EXPLANATORY MEMORANDUM TO

THE SEA FISH LICENSING (ENGLAND) (EU EXIT) REGULATIONS 2019

2019 No. 523

1. Introduction

1.1 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

2.1 The principal purpose of this instrument is to make provision about the licensing of fishing boats from outside the UK when fishing in English waters after the UK leaves the EU. This provision is essential for England to control access from non-UK vessels to its domestic waters, and endorse any international agreements on fisheries access to UK waters post EU exit. This provision will be required if the Fisheries Bill does not receive Royal Assent by 29 March 2019.

Explanations

What did any relevant EU law do before exit day?

2.2 UK fisheries are currently managed under the EU's Common Fisheries Policy (CFP) which sets out the objectives for the conservation and sustainable exploitation of European fisheries resources. Article 5 of Regulation (EU) No 1380/2013 sets out general rules on access to EU waters. EU vessels have equal access to all union waters and resources from 12-200 nautical miles of member state baselines, and are licensed by their respective Member State to fish within Union waters.

Why is it being changed?

2.3 When the UK leaves the EU and the CFP, article 5 of Regulation (EU) No 1380/2013 will not apply in relation to UK waters, meaning foreign vessels will not have automatic access rights, or licences, to fish. As an independent coastal state the UK will be responsible for managing our fisheries and marine environment sustainably. New powers are required to control and manage access by foreign vessels within UK waters after we leave the EU.

2.4 Vessel licensing is an effective method for managing fisheries sustainably, and is currently applied to the domestic fishing fleet. Prohibiting foreign vessels from fishing within English waters post EU exit without the authority of a licence issued by ministers, will allow us to effectively regulate their activity and ensure fishing opportunities are managed fairly across both fleets, and that wider sustainability objectives are met.

What will it now do?

2.5 Section 4 of the Sea Fish (Conservation) Act 1967 prohibits fishing within British Fishery Limits by fishing vessels without the authority of a licence issued by Ministers. Currently this only applies to British registered fishing vessels, but allows Ministers to make, by order, a prohibition on fishing by foreign vessels in British waters without the authority of a licence.

2.6 These powers are devolved, and in relation to England are covered by the Sea Fish Licensing (England) Order 2015. This Order will make it illegal for foreign to fish within English waters without the authority of a licence issued by Ministers. Foreign vessels will be required to comply with conditions attached to their licence for fishing within English waters, allowing us to effectively manage their fishing activity. The Order also amends the Sea Fishing (Licences and Notices) (England) Regulations 2012, updating the definition and communication of a fishing licence as a consequence of the other provisions in this regulation and the withdrawal of the UK from the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

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 procedure 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 England only.

4.2 The territorial application of this instrument is England and the English zone as defined in regulation 2 of the Regulations.

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 Regulation (EU) No 1380/2013 sets out the objectives for the conservation and sustainable exploitation of European fisheries resources under the Common Fisheries Policy (CFP).

6.2 Article 5 of Regulation (EU) No 1380/2013 sets out general rules on access to EU waters. EU vessels have equal access to all Union waters and resources from 12-200 nautical miles of Member State baselines.

6.3 When the UK leaves the EU and the CFP, article 5 of Regulation (EU) No 1380/2013 will not apply in relation to UK waters, meaning foreign vessels will not have automatic access rights to fish. New licensing provisions are required to control and manage access by foreign vessels within UK waters after the UK leaves the EU.

6.4 Section 4 of the Sea Fish (Conservation) Act 1967 provides the power to prohibit fishing within British Fishery Limits by fishing vessels without the authority of a licence.

6.5 The licensing powers under section 4 of the Sea Fish (Conservation) Act 1967 are devolved. English vessels are prohibited from fishing without a licence by the Sea Fish Licensing (England) Order 2015 (S.I. 2015/647). The remainder of British-

owned or UK registered fishing vessels are prohibited from fishing without a licence by the Sea Fish Licensing Order 1992 (S.I. 1992/2633).

6.6 The Sea Fish Licensing (England) (EU Exit) Regulations 2019, will make it illegal for foreign vessels to fish within English waters without the authority of a licence issued by the Marine Management Organisation. Foreign vessels will be required to comply with conditions attached to their licence for fishing within English waters, providing the scope to manage their fishing activity. The Order also amends the Sea Fishing (Licences and Notices) (England) Regulations 2012, updating the definition and communication of a fishing licence as a consequence of the other provisions in this regulation and the withdrawal of the UK from the EU.

7. Policy background

What is being done and why?

7.1 The UK will be an independent coastal state upon leaving the EU and the Common Fisheries Policy (CFP). EU vessels will no longer have automatic access to fish within English waters.

7.2 Future access by foreign vessels to English waters will need to be controlled. New legislation to specify which countries are allowed access, and ensure their compliance with domestic fisheries management rules, will be required. Failure to manage fishing activity can lead to over exploitation of fish stocks and resultant wider damage to the marine ecosystem. This could jeopardise our vision of a more competitive, profitable and sustainable UK fishing industry, and meeting international commitments on sustainable fishing.

7.3 The preferred approach is to introduce these powers through the Fisheries Bill, so that there is a consistent approach across the UK. However in the event that the Fisheries Bill does not gain Royal Assent before the UK leaves the EU, it is important that foreign vessels access to English waters can still be controlled and managed.

7.4 It is intended to achieve this by prohibiting foreign vessels from fishing within English waters without the authority of a licence issued by the Marine Management Organisation. This will allow the Marine Management Organisation to regulate the activity of foreign fishing vessels. Conditions attached to licences would detail the specific requirements for fishing within English waters, such as vessel monitoring systems (VMS) and catch reporting. It will also allow fisheries managers to respond quickly to issues, such as introducing closed areas or gear requirements following scientific advice.

7.5 Vessel licensing is an effective method for managing fisheries sustainably, and is currently applied to the domestic fishing fleet. It is intended that foreign vessels will comply with the same standards applied to the domestic fleet, in addition to other requirements such as catch and position reporting. This will help ensure fishing opportunities are managed fairly across both fleets, and that wider sustainability objectives are met.

7.6 Failure to introduce this legislation would mean we would be unable to license fishing by foreign vessels within English waters post EU exit. There would be no provision to license individual foreign vessels under current domestic legislation, or EU legislation being retained under the Withdrawal Act. If the UK came to an international agreement with another coastal state we would not have the powers to be able to deliver our preferred policy outcome, which is to ensure any foreign vessels we

choose to allow to fish in our waters are licensed. Licensing delivers a "level-playing field" between UK and foreign vessels, and delivers greater control and enforcement options. Failure to act could result in the UK not being able to demonstrate the management of marine resources effectively, which could have an adverse impact on fish stocks in English waters and could attract criticism internationally.

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

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union, because it introduces powers for controlling access to English waters as a result of leaving the EU and CFP.

9. Consolidation

9.1 This order does not consolidate or revoke other legislation.

10. Consultation outcome

10.1 Stakeholder engagement on the White Paper Sustainable Fisheries future generations took place during the year before and after publication in July 2018. The White Paper made clear that, as an independent coastal state, the UK will decide who can access its waters after 2020 and on what terms. Any decisions about giving access to UK waters for vessels from the EU, or any other coastal states including Norway, will then be a matter for negotiation.

10.2 The Fisheries Bill published on 25 October 2018 had its second reading on 21 November 2018 and completed its Commons Committee stage on 17 December 2018. Our approach to managing access for foreign vessels set out in the Fisheries Bill has been supported by industry and MPs. This SI replicates that approach in the absence of the Bill.

11. Guidance

11.1 Guidance for fishermen is being prepared by the Marine Management Organisation (MMO) and will be made available ahead of this Order coming into force.

12. Impact

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

12.2 The impact on the public sector will be the administration of licensing foreign vessels from designated countries. This would be covered by a government body such as the MMO, who will require new staff and potential updating of IT systems associated with managing and updating foreign vessel licences.

12.3 A Regulatory Triage Assessment (RTA) has been prepared for this instrument as the impacts are considered minor. Impacts on government are expected to be less than £5 million.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small domestic (UK) businesses.

14. Monitoring & review

14.1 The approach to monitoring this legislation is covered under article 5 of the Sea Fish Licensing (England) Order 2015. The Secretary of State, from time to time, is required to carry out a review of this order and publish its conclusions in a report. The first report must be published within five years from this order coming into force, and at intervals not exceeding five years thereafter.

15. Contact

15.1 Ross Deadman at the Department for the Environment, Food and Rural Affairs Telephone: 020 8026 5694 or email: ross.deadman@defra.gov.uk can answer 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 Dr Thérèse Coffey MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.