EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (OFFSHORE WORKER NOTIFICATION AND EXEMPTION FROM CONTROL (AMENDMENT)) REGULATIONS 2023

2023 No. 346

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 These Regulations exercise the powers conferred by section 11B of the Immigration Act 1971 ("the 1971 Act"), as inserted by section 43 of the Nationality and Borders Act 2022 ("the 2022 Act"). The effect is to impose a requirement on an offshore migrant worker, or their sponsor if they have one, to inform the Home Office when they (the worker) arrives and leaves UK waters, and to set out the consequences of non-compliance.

2.2 These Regulations also amend the Immigration (Exemption from Control) Order 1972 ("the 1972 Order") made under section 8(2) of the 1971 Act. The effect is to exempt persons working on licensed foreign fishing vessels in UK waters from requiring leave to enter the United Kingdom. This implements commitments the UK has made on fishing in the UK-EU Trade and Cooperation Agreement ("TCA") and other international agreements and arrangements.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is the same as the territorial extent.

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 Under the 1971 Act, a migrant cannot enter the United Kingdom without leave to enter or stay, and may be subject to conditions such as restricting their work or occupation in the UK. Section 11A (inserted by the 2022 Act) clarifies that this framework also applies to those working in United Kingdom waters (e.g. territorial sea and inland waters) and clarifies when offshore workers arrive and enter for these purposes. Section 11B (also inserted by the 2022 Act) give the Secretary of State powers to make provisions in relation to offshore workers (or their sponsors) giving notice of their arrival, entry or when they leave the United Kingdom, and

consequences for a failure to do so. These Regulations make provisions in relation to these notifications under the power in section 11B.

6.2 Section 8 of the 1971 Act allows the Secretary of State to exempt any person or class of persons, either unconditionally or subject to such conditions as may be imposed by or under the order, from all or any of the provisions of the Act relating to those who are not British citizens. The 1972 Order (as amended over time) already sets out a number of exemptions including, at Article 5, persons who are exempt from the requirement to obtain leave to enter when they arrive in the United Kingdom (subject to certain conditions). These Regulations amend Article 5 of the 1972 Order to add persons working on a foreign fishing vessel authorised to fish in the United Kingdom's territorial sea or exclusive economic zone pursuant to a licence granted under the Fisheries Act 2020, where that person is undertaking work pursuant to an international agreement or arrangement.

7. Policy background

What is being done and why?

7.1 The new sections 11A and 11B of the 1971 Act (inserted by the 2022 Act) clarify the position for foreign nationals working in the territorial sea and internal waters of the United Kingdom, and it ensures a consistent position with those coming to work on the UK landmass. All foreign nationals require permission to undertake any work in UK waters, unless they are covered by an exemption.

7.2 In order for the Home Office to know who is working in UK waters, these Regulations require a notification to the Secretary of State when an offshore worker arrives in the UK (that is, arrives in UK waters for the purpose of undertaking work in those waters) and when they leave. This notification must be made no earlier than the day of arrival/leaving and no later than 10 working days after arrival/leaving.

7.3 The Home Office expect that the majority of offshore workers will be seeking to apply for permission under a sponsored work route (e.g. Skilled Worker route). The Home Office already requires sponsors to comply with a number of obligations as part of their core sponsor duties, including monitoring workers' attendance and notifying the Secretary of State of changes to their sponsored workers' circumstances. Where an offshore worker has a sponsor, the Regulations specify that the obligation to make the notification is on the sponsor. In this case, a sponsor need only make a notification when the person first arrives in the United Kingdom at the beginning of the job for which they are being sponsored, and when they leave at the end of that job. Only in a small number of cases where an offshore worker is using an unsponsored route will the requirement be on the worker to make the notification (in which case they will need to notify the Secretary of State each time they arrive or leave). Written notifications can be made by emailing offshoreworkernotificationsinbox@homeoffice.gov.uk. The Home Office will also publish information and guidance setting out the process for making notifications.

7.4 Existing guidance sets out consequences where sponsors fail to comply with their duties, including suspension or revocation of their sponsorship licence. This guidance will be updated to reflect changes from these Regulations. These Regulations also provide that where it is the offshore worker who has failed to make a notification, their leave to enter or remain may be cancelled or varied, or any future application they make for leave to enter or remain may be refused.

7.5 These Regulations also amend the 1972 Order to exempt persons working on a foreign fishing vessel licenced to fish in the UK's territorial sea or exclusive economic zone, so long as that person is undertaking work pursuant to an international agreement or arrangement to which the UK is a party.

7.6 The UK has made a number of international commitments enabling access to the UK for foreign fishing vessels (including the TCA, the Framework Agreement on Fisheries between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Norway, and the UK-Ireland Voisinage Arrangement). In order to fish within British fisheries limits, these foreign fishing vessels must obtain licences under section 17 of the Fisheries Act 2020. These Regulations create an exemption from the requirement to obtain leave for those persons who enter the UK on such a licensed foreign fishing vessel, so long as they are undertaking work pursuant to an international agreement or arrangement. The exemption does not apply to a person subject to a deportation order, where they have previously entered unlawfully and have not subsequently been given leave to enter or remain in the United Kingdom, or where they are required to submit to examination by Border Force.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

8.2 This instrument does however relate to the implementation of the EU-UK Trade and Cooperation Agreement as set out in paragraph 7.6 above.

9. Consolidation

9.1 The Government is not planning consolidation measures.

10. Consultation outcome

10.1 These regulations have not been the subject of a formal public consultation, as this would be disproportionate given the nature of the regulations.

10.2 The Home Office has held engagement sessions with stakeholders in the maritime sectors to discuss the wider policy and implementation of section 43 of the Nationality and Borders Act 2022 (the provision on working in UK waters). Further engagement is planned with the Devolved Governments ahead of implementation.

10.3 Defra has engaged with the Devolved Governments and with the stakeholders on working in UK waters.

10.4 The amendments to the 1972 Order are required to comply with international obligations, such as those in the TCA and the Framework Agreement on Fisheries between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Norway. These obligations were subject to considered discussions between the UK and respective international partners at the time.

11. Guidance

11.1 The Home Office will update its guidance for sponsors relating to the changes, including setting out the process for sponsors to make notifications. The updated guidance will be available on the GOV.UK website before these Regulations come into effect.

11.2 Information and guidance for members of the public (including the process for individual offshore workers to make notifications) will be available on the GOV.UK website before these Regulations come into effect.

11.3 Notifications can be made by sponsors and individual offshore workers at: offshoreworkernotificationsinbox@homeoffice.gov.uk

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 A full Impact Assessment has not been prepared for this instrument because there will only be a low level of impact on individual businesses and it does not represent a significant change to businesses as they are already expected to comply with the requirements of the Home Office Sponsor Management System.

13. Regulating small business

13.1 The Regulations apply to activities that are undertaken by small businesses.

13.2 Small businesses who want to employ foreign nationals are required to become a Home Office licensed sponsor but incur a smaller application fee of £536 to obtain a licence, which lasts five years and is renewable. All sponsors are required to pay £199 per skilled worker for a certificate of sponsorship and also pay the immigration skills charge of £364 per worker per year.

14. Monitoring & review

14.1 This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Robert Jenrick, MP, Minister for Immigration has made the following statement "It is not appropriate in the circumstances to make provisions for a formal review clause. I am satisfied that these regulations have no significant impact on small businesses and fall well below the annualised net impact on business. Nevertheless, in line with standard practice at the Home Office, this policy will be subject to regular monitoring, evaluation and non-statutory review."

15. Contact

15.1 Honor Horsfall at the Home Office (email: honor.horsfall@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Philippa Rouse, Migration & Citizenship Director, SRO Future Border & Immigration System Programme at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Jenrick, Minister of State for Immigration at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.