EXPLANATORY MEMORANDUM TO

THE EELS (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2011

2011 No. 2976

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

The purpose of this instrument is to correct a defect in the Eels (England and Wales) Regulations 2009.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Committee, in its seventh report for the 2009/2010 session, reported a defect in regulation 7(1) of the Eels (England and Wales) Regulations 2009. Regulation 7 relates to duties on those who accept consignments of live eels.

3.2 The Committee identified that the Regulation 7 (1) did not specify that the provisions only applied to consignments of live eels – while Regulation 5 (imports) and Regulation 6 (exports), to which Regulation 7 refers, did. Furthermore the cross reference in Regulation 7 to Regulation 6 (exports) applied the duty on consignees to people outside UK jurisdiction receiving eels exported from England and Wales.

3.3 The Department acknowledged the error and undertook to correct regulation 7(1). It does this by confining regulation 7 to consignments of live eels imported into England and Wales. In relation to exports, a duty is placed on exporters to ensure consignments of live eels exported from England or Wales are accompanied by a certificate.

4. Legislative Context

The Eels (England and Wales) Regulation 2009 implemented Council Regulation (EC No. 1100/2007 of 18 September 2007 establishing measures for the recovery of the stock of European Eel. The Council Regulation requires Member States to implement a number of short- and long-term measures to achieve a target of ensuring that at least 40% of the potential production of adult eels return to the sea to spawn on an annual basis.

5. Territorial Extent and Application

This instrument applies to England and Wales but does not apply to that part of the River Tweed and its catchment areas as lies in England. This area is, instead, managed by Scotland under the Scotland Act 1998 (River Tweed) Order 2006.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

The International Council for the Exploration of the Sea (ICES) advised in 2006 that the stock of the European eel (*Anguilla anguilla*) was outside safe biological limits across European waters. The population level was only about 5% of the stock levels in the 1980s. Following this advice, the EU regulated in Council Regulation (EC) No. 1100/2007 establishing measures for the recovery of the stock of the common eel. The Regulation requires Member States to implement a number of short- and long-term measures to ensure that at least 40% of the potential production of adult eels return to the sea to spawn annually.

8. Consultation outcome

There has been no public consultation on the new instrument.

9. Guidance

Defra will not publish guidance on these Regulations. However, the Environment Agency publishes guidance on legislative requirements and other matters on its fisheries webpage.

10. Impact

An Assessment has not been prepared for this instrument. An Impact Assessment was produced on the original instrument and is available with the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

The legislation applies to small business. However, the legislation will not affect adversely affect small business.

12. Monitoring & review

Member States must report to the Commission periodically (initially every third year) on the success of measures under the EC Regulation. This will form the basis for reviewing the instrument. The Environment Agency will review the effectiveness and outcome of measures introduced following implementation.

13. Contact

Delyth Dyne at the Department for Environment, Food and Rural Affairs Tel: 0207 238 1224 or email: delythdyne@defra.gsi.gov.uk can answer any queries regarding the instrument.