

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION

13413/18

C(2018) 6793 final

COMMISSION DELEGATED REGULATION (EU) .../... OF 18.10.2018 SPECIFYING DETAILS OF IMPLEMENTATION OF THE LANDING OBLIGATION FOR CERTAIN DEMERSAL FISHERIES IN THE NORTH SEA FOR THE PERIOD 2019-2021

Submitted by the Department for Environment, Food and Rural Affairs

22 November 2018

SUBJECT MATTER

1. Since 1 January 2015, all commercial pelagic¹ stocks subject to catch limits have had to be landed and counted against quota. Since then, on an annual basis, the demersal² stocks subject to catch limits have also been phased in. From 1 January 2019, in line with the Common Fisheries Policy (CFP), the landing obligation will apply to all catches, from both demersal and pelagic fisheries, subject to catch limits (also known as the full landing obligation).
2. This delegated act sets out specific provisions to facilitate the full implementation of the Landing Obligation³ (from 1 January 2019) for species which define demersal and deep sea fisheries in the North Sea (NS). In the absence of multiannual plans⁴, those provisions need to be implemented through discard plans⁵. This discard plan was developed as a joint initiative by the Member States with a direct management interest in the North Sea (i.e. Belgium, Denmark, France, Germany, the Netherlands, Sweden and the UK). The Commission recently adopted this discard plan by means of a delegated act.
3. The discard plan is a temporary measure (for a duration of 3 years and renewable for a period of another 3 years, subject to review).

¹ Pelagic fish species which aggregate in the upper water column or the pelagic zone of the sea— being neither close to the bottom nor near the shore

² Demersal fish species are those which aggregate close to the seabed

³ The landing obligation requires all catches of regulated commercial species on-board a fishing vessel to be landed and counted against fishing quota

⁴ Multiannual plans (MAP) are strategic and long term regional fisheries management plans for eliminating the wasteful practice of discarding and moving towards ecosystem level management

⁵ Discard plans are short term regional fishery management plans which are in place in the absence of long term MAPs. Discard Plans cover the non-national decisions relating to the discard ban, such as the timeline that the discard ban will cover stocks and exemptions to the discard ban.

SCRUTINY HISTORY

4. The Parliamentary scrutiny history relevant to this document is contained in the attached Annex A.

MINISTERIAL RESPONSIBILITY

5. Responsibility for overseeing the successful implementation of the Delegated Act lies with the Secretary of State for Environment, Food and Rural Affairs, Scottish Ministers, Welsh Ministers and Northern Ireland Executive Ministers.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

6. The three devolved administrations have been consulted in the preparation of this Explanatory Memorandum and Scotland has fishing interests in the NS region.
7. The Scottish administration has actively contributed to the UK's participation in the NS Regional Group, through which the NS discard plan was developed. This group is composed of EU Member States with a direct management interest in relevant fisheries in the NS region.

LEGAL AND PROCEDURAL ISSUES

8.

i. Legal basis

Article 43(2) of the Treaty on the Functioning of the European Union.

Articles 15(6) and 18(1) and (3) of Regulation of the European Parliament and of the Council (EU) No 1380/2013.

ii. European Parliament Procedure

The Parliament (and the Council) can revoke the delegated act at any time if they have a majority.

iii. Voting procedure

Qualified Majority Voting.

iv. Impact on United Kingdom Law

The proposed Regulation would be directly applicable and no further legislative action would be required to implement the basic proposal.

v. Application to Gibraltar

Not applicable.

vi. Fundamental rights analysis

No fundamental rights issues arise from this Document.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

9. This proposal will not affect the European Economic Area Agreement.

SUBSIDIARITY

10. This proposal falls under the exclusive competence of the European Union and therefore the Subsidiarity principle does not apply.

11. The discard plan was developed as a joint initiative by the Member States with a direct management interest in the NS region.

POLICY IMPLICATIONS

12. This delegated act will replace the existing Delegated Regulation (EU) 2018/45), which was also based on the joint recommendations of the same Member States for the year 2018. The provisions in the discard plan, which will facilitate the implementation of the landing obligation, include exemptions to the landing obligation for certain fish species or certain fisheries; set minimum conservation reference sizes⁶ (MCRS) and specific technical measures.

13. In summary, the survivability exemptions⁷ included in this delegated act apply to (with additional conditions not detailed here):

- a. Norway lobster (*Nephrops norvegicus*) caught with pots⁸ and bottom trawls⁹ in ICES subarea 2a, 3a and 4.
- b. Common sole (*Solea solea*) caught by otter trawls¹⁰ in ICES division 4c.
- c. Catches of all species subject to catch limits made with pots and fyke nets¹¹ in ICES subarea 3a and 4.
- d. Plaice (*Pleuronectes platessa*) caught with nets, Danish seines¹² and bottom trawls in ICES subarea 3a and 4; and in ICES subareas 2a and 4 in specific circumstances. This exemption is provisionally applicable until 31 December 2019, apart from the exemption referring to bottom trawls, which has been restricted to the period of 1 November – 30 April.

⁶ The minimum conservation reference size is the length below which fish are considered juvenile. Fish below MCRS cannot be sold into the human consumption market. This is to deter targeting of juvenile fish and support stock conservation

⁷ A survivability exemption allows fishermen to return to the sea their catch of a stock that has a scientifically-proved high chance of survival

⁸ A pot (or trap) structure built in a stream for catching fish

⁹ A bottom trawl is a fishing technique which involves towing a trawl (i.e. a fishing net) along the sea floor A bottom trawl is a fishing technique which involves towing a trawl (i.e. a fishing net) along the sea floor

¹⁰ In otter trawling a large net is dragged along the bottom or up in the water column behind a towing vessel. The mouth of the net is held open by two large "doors" which are attached to either side of the net.

¹¹ A fyke net consists of cylindrical or cone-shaped netting bags mounted on rings or other rigid structures, with wings or leaders which guide the fish towards the net

¹² Danish seines is a fishing technique whereby one of the lines of the seine net is anchored. The ship expands the net with a moving motion and turns off when picking up the net

- e. Skates and rays (*Rajiformes*) caught by any fishing gear in the NS region. Further evidence has been requested to support this exemption and for one species it has been restricted to a period of one year.
 - f. All species caught with pots and fyke nets in ICES subarea 3a and 4.
14. In summary, the *de minimis* exemptions¹³ included in the delegated act apply to (with additional conditions not detailed here):
- g. Whiting (*Merlangius merlangus*) caught by various bottom trawls, seines or beam trawls¹⁴ across most of ICES subarea 3a and 4.
 - h. Common sole caught by trammel¹⁵ and gills nets¹⁶ in ICES subarea 2a, 3a and 4).
 - i. Common sole caught with beam trawls in ICES subarea 4
 - j. Norway lobster caught with beam trawls in ICES subarea 3a
 - k. Northern prawn caught with bottom trawls in ICES subarea 3a
 - l. Mixed demersal fisheries caught with bottom trawls or seines in ICES subarea 4a, 4b and 4c (the *de minimis* exemption in regards to subareas 4a and 4b will be provisionally applicable until 31 December 2019).
 - m. Plaice caught in the fisheries for Norway lobster using bottom trawls in ICES subarea 4
 - n. A quantity of all species subject to catch limits in the fisheries for brown shrimp by vessels using beam trawls in ICES subareas 4b and 4c
 - o. Ling caught using bottom trawls in ICES subarea 4 (this is provisionally applicable until 31 December 2019).
 - p. Horse mackerel (*Trachurus* spp.) and mackerel (*Scomber scombrus*) caught by bottom trawls in ICES subarea 4 (these exemptions are provisionally applicable until 31 December 2019). These exemptions have been restricted to a period of one year.
15. The technical measures included in the delegated act also define highly selective gear specifications for certain fisheries operating in the NS.
16. Parliament voted to trigger Article 50 and leave the European Union. Until we leave the EU, all the rights and obligations of EU membership remain in force. The outcome of our negotiations with the EU on a future partnership will determine what arrangements apply in the future.
17. When we leave the EU in March 2019, the UK will also become an independent coastal State under international law. Whilst we will remain fully committed to ending the wasteful discarding of fish, we will have the flexibility to introduce measures not

¹³ A *de minimis* exemption is applied where scientific evidence indicates that selectivity is very difficult to achieve or where the costs of handling unwanted catch are disproportionate

¹⁴ A beam trawl is where a large net attached to a heavy metal beam is dragged across the sea bed behind a boat

¹⁵ A trammel net is a fishing net with three layers of netting

¹⁶ Gill nets are vertical panels of netting normally set in a straight line

contained within the CFP toolkit to reduce discarding whilst preventing choke¹⁷. Under an implementation period, the existing body of EU regulations will continue to apply until December 2020.

CONSULTATION

18. As detailed in sections above, the discard plan was developed by Member States in the NS regional group in consultation with the relevant advisory councils and scientific bodies. The Commission's Scientific, Technical and Economic Committee for Fisheries (STECF) were consulted.
19. Defra also consulted the fishing industry and environmental NGOs and these consultations informed the position that the UK took in the regional discussions.
20. As the delegated act is applicable to all UK registered vessels fishing within the NS, all the devolved administrations were consulted and the Scottish administration actively contributed to its development. The Scottish administration consulted their respective industry stakeholders.
21. Generally industry were supportive of the delegated act as it would provide the flexibility required to practically implement the landing obligation.

IMPACT ASSESSMENT

22. A UK impact assessment was conducted as part of the Defra consultation on the original discard plan for the pelagic landing obligation in 2014.

FINANCIAL IMPLICATIONS

23. The Commission produced financial implications for the reform of the CFP proposal at the European level in 2011.

TIMETABLE

24. The pelagic landing obligation under the reformed CFP came into full force on 1 January 2015. Since 1 January 2015, on an annual basis, the demersal stocks that have to be landed have been phased in.
25. The full landing obligation, covering both demersal and pelagic fisheries, will come into force on 1 January 2019.
26. The delegated act establishes a discard plan for certain demersal fisheries in the NS for the period 1 January 2019 to 31 December 2021. It was adopted on 18 October 2018.



GEORGE EUSTICE MP
MINISTER OF STATE FOR AGRICULTURE, FISHERIES AND FOOD
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

¹⁷ Choke is where the exhaustion of one quota prevents fishing continuing for other species.

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

COMMISSION DELEGATED REGULATION (EU) .../... OF 18.10.2018 SPECIFYING DETAILS OF IMPLEMENTATION OF THE LANDING OBLIGATION FOR CERTAIN DEMERSAL FISHERIES IN THE NORTH SEA FOR THE PERIOD 2019-2021

EM 13730/17: COMMISSION DELEGATED REGULATION (EU) .../... OF 20.10.2017 ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN THE NORTH SEA AND IN UNION WATERS OF ICES DIVISION IIA FOR THE YEAR 2018

13730/17 ADD 1: ANNEX TO THE COMMISSION DELEGATED REGULATION ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN THE NORTH SEA AND IN UNION WATERS OF ICES DIVISION IIA FOR THE YEAR 2018

DATE EM SIGNED: 10/11/2017

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
POLITICALLY IMPORTANT CLEARED, FURTHER INFORMATION REQUIRED (AGENDA FOR REPORT NO 3;29/11/2017	CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1672 - 21/11/2017

EM 12936/16: COMMISSION DELEGATED REGULATION (EU) .../... OF 4.10.2016 ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN THE NORTH SEA AND IN UNION WATERS OF ICES DIVISION IIA

EM 12936/16 ADD 1: ANNEX TO THE COMMISSION DELEGATED REGULATION ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN THE NORTH SEA AND IN UNION WATERS OF ICES DIVISION IIA

EM 13272/16: COMMISSION DELEGATED REGULATION (EU) .../... OF 12.10.2016 ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN NORTH-WESTERN WATERS

EM 13272/16 ADD 1: ANNEX TO THE COMMISSION DELEGATED REGULATION (EU) .../... ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN NORTH-WESTERN WATERS

DATE EM SIGNED: 26/10/2016

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
NOT IMPORTANT (REPORT 17; 01/11/2016)	CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1634 - 01/11/2016

EM 13017/15: COMMISSION DELEGATED REGULATION (EU) OF 12.10.2015 ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN NORTH-WESTERN WATERS

13017/15 ADD 1 ANNEX TO THE COMMISSION DELEGATED REGULATION (EU) .../.... ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN NORTH-WESTERN WATERS

13334/15: COMMISSION DELEGATED REGULATION (EU) NO .../.. OF 22.10.2015 ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN THE NORTH SEA AND IN UNION WATERS OF ICES DIVISION IIA

13334/15 ADD 1: ANNEX TO THE COMMISSION DELEGATED REGULATION ESTABLISHING A DISCARD PLAN FOR CERTAIN DEMERSAL FISHERIES IN THE NORTH SEA AND IN UNION WATERS OF ICES DIVISION IIA

DATE EM SIGNED: 09/11/2015

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
CLEARED AS POLITICALLY IMPORTANT (REPORT 09), 18/11/2015	CLEARED AT CHAIRMAN'S SIFT 1600 - 18/11/2015

EM 18021/13: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL REGULATIONS (EC) NO 850/98, (EC) NO 2187/2005, (EC) NO 1967/2006, (EC) NO 1098/2007, NO 254/2002, (EC) NO 2347/2002 AND (EC) NO 1224/2009 AND REPEALING (EC) NO 1434/98 AS REGARDS THE LANDING OBLIGATION

18021/13: ADD 1 ANNEXES 1-3 TO THE REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL REGULATIONS (EC) NO 850/98, (EC) NO 2187/2005, (EC) NO 1967/2006, (EC) NO 1098/2007, NO 254/2002, (EC) NO 2347/2002 AND (EC) NO 1224/2009 AND REPEALING (EC) NO 1434/98 AS REGARDS THE LANDING OBLIGATION

DATE EM SIGNED: 15/01/2014

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
CLEARED AS NOT LEGALLY OR POLITICALLY IMPORTANT 24/01/2014	CLEARED BY CORRESPONDENCE ON 13/03/2014