EXPLANATORY MEMORANDUM TO

THE FISHERIES, AQUACULTURE AND MARINE (FUNCTIONS EXERCISABLE IN OR AS REGARDS SCOTLAND) (AMENDMENT) (EU EXIT) (NO. 2) REGULATIONS 2019

2019 No. 1272

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument makes simple changes to domestic legislation to ensure that the Scottish Government and its agencies can continue to control fishing and marine dredging (for the extraction of minerals) in the Scottish zone after EU Exit. This instrument amends the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 and the Scotland Act 1998 (Modifications of Functions) Order 1999.

2.2 This instrument revokes and replaces a largely identical instrument: the Fisheries, Aquaculture and Marine (Functions Exercisable in or as Regards Scotland) (Amendment) (EU Exit) Regulations 2019 ("the original Regulations"). This instrument is being made to ensure there is no doubt in relation to compliance with the requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018. The commencement provisions in the original Regulations were amended after the Committees referred to in paragraph 3(4) of Schedule 7 to that Act (the Sifting Committees) had made their recommendations as to the appropriate procedure for that instrument. As a result, the Joint Committee on Statutory Instruments drew the original Regulations to the attention of both Houses on the grounds that there appeared to be doubt over the power to make them. This instrument revokes the original Regulations before they were due to come into force, thereby addressing the points raised by the Joint Committee.

Explanations

What did any relevant EU law do before exit day?

2.3 The two Scotland Act Orders amended by this instrument are made under the power in section 30 of the Scotland Act 1998 to specify which functions are exercisable in or as regards Scotland. The Orders, among other things, specify that functions relating to fisheries, aquaculture and marine dredging (for the extraction of minerals) which arise under EU law are exercisable by the Scottish Government.

Why is it being changed?

2.4 Leaving the EU means that references to EU law in domestic law will no longer be relevant and must be amended. Under the European Union (Withdrawal) Act 2018,

the body of law which will replace EU law is "retained EU law", and that is the amendment that the instrument makes.

What will it now do?

2.5 This instrument ensures there is immediate continuity in the control of functions in Scottish waters, in relation to marine dredging and fishing vessels when the UK leaves the EU. No policy changes are made to the effect of the Orders, and there is no change to the devolution settlement.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Fisheries, Aquaculture and Marine (Functions Exercisable in or as Regards Scotland) (Amendment) (EU Exit) (No. 2) Regulations 2019 were presented to the Sifting Committees for consideration on 22 July 2019. On 10 September 2019 the Sifting Committees agreed with the Government that this instrument does not have to have a debate in parliament, though one may still occur. The instrument will, therefore, remain subject to the negative resolution procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU. This instrument is made in exercise of these powers.

6.2 The original Regulations (S.I. 2019/728) were laid before Parliament on 29th March 2019. At that time, the statutory definition of "exit day" meant that the instrument was being laid before Parliament within 21 days of EU Exit. Defra did not wish to risk breaching the convention that an instrument should not normally be laid before Parliament less than 21 days before it comes into force, so the commencement provisions in the original Regulations were amended to "the later of exit day or the 21st day after the day on which they [the Regulations] are made". This had the effect that the commencement provisions in the made instrument differed from those in the

draft instrument that had been laid to the Sifting Committees. The Joint Committee on Statutory Instruments drew the original Regulations to the attention of both Houses on the grounds that there appeared to be doubt over the power to make them. Following that report, and in consideration of the amount of time until the new statutory definition of "exit day", a decision was made to replace the original Regulations, thereby addressing the points raised by the Joint Committee. This instrument revokes the original Regulations before they were due to come into force and the amendments made to the two Scotland Act Orders will come into force on exit day.

7. Policy background

What is being done and why?

7.1 Fisheries management is largely devolved to Scotland, and the Scotland Act Orders lay out how functions in EU law will be delivered in Scottish waters and by Scottish vessels.

7.2 Directly applicable EU law and EU-derived domestic law will become retained EU law after the UK leaves the EU, and this instrument ensures that the correct body of law is referred to in the Orders.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively as a result of the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of Annex A.

9. Consolidation

9.1 There are no plans to consolidate the legislation.

10. Consultation outcome

10.1 The simple changes in this SI ensure that EU law continues to operate in Scotland after EU Exit, therefore there was no requirement to consult on this instrument.

11. Guidance

11.1 As these are technical changes to existing legislation there is no associated guidance.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there are no changes to what the public sector, or business, will have to do under the Regulations.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 As the legislation will continue to operate substantially as it did before EU Exit, it will not disproportionately affect small business.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that Defra, as well as the Devolved Administrations in relation to devolved matters, will monitor and review the impact of the instrument as part of their standard policy-making procedures.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Paul Simpson at the Department for Environment, Food and Rural Affairs, Telephone: 020 7895 5263 or email: Paul.Simpson@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Anne Freeman, Deputy Director for Domestic Fisheries and Reform at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.

15.3 George Eustice MP, Minister of State for Agriculture, Fisheries and Food at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI.	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees.
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA 2018 SIs.	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under s. 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under s. 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

1.1 The Minister of State for Agriculture, Fisheries and Food, Robert Goodwill MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Fisheries, Aquaculture and Marine (Functions Exercisable in or as Regards Scotland) (Amendment) (EU Exit) (No. 2) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

1.2 This is the case because this instrument addresses only technical deficiencies in retained EU legislation and EU derived UK legislation arising from the UK's withdrawal from the EU. This instrument does not change the substantive policy.

2. Appropriateness statement

2.1 The Minister of State for Agriculture, Fisheries and Food, Robert Goodwill MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Fisheries, Aquaculture and Marine (Functions Exercisable in or as Regards Scotland) (Amendment) (EU Exit) (No. 2) Regulations 2019 do no more than is appropriate".

2.2 This is the case because this instrument corrects deficiencies which have arisen out of the UK's exit from the EU. It does no more than ensure the UK has functional and operable fisheries legislation in place immediately after EU Exit.

3. Good reasons

3.1 The Minister of State for Agriculture, Fisheries and Food, Robert Goodwill MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

3.2 These are: correcting deficiencies as necessary to ensure we continue to have operable fisheries legislation after EU Exit.

4. Equalities

4.1 The Minister of State for Agriculture, Fisheries and Food, Robert Goodwill MP, has made the following statement:

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts".

4.2 The Minister of State for Agriculture, Fisheries and Food, Robert Goodwill MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Robert Goodwill MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.