

Cabinet Secretary for Rural Affairs, Land Reform
and Islands
Mairi Gougeon MSP



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Finlay Carson MSP
Convener
Rural Affairs and Islands Committee
Scottish Parliament
Edinburgh
EH99 1SP

Copied to UKSIs@parliament.scot

12 January 2024

Dear Finlay,

**The Sea Fisheries (Amendment) Regulations 2024
EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT**

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament for proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and the Parliament, accompanied the letter from the then Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you by 21 February 2024.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mairi Gougeon'. The signature is fluid and cursive, with the first name 'Mairi' written in a more upright style and the last name 'Gougeon' in a more flowing, cursive script.

MAIRI GOUGEON

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI and summary and brief description of what it does:

The Sea Fisheries (Amendment) Regulations 2024

The Sea Fisheries (Amendment) Regulations 2024 (**‘the Regulations’**) remove the expiry dates from landing obligation exemptions and extend the Data Collection Framework (DCF) and associated Multiannual Plans (MAP) from 2024 to 2026. The Regulations include provision relating to the regulation of sea fisheries in the Scottish zone and are therefore within devolved competence.

Is the notification Type 1 or Type 2?

Type 1.

Details of the provisions that Scottish Ministers are being asked to consent to

Summary of the proposals

Landing obligation exemptions:

The landing obligation was introduced by the EU under the reform of the Common Fisheries Policy (CFP) in 2013. The aims of the landing obligation were primarily to decrease waste associated with throwing fish back, dead, into the sea, and to increase accountability by properly accounting for removals. Under the landing obligation, fishing vessels are not permitted to discard quota species, regardless of size or age, and must land them. However, exemptions exist under this rule in order to account for species with a high survival rate when returned to the sea; and in the form of de minimis exemptions – these exemptions are an essential part to the operability of the landing obligation. Fisheries administrations deduct a certain percentage of quota a year to allow for small levels of discards under these exemptions in fisheries where there are issues with retaining and landing certain catch.

Regulation (EU) No 1380/2013 of the European Parliament and the Council (‘the Basic EU Regulation’) introduced a full landing obligation from 1st January 2019. Article 15 (5) of the Basic EU Regulation provides that the details of the landing obligations are specified in multiannual plans referred to in Articles 9 and 10 of the Basic EU Regulation.

Prior to EU exit, in accordance with the Basic EU Regulation, each member state prepared their own discard plans which set out their proposals for exemptions from the landing obligations based on de minimis and high survivability. These plans were reviewed by the Commission who decided what was to be granted and form part of EU law under delegated acts.

The Regulations amend four retained EU law Regulations (‘retained EU law’ will be called ‘assimilated law’ from the beginning of 2024) which set out the exemptions to the landing obligations in UK waters by removing the expiry date of 31 December 2024 as follows:

- Commission Delegated Regulation (EU) No 1393/2014 establishing a discard plan for certain pelagic fisheries in north-western waters. The Regulations omit Article 5 which relates to expiry.
- Commission Delegated Regulation (EU) No 1395/2014 establishing a discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea. The Regulations omit Article 5 which relates to expiry.
- Commission Delegated Regulation (EU) 2019/2238 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2020-2021. The Regulations omit Article 14 which relates to expiry.
- Commission Delegated Regulation (EU) 2019/2239 specifying details of the landing obligations for certain demersal fisheries in North-Western waters for the period 2020 - 2021. The Regulations omit Article 13 which relates to expiry.

Extension of the Data Collection Framework (DCF) and associated Multiannual Plans (MAP):

The Data Collection Framework Regulation (Regulation (EU) 2017/1004) is retained EU law (from the start of 2024 this will be called “assimilated law”) providing for the collection, management and use of data in the fisheries sector, support for scientific advice regarding the common fisheries policy and for a data collection multiannual programme (MAP).

The UK Work Plan ensures coordination of activities across the Fisheries Administrations to enable the UK to meet international commitments for fisheries data management and collection. Extending the MAP provides assurance that the four UK Fisheries Administrations collectively will meet international obligations, whilst providing an expiry point to drive forward reform of the UK’s data collection. This will support coordination across the Fisheries Administrations and provide the continuation of essential data collection whilst providing an expiry point for the legislation will prevent long term temporary solutions.

This instrument amends the two retained EU law Decisions below to extend the application of the multiannual programme to the end of 2026 by changing ‘2024’ to ‘2026’ in Article 1 of both Decisions.

- Commission Implementing Decision (EU) 2019/909 establishing the list of mandatory research surveys and thresholds for the purposes of the multiannual Union programme for the collection and management of data in the fisheries and aquaculture sectors, as it applies in retained EU law; and
- Commission Delegated Decision (EU) 2019/910 establishing the multiannual Union programme for the collection and management of biological, environmental, technical and socioeconomic data in the fisheries and aquaculture sectors.

Why the Regulations are necessary?

The landing obligation exemptions that are currently in operation in Scottish and UK waters are due to expire in December 2024. The exemptions have already been assessed and extended via a UK Statutory Instrument ('SI') on a number of occasions. In 2021 and 2022 the Scottish Government worked with the other UK fisheries administrations, and asked Defra to legislate on our behalf.

Instead of extending these exemptions again, and in light of the various devolved administrations' plans to legislate for their own catching policies going forward, Defra are proposing that the expiry dates for the exemptions are removed. This would act as an interim measure to give respective administrations more time to implement their own policies and avoid being in the position of having no exemptions in place after December 2024, should the respective policies (and associated legislation) not be implemented before then. In relation to Scotland this will be the Future Catching Policy (FCP).

The implications of letting the exemptions expire would mean Scotland would lose some key exemptions for its fleet, and EU vessels would also lose important exemptions in Scottish waters. Conversely, removing the expiry dates would ensure all the current exemptions which are in place, which many vessels rely on to comply with the retained landing obligation rules, would continue.

As regards the extension of the DCF regulation, should these not be extended then the UK would find itself in breach of its legal obligations under the Framework to have a UK Work Plan which ensures coordination of activities across the Fisheries Administrations to enable the UK to meet international commitments for fisheries data management and collection.

Alignment:

Simply removing the expiry date from exemptions that essentially only apply in UK/Scottish waters does not represent any great departure from the EU process and therefore has little impact on alignment as we will continue to utilise the landing obligation exemptions as designed. Exemptions have always differed in their application across member states and sea basins. The key difference is, where the EU will likely have a date for review (usually every few years) written into their delegated acts, we are simply removing this expiry date with the knowledge that there are respective future catching policies in the pipeline from UK administrations that will make changes to these exemptions on a more permanent basis.

These exemptions are only relevant in the sea basin in which they are implemented. Therefore, member states have always had a level of autonomy over how to apply them.

The extension of the DCF regulations will allow for the creation of a UK Work Plan which is consistent with existing EU processes.

Does the SI relate to a common framework or other scheme?

Yes, both the Data Collection Framework (DCF) and the discard exemptions are covered through the Fisheries Management and Support Framework¹.

Summary of stakeholder engagement/consultation

The Scottish Government's core Fisheries Management and Conservation (FMAC) stakeholder group were engaged in 2021 when the exemptions were initially extended and re-written in their current form and had no issues. This was agreed upon by ministers and Scottish parliament at the time. As the Regulations are only removing the expiry dates from these same exemptions and extending the dates on the DCF/MAP it was determined not to be necessary to further consult. Stakeholders are heavily involved in the development of the FCP which will seek to replace the current exemptions in the near future.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

The Cabinet Secretary for Rural Affairs, Land Reform and Islands has agreed that we should consent to the UK Parliament legislating on Scotland's behalf for this specific purpose, taking into account of the Regulations and the efficiency and consistency of approach in using the UK SI to ensure discard exemptions continue and to extend DCF/MAP dates. Further, the Scottish Government is planning to supersede the UK SI in the near future with our own FCP SSI and will consider what, if any, reforms are required to the DCF/MAP process over the next two years.

Intended laying date (if known) of instruments likely to arise

UK government has intimated that they are planning to lay the SI on 28th February 2024.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

N/A

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

The EU implement landing obligation exemptions in the same way Scotland does currently under retained EU law. The only change that the Regulations would make to the procedural application of exemptions is that the EU exemptions will likely maintain an expiry date (usually extended after Regional Group review). If the Regulations are taken forward Scotland's landing exemptions would not contain this expiry date, but the process of reviewing, changing, removing or improving upon exemptions will be undertaken by administrations respectively as part of their future catching policies, as stated in paragraph 2 of the summary.

The extension of the DCF and associated MAP regulations maintains consistency with existing EU processes.

¹ [CP 616 – Fisheries Management and Support Common Framework – Provisional Framework Outline Agreement and Memorandum of Understanding \(publishing.service.gov.uk\)](#)

Any significant financial implications?

There are no financial implications with this SI.