POLICY NOTE

THE SEA FISHING (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2021

SSI 2021/XXX

The above instrument was made in exercise of the powers conferred by paragraph 11M(1) of schedule 2 of the European Union (Withdrawal) Act 2018(**1**) ("the 2018 Act"). The instrument is subject to draft affirmative procedure.

Purpose of the instrument.

The purpose of this instrument is to deal with matters arising out of or related to the Protocol on Ireland/Northern Ireland ("the Protocol") in the Withdrawal Agreement between the United Kingdom ("UK") and the European Union, namely facilitating the access to the market within Great Britain of qualifying Northern Ireland goods(**2**).

Policy Objectives

This instrument makes a technical amendment to the offence provision in article 9(3) of the Sea Fishing (Illegal, Unreported and Unregulated Fishing) (Scotland) Order 2013 (SSI 2013/189) ("the 2013 Order") to reflect amendments to be made by a UK SI, the Common Fisheries Policy (Amendment etc.) Regulations 2021 ("the UK SI") to the retained EU law version of the Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (EUR 2008/1005) (the "retained IUU Regulation") in accordance with the Protocol. The effect of this technical amendment is to clarify the scope of this offence, following these amendments to the retained IUU Regulation, so that it is only an offence to import fishery products into Scotland without a validated catch certificate in circumstances where such a catch certificate is required under (the amended) Article 12 of the retained IUU Regulation. This instrument therefore facilitates the access to the market within Great Britain of qualifying Northern Ireland goods(**2**).

Explanation of the law being amended by the regulations

Article 12(1) of the retained IUU Regulation currently prohibits the importation into the UK of fishery products obtained from illegal, unreported or unregulated fishing. This is supplemented by a requirement under Article 12(2) of the retained IUU Regulation that fishery products shall only be imported into the UK when accompanied by a catch certificate in conformity with the retained IUU Regulation, subject to an exemption provided under Article 12(2A) for imports into the UK of fishery products caught by Isle of Man- or Channel Island-registered vessels.

(**1**) 2018 (c.16). Paragraph 11M was inserted by section 22 of the European Union (Withdrawal Agreement) Act 2020 (c.1).

(**2**) The term "qualifying Northern Ireland goods" is defined in the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 (SI 2020/1454).

The offence provision in article 9(3) of the 2013 Order enforces Article 12 of the retained IUU Regulation in Scotland, by providing that it is an offence for a person to import fishery products into Scotland without a validated catch certificate in accordance with Article 12 of the retained IUU Regulation.

The UK SI will amend the retained IUU Regulation in various respects to give effect to the Protocol, including to provide that Articles 12(1), (2) and (2A) of the retained IUU Regulation will only apply to imports of fishery products into Great Britain, rather than into the UK. In addition, the UK SI will expand the Article 12(2A) exemption to include imports of fishery products into Great Britain which are classed as "qualifying Northern Ireland goods"(**3**).

These regulations follow on from these amendments to Article 12 of the retained IUU Regulation and provide that it is only an offence for a person to import fishery products into Scotland without a validated catch certificate in circumstances where such a catch certificate is required under (the amended) Article 12.

Reasons for and effect of the proposed change or changes on retained EU law

The reasons for and effect of the proposed change to retained EU law are as described above. These Regulations do not make any substantial changes to retained EU law, but will ensure continuity of law and ensure the implementation of the Protocol. Without this technical amendment, the 2013 Order would not be in accordance with the Protocol.

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

The Regulations are made in exercise of a power in the 2018 Act to implement the Protocol (paragraph 11M(1) of Part 1C of schedule 2).

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

The Minister for Rural Affairs and the Natural Environment, Ben Macpherson, has made the following statement, “In my view the Sea Fishing (EU Exit) (Scotland) (Amendment) Regulations 2021 have had due regard to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”.

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

The Minister for Rural Affairs and the Natural Environment, Ben Macpherson has made the following statement, “In my view the Sea Fishing (EU Exit) (Scotland) (Amendment) Regulations 2021 have no effect on the rights and duties relating to employment, health and safety and matters relating to consumer protection. This is because they make a minor technical amendment unrelated to these policy areas.

(**3**) The term “qualifying Northern Ireland goods” is defined in the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 (SI 2020/1454).

An indication of how the regulations should be categorised in relation to the significance of the change proposed

Medium – This instrument is predominantly concerned with technical detail but does relate to an offence. And although this instrument does relate to an offence, it doesn't extend, or materially change the offence, it merely ensures the that the offence is being properly read in light of the NI Protocol.

Statement setting out the Scottish Ministers' reasons for their choice of procedure

This SSI is subject to mandatory draft affirmative procedure under paragraph 8F(5) of schedule 7 of the 2018 Act. Therefore, the sifting procedure in the SSI protocol is not relevant to this SSI.

Further information

Consultation

The amendment made by this instrument is technical in nature and is intended to clarify the scope of an existing offence under the 2013 Order. There is no statutory consultation requirement for amendments to the 2013 Order and no consultation was considered necessary for this purely technical amendment.

Impact Assessments

Full impact assessments have not been prepared for this instrument because only a minor technical amendment is being made and the practical effect of this amendment is considered to be negligible. The amendment does not alter the Scottish Government's current environmental policies and priorities and, therefore, does not have an impact on the environment. There is no expected impact on business, charities or voluntary bodies.

Financial Effects

The Minister for Rural Affairs and the Natural Environment, Ben Macpherson, confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Marine Scotland
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