EXPLANATORY MEMORANDUM TO

THE SEA FISHING (ENFORCEMENT) REGULATIONS 2018

2018 No. 849

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 Inshore Fisheries Conservation Officers (IFCOs) previously had enforcement powers in relation to a list of EU technical fisheries measures under the Sea Fishing (Enforcement of Community Conservation Measures) Order 2000 (the 2000 Order). The 2000 Order was revoked by the Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015 (the 2015 Order) as part of the Red Tape Challenge because a significant number of the EU measures it listed were out of date. The revocation of the 2000 Order inadvertently resulted in IFCO's losing the power to enforce those listed EU fisheries measures that were still in force. To address this enforcement gap, interim cross-warranting arrangements were put in place under which the Marine Management Organisation (MMO) appointed IFCOs as Marine Enforcement Officers (MEOs). This approach gave IFCOs powers to enforce all relevant EU measures on a temporary basis but practical and operational difficulties meant that it was never intended to be a long-term solution.

2.2 This instrument reinstates IFCOs' direct powers to enforce certain specified EU technical and conservation fisheries measures.

2.3 In addition to updating references to the measures listed in the 2000 Order, it extends IFCO enforcement powers to a number of additional EU fisheries technical and conservation measures, including conservation measures in relation to bass and bluefin tuna. References to the EU measures listed will be "ambulatory", i.e. the references will be read as references to those measures as amended by the EU until the UK leaves the EU (or after any implementation period). After that point, they would be read as references to those measures as converted into UK law by and under the Withdrawal Act 2018, and so would be subject to UK Parliamentary process and scrutiny.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 This instrument reinstates IFCOs' direct enforcement powers in relation to listed EU technical fisheries measures. IFCOs previously held enforcement powers in relation to a range of EU measures under the 2000 Order but this Order was revoked in 2015. This instrument replaces the temporary arrangements for enforcement which have been in place since 2015, under which IFCOs have been appointed as Marine Enforcement Officers by the Marine Management Organisation under section 235 of Marine and Coastal Access Act 2009 (the 2009 Act) to enable them to enforce EU fisheries measures.

4.2 These arrangements are not considered to be a viable long-term enforcement solution due to the operational difficulties that arise from an IFCO acting as a MEO under the authority of the MMO rather than under the authority of an IFCA. For example, under current arrangements, the MMO is liable for the actions of an IFCO acting as a MEO, rather than the IFCA for the IFCO's district. In addition, there is lack of clarity for industry and the public as to which prosecuting authority has primary responsibility to enforce EU conservation measures in inshore districts.

4.3 This instrument is made under section 2(2) and paragraph 1A of Schedule to the European Communities Act 1972 and gives IFCOs the enforcement powers referred to in section 166(3) of the 2009 Act in respect of specific EU technical and conservation fisheries measures listed in the Schedule. These measures are contained in the following EU Regulations:

- Commission Regulation (EEC) No 3440/84 on the attachment of devices to trawls, Danish seines and similar nets
- Council Regulation (EC) No 894/97, laying down certain technical measures for the conservation of fishery resources
- Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms
- Council Regulation (EC) No 2549/2000 establishing additional technical measures for the recovery of stock of cod in the Irish Sea (ICES Division VIIa)
- Commission Regulation (EC) No 2056/2001 establishing additional technical measures for the recovery of stocks of cod in the North Sea and to the west of the coast of Scotland
- Commission Regulation (EC) No 494/2002 establishing additional technical measures for the recovery of the stock of hake in ICES sub-areas III,IV, V, Vi and VII and ICES divisions VIII a b d e
- Council Regulation (EC) No 1185/2003 on the removal of fins of sharks on board vessels
- Council Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries
- Council Regulation (EC No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy

- Council Regulation (EU) 2016/1627 of the European Parliament and of the Council on a multiannual recovery plan for bluefin tuna in the eastern Atlantic and the Mediterranean
- Council Regulation (EU) 2018/120 fixing for 2018 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters

5. Extent and Territorial Application

5.1 This instrument extends to England, Scotland and Wales.

5.2 IFCOs are appointed for inshore fisheries conservation districts in England only, but as IFCOs may exercise their powers of pursuit under this instrument in Scotland or Wales.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 Defra is introducing this instrument to provide IFCOs with powers to enforce a list of EU fisheries technical and conservation measures that were inadvertently revoked as part of the Red Tape Challenge.

7.2 This instrument also gives IFCOs powers to enforce the EU fisheries measures listed in the 2000 Order, as updated by EU legislation and enforce EU conservation measures on bass catch limits for vessels and recreational fishing for bass and conservation measures for blue fin tuna. Much of this fishing activity occurs within the IFCA 0-6 nautical mile zone and it is therefore appropriate for IFCOs to enforce the relevant controls.

7.3 This instrument contains "ambulatory references", i.e. references to the specified EU measures will be read as references to those measures as amended by the EU from time to time. The measures listed are primarily of a technical nature and they regularly updated by the EU. The ambulatory references apply only to amendments to the specific Articles of the EU Regulations listed in this instrument. Any amending measures affecting the EU measures listed in this instrument may be found on the Eur-Lex website (https://eur-lex.europa.eu/homepage.html).

Consolidation

7.4 None.

8. Consultation outcome

8.1 MMO and the IFCAs have been involved in the development of this instrument from the beginning. However, in the interests of legislative transparency and openness, Defra held a four week public consultation during March and April 2018.

8.2 The consultation sought views on the introduction and implementation of this instrument and sought any more general comments. Responses were received from stakeholders, industry and members of the general public.

8.3 71% of respondents agreed with the introduction of this instrument. The same percentage of respondents agreed with the reinstatement of IFCOs as direct enforcers of EU fisheries legislation.

8.4 The main objections to the proposals were:

1. suitability of IFCOs to interpret and enforce the legislation;
2. possible duplication of resources; and
3. increase in costs to IFCAs.

8.5 Responses to these concerns are summarised below. A more detailed analysis of the consultation is available on the GOV.UK website at https://www.gov.uk/government/consultations/introducing-the-sea-fishing-enforcement-regulations-2018

1. IFCOs have enforced EU fisheries measures under the 2000 Order and since its revocation in 2015, they have been appointed by the MMO and cross-warranted as MEOs under section 235 of the 2009 Act. As a result, IFCOs have experience of interpreting and enforcing EU Regulations. In addition, all warranted IFCOs are required to receive training in order to obtain their warrant. There is a continued programme of training for many warranted officers. IFCOs attend the MMO Training Course that is mandatory for MEOs and Naval Fisheries Officers.
2. There will be no duplication of resources as responsibility to enforce EU Regulations in IFCA districts is transferred from the MMO to the IFCAs. It is not considered a viable long-term solution to temporarily cross warrant IFCOs as there are practical and operational issues with this process as an IFCO acting as MEO would be acting under the control and authority of the MMO rather than the authority of its IFCA.
3. Defra will meet any downstream costs of any additional enforcement cases that may arise as a result of this legislation.

9. Guidance

9.1 The Marine Management Organisation and the Inshore Fisheries Conservation Authorities will be fully informed of the implementation of this instrument.

10. Impact

10.1 There is no impact on those businesses, charities or voluntary bodies complying with applicable legislation. This measure will not introduce extra burdens for business.

10.2 Enforcement measures are already carried out by the MMO and IFCAs so the impact on the public sector will be limited. Defra will bear the cost of additional cases arising as a result of this instrument.

10.3 An Impact Assessment has not been prepared for this instrument as there will be no impact on business.

11. Regulating small business

11.1 The legislation in part applies to activities undertaken by small businesses. The proposal is not anticipated to affect small or micro businesses negatively, their customers or competitors.

12. Monitoring & review

12.1 The Government has considered the need for a review of the Regulations relating to the enforcement provisions in accordance with sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015. Giving consideration to the low impact these Regulations have on business, the Government is of the view that the high costs of undertaking a review outweigh the limited scope for future policy change. Therefore, in accordance with section 14 (b) of the Statutory Guidance under s.31 of the Small Business, Enterprise and Employment Act, the Minister considers that it is not appropriate in the circumstances to make provision for review in these Regulations due to cost proportionality.

13. Contact

13.1 Graham Lott at the Department for the Environment, Food and Rural Affairs Telephone: 020 8026 4399 or email: graham.lott@defra.gsi.gov.uk can answer any queries regarding the instrument.