

EXPLANATORY MEMORANDUM TO
THE SEA FISHING (PENALTY NOTICES AND DESIGNATION) (ENGLAND)
(AMENDMENT) (EU EXIT) ORDER 2020

2020 No. 1635

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.
- 1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes amendments to the Sea Fishing (Penalty Notices) (England) Order 2011 (S.I. 2011/758 – “the 2011 Order”) which introduced a scheme for the issuing and payment of penalty notices for certain offences relating to sea fishing. The amendments made by this instrument are consequential to provisions contained in the Fisheries Act 2020.
- 2.2 This instrument also designates the Marine Management Organisation (“the MMO”) as a designated body under section 80 of, and Schedule 7 to, the Natural Environment and Rural Communities Act 2006 (“NERC Act 2006”). The designation of the MMO as a designated body under NERC Act 2006 will permit the Secretary of State to enter into an agreement with the MMO under section 78 of NERC Act 2006 to authorise the MMO to perform a Defra function in relation to England.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Article 2 of this instrument contains amendments which are consequential to provisions contained in the Fisheries Act 2020 and which have been identified as necessary for the efficient and effective enforcement of certain offences relating to sea fishing. The offences in question, which relate to access and licensing provisions in the Fisheries Act 2020, will come into force on Implementation Period (“IP”) completion day and, therefore, the amendments made by this Order must also come into force on IP completion day.
- 3.2 This instrument will therefore breach the 21-day rule. Given the circumstances it is necessary to breach the 21-day rule, it is essential that this instrument is placed before the 1st January 2021 when the United Kingdom will become an independent coastal State. Without these amendments, from the 1st January 2021 the MMO would not be able to issue a financial administrative penalty (“FAP”) for access offences made by foreign fishing vessels. Issuing an FAP is one of the key steps in proportionate enforcement and an approach that has been agreed across the UK’s fisheries authorities. A FAP may be issued, for example, when foreign fishing boats make access or licensing offences. Without this Order, access offences requiring a sanction more serious than an official warning letter would instead need to be dealt with by the

courts, which would delay taking suitable, proportionate and immediate enforcement actions.

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)

- 3.3 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 of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is dictated by the territorial application of the provisions being amended. In particular, the amendments made by Article 2 of this instrument to the 2011 Order will take on the territorial application set out in Article 1(2) of the 2011 Order. Namely, that they apply in relation to England, to English and Welsh fishing boats, except when they are in Wales or the Welsh zone; and to foreign fishing boats within British Fishery Limits, except when they are in the Northern Ireland zone, the Scottish zone, Wales or the Welsh zone or the territorial sea adjacent to the Isle of Man, Jersey, or Guernsey. The amendment made by Article 3 of this instrument to Schedule 7 of NERC Act 2006 only has practical application in relation to England because the power under section 78 of NERC Act 2006, for the Secretary of State to enter into an agreement with a designated body, is limited so that the authorisation to perform functions can only be in relation to England or a specified area in England.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Sea Fishing (Penalty Notices and Designation) (England) (Amendment) (EU Exit) Order 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The amendments to the 2011 Order are being made under section 294 of the Marine and Coastal Access Act 2009 (“administrative penalty schemes”). A list of offences that may be subject to financial administrative penalties (“FAPs”) are listed in the Schedule to the 2011 Order.
- 6.2 The Fisheries Act 2020 has replaced some of the offences currently listed in the Schedule to the 2011 Order with new offences in new provisions that consolidate and replace provisions under the Sea Fish (Conservation) Act 1967 and the Fishery Limits Act 1976. Accordingly, the amendments to the 2011 Order update the list to take account of these changes.
- 6.3 The amendment to Schedule 7 of the NERC Act 2006 is being made using the power in section 80 of that Act. Section 80 provides the Secretary of State with the power to add a body to the list of ‘designated bodies’ contained in Schedule 7. Ultimately, the designation of the MMO as a designated body under NERC Act 2006 will permit the

Secretary of State to enter into an agreement with the MMO under section 78 of NERC Act 2006. Section 78 provides the Secretary of State with the ability to authorise a designated body to perform a Defra function in relation to England. Currently, powers may be delegated to the MMO under the provisions of section 14 of the Marine and Coastal Act 2009 to deliver marine functions. However, the designation of the MMO under section 80 of, and Schedule 7 to, NERC Act 2006 will widen the ability of the Secretary of State to delegate functions which do not necessarily fall within the remit of ‘marine functions’ – for example, certain land-based activities, such as investment in inland aquaculture farms.

7. Policy background

What is being done and why?

- 7.1 Domestic sea fisheries offences are punishable through the courts, with unlimited fines. Courts also have the power to suspend or revoke fishing licences but rarely do so. Over the years, there have been considerable doubts about the deterrent effects of using criminal sanctions for minor fisheries offences. Not only are fines generally low, it often takes a long time to bring offenders before the courts because of the process involved.
- 7.2 Under the system introduced by the 2011 Order, the MMO may issue a FAP, the level of which may be up to £10,000, as an alternative to criminal prosecution in certain circumstances. A FAP may only be issued where there is evidence of an offence committed, and may be issued to the owner, master and/or charterer of the vessel. Payment of the penalty will discharge the possibility of the MMO prosecuting the offence. However, if a FAP is not paid within the required timescale (28 days), the matter will proceed to court.
- 7.3 This instrument amends the 2011 Order to replace references in its Schedule, which will now become obsolete due to provisions contained in the Fisheries Act 2020, with new references to replacement provisions in the Fisheries Act 2020. This will enable FAPs to be issued for the relevant offences, which relate to: access to British fisheries by foreign boats (see section 12(3) of the Fisheries Act 2020); the requirement to license British fishing boats (see section 14(6) of the Fisheries Act 2020); the requirement to license foreign fishing boats within British fishery limits (see section 16(6) of the Fisheries Act 2020); and the requirement to comply with conditions attached to a fishing licence (see paragraph 1(4) of Schedule 3 to the Fisheries Act 2020).
- 7.4 Without these amendments the MMO would not be able to issue a FAP from 1st January 2021 for example, for access and licensing offences made by foreign fishing boats. Offences would instead need to be dealt with by the courts, which would delay taking suitable and proportionate enforcement action. Someone issued with a penalty notice will be under no obligation to pay the penalty if they wish to have the matter dealt with in court in the usual way and non-payment of the penalty will not constitute an offence. However, accepting the penalty would enable the fisher to avoid prosecution for the offence, as payment of the penalty will discharge the person’s liability to be convicted for the offence.
- 7.5 Separately from the amendments to the 2011 Order, this instrument also amends Schedule 7 to NERC Act 2006. Schedule 7 contains a list of ‘designated bodies’ and section 78 of NERC Act 2006 provides the power for the Secretary of State to enter

into an agreement with a designated body to authorise that body to perform a Defra function in relation to England. Designating the MMO will enable the Secretary of State to delegate functions relating to certain limited schemes of financial assistance provided by Defra for the seafood sector. The NERC Act 2006 itself contains provisions enabling such schemes to be administered but the designation, and subsequent agreement to delegate functions, will ensure adequate legal powers for the MMO to deliver such support to both inland and marine based enterprises where considered appropriate in line with the powers available under NERC Act 2006.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because from the 1st January 2021 the United Kingdom will become an independent coastal State. The MMO's general objective is to license, regulate and plan marine activities in the seas around England so that they are carried out in a sustainable way. The MMO's operational enforcement plan encompasses this and the challenges faced when becoming an independent coastal state, hence the need for the MMO to have the power to issue a FAP from 1st January 2021.

9. Consolidation

9.1 Not applicable to this instrument.

10. Consultation outcome

10.1 Stakeholders have not been consulted as all the amendments introduced by this instrument are technical amendments and not policy changes.

11. Guidance

11.1 Defra does not intend to publish guidance for this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

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 the equivalent annual net direct costs to businesses, charities or voluntary bodies has been assessed at less than +/-£5million.

13. Regulating small business

13.1 Fisheries legislation applies to both small and larger businesses in the same way.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

14.1 There are no plans in place to monitor or review this instrument since it is not amending regulations impacting businesses and is a technical measure to designate a publicly controlled body under NERC Act 2006. There is no cost to businesses associated with this designation and the use of this authority under NERC Act 2006 is likely to be done on a limited basis where it is not possible to use other existing

legislation, for example, for utilisation of the spending power in NERC Act 2006 for inland aquaculture investment. It would not be proportional from a cost or time perspective to require a review for a designation.

- 14.2 This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement:

“In my view the provisions of the Sea Fishing (Penalty Notices and Designation) (England) (Amendment) (EU Exit) Order 2020 have no net impact on business”.

15. Contact

- 15.1 James Windebank at the Department for the Environment, Food and Rural Affairs Telephone: 07766472068 or email: James.Windebank@defra.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Colin Faulkner, Deputy Director for External Fisheries Negotiations and Trade Policy, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Victoria Prentis at the Department for Environment Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.