

EXPLANATORY MEMORANDUM TO

The Sea Fishing (Licences and Notices) Regulations (Northern Ireland) 2014

SR 2014 No. 209

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture and Rural Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers conferred on it by section 4B of the Sea Fish (Conservation) Act 1967, vested in the Department by virtue of SI 2002/790 Article 3(1) and Schedule 1, paragraph 3(1)(g) and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The UK Fisheries Administrations have agreed that they wish to have legislative power to give notice of fishing vessel licence variations by publishing notices of variation on their respective websites. As well as this new power, the existing methods of publishing licences and notices would still be provided for in the new legislation. The main purpose of giving notices by publication on a website is that it will save the Department and industry cost and time in dealing with paper variations that are currently being delivered to each licence holder frequently throughout the year by post.

3. Background

- 3.1. The measure is being introduced at this time as we believe that use of the Internet and access to it by the fishing industry is now sufficiently widespread to make communication by this method effective.
- 3.2. The implementation of this policy is by introducing new Licencing and Notices Regulations for each Administration and revoking the existing UK wide Statutory Instrument the "Sea Fishing (Licencing and Notices) Regulations 1994 (SI No. 2813 1994). The new NI Regulations are similar to the outgoing 1994 Regulations except that they, apply only to Northern Ireland, include provision to publish a notice of licence variation on a website (Regulation 3(4)(b)), specify that a notice published on a website is treated as being given immediately it is published (Regulation 4(5)), state that a notice given by publishing on a website has effect 24 hours after being given (Regulation 5(c)); and include additional conditions in respect of the electronic communication of licences and notices to ensure that electronic communication is effectively communicated and received (Regulation 3(7)).
- 3.3. Once the Regulations come into operation the Department proposes to phase out postal notifications of licence variation over a three month period.
- 3.4. In its place, notices of variation will be published on the Department's website. In order to assist the industry notices will usually be published on

a Friday. In exceptional circumstances notices may have to be published at other times.

- 3.5. We will also send alerts to licence holders or their nominees that a notice of variation has been published, either by e-mail or SMS text message.

4. Consultation

- 4.1. The consultation period ran from 10 June until 22 July 2013. A total of 8 responses were received after 425 consultation letters had been issued. This represented a return rate of just fewer than 2% of the total number of consultation letters issued.
- 4.2. The Agriculture and Rural Development Committee questioned the low rate of response in follow up correspondence and we advised that we believed the low response rate was due to the minor and uncontroversial nature of the changes being proposed rather than any issues with the consultation process. We also advised that similar consultations in Scotland and England had generated little response.
- 4.3. The one issue of concern raised in our consultation was in relation to licence holders without internet access. This can be addressed by the licence holder advising us of a nominee who can view the notices on their behalf. This facility currently exists for licence holders who have difficulty in receiving postal communications.

5. Equality Impact

- 5.1. In accordance with DARD's obligations under Section 75 of the Northern Ireland Act 1998, the equality implications of the proposed Regulations have been assessed. The Regulations have been screened out and the Department considers that the regulations will not result in any equality differentials amongst Section 75 groups.

6. Regulatory Impact

- 6.1. The Department consulted on draft Regulatory Impact Assessment and the Final Regulatory Impact Assessment provided at Appendix 1. The Department is satisfied that the benefits of the Regulations justify the costs.
- 6.2. The effect of the Regulations will be a minor reduction in the paperwork that fishing businesses will have to deal with, through the adoption of electronic communication. It is estimated that around 4,500 posted letters in total will be saved per year.
- 6.3. The existing Sea Fishing (Licencing and Notices) Regulations 1994 (SI No. 2813 1994), will be revoked insofar as they apply to NI and replaced with the new NI Regulations.
- 6.4. We are content that the proposed legislation meets DARD's commitment to Better Regulation and "gold plating" is not applicable.

7. Financial Implications

- 7.1. The Regulations should be cost neutral for the fishing industry. It is estimated that the Department will save around £4,000 per year in postal costs but incur approximately £60 per year additional costs for text alerts.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Regulations deal with minor changes to the existing administrative procedure for delivering fishing vessel licences and notices of fishing vessel licence variations and not licencing policy. Therefore they do not have any human rights implications, nor are they incompatible with EU law. The Regulations are therefore deemed to comply with the requirements of section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. There are no EU implications in relation to this legislation. The Regulations only affect the manner in which the Department issues fishing licences and notices of licence variation.

10. Parity or Replicatory Measure

- 10.1. Similar legislation has already been introduced in Scotland and England and Wales are in the process of introducing it. It is desirable that fishermen throughout the UK receive notices of licence variation in a similar fashion.

11. Additional Information

- 11.1. In drafting these Regulations the Department noted comments made by the Joint Committee on Statutory Instruments in relation to the similar Sea Fishing (Licences and Notices) (England) Regulations 2012 (SI 2012/827).
- 11.2. The Joint Committee enquired of DEFRA, "Given the possibility of websites becoming inaccessible, why is no provision included in the Regulations to cover the consequences of inaccessibility, for example by adding any period of inaccessibility to the 24 hour period covered by regulation 5(c)?"
- 11.3. The equivalent Regulation in the NI Regulations is also Regulation 5(c). The Department confirms that it would adopt the same approach as the Marine Management Organisation in the event that the Department's website was unavailable to allow notices of variation to be published.
- 11.4. The intention is that notices will normally be posted on a set day of the week and on that day fishermen would be expected to view the website. Fishermen may also request that an alert is sent to them via mobile telephone or e-mail to inform them that a notice has been published and that it may be viewed on the website.
- 11.5. If there is a problem with the Department's website the Department would not issue a notice whilst problems persist and therefore publication would not take place and there would be no need to extend the 24 hour period.
- 11.6. If the Department posts a notice on its website and a problem occurs shortly afterwards that prevents the notice from being viewed the fisherman could contact the local port office to obtain details of the notice and the Department could take steps to communicate the notice by some other means. In such a situation the Department would adopt a pragmatic approach to ensure that fishermen were not disadvantaged and would not enforce a licence variation until the notice had been successfully published.

- 11.7. If the Department's website is functioning correctly but a fisherman cannot access it because of difficulties with his own computer or server, he can appoint a nominee to receive the notice on his behalf; or access the website from any other computer or portal, including in a public library, post office, internet cafe etc. or he can speak to his local port office who could if necessary issue a paper copy of the notice.
- 11.8. The purpose of regulation 5 is to determine an exact point in time at which licences and notices are to have effect. The Department considers it undesirable to introduce uncertainty by including a reference to a period of website inaccessibility which might not easily be proven and could give rise to disputes. Given the short period of time (24 hours) between the notice being given and taking effect, and the importance of achieving certainty in the timing of the notice taking effect, the Department considers it preferable to rely on the approach outlined in this memorandum.