

Explanatory Memorandum to the Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2020

This Explanatory Memorandum has been prepared by the Rural Development & Legislation Division within the Department for Environment, Skills and Natural Resources of the Welsh Government and is laid before the Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2020.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this Memorandum.

Lesley Griffiths MS

Minister for Environment, Energy and Rural Affairs

27 October 2020

Part 1

1. Description

The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2020 (the “instrument”) make amendments to subordinate legislation, which apply in relation to Wales and the Welsh zone, in the fields of fisheries and marine management.

In particular, the instrument makes a minor correction to the previous statutory instrument (the Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019) (the “2019 Regulations”) made under the European Union (Withdrawal) Act 2018 (the “Withdrawal Act”) due to an error in references and also to recognise European Union (EU) law will continue to apply to the programmes and activities funded under the European Maritime and Fisheries Fund (EMFF) until the closure of those programmes and activities .

2. Matters of special interest to the Legislation, Justice and Constitution Committee

The instrument is being made by the Welsh Ministers in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the Withdrawal Act, in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom (UK) from the EU.

As set out in the Ministerial statement in Part 2 of this Explanatory Memorandum, it is proposed this instrument is subject to the negative resolution procedure. The instrument makes minor amendments and should therefore be subject to annulment.

3. Legislative background

There is a need to amend domestic legislation derived from EU law to ensure the efficient and effective operability of the statute book following the UK’s exit from the EU.

The Withdrawal Act converts the majority of directly applicable EU law as it stands immediately before Implementation Period (IP) completion day into domestic law and preserves laws made in the UK which implement EU obligations. The Withdrawal Act also creates temporary powers to make secondary legislation to deal with deficiencies that would arise from the UK’s exit. Section 11 of and paragraph 1 of Schedule 2 to the Withdrawal Act provides the Welsh Ministers with powers to address deficiencies.

Welsh Statutory Instruments (SIs) which correct deficiencies in Welsh domestic legislation due to the UK’s withdrawal from the EU and are

proposed to be made under the negative resolution procedure will be required to be considered by a sifting committee, in accordance with paragraph 1(1) of Schedule 2 to the Withdrawal Act. The purpose of the sifting committee is to determine whether the negative resolution procedure is the appropriate Senedd Cymru procedure for the relevant SI. For the purpose of Welsh SIs, the sifting committee functions are undertaken by the Legislation, Justice and Constitution Committee.

In accordance with the requirements of the Withdrawal Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

The purpose of the instrument is to ensure retained EU law operates effectively once the UK leaves the EU. This means maintaining the substantive elements of the EU legislative regime in the fields of fisheries and marine management (following the work of addressing identified deficiencies).

Regulation 3 amends the 2019 Regulations, which in turn amend the Marine Licensing (Exempted Activities) (Wales) Order 2011 in order to correct an error in references. The current reference to “the Hazardous Waste (England and Wales) Regulations 2005” is replaced with a reference to “the Hazardous Waste (Wales) Regulations 2005”.

Regulation 4 amends the 2019 Regulations, which in turn amend the European Maritime and Fisheries Fund (Grants) (Wales) Regulations 2016. Previous amendments made by the 2019 Regulations were predicated on the fact that upon exiting the EU, the UK would no longer be a beneficiary of the EMFF scheme and funding could come from HM Treasury. Further that the EU EMFF Regulation 508/2014 would become Retained EU law. However, since the making of the 2019 Regulations, the Withdrawal Agreement has been agreed and the effect of article 138 of the Withdrawal Agreement is that EMFF (which is funded under the MFF 2014-2020) will continue to be governed by EU until the closure of those programmes and activities. As a result of section 7A and section 3(2)(bi) of the Withdrawal Act (as amended by the European Union (Withdrawal Agreement) Act 2020 the applicable Union law (including the EU EMFF Regulation 508/2014) will continue to directly apply in the UK and will not become part of Retained EU law. As a consequence, all amendments made in the 2019 Regulations relating to the 2016 Regulations are now omitted and replaced with provision to reflect the position that the EU legislation referenced in the 2016 Regulations has effect by virtue of the Withdrawal Agreement/Withdrawal Act.

5. Consultation

As there is no policy change, no public consultation was undertaken. The purpose of this instrument is solely to enable the current domestic legislative and policy framework to remain unchanged by the withdrawal of the UK from the EU.

6. Regulatory Impact Assessment (RIA)

No impact assessment has been produced in relation to these Regulations as no impact is foreseen on the private, voluntary or public sectors.

Annex: Statements under the European Union (Withdrawal) Act 2018

Part 1: Table of Statements under the 2018 Act

This table sets out the statements which may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements which may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

| Statement | Where the requirement sits | To whom it applies | What it requires |
|-----------------|--|--|---|
| Sifting | Paragraphs 3(7) and 4(3), Schedule 7 Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders) | The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement | A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee) |
| Appropriateness | Sub-paragraph (2) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when 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 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement | A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action. |

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| | | when exercising powers in Schedule 2 | |
| Equalities | Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | <p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement which the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p> |
| Explanations | Sub-paragraph (6) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement to 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 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached. |
| Sub-delegation | Paragraph 30, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. | A statement to explain why it is appropriate to create such a sub-delegated power. |

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| | | Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority | |
| Urgency | Sub-paragraph (2) and (8) of paragraph 7, Schedule 7 | Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7 | A statement |

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Sifting statement(s)

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2020 should be subject to annulment in pursuance of a resolution of the Senedd Cymru (i.e. the negative procedure). This is the case because the changes made are minor and technical in nature.”

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2020 do no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

3. Good reasons

The Minister for Environment, Energy and Rural Affairs 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. There are benefits to the continuation of operable fisheries and marine management legislation following EU exit.”

4. Equalities

The Minister for Environment, Energy and Rural Affairs 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.”

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose and intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.