

**EXPLANATORY MEMORANDUM TO**  
**THE COMMON FISHERIES POLICY (AMENDMENT ETC.) (EU EXIT)**  
**REGULATIONS 2018**

**2018 No. [XXXX]**

**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 Act.
- 1.2 This memorandum contains information for the Sifting Committees.

**2. Purpose of the instrument**

- 2.1 The EU's Common Fisheries Policy ("CFP") regulates fishing activities and the enforcement of those activities in UK waters. The CFP comprises numerous EU Regulations which will automatically be transferred into UK law on exit day, by virtue of the European Union (Withdrawal) Act 2018, and will have the status of 'retained direct EU legislation'. These EU Regulations require amendment in order to operate effectively in UK law after the UK has exited from the European Union, and therefore the CFP. This instrument uses the powers in section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 to make the necessary amendments.

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 The CFP comprises approximately 100 EU Regulations which impose a common approach to the sustainable management of fisheries across the European Union and its waters (currently UK waters are part of EU waters). The Regulations have direct effect in UK law. The CFP "Basic Regulation" (EU Regulation 1380/2013) contains the overarching aims and objectives of the CFP, but the rest of the CFP regulates the detail of many aspects of fisheries management, in particular:
  - (i) The Control Regulations: these contain the rules for compliance with the CFP legislation, including requirements to produce catch certificates and sales notes, the vessel monitoring and inspection provisions and the enforcement of the CFP generally. There are specific Regulations which impose rules for particular species only, such as for highly migratory fish. This Part also covers the Sustainable Management of External Fishing Fleets, a framework for authorising EU vessels to operate outside EU waters, and non-EU vessels to operate in EU waters.
  - (ii) The regulations on Illegal, Unregulated and Unreported fishing: these aim to prevent, deter and eliminate illegal fishing activities. They establish the requirement to produce catch certificates and lists of vessels which are in breach of existing rules and prohibit the import of fish from vessels or countries which fish illegally.
  - (iii) The multi-annual plans and effort regimes: these Regulations establish long-term plans for the recovery, preservation or management of fish stocks, including managing how much time fleets can spend at sea.

- (iv) The data collection frameworks: these Regulations set out rules for the collection, management and use of data, in particular scientific data relating to fish stocks.
- (v) The Regulations on the Common Organisation of the Markets (CMO): these Regulations provide for the collective management of producer organisations, common marketing standards, rules on consumer information, competition rules and the transparency and efficiency of the market as a whole.
- (vi) Regulations relating to the protection of vulnerable marine ecosystems and fish stocks in the deep seas and high seas: these impose technical and control measures to ensure that vulnerable stocks are protected.
- (vii) The regulations of the European Maritime and Fisheries Fund: these establish an EU funding scheme to support the implementation of the CFP and CMO.
- (viii) Other provisions: setting defining characteristics for fishing vessels, establishing an EU vessel fleet list and technical conservation measures governing gear size and design, minimum mesh sizes, by catch limits and other measures for the conservation of resources and ecosystems.

2.3 Annex B contains a full list of the CFP regulations to be amended in this SI and their functions. There are additional regulations that form part of the CFP, these will be amended in the same way in separate instruments. CFP Regulations which are not amended in this instrument will be amended at a later date because either they were not in force when the instrument was drafted, they were listed for revocation by the EU, or they were less critical to the effective management of our waters than the Regulations amended by this instrument.

2.4 The CFP is implemented throughout the EU through directly applicable EU Regulations.

*Why is it being changed?*

2.5 The technical changes made by this instrument are necessary to ensure that the rules contained in the CFP continue to operate effectively, so that fishing within UK waters continues to be regulated in a sustainable manner. The instrument imposes the rules of the CFP on UK vessels wherever they are, subject to different rules stemming from international agreements, and on all vessels within UK waters.

*What will it now do?*

2.6 This instrument makes the minimum necessary technical fixes to address deficiencies within CFP legislation and enable the same sustainable fisheries management in UK waters after exit as is currently provided for by the CFP. The instrument has the effect of preserving the status quo, so that there is immediate continuity in the regulation of UK waters when the UK exits the EU.

2.7 Fisheries management is largely devolved to Scotland, Wales and Northern Ireland in relation their vessels and their waters. Therefore, references to “Member State” have, where appropriate, been amended to “fisheries administration”, so that where the UK currently has a function or a power under the CFP, the legislation will refer to a fisheries administration as being the body which carries it out. “Fisheries administration” means the Scottish Ministers in relation to Scotland; the Department of Agriculture, Environment and Rural Affairs in relation to Northern Ireland; the Welsh Ministers in relation to Wales or, in relation to England, the Secretary of State or the Marine Management Organisation. The definition of “fisheries administration”

has the effect of preserving the status quo, so that the administration which currently carries out the function in question, or which exercises the power in question, continues to do so. The instrument does not alter the devolution settlements in any way.

- 2.8 No substantive changes are made to the effect of the CFP and no change to the way in which fishers conduct their activities is expected. Some functions which are currently carried out by the EU will be carried out by fisheries administrations. A full description of the amendments being made is given at section 7.1.

### **3. Matters of special interest to Parliament**

*Matters of special interest to the Sifting Committees.*

- 3.1 The instrument is being laid in draft for sifting pursuant to the European Union (Withdrawal) Act 2018.

*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 is the United Kingdom.  
4.2 The territorial application 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. The instrument is made in exercise of these powers.
- 6.2 Paragraph 21 of Schedule 7 to the Act specifies that the power to modify retained EU law includes a power to make supplementary, incidental and consequential provision and the power to restate retained EU law in a clearer or more accessible way.
- 6.3 This instrument does not make amendments to the provision in the CFP that provides for mutual access to Member States' waters for all EU vessels, or to the EU system of allocating opportunities for fishing to Member States. The CFP provisions on the mutual access to Member States' waters for all EU member state vessels and the EU system of allocating opportunities for fishing, as detailed in Articles 5, 16 and 22 of the CFP's Basic Regulation (1380/2013) will not apply when the UK is no longer a member of the EU and is an independent coastal state. However, these provisions are being amended by the Fisheries Bill as they form part of the fisheries administrations' policies post EU Exit. Also, Article 2 of the CFP's Basic Regulation is not being made operable in this SI, because the Fisheries Bill will set the future sustainability objectives of the UK fisheries administrations.

- 6.4 This SI operates together with the Fisheries (Amendment) (EU Exit) Regulations 2019, which provides technical corrections to correct deficiencies within *domestic* legislation. The two SIs work together to amend the suite of fisheries management legislation that applies to the UK.
- 6.5 Provisions in the EU Regulations which contain powers of the EU to make legislation have been left unamended by this instrument, save that a small number of powers which are not required by the UK have been omitted. That is because all provisions which contain powers that are to be transferred to UK authorities will be addressed in a later instrument which will be subject to the ‘affirmative’ Parliamentary procedure.

## 7. Policy background

### *What is being done and why?*

- 7.1 The Government remains committed to retaining existing standards of effective fisheries management. This instrument is required to ensure that after the UK leaves the EU there is immediate continuity in regulation, and the same environmental standards are met. In accordance with the provisions of section 8 of the European Union (Withdrawal) Act 2018, all amendments to the CFP have arisen as a result of the UK’s departure from the EU and therefore the amendments do not represent any changes in policy regarding fisheries management. Over time, the fisheries administrations will amend retained EU law in order to implement their own policies.
- 7.2 We do not consider any other policy options in this Explanatory Memorandum, because the deadline of the UK’s departure from the EU means that the priority is to ensure essential legislation operates in UK law in time for EU exit, so that the UK is not left with a legislative deficit upon exit. The CFP is the main body of law which regulates fishing activities and enforcement in UK waters.
- 7.3 Examples of the technical changes that are made include amending references from the “European Union” to “the United Kingdom”; and “Member State” to “fisheries administration”, to enable the Secretary of State or devolved authority to carry out their specific functions post-Exit. Similarly, references to Union or Member State vessels and waters will be amended to UK vessels and waters.
- 7.4 EU regulations which duplicate existing UK legislation will be removed, and provisions that are not capable of operating within the UK, or which have no relevance to the UK outside of the EU, will be revoked.
- 7.5 The drafting of the instrument respects the existing devolution settlements so that the appropriate fisheries administration is identified as the authority which carries out the functions, and exercises the powers, which are relevant to it.
- 7.6 This SI will not amend all of the regulations within the CFP, it amends 31 regulations. Regulations concerning specific Member States, regions and operations which are not relevant to the UK once it is no longer part of the EU are being revoked. A full schedule of legislation which are being revoked is contained in the instrument.
- 7.7 Some regulations, particularly those concerned with technical conservation measures, multi-annual plans and discard plans have not yet been introduced by the EU, or are currently being amended, therefore these regulations will be included in a future instrument as appropriate. Amendments to EU Regulations relating to Regional Fisheries Management Organisations will also be included in a later instrument.

## **8. European Union (Withdrawal) Act/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 or other deficiencies arising from 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 Devolved Administrations (Scottish Government, Department of Agriculture, Environment and Rural Affairs, and Welsh Government) were involved in the drafting of the proposed amendments.

10.2 A targeted engagement was carried out on the approach to the amendments, involving key stakeholders from the fisheries sector, food industry and environmental non-governmental bodies. In addition, a ten-week consultation was also conducted through the Fisheries White Paper. Stakeholders were broadly supportive of the approach being taken.

## **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 the voluntary sector.

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 as it did before 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 its standard policy-making procedures.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

## **15. Contact**

15.1 Tim Godson at the Department for Environment, Food and Rural Affairs, Telephone: 0208 225 8532 or email: [Tim.Godson@defra.gsi.gov.uk](mailto:Tim.Godson@defra.gsi.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 at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

# Annex A

## 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
Appropriateness	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 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 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		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 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	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 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	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, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2018 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 makes minor amendments to EU legislation, addressing technical deficiencies in order to ensure the operability of the law after EU Exit. The instrument makes no policy changes leading to no significant divergence from the EU. No powers will be conferred on other individuals or bodies to make legislation by this SI, and it does not impose a financial or administrative burden, thereby not meeting any of the criteria for an affirmative procedure. Further, and more substantive, amendments to retained EU law in relation to the common fisheries policy will be made via the Fisheries Bill and later amendment instruments, including amendments transferring functions from EU institutions to the UK which will be achieved via an affirmative instrument.

#### 2. Appropriateness statement

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

“In my view the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2018 does no more than is appropriate”.

2.2 This is the case because: this instrument corrects deficiencies in retained EU legislation 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, George Eustice 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: without the amendments contained in this instrument the retained EU legislation in question would not operate in the context of the UK as an independent coastal state, rather than as part of the EU’s common fisheries policy. The amendments ensure that the UK has an operable legal framework for the maintenance of existing standards of sustainable fisheries management after EU Exit. This is essential in the absence of other legislation.

#### **4. Equalities**

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

“In relation to the instrument, I, George Eustice 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.

**Annex B: List of Common Fisheries Policy Regulations relating to  
the Common Fisheries Policy (Amendment etc.) (EU Exit)  
Regulations 2018 and their functions**

Legislation number	Legislation
1005/2008	Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing
1010/2009	Commission Regulation (EC) No 1010/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing
1026/2012	Regulation (EU) No 1026/2012 of the European Parliament and of the Council on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing
1100/2007	Council Regulation (EC) No 1100/2007 establishing measures for the recovery of the stock of European Eel
1224/2009	Council Regulation (EC) No 1224/2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy
1379/2013	Regulation (EU) No 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products
1380/2013	Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy
1418/2013	Commission Implementing Regulation (EU) No 1418/2013 concerning production and marketing plans pursuant to Regulation (EU) No 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products
1419/2013	Commission Implementing Regulation (EU) No 1419/2013 concerning the recognition of producer organisations and inter-branch organisations, the extension of the rules of producer organisations and inter-branch organisations and the publication of trigger prices as provided for by Regulation (EU) No 1379/2013 of the European Parliament and of the

	Council on the common organisation of the markets in fishery and aquaculture products
1536/92	Council Regulation (EEC) No 1536/92 laying down common marketing standards for preserved tuna and bonito
1936/2001	Council Regulation (EC) No 1936/2001 laying down control measures applicable to fishing for certain stocks of highly migratory fish
1954/2003	Council Regulation (EC) No 1954/2003 on the management of the fishing effort relating to certain Community fishing areas and resources
C(2015) 8628	Commission Implementing Decision C(2015) 8628 on approving the operational programme “European Maritime and Fisheries Fund – Operational Programme for the United Kingdom” for support from the European Maritime and Fisheries Fund in the United Kingdom
2014/170/EU	Council Implementing Decision 2014/170/EU establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing
2015/288	Commission Delegated Regulation (EU) 2015/288 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the period of time and the dates for the inadmissibility of applications
2015/531	Commission Delegated Regulation (EU) 2015/531 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council by identifying the costs eligible for support from the European Maritime and Fisheries Fund in order to improve hygiene, health, safety and working conditions of fishermen, protect and restore marine biodiversity and ecosystems, mitigate climate change and increase the energy efficiency of fishing vessels.
2016/1251	Commission Implementing Decision (EU) 2016/1251 adopting a multiannual Union programme for the collection, management and use of data in the fisheries and aquaculture sectors for the period 2017-2019

2016/2336	Regulation (EU) 2016/2336 of the European Parliament and of the Council establishing specific conditions for fishing for deep sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic
2017/1004	Regulation (EU) 2017/1004 of the European Parliament and of the Council on the establishment of a Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy
2017/1130	Regulation (EU) 2017/1130 of the European Parliament and of the Council defining characteristics for fishing vessels
2017/218	Commission Implementing Regulation (EU) 2017/218 on the Union fishing fleet register
2017/2403	Regulation (EU) 2017/2403 of the European Parliament and of the Council on the sustainable management of external fishing fleets
2136/89	Council Regulation (EEC) No 2136/89 laying down common marketing standards for preserved sardines and trade descriptions for preserved sardines and sardine-type products
218/2009	Regulation (EC) No 218/2009 of the European Parliament and of the Council on the submission of nominal catch statistics by Member States fishing in the north-east Atlantic
404/2011	Commission Implementing Regulation (EU) No 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy
468/2010	Commission Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing

508/2014	Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund
724/2010	Commission Regulation (EU) No 724/2010 laying down detailed rules for the implementation of real-time closures of certain fisheries in the North Sea and Skagerrak
734/2008	Council Regulation (EC) No 734/2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears
954/87	Commission Regulation (EEC) No 954/87 on sampling of catches for the purpose of determining the percentage of target species and protected species when fishing with small-meshed nets
95/84/EC	Commission Decision 95/84/EC concerning the implementation of the Annex to Council Regulation (EEC) No 2930/86 defining the characteristics of fishing vessels