

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Common Fisheries Policy (Amendments ETC.) (EU Exit) Regulations 2020

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the Senedd if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd.
2. The Common Fisheries Policy (Amendments ETC.) (EU Exit) Regulations 2020 were laid before Parliament on 14 October 2020. The Regulations can be found at:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213379>

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to address failures of retained EU law to operate effectively and other deficiencies arising from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2018. It also corrects out-of-date references to EU legislation.
4. The SI makes amendments to the following legislation:
 - The Marine & Coastal Access Act 2009

Relevant provision to be made by the SI

5. The changes made by these Regulations were required as the relevant EU legislation had been changed and new EU legislation had been adopted since the existing EU Exit SIs were made. Powers need to be repatriated to the UK, and some amendments were necessary as a consequence of the Northern Ireland Protocol.
6. The Regulations ensure existing CFP legislation will convert into retained EU law on IP completion day. The 2020 Regulations ensure that the relevant rules contained within the legislation continue to apply to UK fishing vessels wherever they are, subject to different rules stemming from international agreements, and that those same rules continue to apply to all fishing vessels operating within UK waters.
7. The Fisheries (Amendment) (EU Exit) Regulations 2019 amended sections 30,, 238 and 278 of the Marine & Coastal Access Act 2009 to add a definition of “retained EU restriction”; as a restriction that was created or

arose by or under the EU Treaties before exit day, and forms part of retained EU law, as modified from time to time. This was subject to a SICM at the time of laying.

8. The 2020 Regulations amend this definition in the three sections so that “exit day” is substituted with “IP completion day”. “IP completion day” is defined in section 39(1) to (5) of the European Union (Withdrawal Agreement) Act 2020 to mean 31st December 2020 at 11pm,
9. Amendments to sections 238 and 278 of the Marine and Coastal Access Act 2009 concern the enforcement powers of Marine Enforcement Officers in relation to EU restrictions or obligations under the CFP, and rules regarding forfeiture of fish or fishing gear following a conviction for a sea fishing offence. Welsh Ministers have the function of appointing Marine Enforcement Officers in Wales.
10. Section 108A of the Government of Wales Act 2006 enables the Senedd to legislate on any subject except those specifically reserved to the UK Parliament in Schedule 7A to GOWA 2006. In relation to fisheries management, the Senedd has legislative competence in relation to Wales.
11. The subject matter of the amendments under paragraphs 7 and 8 relate to areas that are within the legislative competence of the Senedd, which could be the subject of a Senedd Bill.

Why it is appropriate for the SI to make this provision

12. There is no divergence between the Welsh Government and the UK Government on the policy of the correction. Therefore, making separate SIs in Wales and England to correct the reference in question would lead to duplication, and unnecessary complication of the statute book. Consenting to this SI ensures that there is a single legislative framework across England and Wales, which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs

October 2020