

# FISHERIES BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Fisheries Bill as introduced in the House of Commons on 25 October 2018 (Bill 278).

- These Explanatory Notes have been prepared by the Department for Environment, Farming and Rural Affairs in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Fisheries Bill (the Bill) will provide the legal framework for the United Kingdom to operate as an independent coastal state under the United Nations Convention on the Law of the Sea 1982 (UNCLOS) after the UK has left the European Union (EU) and the Common Fisheries Policy (the CFP). The Bill creates common approaches to fisheries management between the UK government and the Devolved Administrations, known collectively as the Fisheries Administrations, and makes reforms to fisheries management in England.
- 2 The Bill contains the following provisions:
  - Fisheries objectives and fisheries statements: the Bill replaces the sustainability objectives currently in Art. 2 of the Basic Regulation of the Common Fisheries Policy (Regulation (EU) 1380/2013), making them objectives for the Fisheries Administrations or the Secretary of State. The objectives also include the objective of securing that all UK fishing boats have equal access to UK waters. The Fisheries Administrations are required to publish a statement setting out the policies which would achieve or contribute to the achievement of those objectives. In addition, the Secretary of State is required to publish a statement setting out the policies that apply to England that achieve or contribute to the achievement of a number of objectives that apply only to the Secretary of State. The Fisheries Administrations are required to pursue the policies contained in the statements unless relevant considerations indicate otherwise.
  - Access: when the UK leaves the EU, any access for EU and other foreign vessels to UK waters will be a matter for negotiation. The Bill revokes the EU legislation which currently provides for automatic rights for vessels registered in the EU to access UK waters. By revoking provisions in the Fishery Limits Act 1976, it removes the need to designate which countries' vessels are able to fish in UK waters and introduces a new requirement that foreign vessels fishing in UK waters must be authorised to be in UK waters under international agreements or arrangements or must have a licence issued by a Fisheries Administration.
  - Fishing boat licensing: the Bill revokes, replaces and clarifies existing powers for the Fisheries Administrations to license fishing in UK waters. For the most part, this is a consolidation of existing powers but the Bill makes several significant changes. It provides for equal access for UK vessels in UK waters by clarifying that licences issued by any Fisheries Administration are effective throughout UK waters. It also requires for the first time that foreign vessels are prohibited from fishing in UK waters unless they have a licence issued by a Fisheries Administration.
  - Fishing opportunities: the Bill revokes EU legislation which currently sets UK fishing opportunities and gives the Secretary of State powers to determine the UK's fishing opportunities. Before doing so he must consult the other Fisheries Administrations. He must also make certain notifications, including a notification to Parliament. The Bill also introduces powers to enable annual fishing opportunities, which the Secretary of State can allocate to the English industry, to be sold to those in the English industry.

- Discard prevention charging scheme: The Bill contains a regulation-making power to set up a scheme for charging English fishing licence holders that land fish in excess of their authorised quota. This will support the implementation of the landing obligation (which from January 2019 will require all species under quota to be landed) by encouraging the uptake of more sustainable fishing practices.
- Marine environment: the Bill extends the Fisheries Administrations' marine conservation powers to regulate fishing for the purposes of protecting the marine environment. The Fisheries Administrations will be able to regulate fishing outside territorial waters and outside marine protected areas. It extends the Marine Management Organisation's (MMO) existing byelaw making powers and confers equivalent order making powers on the Welsh and Scottish Ministers.
- Cost recovery: the Bill extends the cost-recovery powers of the MMO in England and the Department of Agriculture, Environment and Rural Affairs Northern Ireland to enable both to charge for services they provide to the fishing industry.
- Grant schemes: the Bill provides powers to introduce schemes of financial assistance for the fish and fish farming industries, to improve the marine and aquatic environment, and to promote recreational fishing. Schemes could be introduced by the Secretary of State, Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs Northern Ireland. The powers replace and broaden existing domestic funding powers and will allow new funding schemes to replace funding currently received under the European Maritime Fisheries Fund (EMFF).
- Power to amend UK law (including retained EU law) related to fisheries: the Bill provides a power, by regulations, to make provision in relation to listed fisheries matters and for listed purposes. The power is exercisable by the Secretary of State, Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs Northern Ireland. The Secretary of State could introduce UK-wide measures with the consent of the Devolved Administrations. The power could be used to amend UK law (including primary legislation and retained EU law).
- Power to amend UK law (including retained EU law) related to aquatic animal health: the Bill provides a power, by regulations, to make provision in relation to listed matters related to the control of aquatic animal diseases and for listed purposes. The power is exercisable by the Secretary of State, Scottish Ministers, Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs Northern Ireland. The Secretary of State could introduce UK-wide measures with the consent of the Devolved Administrations. The power could be used to amend UK law (including primary legislation and retained EU law).

# Policy background

## Exiting the EU

- 3 On 1 January 1973 the UK joined the European Economic Community, which has since evolved to become today's European Union. As part of its membership, the UK joined the CFP, which has underpinned UK fisheries management policy for the 45 years since.
- 4 On 17 December 2015 the European Union Referendum Act 2015 received Royal Assent. The Act made provision for holding a referendum in the UK and Gibraltar on whether the UK should remain a member of the EU.
- 5 The referendum was held on 23 June 2016 and a majority voted to leave the EU. The European Union (Notification of Withdrawal) Act 2017 received Royal Assent on 16 March 2017. On 29 March 2017, the Prime Minister gave notification of withdrawal of the UK from the EU under Article 50(2) of the Treaty on European Union (TEU).
- 6 On 3 July 2017 the UK gave notification of its withdrawal from the London Fisheries Convention (LFC), signed in 1964 before the UK joined the European Union. The UK will formally leave the convention at the end of the two-year termination period following notification.
- 7 Leaving the EU means the UK will also leave the CFP. The Fisheries Bill will take advantage of this opportunity to establish a domestic system of fisheries management.

## The Common Fisheries Policy (CFP)

- 8 The CFP has been reformed several times during the course of the UK's membership of the EU, but the principal matters which the CFP has covered are as follows:
  - Shared access for EU fishing vessels to EU Member States' waters;
  - Total Allowable Catch (TAC) and fishing opportunities for key fish stocks for each Member State are agreed annually in December between EU Member States;
  - The representation of EU Member States by the European Commission in negotiations with third countries and in international fisheries agreements; and,
  - Directly applicable fisheries management legislation, including on detailed technical measures and control and enforcement.

## Access

- 9 In relation to access arrangements, under the CFP, EU Member States share access to each other's Exclusive Economic Zones (EEZs) and territorial (inshore) waters in the following way:
  - 0-6 nautical miles: national vessels only, subject to a specific arrangement between the Republic of Ireland and Northern Ireland - the voisinage arrangement. There are mutual access arrangements between France and Jersey under the Granville Bay Agreement;
  - 6-12 nautical miles: national vessels, and foreign vessels operating under historic access arrangements. Vessels from Belgium, France, Germany, Netherlands and the Republic of Ireland have had access to the UK 6-12 mile zone under the LFC, which is also reflected in the CFP Regulation. UK vessels also have some access

to the zones of those countries which they exploit but to a much lesser extent;

- 12-200 nautical miles: EU waters, shared access between all Member States.

### The management of fishing opportunities

- 10 In the management of fishing opportunities, the explicit objectives of the CFP are to ensure that fishing is environmentally, economically and socially sustainable. Under the Common Fisheries Policy (CFP), most fish stocks in the North East Atlantic (which includes the waters around the UK) are managed using Total Allowable Catches (TACs), which are shared between Member States as quotas. TACs cover more than 50 species split into over 200 stocks. In 2018, the UK received quota for 140 stocks. Total Allowable Catches are agreed following scientific advice provided by the International Council for the Exploration of the Sea (ICES). EU Member States and other countries that fish in the North East Atlantic, such as Norway, Iceland, the Faroe Islands and Russia, contribute to this advice by providing stock assessments produced by their national scientific bodies and by submitting catch data.
- 11 Although ICES makes recommendations on the level of TAC which reflect different management scenarios consistent with sustainable management of the stock, the TAC level set is negotiated and agreed between the parties fishing the stock.

### Coastal State negotiations

- 12 International law, including UNCLOS and the UN Fish Stocks Agreement (UNFSA), provides that coastal states control fisheries in their territorial waters and EEZ, and must co-operate with one another to manage shared fish stocks.
- 13 Under the CFP, TACs and quota shares are agreed between the EU Commission (acting on behalf of Member States) and interested countries. Agreements are reached, for example, bilaterally with Norway and the Faroe Islands and within Regional Fisheries Management Organisations (RFMOs). RFMOs are international organisations formed by countries with fishing interests in an area (and driven by obligations under UNCLOS and UNFSA). Some of them manage all the fish stocks found in a specific area, while others focus on particular highly-migratory species, notably tuna.
- 14 The EU Commission leads on all external fisheries negotiations on behalf of Member States. It holds co-ordination meetings with interested Member States prior to and during negotiations.

### December Fisheries Council

- 15 The final TAC for each stock for the following year are agreed annually at the December Fisheries Council. This involves complex negotiations between Member States and the Commission. The Commission and the Presidency need to secure agreement by a Qualified Majority in the Council to reach a deal. The TACs and Quota Regulation is a Council Regulation.

### National quotas

- 16 Once EU TACs have been set, they are divided between Member States into national quotas. Quota is allocated to Member States in accordance with a method known as 'relative stability' – this grants EU countries a fixed percentage of quota for each fish stock covered by TACs. Relative stability shares (which vary by stock) were agreed in 1983 and based on Member States' historical fishing patterns dating back to the 1970s.

### Management regime

- 17 The CFP has undergone a number of reforms since it was introduced. The most recent reform took place in 2013 and introduced a range of measures designed to conserve fisheries resources. These include a commitment to fish at maximum sustainable yield, a ban on discarding fish, and

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increased regionalisation of fisheries governance. Examples of the management reforms introduced in 2013 are:

- The landing obligation: one of the problems with the quota system is the incentive it provides for fishermen to throw over-quota fish back into the sea. To end this wasteful practice, the latest CFP reform introduced a phased landing obligation in 2015, which will require fishermen to land all catches by 2019.
- Regionalisation: enables only those Member States that share fisheries at a sea basin level to agree and enact regional decisions in EU or national law.

## European Maritime Fisheries Fund

- 18 Funding for the fisheries industry in the EU is derived from the EMFF. The UK was allocated €243m (£190m) for EMFF over 2014-2020, divided between England, Scotland, Northern Ireland and Wales.

## Fisheries management in the UK

### Quota distribution

- 19 Following agreement at December Council on TACs, Defra allocates shares of the UK's quotas to each of the UK's four Fisheries Administrations. Allocations have been based on Fixed Quota Allocation (FQA) units and are set out in the Concordat between the Fisheries Administrations (*Concordat on management arrangements for fishing quotas and licensing in the UK and in the Quota Management Rules (Rules for the management of the UK's fisheries quotas in areas I, II, IV, VI and VI (and associated areas) and in Faroese waters (Vb))*). Each unit entitles the FQA holder to a specific percentage share of UK quota for a given stock. FQAs were allocated to vessel owners in 1999 based on historical fishing track records.
- 20 In the case of over 10 metre vessels, FQAs are attached to vessel licences. Most large vessel owners come together in cooperatives known as producer organisations which manage the quota for their members and also hold FQAs on "dummy" licences. In the case of 10 metre and under vessels, the FQAs are managed as a pool by each Fisheries Administration. In England, this pool is managed by the MMO. Vessels are given monthly allocations and, based on the level of catches recorded, the MMO will make decisions on whether the levels of quota allocated each month need to be changed.

### Producer Organisations

- 21 Fish Producer Organisations (POs) were established under the EU Regulation on the common organisation of the markets in fishery and aquaculture products (No. 1379/2013 - the CMO Regulation). POs are made up of producers of fishery products and their main objectives are promoting sustainable fishing, reducing unwanted catches, and contributing to the traceability of fishery products and the elimination of IUU fishing. They also play a role in marketing the products of their members and building a relationship with the supply chain (fish markets, processors, other purchasers, retailers and consumers) in order to promote market stability. POs must produce Production and Marketing Plans which set out a marketing strategy relating to quantity and quality of supply, and a Catch Plan for species, in particular for species covered by quotas.
- 22 In addition to their responsibilities under the CMO Regulation, POs in the UK are responsible for managing quota on behalf of their members. PO staff also provide an administrative function to ensure accurate catch records for their members are maintained.

## Fisheries Management in England

- 23 The enforcement and management of fisheries is generally carried out by the MMO and the Inshore Fisheries Conservation Authorities (IFCAs).
- 24 The MMO's functions are set out in the Marine and Coastal Access Act 2009 (MCAA) and in general terms are to license, regulate and plan marine activities in the seas around England.
- 25 The IFCAs' functions are also set out in the MCAA. They are committees or joint committees formed from relevant local authorities within 10 areas across England. Their duties relate to the management of fisheries resources and the conservation of the marine environment within the inshore sea (0-6 nautical miles). Their powers include byelaw making powers.

## Devolution

- 26 Fisheries is generally a devolved matter: the Devolved Administrations regulate fisheries in their waters and regulate their vessels wherever they fish. The current UK-wide approach to fisheries is achieved because all the Fisheries Administrations are required to comply with EU law – including the Common Fisheries Policy.
- 27 Also, as UK vessels fish throughout UK waters, the UK Fisheries Administrations work together to ensure a common or consistent approach to fisheries management where necessary or appropriate. This is currently provided for through the Concordat.

## Sustainable fisheries for future generations

- 28 On 4 July 2018, the Environment Secretary, the Rt Hon Michael Gove MP, published a White Paper for consultation ('Sustainable fisheries for future generation'). This set out the government's vision for future fisheries management after leaving the European Union and the Common Fisheries Policy (CFP). The White Paper sets out the government's aim to build a vibrant and sustainable UK fishing industry by taking responsibility for managing fisheries resources within UK waters, while continuing to protect and improve the marine environment, in line with the recently published 25 Year Environment Plan. The purpose of the consultation was to seek views on the government's proposals for all aspects of our emerging approach which were set out in the White Paper.
- 29 The consultation closed on 12 September 2018. In total, 34,667 responses to the consultation were received from a wide range of stakeholders including fishermen, producer organisations, government bodies and local councils, Non-governmental organisations, members of Parliament, IFCAs, academia, other industries and local groups.

## Legal background

### Legal background to the Common Fisheries Policy

- 30 Article 2(1) of the Treaty on the Functioning of the European Union (TFEU) provides that the EU has exclusive competence in several areas. These are set out in Article 3(1) TFEU and include:-

“(d) the conservation of marine biological resources under the common fisheries policy”.

As an EU Member State, the UK therefore does not have competence to act in relation to the conservation of marine biological resources under the common fisheries policy (CFP). This

means that the EU has made most of the law applicable in the UK in relation to fishing and the need for marine conservation in connection with fishing activities. The CFP does, however, provide for Member States to manage their territorial waters (provided they do so consistently with any CFP rules).

- 31 Under Article 3(2) of the TFEU, the EU generally has exclusive competence in relation to international matters where it has exclusive internal competence. The EU has entered into a large number of fisheries agreements with third countries and is a member of several Regional Fisheries Management Organisations.
- 32 Article 2(2) TFEU provides that in areas of shared competence the Member States may exercise their competence to the extent that the EU has not exercised its competence. The areas of shared competence are set out in Article 4(2) TFEU and include
  - “(d) agriculture and fisheries, excluding the conservation of marine biological resources;
  - (e) environment”
- 33 There is therefore shared competence in relation to those aspects of fisheries which do not concern the conservation of marine biological resources, for example, in relation to freshwater fish.
- 34 In some areas, the CFP does allow Member States more autonomy. The CFP allows Member States to restrict access of their 0-12 nautical mile area to their own vessels and the vessels of other Member States which have historic fishing rights in that area and to supplement EU measures in their territorial waters, provided they are non-discriminatory and at least as stringent as measures under EU rules. Member States may also enact measures which apply to their own vessels fishing outside territorial waters, provided those measures are consistent with the objectives of the CFP, and are at least as stringent as measures under Union law. This allows the UK to apply technical measures to its own vessels, regardless of where they are fishing. In emergencies, Member States can also take temporary measures which apply to all vessels, not just their own, in waters within their jurisdiction. Such measures have a time limit of three months.
- 35 Member States have various other powers. These include: stipulating which vessels may have their nationality and thus fly their flag; licensing their own vessels; allocating quota amongst their own vessels; administering aspects of the EMFF; and carrying out various tasks in relation to the common organisation of the market in fisheries products. In addition Member States play a significant role in the enforcement of the CFP.

## London Fisheries Convention

- 36 The LFC provides certain EU Member States a right of access for their vessels to fish for certain species in certain areas of UK and Crown Dependency territorial waters within 6 to 12 nautical miles from the coast.
- 37 It was concluded in 1964, before the UK joined the EU, and before subsequent international agreements (in particular, UNCLOS) established definitively which rights coastal States could exercise in their territorial seas and Exclusive Economic Zones.
- 38 The Netherlands, Germany, Belgium, France and Ireland can fish for certain species in certain areas of UK and Crown Dependency territorial waters under the agreement, whilst UK vessels have access to certain areas and for certain species 6-12nm from the coast of the Netherlands, Germany, France and Ireland.

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- 39 The Fishery Limits Act 1964 provided a power for Ministers to give effect to other states' rights (such as rights under the LFC) of access to fish within British fishery limits (at that time extending to 12 nautical miles from the coast) by making orders designating which countries could fish within these waters. The 1964 Act was repealed and replaced by the Fishery Limits Act 1976, which extended British fishery limits to 200 nautical miles and contained a similar power for Ministers to designate which countries could fish within these new limits. This power was used to provide for access to fish in accordance with the provisions of the Convention. Rights of access under the LFC have also been included in Annex 1 to the Basic CFP Regulation (1380/2013), except those rights that relate to the Crown Dependencies.
- 40 Article 15 of the LFC permits parties to withdraw from the Convention by giving two years' notice. On 3 July 2017, as part of the wider process of becoming an independent Coastal State, the UK formally gave notice under the Convention of its intention to withdraw from the LFC. This notice triggered a two-year withdrawal period, which will come to an end on 2 July 2019.

## UK law relating to fisheries

- 41 In addition to EU law derived from the CFP, there are a number of principal pieces of UK primary legislation that relate to fisheries. These are summarised below.

- **The Sea Fish (Conservation) Act 1967 Act (SF(C)A 1967)** contains a number of important provisions which allow UK and Devolved Administration Ministers to:-
  - i. prescribe the size limits for sea fish and minimum net sizes;
  - ii. license fishing boats;
  - iii. regulate the trans-shipment of fish from vessel to vessel; and
  - iv. restrict fishing in certain areas and the landing of foreign-caught fish.

The main licensing Orders are the Sea Fish Licensing Order 1992 and the Sea Fish Licensing (England) Order 2015. The 2015 Order is a consolidation and applies in relation to England. The 1992 Order continues to apply in relation to Scotland, Wales and Northern Ireland. The Orders prohibit unlicensed fishing anywhere by UK fishing boats (subject to certain exceptions).

- **The Sea Fisheries Act 1968 Act** adds to the framework of domestic UK fisheries legislation. In particular it provides that Ministers may make orders regulating the conduct of fishing and makes provision for British sea-fishery officers.
- **The Fishery Limits Act 1976** and designation orders made under it prescribes the fishery limits of the British Islands and the rights of the fishing boats of other countries to fish within those limits. British fishery limits are now for the purposes of section 1 of the Fishery Limits Act those limits as designated by the Exclusive Economic Zone Order 2013 which declares the area of the UK's Exclusive Economic Zone (in effect, the United Kingdom's 12-200 nautical mile area of sea).
- **The Fisheries Act 1981** created the Sea Fish Industry Authority, setting out its duties and powers (including a power to impose a levy on persons engaged in the sea fish industry). It also contains provisions on financial assistance to the sea

fish and fish farming industry. It contains a provision making a breach of EU sea fisheries legislation an offence under the Act.

- **The Marine and Coastal Access Act 2009** established the Marine Management Organisation. The Act makes the MMO the licensing authority for English vessels. It also allows Ministers to delegate functions to the MMO and makes provision for the management of inshore fisheries by Inshore Fisheries Conservation Authorities. The Act sets out the regime for marine planning in the UK marine area and provides for the designation and protection of Marine Conservation Zones. The Act also makes provision for the enforcement of fisheries legislation by Marine Enforcement Officers.

## Legal background to the devolution of fisheries

42 Foreign affairs (including relations with the EU, other countries and other international organisations) is a reserved matter. Observing and implementing international obligations is not a reserved matter.

43 Subject to very few exceptions, the devolved legislatures and administrations have legislative and executive competence in relation to fisheries and marine conservation in their territorial waters.

- The regulation of sea fishing in the Scottish zone and the regulation of Scottish fishing boats anywhere are devolved matters.
- The regulation of sea fishing in the Northern Ireland zone and the regulation of Northern Ireland fishing boats anywhere are devolved matters. In Northern Ireland, the foreshore and seabed are excepted matters.
- The regulation of sea fishing is devolved in the Welsh inshore area but the National Assembly of Wales does not have legislative competence in relation to fisheries in the Welsh offshore area. Fisheries is not reserved under Schedule 7A to the Government of Wales Act 2006. The regulation of sea fishing is not reserved so is devolved where provisions can be said to relate to Wales (which includes the inshore area). Welsh Ministers do have executive competence in relation to fisheries in the offshore region. The regulation of Welsh fishing boats anywhere is devolved, because Welsh fishing boats are registered in a Welsh port and can therefore be said to relate to Wales wherever they are fishing.

44 Subject to certain exceptions, the Devolved Administrations have devolved competence in relation to marine licensing in their inshore area and the Scottish Ministers and the Welsh Ministers have executive competence in relation to marine licensing in respect of their offshore area.

45 The Devolved Administrations have executive competence in relation to marine planning in their offshore area as well as competence over marine planning in their inshore area.

## International law: the United Nations Convention on the Law of the Sea, the United Nations Fish Stocks Agreement and Regional Fishery Management Organisations

### UNCLOS

- 46 UNCLOS is the main international agreement governing the World's oceans and seas. The UK is a party to UNCLOS in its own right. UNCLOS covers a number of significant issues including setting limits, navigation, archipelagic status and transit regimes, Exclusive Economic Zones (EEZ), continental shelf jurisdiction, deep seabed mining, the exploitation regime, protection of the marine environment, scientific research, and settlement of disputes. In relation to fisheries, the most significant parts of UNCLOS recognise a coastal State's rights and obligations with respect to fishing in its territorial sea, its EEZ and on the high seas.
- 47 The territorial sea is a zone extending up to 12 nautical miles from a coastal State's baselines (generally the low-water line along the coast). The coastal State's sovereignty extends to its territorial sea. The coastal State's sovereignty over its territorial sea is to be exercised in accordance with its international obligations, including obligations under UNCLOS (for example, to provide innocent passage to vessels from third States).
- 48 The EEZ is a zone extending from the outer limit of the coastal State's territorial sea to up to 200 nautical miles from its baselines or to the median line with another coastal State's EEZ. Within the EEZ, the coastal State enjoys exclusive rights in relation to natural resources and related jurisdictional rights, and third States enjoy the freedoms of navigation, overflight by aircraft and the laying of cables and pipelines.
- 49 Within the EEZ, the coastal State has "sovereign rights for the purpose of exploring and exploiting, conserving and managing" the fish stocks of the zone (UNCLOS, Article 56(1)). These rights are subject to a number of duties under the Convention, including the need to:
- determine the total allowable catch of the living resources in the EEZ – Article 61(1);
  - maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield – Article 61(3);
  - optimise utilisation of the living resources within its EEZ, without prejudice to Article 61 – Article 62(1);
  - determine the coastal State's own capacity to harvest those living resources – Article 62(2);
  - provide other States with access to any surplus if the allowable catch exceeds the coastal State's own capacity to harvest the living resources – Article 62(2);
  - provide due notice of conservation and management laws and regulations relating to living resources of its EEZ – Article 62(5); and,
  - cooperate with other Coastal States upon measures necessary to coordinate and ensure the conservation and development of shared stocks - Article 63.
- 50 Where coastal States allow access for fishing boats from other States to their EEZ, the coastal State can prescribe conditions to govern such fishing. Article 62(4) of UNCLOS provides that these conditions may, for example, require foreign fishermen to have licences, to observe the

coastal State's conservation measures, to provide information including catch and effort statistics and vessel position reports, to carry out research programmes, to land part or all of their catches in the coastal State, to carry on-board observers, to train coastal State personnel, and to comply with enforcement procedures.

- 51 The rights and duties of other States in the coastal State's EEZ are set out in Article 58 of UNCLOS. Other States' rights include (i) the freedom of navigation, (ii) the freedom of overflight, and (iii) the freedom to lay submarine cables and pipelines. Other States must have due regard to the rights and duties of the coastal State and comply with the laws and regulations adopted by the coastal State adopted in accordance with UNCLOS and other rules of international law.
- 52 Whilst the overwhelming proportion of commercial fishing takes place within 200 miles of land, UNCLOS also contains provisions governing fishing on the high seas (i.e. beyond 200 miles) where many fish stocks spend part or the whole of their life cycle. The Convention provides that fishing is, in principle, open to all States on the high seas, subject to a number of general obligations relating to the conservation and management of high seas living resources (set out in Articles 117 to 120). These include the obligation to cooperate to establish regional fisheries organisations (also known as regional fisheries management organisations or RFMOs) to this end.
- 53 UNCLOS includes a bespoke dispute settlement mechanism. When a dispute arises, parties to UNCLOS are under a general obligation to settle the dispute by peaceful means (Art 279). Parties must proceed expeditiously to an exchange of views regarding settlement by negotiation or other peaceful means (Art 283). If parties fail to reach a settlement through agreed procedures, one may invite the other to submit to the conciliation procedure laid out in the Convention (Art 285 and Annex V). There are compulsory dispute resolution mechanisms provided by section 2 of Part XV of UNCLOS, which are engaged where settlement of a dispute is not possible by a means freely chosen by the parties, but there are exceptions to this compulsory procedure for fisheries disputes relating to a coastal State's sovereign rights relating to the living resources in its EEZ, including its determination of the total allowable catch and harvesting capacity, its allocation of surpluses to other States and its conservation and management laws.
- 54 The United Nations Fish Stocks Agreement 1995 (UNFSA) is a multilateral treaty intended to ensure the long-term conservation and sustainable use of straddling fish stocks (stocks which migrate between, or occur in both, the EEZ of one or more States and the high seas such as mackerel, herring and whiting) and highly migratory fish stocks (stocks listed in Annex 1 of UNCLOS which are capable of migrating long distances and which generally occur in both EEZs and the high seas) through effective implementation of the relevant provisions of UNCLOS (UNFSA, Article 2). In order to achieve this objective, UNFSA sets out various principles for the conservation and management of these stocks by the coastal state within its EEZ, and by the coastal State and other states on the high seas. The UK is currently a party to UNFSA in its own right.
- 55 Part III of UNFSA contains detailed provisions on the implementation of Articles 117 to 120 of UNCLOS. This includes provision on the establishment and functions of RFMOs and duties of States to cooperate with them (Articles 8-17). In particular, States fishing for stocks managed by a particular RFMO on the high seas and the relevant coastal States must either join that RFMO or agree to apply the conservation and management measures adopted by the RMFO (Article 8(3)). UNFSA also imposes duties on States to implement and enforce conservation and management measures adopted by RFMOs.

## Regional Fishery Management Organisations (RFMOs)

- 56 As envisaged by UNCLOS and UNFSA, a large number of RFMOs have been established by coastal States and States fishing on the high seas. RFMOs are established by multilateral treaties and are intended to strengthen regional cooperation in order to promote conservation and sustainable exploitation of fish resources on the high seas, straddling stocks and highly migratory species. While some RFMOs have a purely advisory role, most have management powers to set catch and fishing effort limits, technical measures, and control obligations in order to establish measures for the control and monitoring of fishing activities. The EU is a member of 17 of these organisations. The EU's exclusive competence in this area means that the UK is currently a member of only two RFMOs on behalf of a number of its overseas territories.
- 57 After the UK leaves the EU, the UK intends to join a number of RFMOs in its own right and will be bound directly by the conservation and management measures adopted by these RFMOs as a result.

## Retained EU law

- 58 The EU regulations of which the CFP is comprised will be retained in UK law under the European Union (Withdrawal) Act 2018. The Department intends to make statutory instruments to correct retained EU law relating to fisheries to make it operable in UK law.

## Territorial extent and application

- 59 Clause 41 sets out the territorial extent of the Bill. These are the legal systems of which the Bill will form part. The extent of a Bill can be different from its application. Territorial application is about where a Bill produces a practical effect rather than where it forms part of the law. The Bill extends and applies to the whole of the UK. In addition, repeals and amendments made by the Bill have the same territorial extent as the legislation that they are repealing or amending.
- 60 The UK Parliament will not normally legislate for areas within the competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. The government will therefore seek legislative consent for provisions where this is the case. See the table in Annex A for a summary of the position regarding territorial extent and application. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.
- 61 The Bill also provides for some of its provisions to be extended to the Crown Dependencies. The Crown Dependencies are not part of the United Kingdom and the United Kingdom generally seeks their consent before extending legislation to them. This would be the case here.

# Commentary on provisions of Bill

## Fisheries objectives and joint fisheries statements

### Clause 1: Fisheries objectives

- 62 Clause 1 lists and defines the fisheries objectives. It also revokes Article 2 of the main Common Fisheries Policy Regulation (Council Regulation 1380/2013). This Regulation sets out the overarching aims and objectives which govern the CFP and the policies made under it. The objectives are the subject of the Joint Fisheries Statement which is provided for in clause 2.
- 63 Subsection (1) lists the fisheries objectives. These are the sustainability objective, the precautionary objective, the ecosystem objective, the scientific evidence objective, the discards objectives and the equal access objective. Save for the equal access objective, these objectives replace equivalent objectives in Article 2 of the Common Fisheries Policy Regulation.
- 64 Subsection (2) provides the meaning given to the “sustainability objective” which is to ensure that fishing and aquaculture activities are environmentally sustainable in the long term, and managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies.
- 65 Subsection (3) provides the meaning given to the “precautionary objective” which is to apply the precautionary approach to fisheries management, and to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above biomass levels capable of producing maximum sustainable yield.
- 66 Subsection (4) provides the meaning given to the “ecosystem objective” which is to implement an ecosystem-based approach to fisheries management so as to ensure that negative impacts of fishing activities on the marine ecosystem are minimised, and to ensure that aquaculture and fisheries activities avoid the degradation of the marine environment.
- 67 Subsection (5) provides the meaning given to the “scientific evidence objective” which is to contribute to the collection of scientific data and to base fisheries management policy on the best available scientific advice.
- 68 Subsection (6) provides the meaning given to the “discards objective” which is to gradually eliminate discards of fish, on a case-by-case basis, by avoiding and reducing, as far as possible, unwanted catches, and by gradually ensuring that catches are landed.
- 69 Subsection (7) provides the meaning given to the “equal access objective” which is to ensure that the access of UK fishing boats to any area within British fishery limits is not affected by the location of the fishing boat’s home port, or any other connection of the fishing boat, or any of its owners, to any place in the United Kingdom. The meaning of UK fishing boats in subsection (7) is given in subsection (8).
- 70 Subsection (9) revokes Article 2 of the Commons Fisheries Policy Regulation which would otherwise be retained in UK law under the European Union (Withdrawal) Act 2018.

### Clause 2: Fisheries statements

- 71 Clause 2 defines a Joint Fisheries Statement (JFS) and the Secretary of State Fisheries Statement (SSFS). The statements are documents in which the relevant fisheries policy authorities will set out the policies they have which will achieve, or contribute to the achievement of, the fisheries

objectives that apply to them. The fisheries policy authorities are the four UK Fisheries Administrations (listed in subsection (4)). Subsection (3) provides that only statements that have been expressly prepared as either a JFS or a SSFS fulfil the requirements of clause 2. The effect of the statements is set out in clause 6.

- 72 The JFS is provided for in subsection (1). It is a document in which the fisheries policy authorities jointly state their policies for achieving the fisheries objectives in clause 1. The purpose of the statement is to recognise that, although fisheries is devolved, none of the Fisheries Administrations acting alone could achieve the fisheries objectives. The intended effect of the statement would be to set out and coordinate fisheries policies after the UK has left the EU.
- 73 Although some of the objectives currently in Article 2 of the Common Fisheries Policy Regulation are replicated in clause 1, others relating to more detailed matters are not. The SSFS covers many of those detailed objectives and must include the Secretary of State's policies in relations to the matters listed in subsection (2).

### Clause 3: Preparation and coming into effect of fisheries statements

- 74 Clause 3 sets out how the Joint Fisheries Statement may only be prepared by the fisheries policy authorities acting jointly.
- 75 The mechanism for bringing the policy statements into effect is set out in Schedule 1. Under subsection (4), the statements only come into effect when they have been published in accordance with that schedule.
- 76 Subsection (3) provides that later statements replace previous statements.

### Clause 4: Amendment of fisheries statements

- 77 Clause 4 provides that amendments may be made to both the JFS and the SSFS. Amendments must be made following the processes set out in Schedule 1.
- 78 If the processes in Schedule 1 have been followed, then the JFS or the SSFS would come into effect as amended.

### Clause 5: Deadline for first fisheries statements and obligations to review.

- 79 Clause 5 requires the fisheries policy authorities, in relation to the JFS, and the Secretary of State alone, in relation to the SSFS, to publish the respective statements by 1 January 2021. The intention is that the statements come into effect at the end of the Implementation Period.
- 80 Subsections (3) and (4) provide that the statements must be reviewed within 6 years of publication of the first statements and thereafter within 6 years following the end of the most recent review.

### Clause 6: Effect of statements

- 81 Clause 6 requires the relevant national authorities to pursue the policies outlined in the relevant fisheries statements that are applicable to them unless relevant considerations indicate otherwise. The purpose of this exception is to allow for flexibility in decision-making; it may occasionally be appropriate to diverge from the policies in the statements (for example, if there

are changes in scientific advice, new international standards or catastrophic events which have an impact on fisheries management or the marine environment). The relevant national authorities are all the UK Fisheries Administrations and the MMO in relation to the JFS, and the Secretary of State and the MMO in relation to SSFS.

- 82 Subsection (1) requires the relevant authorities, which are all those listed in subsection (5), to exercise their functions relating to fisheries, fishing or aquaculture in accordance with the JFS unless relevant considerations indicate otherwise. Subsection (2) requires a relevant national authority to state its reasons if it does not take a decision in accordance with the JFS.
- 83 Subsection (3) requires the Secretary of State and the MMO to exercise their functions relating to fisheries, fishing or aquaculture in accordance with the SSFS unless relevant considerations indicate otherwise. Subsection (2) requires the Secretary of State and the MMO to state their reasons if they do not take a decision in accordance with the SSFS.

## Access to British Fisheries

### Clause 7: Revocation of requirement for equal access for EU fishing vessels

- 84 Clause 7 revokes Article 5 of, and Annex I to, the Common Fisheries Policy Regulation (Council Regulation 1380/2013), which provides for mutual access to EU waters by EU Member States' vessels. This covers both the 6-12 mile zone and the 12-200 mile Exclusive Economic Zone. The consequence of this clause will be to give the UK control over access to its waters by foreign fishing boats.

### Clause 8: Access to British fisheries by foreign fishing boats

- 85 Clause 8 sets out when foreign fishing boats may enter British fishery limits (which equates to the UK's EEZ). The clause replaces section 2 of the Fishery Limits Act 1976. Under section 2 of the 1976 Act, as amended by the devolution Acts, the Secretary of State and the Devolved Administrations may, by order, designate the foreign countries whose vessels may enter British fishery limits. The Bill sets out this process, replacing the order-making procedure.
- 86 Subsection (1) provides that a foreign fishing boat can only enter British fishery limits if it has a sea fishing licence or for a purpose recognised by international law or by any international agreement or arrangement. Foreign sea fishing licences are those provided for under clause 11 and foreign fishing boats are defined in clause 40.
- 87 Subsection (2) requires that foreign fishing boats must leave British fishery limits as soon as their purposes under subsection (1) have been fulfilled.
- 88 Subsection (3) makes it an offence for the master of a foreign fishing boat to breach these requirements. The owner and charterer of a foreign fishing boat may also commit an offence if there is a breach of subsection (1) or (2).

## Licensing of fishing boats

### Clause 9: British Fishing boats required to be licensed

- 89 Clauses 9-17 and Schedules 2 and 3 provide for changes to the current regime for the licensing of UK fishing boats and for the licensing of other fishing boats in UK waters. These provisions consolidate and clarify existing law as well as making policy changes. They revoke and replace

section 4 of the Sea Fish (Conservation) Act 1967, which provides powers for the Fisheries Administrations to make orders prohibiting fishing without a licence. Further to this, these provisions consolidate 14 other pieces of legislation, including orders made under section 4 of the 1967 Act and orders made under the devolution acts to transfer functions to the Devolved Administrations. Schedule 2 sets out the provisions equivalent to revoke provisions in section 4 of the 1967 Act and Schedule 3 deals with the modifications to and revocations of other legislation.

- 90 The purpose of restating existing law here is to clarify and simplify the legal position. Furthermore, the measures make policy changes to provide for equal access across UK water for UK fishing boats. They also prohibit fishing by foreign fishing boats without a licence issued by a UK Fisheries Administration. The need for these provisions arises as a consequence of EU exit; currently UK and EU fishing boats have a right of access under Article 5 of the Common Fisheries Policy Regulation. Clause 7 revokes that right and we need a power to regulate foreign vessels as soon as that revocation takes effect.
- 91 Clause 9 deals with the circumstances in which a licence is required for British boats. The prohibition and subsequent exemptions under clause 9 will apply UK wide and ensure that the basic licensing requirement is consistent throughout UK waters. The effect of this change will be to replicate the effective status quo; that a licence issued by a UK Fisheries Administration will be effective throughout UK waters.
- 92 Subsection (1) requires that fishing anywhere by a British fishing boat is prohibited unless that boat has been authorised under a licence.
- 93 Subsection (2) sets out the exceptions to the requirement to have a licence. These exceptions are the same as those set out in existing licensing orders. Generally, these exceptions are in place as the relevant fishing activity is regulated under another regime or because it would not be appropriate to license the activity. The fishing activities exempted are fishing:
- for salmon or migratory trout;
  - for common eels (*Anguilla anguilla*) by a boat whose length is 10 metres or less;
  - by a boat whose length is 10 metres or less and which does not have an engine to power the boat;
  - by a boat used wholly for the purpose of conveying persons wishing to fish for pleasure;
  - in waters lying within 12 miles of the baselines from which the breadth of the territorial sea adjacent to the Isle of Man and the Channel Islands respectively is measured, but not extending beyond a line every point of which is equidistant from the nearest points of such baselines and the corresponding baselines adjacent to the United Kingdom and France respectively.
- 94 Subsection (3) provides a power for the Secretary of State, by regulations, to amend the exceptions to the licensing requirement in subsection (2). This will provide the flexibility to require in the future that further fishing activities are licensed if, for example, the activity is judged to risk the health of fish stocks. It replicates the ability to vary the exceptions by order under section 4 of the Sea Fish (Conservation) Act 1967.
- 95 Subsection (4) requires that the Scottish Ministers, the Welsh Ministers and the Northern Ireland department give their consent to any changes to the exceptions from the requirement under subsection (1). Given that fisheries is generally a devolved matter, the requirement for the

Devolved Administrations' consent to regulations under subsection (3) respects the devolution settlements but at the same time ensures that the requirements are consistent across the UK.

- 96 Subsection (5) provides that regulations under subsection (3) are subject to the affirmative regulation procedure.
- 97 Subsection (6) makes it an offence to fish in contravention of subsection (1). The master, owner and charterer of a fishing boat would be guilty of the offence. Subsection (7) explains that further provision is made about the offence in clauses 14 to 16.
- 98 Subsection (8) defines the terms "the baselines", "length", "licence" and "mile". It provides that licences in this clause mean those issued under clause 10 or issued under section 4 of the 1967 Act by the Department of Environment, Food and Agriculture (Isle of Man) for herring fishing in ICES 7.a (Irish Sea). This replicates an existing provision in the 1967 Act. Subsection (9) provides the meaning of ICES 7.a which is a statistical division determined by the International Council for the Exploration of the Sea.

### Clause 10: Power to grant licences in respect of British fishing boats.

- 99 Clause 10 provides a power for the UK Fisheries Administrations to grant licences to British fishing boats.
- 100 Subsection (1) sets out which fishing boats are licensed by which administration:
- Scottish fishing boats are licensed by the Scottish Ministers;
  - Welsh fishing boats are licensed by the Welsh Ministers;
  - Northern Ireland fishing boats are licensed by the Northern Ireland department;
  - other British fishing boats (English boats and Crown Dependency boats which need a UK licence) are licensed by the MMO.
- 101 Subsection (2) allows the Fisheries Administrations to grant licences limited by reference to fishing in a particular area; to the periods, times or particular voyages during which fishing is authorised; to the descriptions and quantities of fish which may be caught; and to the method of sea fishing.
- 102 Subsection (3) provides that licences granted under clause 10 must name the fishing boat in respect of which it is granted, and may only be granted to the boat's owner or charterer.

### Clause 11: Foreign fishing boats required to be licensed if within British fishery limits

- 103 Clause 11 prohibits fishing by foreign fishing boats unless they have a licence issued by a UK Fisheries Administration. This is a new requirement which reflects the fact that, in future, access for foreign vessels to fish in UK waters will be a matter for negotiation, implemented partly through UK licensing.
- 104 Subsection (1) prohibits fishing within British fishery limits (which is the UK EEZ) by foreign vessels unless they have a licence.
- 105 Subsection (2) gives the Secretary of State a power to make exemptions to the requirement under subsection (1) which is equivalent to the power provided in clause 9(3) with respect to British fishing boats. Unlike the exemptions for British fishing boats, there are no exemptions to the requirement that foreign fishing boats are licensed.

- 106 Subsection (3) requires that the Scottish Ministers, the Welsh Ministers and the Northern Ireland department consent to any regulations made under subsection (2).
- 107 Subsection (4) is a requirement that regulations under subsection (2) are subject to the affirmative procedure.
- 108 Subsection (5) makes it an offence for a boat to fish in contravention of the requirement in subsection (1) and makes this an offence of the master, owner and charter of the boat.
- 109 Subsection (6) refers to further offence provisions in clauses 14 to 16 about the offence in subsection (5).
- 110 Subsection (7) provides that licences in this clause mean licences issued under clause 12.

### Clause 12: Power to grant licences in respect of foreign fishing boats

- 111 Clause 12 provides powers for the UK Fisheries Administrations to grant licences to foreign fishing boats.
- 112 Subsection (1) provides that licences may be issued to foreign fishing boats by the Scottish Ministers, the Welsh Ministers, the Northern Ireland department and the MMO.
- 113 Subsection (2) provides that licences issued under subsection (1) may only authorise fishing with respect to the areas of UK waters for which the respective administrations have competence; this is the Scottish Ministers in relation to the Scottish Zone, the Welsh Ministers in relation to the Welsh zone and the Northern Ireland department in relation to the Northern Ireland zone. In relation to the MMO the effect of this provision is that they may only license foreign boats in England or the waters around England.
- 114 Subsection (3) allows the Fisheries Administrations to grant licences limited by reference to certain matters. This is equivalent to clause 10, which applies in relation to licences for UK boats.
- 115 Subsection (4) provides that licences granted under clause 12 must name the fishing boat in respect of which it is granted, and may only be granted to the boat's owner or charterer.

### Clause 13: further provision about licences

- 116 Clause 13 provides that in this Bill "sea fishing licence" means licences granted under clause 10 or clause 12. It also refers to Schedule 2, which makes further provision about sea fishing licences.

## Access and licensing: offences and consequential amendments

### Clause 14: Penalties for offences

- 117 This clause sets out the penalties for licensing offences. This replicates existing offences under section 4 of the Sea Fish (Conservation) Act 1967.
- 118 Subsection (1) provides the penalties for offences under clauses 8(3), 9(6) or 11(5) and paragraph 1(4), 3(2) and (3) of Schedule 2.
- 119 Subsection (2) allows the court to disqualify persons convicted of the offences from holding a sea fishing licences for a specified period and to order the forfeiture of fish, nets and fishing gear used when the offence was committed.

120 Subsection (3) provides that the fines that must be paid by those found guilty of committing the relevant offences may not exceed the value of the fish that was fished during the activity for which the person had been found guilty.

121 Subsection (4) provides that the court may not order both the forfeiture of the fish fished in the course of the offence under subsection (2) and order that a fine be paid under subsection (3) for the same offence.

122 Subsection (5) allows for a fine under subsection (3) to be in addition to any other fine for which a person is liable as a result of the same offence.

### Clause 15: Offences by bodies corporate etc.

123 Clause 15 sets out the circumstances in which the officer of a body corporate as well as the body corporate may be found guilty of committing a relevant offence.

124 Subsection (1) provides that an officer of a body corporate, as well as a body corporate, may be guilty of an offence where it is proved that an officer connived or consented to the offence, or that the offence was attributable to the neglect of an officer.

125 Subsection (2) gives the meaning of “officer” in subsection (1).

126 Subsection (3) provides for members of a body corporate to be treated as if they were directors, who are officers under subsection (2).

127 Subsection (4) is a similar provision for subsection (1) but applies to a partner or person purporting to be a partner in a Scottish partnership.

128 Subsection (5) defines the relevant offences.

### Clause 16: Jurisdiction of court to try offences

129 This clause provides that the relevant offences may be treated as having been committed in any place in the United Kingdom.

### Clause 17: Consequential amendments

130 This clause refers to Schedule 3, which contains consequential amendments and transitional provision in relation to clauses 7 to 16.

## Fishing Opportunities

### Clause 18: Power of the Secretary of State to determine fishing opportunities

131 Clause 18 sets out the power of the Secretary of State to set the maximum quantity of sea fish caught by British fishing boats and days that British fishing boats may spend at sea in a calendar year. “Fishing opportunities” refers to the maximum amount of fish that may be caught and the maximum number of days that may be spent at sea. Clause 18 replaces the current provision in EU law that allows the European Council to determine fishing opportunities for EU waters (of which UK waters are a constituent part). The provisions set out the Secretary of State reserved function of determining the UK’s fishing opportunities, in accordance with the UK’s international obligations. These might arise under an agreement with the EU or with another coastal state. They might also arise because of the UK’s obligations under UNCLOS or as a

member of an RFMO.

- 132 Subsection (1) provides that the Secretary of State may determine for a calendar year the maximum quantity of sea fish that may be caught by British fishing boats and the maximum number of days that British fishing boats may spend at sea.
- 133 Subsection (2) requires that a determination under subsection (1) may only be made for the purpose of complying with an international obligation of the UK to determine the fishing opportunities of the UK. The purpose of this subsection is to ensure that the power to determine fishing opportunities is limited to matters within the Secretary of States competence.
- 134 Subsection (3) allows for the maxima determined under subsection (1) to be determined for, or for fishing boats fishing for, different descriptions of sea fish; for different areas of sea; or for different descriptions of fishing boat.
- 135 Subsection (4) provides that fishing opportunities under this clause may not be determined by reference to a boat's home port or connection to a particular part of the UK. The purpose of this is to ensure that the power could only be used to set fishing opportunities for the whole UK.
- 136 Subsection (5) gives the meaning of "catch quota" and "effort quota".
- 137 Subsection (6) allows for determinations under subsection 1 to be zero; to replace a determination that had already been made; or to withdraw a determination that had already been made. This provision would allow for changes to be made to determinations under subsection (1) over the course of a year to respond to environmental changes, depletions of fish stocks or for other purposes.
- 138 Subsection (7) explains that a determination may not be made or withdrawn after the end of the calendar year to which it relates.
- 139 Subsection (8) creates a power for the Secretary of State, by regulations, to determine what is to be regarded as the number of days in a calendar year that a boat spends at sea. Regulations under this power will reflect the varying conditions that may affect the period spent fishing.
- 140 Subsection (9) provides that the regulations made under subsection (8) may make provision by reference to provision made under paragraph 1(2)(c) of Schedule 2. That paragraph provides that licences issued to fishing boats may include conditions restricting the time the fishing boat may spend at sea.
- 141 Subsection (10) provides that regulations made under subsection (6) would be subject to the negative procedure.

### Clause 19: Duties relating to a determination of fishing opportunities

- 142 Clause 19 sets out the duties that will apply to the Secretary of State when making a determination under clause 18. Subsection (1) requires that the Secretary of State must consult with Devolved Ministers and the MMO before making or withdrawing a determination.
- 143 Subsection (2) requires that after making or withdrawing a determination, the Secretary of State must publish a notice of the determination, lay a copy of the notice in Parliament, and send a copy to the Devolved Administrations.

## Clause 20: Distribution of fishing opportunities

- 144 Clause 20 deals with retained EU law that relates to the distribution of fishing opportunities to EU Member States. It revokes EU law that will no longer be operable or appropriate after the UK leaves the EU.
- 145 Subsection (1) revokes Article 16 of the Common Fisheries Policy Regulation (Council Regulation 1380/2013). That Article provides for the European Council to distribute fishing opportunities to Member States under the principle of relative stability, which is an allocation key reflecting historic catches by Member States.
- 146 Subsection (2) corrects Article 17 of the Common Fisheries Policy Regulation to make it operable in UK law. Article 17 requires that Member States distribute fishing opportunities domestically according to transparent and objective criteria including those of an environmental, social and economic nature.
- 147 Subsections (3) to (6) make corrections to Article 17 in retained EU law. The effect is to maintain the existing requirements insofar as they apply to the Secretary of State and the MMO.
- 148 This clause does not apply Article 17 to the other Fisheries Administrations, at their request.

## Clause 21: Duties to ensure fishing opportunities are not exceeded

- 149 Clause 21 relates to the duty to ensure that the level of quota and fishing effort determined by the Secretary of State in a calendar year is not exceeded.
- 150 Subsection (1) places a duty on the UK Fisheries Administrations and the MMO to exercise their functions in such a way that in any calendar year and so far as possible, no fish are caught, or days at sea spent, by British fishing boats in excess of catch or effort quota for that year.
- 151 Subsection (2) is to deal with the possibility that a fishing boat may have received quota from another country. It provides that fishing opportunities of a territory outside the UK must be ignored when determining whether a catch quota or effort quota is exceeded.
- 152 Subsection (3) defines who the “relevant national authorities” are for the purposes of the section.

## Clause 22: Sale of English fishing opportunities for a calendar year

- 153 Clause 22 allows the Secretary of State to provide, in regulations, for the sale of rights to use English fishing opportunities for a calendar year. The intention is that the scheme would be used to tender a proportion of the additional fishing opportunities that are gained following the UK’s withdrawal from the EU. The scheme would only be used in relation to the portion of UK quota which may be allocated by the MMO or the Secretary of State to English fishing boats. The scheme could include the requirement that certain criteria are met in order to purchase fishing opportunities, for example environmental criteria. It is not intended that a scheme would be used to sell fishing opportunities exclusively on the basis of price.
- 154 Subsection (1) is a power which provides that the Secretary of State may by regulations make provision for the sale of the right to use English catch quota or effort quota for a calendar year.
- 155 Subsection (2) allows the regulations made under subsection (1) to provide for sale by reference to such fishing boats, by such persons and subject to such conditions as may be prescribed in the regulations.

- 156 Subsection (3) lists the matters which the regulations may make provision about.
- 157 Subsection (4) requires that the MMO must exercise its function to secure, as far as possible, the sale of quota does not result in breaches of licence requirements.
- 158 Subsection (5) provides that regulations made under this clause are subject to the affirmative procedure.
- 159 Subsection (6) defines “English catch quota” and “English effort quota”.

### Clause 23: Discard prevention charging schemes

- 160 Clause 23 allows the Secretary of State to provide in regulations for a scheme that would require a charge to be paid in respect of unauthorised catches of sea fish. The purpose of the scheme is to charge for unauthorised catches at a level which deters overfishing and thereby incentivises fishers to use more sustainable fishing practices and avoid unwanted catches. Previously, fishers have regularly discarded fish when they have an unauthorised catch. The landing obligation requires that all catches of species which are subject to catch limits are landed (subject to limited exceptions). They cannot be discarded.
- 161 Subsection (1) creates a power for the Secretary of State to make regulations to establish a charging scheme.
- 162 Subsection (2) requires that the regulations must provide for how a charge would be calculated and when payments of a charge are due.
- 163 Subsection (3) allows for a charge to be calculated by reference to matters specified in the scheme and list examples of those matters.
- 164 The scheme is voluntary and subsections (4) and (5) limits the scope of any scheme to those registered under it. The scheme may only apply charges to those registered, and only persons eligible according to criteria that may be prescribed in the regulations could register. Subsection (6) allows for further provision to be made about registration or de-registration under the scheme.
- 165 Subsection (7) provides that regulations under clause 25 are subject to the affirmative procedure.

### Clause 24: Meaning of “chargeable person” and “unauthorised catch of sea fish”

- 166 This clause provides the meaning of “chargeable person” and “unauthorised catch of sea fish”.
- 167 Subsection (1) provides that the chargeable persons under the scheme are holders of English sea fishing licences or producer organisations that have at least one member that is an English sea fishing licence holder. Further background is provided on producer organisation in paragraph 55. Producer organisations are included as chargeable persons as they frequently manage quota on behalf of their members and distribute quota between their members.
- 168 Subsection (2) gives the meaning of unauthorised catch of sea fish.
- 169 Subsection (3) provides that a scheme may make provision about whether the catching of fish under the scheme is authorised.
- 170 Subsection (4) provides gives the meaning of “charging provisions”.

## Clause 25: Catches subject to a charge ignored for certain regulatory purposes

- 171 This clause provides that where a charge is payable under the scheme, the scheme may provide that the fishing activity that led to the charge may be ignored in determining whether there has been a breach of a licence requirement.
- 172 Subsection (1) sets out that the schemes may provide that where a charge is payable and conditions under the scheme have been met, the catch must be ignored for determining whether a regulatory breach has occurred.
- 173 Subsection (2) gives the meaning of “relevant regulatory breach” which are the requirements under clause 10(2) (which allow for limits to be placed on a fishing licence) and paragraph 1 of schedule 2 (which allows for conditions contained in a sea fishing licence).
- 174 Subsection (3) allows for the conditions referred to under subsection (1)(b) to include conditions contained in an English sea fishing licence.

## Clause 26: Charge collectors

- 175 Clause 26 makes provision about the collectors of the charges which are payable under schemes made under clause 23.
- 176 Subsection (1) provides that the charging scheme may include provision about appointments by the Secretary of State of charge collectors to administer the scheme, about their terms of office, their functions and the termination of their appointment.
- 177 Subsection (2) sets out the functions which may be conferred on the charge collector under subsection (1).
- 178 Subsection (3) sets out the provisions which may be made in connection with the termination of appointments of charge collectors.
- 179 Subsection (4) allows for the scheme to make provision with regard to appeals from decisions made by charge collectors under the scheme.
- 180 Subsection (5) allows for payments to be made to charge collectors to cover expenditure incurred by charge collectors in the exercise of their functions. Subsection (6) allows for payments under subsection (5) to be subject to such conditions as the Secretary of State considers to be appropriate.

## Clause 27: Discard prevention charging schemes: supplementary provision

- 181 This clause makes further provision with regards to the discard prevention scheme provided for in clauses 23-26.
- 182 Subsection (1) provides that a scheme may provide that the master of a fishing boat is jointly and severally liable for the payment of the charge where an English sea fishing licence holder is a chargeable person under the scheme.
- 183 Subsection (2) provides for charges under the scheme to be recoverable as a debt.
- 184 Subsection (3) provides for the scheme to include provision about how the charge collectors must manage receipts of charges. The provision provides flexibility in a charging scheme so that the charge may be paid to the Secretary of State, used to cover the expenditure incurred in carrying out their function, or to permit the charge collectors to use the receipts for a charitable or conservation purpose specified in the scheme. Subsection (5) provides the meaning of

conservation purpose.

185 Subsection (4) allows for the scheme to confer functions on the Secretary of State and for those functions to be exercised by a person appointed by the Secretary of State.

### Clause 28: Financial assistance: powers of the Secretary of State

186 Clause 28 creates new powers for the Secretary of State to make grants to the fishing industry and for connected purposes. During the UK's membership of the EU, funding has been provided under the EMFF, in relation to which further background is provided in the policy background in this document. The purpose of this clause is to allow for grant scheme to be established for England after the UK's withdrawal from the EU.

187 Subsection (1) lists the purposes for which the Secretary of State may give financial assistance.

188 Subsection (2) requires that a scheme must be established by regulations in pursuance with the purposes listed in subsection (1).

189 Subsection (3) requires that the scheme may only provide for financial assistance in relation to England, or to an area within the UK marine area (but not within the Scottish, Welsh or Northern Ireland zones) or to English fishing boats.

190 Subsection (4) provides for the scheme to confer functions on a person and require persons exercising those functions to keep accounts and records and to make them available for inspection.

191 Subsection (5) allows for the scheme to include provision that financial assistance may be given subject to conditions and the circumstances in which the payment must be repaid.

192 Subsection (6) requires that regulations made under this clause are subject to the affirmative procedure.

193 Subsection (7) gives the meaning of "financial assistance" and "the UK marine area".

194 Subsection (8) refers to Schedule 4 which contains provision conferring corresponding grant making powers on the Welsh Ministers and the Northern Ireland Department.

### Clause 29: Power of Marine Management Organisation to impose charges

195 Clause 29 provides a power for the Secretary of State to make regulations for the MMO to impose charges for carrying out certain functions.

196 Subsection (1) is a power for the Secretary of State to make regulations regarding the MMO's power to impose charges.

197 Subsection (2) lists the relevant marine functions for which the MMO may impose charges. These are functions relating to:

- fishing quotas;
- ensuring that commercial fish activities are carried out lawfully;
- the registration of buyers and sellers of first-sale fish;
- catch certificates for the import and export of fish.

198 Subsection (3) specifies the types of charges which may be authorised by the scheme.

- 199 Subsection (4) lists the matters which may be provided for in the regulations.
- 200 Subsection (5) allows for the regulations to confer a discretion on the MMO.
- 201 Subsection (6) clarifies that regulations made under this clause would not affect any other power of the MMO to impose charges. The MMO has existing charging powers under sections 27 and 67 MCAA.
- 202 Subsection (7) requires that the Secretary of State consults appropriate persons before making regulations under this clause.
- 203 Subsection (8) provides that regulations made under this clause are subject to the negative procedure.
- 204 Subsection (9) gives the meaning of “first-sale fish” and “fishing quota”.
- 205 Subsection (10) refers to Schedule 5 which contains provisions conferring corresponding powers on the Northern Ireland department.

### Clause 30: Sea Fish Industry Authority: fees for services provided for industry in EU

- 206 This clause amends section 3(5) of the Fisheries Act 1981 to extend a requirement that the Sea Fish Industry Authority (Seafish) must recover the full cost of any services it provides to those in other countries. This is a technical correction which arises as a consequence of withdrawal from the EU.
- 207 Section 3(5) of the Fisheries Act 1981 requires Seafish to recover the full costs of services it provides to those in other countries. Seafish is required to charge in full for such services provided to non-EU states, but may not charge those from EU states more than those in the UK. Clause 30 removes the exemption for EU fishing boats from the requirement that Seafish recover the full costs of the services they provide to those in other countries.

### Clause 31: Power to make provision about fisheries, aquaculture etc.

- 208 Clause 31 provides a power for the Secretary of State, by regulations, to make provision on matters currently regulated by the EU under the CFP. The purpose of this power is to allow the UK to meet its international obligations, conserve the marine environment and to adapt fisheries legislation, including the c.100 regulations of the CFP incorporated into UK law by the EU (Withdrawal) Act 2018.
- 209 Subsection (1) provides that the Secretary of State may, by regulations, make provision for the purpose of implementing an international agreement or arrangement relating to fisheries, fishing or aquaculture; for a conservation purpose; or for a fish industry purpose.
- 210 The meaning of conservation purpose and fish industry purpose are given in subsections (2) and (3) respectively.
- 211 Subsection (4) lists the matters which the regulations made under subsection (1) must be about. It also provides that the list of matters does not apply in relation to regional fisheries management regulations. These are defined in subsection (5). The matters in the list are:
- the quantity of sea fish that may be caught;
  - the amount of time that fishing boats may spend at sea;
  - the landing of sea fish;

- bycatch;
- catching, landing or selling sea fish that are below a certain size;
- setting and enforcing targets relating to stocks of sea fish;
- the design of sea fishing equipment;
- the use of sea fishing equipment;
- the retrieval of lost or discarded sea fishing equipment;
- methods of sea fishing;
- the processing of sea fish on fishing boats;
- the use to which the Secretary of State may put information obtained in the exercise of the Secretary of State’s functions relating to fisheries or aquaculture;
- the functions, objectives or regulation of producer organisations or inter-branch organisations;
- the marketing of fishery products (including labelling);
- keeping, disclosing or publishing accounts, records or other documents or information by persons involved in –
  - commercial fish activities or commercial aquaculture activities,
  - monitoring, or enforcing, compliance with the regulation of commercial fish activities or commercial aquaculture activities;
- the use in aquaculture, or transport, of aquatic organisms that are members of an alien species or a locally absent species;
- monitoring, or enforcing, compliance with the regulation of any of matters mentioned in the preceding paragraphs of this subsection.

212 Subsection (5) gives the meaning of regional fisheries management regulations. Further background on Regional Fisheries Management Organisations is provided in paragraph 55 of this document.

213 Subsection (6) provides that regulations under this clause may make different provision in relation to different descriptions of sea fish or other animal, different descriptions of fishing boat or to different areas of the sea or inland waters.

### Clause 32: Interpretation

214 This clauses give the meaning of certain terms used in clause 33.

### Clause 33: Power to make provision about aquatic animal diseases

215 This clause provides an equivalent power to that in clause 31 for the Secretary of State to make regulations about aquatic animal diseases. The purpose of this provision is to allow for

amendments to be made to retained EU law and other UK law by secondary legislation.

216 Subsection (1) provides a power for the Secretary of State to make provision for the purpose of monitoring, controlling, preventing or eradicating diseases of fish or other aquatic animals.

217 Subsection (2) specifies the matters in relation to which provision may be made under this clause. These are the importation, exportation, movement, storage or handling of fish or other aquatic animals; products derived from fish or other aquatic animals; or any other thing that the Secretary of State considers may carry or affect the prevalence of a disease of fish or other aquatic animal.

### Clause 34: Scope of regulation under section 31 or 33

218 Clause 34 defines and limits the scope of the regulation-making powers in clauses 33 and 35.

219 Subsection (1) allows for regulations under clauses 31 and 33 to confer a function, including a function that involves a discretion and to impose fees.

220 Subsection (2) allows for regulations under clauses 31 and 33 to create criminal offences but not offences that are punishable with imprisonment.

221 Subsection (3) defines the scope of the clauses 31 and 33 by reference to devolved competence. Regulations made under clauses 31 and 33 could not include provisions that would be within the competence of the Scottish Parliament, National Assembly for Wales or the Northern Ireland Assembly unless the provision is merely incidental or consequential. Clause 35 provides for the Secretary of State to make regulations within devolved competence with the consent of the relevant Devolved Administration.

222 Subsection (4) further restricts the use of the powers under clauses 31 and 33 so that the regulations may not be used to modify specified functions of the Welsh Ministers. These are existing powers for the Welsh Minister to make orders in relation to the power of British sea-fishery officers to enforce sea fishing licences and to the regulation of the conduct of fishing operations.

223 Subsection (5) restricts the use of the powers under clauses 31 and 33 so that they may not modify the functions of the Fisheries Administrations that relate to the licensing of fishing boats provided under this Bill in clauses 9 to 13 and Schedule 2.

224 Subsection (6) clarifies what is meant by modifying in subsections (4) and (5).

225 Subsection (7) provides that the powers under clauses 31 and 33 may be used to modify any enactment apart from clauses 31 to 37, Schedule 6 and clause 40 of this Bill.

226 Subsection (8) gives the meaning of “modify” and “enactment” in subsection (7).

### Clause 35: Scope of regulations under section 31 or 33 where consent obtained

227 This clause provides that regulations under clauses 31 and 33 may make provision in areas of devolved competence where the consent of the Scottish Ministers, the Welsh Ministers or the Northern Ireland department has been obtained.

228 Subsection (1) provides that the regulations may extend to matters in the competence of the Scottish Parliament if the consent of the Scottish Ministers has been obtained.

229 Subsection (2) provides that the regulations may extend to matters in the competence of the Welsh Assembly or relating to the functions of Welsh Ministers listed in clause 34 (4) if the

consent of the Welsh Ministers has been obtained.

230 Subsection (3) provides that the regulations may extend to matters in the competence of the Northern Ireland Assembly if the consent of the Northern Ireland department has been obtained.

231 Subsection (4) provides that the regulations may extend to matters relating to the powers to license fishing boats in this Bill, dealt with under clause 34(5), if the consent of the Scottish Ministers, the Welsh Ministers and the Northern Ireland department has been obtained.

### Clause 36: Procedural requirements for regulations under section 31 and 33

232 Clause 36 deals with procedural requirements that must be followed when exercising powers under clauses 31 and 33.

233 Subsection (1) sets out who the Secretary of State must consult before making regulations under clauses 31 and 33.

234 Subsection (2) sets out the circumstances in which the regulations made under clauses 31 and 33 would be subject to the affirmative resolution procedure.

235 Subsection (3) provides that where regulations do not relate to the matters in subsection (2), they are subject to the negative procedure.

### Clause 37: Powers of Scottish Ministers, Welsh Ministers and Northern Ireland department

236 This clause refers to Schedule 6 which confers corresponding powers on the Scottish Minister (in relation to clause 33) and the Welsh Ministers and the Northern Ireland department (in relation to clauses 31 and 33).

### Clause 38: Powers to make byelaws etc relating to marine conservation

237 This clause refers to Schedule 7 which confers powers on the MMO, the Welsh Ministers and the Scottish Ministers to make byelaws or orders relating to the impact of fishing on marine conservation. The purpose of these provisions is to replace EU measures for the protection of the marine environment in Member States' offshore zones. Schedule 7 makes amendments to the MCAA to effect this, by extending existing byelaw and order-making powers.

## Final provisions

### Clause 39: Regulations

238 Subsection (1) provides that regulations made under this Bill may make consequential, supplementary, incidental, transitional or saving provisions; and that different provision may be made for different purposes or areas.

239 Subsection (2) provides that regulations under this Bill will be statutory instruments.

240 Subsection (3) provides what is meant by "the negative resolution procedure" in relation to regulations made under this Bill.

241 Subsection (4) provides what is meant by "the affirmative resolution procedure" in relation to

regulations made under this Bill.

242 Subsection (5) provides that regulations made under this Bill that are subject to the negative procedure may be made by regulations subject to the affirmative procedure.

243 Subsection (6) provides that this clause does not apply to regulations made under clause 42, which deals with the commencement of this Bill.

## Clause 40: Interpretation

244 This clause sets out definitions of commonly used terms in this Bill.

## Clause 41: Extent

245 Once the Bill becomes an Act of Parliament, its provisions will extend to England and Wales, Scotland and Northern Ireland, except for Schedule 6. Subsection (2) of clause 41 provides for the extent of Parts of Schedule 6. Amendments, repeals or revocations made by the Act would have the same extent as the provisions that were amended, repealed or revoked.

246 Subsection (3) requires that the amendment, repeal or revocation made under this Bill do not extend to the Channel Islands or the Isle of Man. Subsection (4) sets out the provisions which may be extended to the Channel Islands and the Isle of Man by Order in Council. The Crown Dependencies are not part of the United Kingdom and the UK Government does not generally extend UK legislation to the Crown Dependencies without their consent and there is no intention to do this here. The provisions which may be extended are:

- Clauses 7 to 17 and Schedules 2 and 3;
- Clauses 18 to 22;
- Clause 31 to 36;
- Clause 29; and,
- Clause 42.

## Clause 42: Commencement

247 This clause is a standard provision which explains when the provisions of the Bill will come into force (i.e. begin to have an effect).

248 Clauses 39 and 43 will come into force on the day which the Act is passed.

249 Clause 29 and clauses 38 and Schedule 7, which are powers for the MMO to impose charges and powers relating to marine conservation, will come into force two months after the Act has been passed.

250 The remainder of the clauses may be commenced by the Secretary of State on a day which he may specify in regulations. Subsection (4) allows for different provisions to be commenced on different days.

251 Subsection (5) provides a power for the Secretary of State to make transitional or saving provision in connection with the commencement of this Bill. This will make sure that things done under existing legislation (for example licences granted) have continuing effect. This power

may make different provisions for different purposes and must be made by statutory instrument.

### Clause 43: Short title

252 This clause provides that the short title of the Bill when it becomes an Act will be the Fisheries Act 2019.

## Schedule 1: Fisheries Statements – preparation, adoption and publication

253 Schedule 1 sets out the procedures that would apply to the preparation, adoption and publication of the two fisheries statements prescribed by clause 2: the Joint Fisheries Statement (JFS) and the Secretary of State Fisheries Statement (SSFS).

### Part 1: The Joint Fisheries Statement

254 In relation to the JFS, paragraph 2 would require the fisheries policy authorities to jointly prepare a consultation draft of the statement, publish it and take such steps as they consider appropriate to ensure that it is brought to the attention of “interested persons”, which is defined in sub-paragraph 3 and includes members of the public.

255 Sub-paragraph (2) would require the fisheries policy authorities to have regard to any responses to the consultation.

256 Paragraph 3 would require each fisheries policy authority to specify a period of scrutiny of the draft JFS by their legislature, and to lay a copy of the consultation draft before their legislature on or before the first day of the scrutiny period. If the Secretary of State or the Devolved Administration Ministers, as the case may be, passes a resolution or makes a recommendation on the draft JFS, the fisheries policy authority in question would then have to lay a statement setting out its response.

257 Paragraph 4 states that once the procedure detailed above has been completed and the fisheries policy authorities have decided on the final text of the JFS, they must publish the document as soon as reasonably practicable.

### Part 2: The Secretary of State Fisheries Statement

258 The consultation requirements, the requirement to lay the consultation draft before the appropriate legislature and the publication requirement would apply in the same way to the SSFS as they do to the JFS (the SSFS is laid before UK Parliament). Once the SSFS has been adopted, the Secretary of State must publish the SSFS.

## Schedule 2: Sea Fishing Licences: Further provision

### Power to attach conditions to sea fishing licence

259 Paragraph 1 would confer a power on a sea fish licensing authority to attach such conditions to a licence as appear to it to be necessary or expedient for the regulation of sea fishing. The conditions may include conditions which do not relate directly to sea fishing.

*These Explanatory Notes relate to the Fisheries Bill as introduced in the House of Commons on 25 October 2018 (Bill 278)*

260 Paragraph 2 lists particular conditions which may be attached to a licence, and includes (but is not limited to) conditions as to landing fish, restricting the time fishing boats may spend at sea and conditions aimed at preserving the marine and aquatic environment. Paragraph 3 states that conditions in relation to time spent at sea may include the circumstances in which time is, or is not, to be counted for this purpose.

261 Paragraph 4 would make it an offence to break a condition of a licence, and in these circumstances the master, the owner and the charterer of the fishing boat are each guilty of an offence.

### Power to vary, suspend or revoke sea fishing licence

262 Paragraph 2 would give a sea fish licensing authority the power to vary a licence it has granted or to add, remove or vary a licence condition. It may also suspend or revoke a sea fishing licence if it appears to be necessary or expedient for the regulation of sea fishing, or if it appears to be appropriate where there is a contravention of the requirement to licence a British fishing boat or a foreign fishing boat.

263 Paragraph 3 states that if a sea fish licensing authority varies or revokes a licence or a licence condition, it may reimburse part or all of any charge made for the licence, if it considers it appropriate to do so.

### Duty to comply with request of another sea fish licensing authority

264 Sub-paragraphs (1) and (2) of paragraph 4 would give a sea fish licensing authority the power to request another sea fishing licensing authority to exercise its licensing functions in a such a way that any licences or licence conditions it grants are made subject to a limit imposed by the requesting sea fish licensing authority, where that authority has imposed limits or conditions in respect of a particular area. The purpose of this clause is that one sea fish licensing authority can ask another authority not to undermine its licensing decisions in respect of an area of water where boats licenced by different authorities may fish.

265 Paragraph 3 states that the requested authority must comply with the request unless it considers it unreasonable to do so.

### Use of licensing functions to limit fishing activity

266 Paragraph 5 would give a sea fish licensing authority the power to exercise its licensing functions so as to limit the number of fishing boats, or any class of fishing boat, or fishing in any area for any type of fish.

### Power to arrange for licensing functions to be exercised by others

267 Paragraph 6 would enable a sea fish licensing authority to delegate its licensing functions, although the authority remains responsible for the exercise of any delegated function. Sub-paragraph (3) states that a public authority to which licensing functions are delegated may charge the sea fish licensing authority such fees as it considers reasonable.

### Regulations about the licensing of fishing boats

- 268 Paragraph 7 would provide that a relevant national authority (the Devolved Administration Ministers in respect of the boats or zones of their administration, or the Secretary of State) may make regulations as to how a sea fish licensing authority's licencing functions are to be exercised and as to the time when a licence, or various aspects of it, have effect.
- 269 Sub-paragraph (3) states that any regulations may make provision authorising the making of charges in relation to a sea fishing licence. Sub-paragraph (4) gives examples of the kind of provision which may be made in respect of charges, such as the amount to be charged, different charges for different classes of licence and that no charge may be payable in certain circumstances.
- 270 Sub-paragraph (5) would impose a duty on the relevant national authority to make regulations as to the principles that are to be applied to licence conditions about time spent at sea. However, the regulations may not make provision about the principle described in sub-paragraph (7).
- 271 Paragraph 8 would provide a power for the Secretary of State to make regulations in areas of devolved competence, with the consent of the relevant Devolved Administration.

### **Schedule 3: Access and licensing: consequential amendments**

#### **Part 1: Access to British fisheries by foreign fishing boats**

- 272 Paragraphs 1 – 4 make changes consequential on the provisions in clause 8.
- 273 In particular, section 2 of the British Fishery Limits Act 1976, which sets out the current law on access by foreign boats, would be repealed. Paragraph 4 repeals the subordinate legislation made under section 2 of the 1976 Act, which designates the countries whose vessels have access to British fishery limits.

#### **Part 2: Licensing of fishing boats**

- 274 Part 2 makes changes consequential on the provision in clause 9. In particular, paragraph (5)(2) would revoke section 4 of the Sea Fish (Conservation) Act 1967, which requires Fisheries Administrations to designate which countries can fish within British fishery limits. The remainder of paragraph 5 would insert references to the clauses which impose new provisions on licensing.

#### **Part 3: Transitional Provision**

- 275 Paragraph 8 would provide that there is no break in the continuity of the law where provisions which are repealed by Part 2 of Schedule 2 are re-enacted.
- 276 Sub-paragraph (4) would provide that anything done under legislation that would be amended by the Bill, if that provision is in force immediately before the commencement of the corresponding provision in the Bill, continues to have effect as if it were done under the corresponding provision.
- 277 Sub-paragraph (5) would provide that any reference in any other legislation to a provision which has been amended by the Bill should be construed as a reference to the corresponding provision in the Bill.

## **Schedule 4: Financial Assistance**

### **Financial assistance: power of the Welsh Ministers; power of the Northern Ireland department**

278 Clause 28 would give a power to the Secretary of State to give financial assistance, or to arrange for such assistance to be given, to any person for certain purposes.

279 Paragraphs 1 and 2 would make the same provision for Welsh Ministers and for the Department of Agriculture, Environment and Rural Affairs in Northern Ireland that would be made for the Secretary of State by clause 28.

280 Paragraph 3 would make amendments to the Fisheries Act 1981 which are consequential on clause 28 and on paragraphs 1 and 2.

## **Schedule 5: Power of Northern Ireland department to impose charges**

281 Paragraph 1 would give the Northern Ireland department the same regulation making power that would be conferred on the Secretary of State by clause 29. This means that paragraph 1 would enable the Northern Ireland department to make regulations to enable it to impose charges in respect of the exercise by it of a relevant marine function, which is defined in subparagraph (2).

## **Schedule 6: Powers of Welsh Ministers and Northern Ireland department**

### **Part 1: Scottish Ministers**

#### **Power to make provision about aquatic animal diseases**

282 Paragraph 1 would confer a power on the Scottish Ministers to make regulations for the purposes set out in sub-paragraphs (1) – (2). This power mirrors the one that would be conferred on the Secretary of State by clause 33, and would enable the Scottish Ministers to amend retained EU law, domestic law and make regulations to implement international agreements.

### **Part 2: Welsh Ministers**

#### **Power to make provision about fisheries, aquaculture etc.**

283 Paragraph 1 would confer a power on the Welsh Ministers to make regulations for the purposes set out in sub-paragraphs (1) – (4). This power mirrors the one that would be conferred on the Secretary of State by clause 31, and would enable the Welsh Ministers to amend retained EU law, domestic law and make regulations to implement international agreements.

284 Paragraph 3 would confer a power in the Welsh Ministers to make regulations to control aquatic diseases. This mirrors the power that would be conferred on the Secretary of State by clause 33.

285 Paragraph 5 would require the Welsh Ministers to consult the Secretary of State, the other Devolved Administration Ministers and any other persons likely to be affected before making regulations under paragraphs 1 or 3.

## Part 3: The Northern Ireland department

### Power to make provision about fisheries, aquaculture etc.

- 286 Paragraph 6 would confer the same power on the Northern Ireland Department in relation to making regulations about fisheries that would be conferred on the Secretary of State by clause 31 and the Welsh Ministers by paragraph 1.
- 287 Paragraph 8 would confer the same power on the Northern Ireland Department in relation to making regulations on aquatic disease that is conferred on the Secretary of State by clause 33 and by paragraph 3.

## Schedule 7: Power to make byelaws etc. relating to marine conservation

- 288 Schedule 7 would confer power on the MMO, the Welsh Ministers and the Scottish Ministers to make byelaws or orders relating to marine conservation, in connection to fishing activity. It would insert added sections into MCAA. (Currently, the MMO and Welsh Ministers are only able to make byelaws in connection with Marine Conservation Zones (MCZs).
- 289 Paragraphs 1 - 4 would make changes consequential on the new provisions. Paragraph 5 would amend section 129 of MCAA to provide that byelaws for the protection of MCZs may be made subject to specified conditions or for a specific period of time.
- 290 Paragraph 6 would insert new section 129A into MCAA. This section would confer on the MMO the power to make byelaws relating to the exploitation of sea fisheries resources for the purpose of conserving marine flora or fauna, or marine habitats. MMO byelaws under this provision would extend to "England", which includes the 0 – 12nm inshore region.
- 291 "Sea fisheries resources" is defined in section 153(10) of MCAA as any plant or animal that habitually lives in the sea (with some exceptions) and "exploitation" is defined in section 153(12) of MCAA to refer, in terms, to fishing activities, selling, buying or introducing to the sea or cultivating sea fisheries resources. The effect of this is that the marine conservation byelaws must be for the purpose of marine conservation in connection with these activities.
- 292 In addition to new section 129A, paragraph 6 would insert new section 129B which would confer on the MMO a power to make byelaws relating to the English offshore region, i.e. the 12 – 200 nm area. Again, such a byelaw would have to be made for the purposes of marine conservation in connection with the exploitation of sea fisheries resources.
- 293 New section 129C contains further provision on byelaws made under sections 129A and 129B. Paragraphs (2) – (4) of section 129C contain particular examples of matters which byelaws may make provision about, for example prohibiting or restricting exploitation in specific areas or during specific periods, or the charging of fees for permits.
- 294 Paragraph 7 would amend section 130 of MCAA, which deals with procedural matters for MCZ byelaws (such as their publication), so that these provisions would also apply to the new byelaws that would be made under section 129A or 129B. Also, subparagraph (4) would insert a provision requiring the MMO to send a draft byelaw relating to the offshore region to the Welsh or Scottish Ministers if the byelaw might or would affect the exploitation of sea fisheries resources in the Welsh or Scottish offshore region.
- 295 Paragraph 8 would amend section 131 of MCAA, which makes provision for emergency byelaws to protect MCZs. The amendment would make the emergency byelaw provisions apply to byelaws made under new section 129B, to protect the English offshore regions, so that these

byelaws could be made without the confirmation of the Secretary of State, in the circumstances that currently apply to emergency MCZ byelaws.

296 Paragraphs 9 and 10 make consequential changes, including, at sub-paragraph (4), the insertion of a paragraph into section 133 of MCAA. Section 133 makes further provision in relation to interim byelaws and byelaws for the protection of MCZs. The additional paragraph would require the MMO to send a copy of a draft byelaw made under section 129B or section 132 to the Welsh or Scottish Ministers if it will or may affect the exploitation of sea fisheries in the Welsh or Scottish offshore region.

297 Paragraph 12 would confer on Welsh Ministers the same powers to make provision for Wales, the Welsh inshore region and the Welsh offshore region, by order, as is conferred on the MMO in relation to byelaws. The new sections are 134A – 134C and these mirror new sections 129A – 129C. Paragraphs 13 – 15 make amendments which are consequential on the new sections including the duty to consult the MMO or the Devolved Administrations if the exploitation of sea fisheries resources in their offshore areas may be affected.

298 Paragraph 16 would insert new sections 137A – 137D into the MCAA. New section 137A would confer a power on Scottish Ministers to make orders relating to the exploitation of sea fisheries resources in the Scottish offshore region for marine conservation purposes (Scottish Ministers already have a power to make marine conservation orders in the Scottish inshore region under the Marine (Scotland) Act 2010). This mirrors the powers in the offshore region that would be conferred on the MMO and Welsh Ministers. New section 137B would impose a duty on Scottish Ministers to consult the Secretary of State and any other person whom they think fit to consult before making an order under section 137A. New section 137C would provide Scottish Ministers with the power to make interim orders for the purposes of protecting any feature in an area of the Scottish offshore region – these mirror the powers that the MMO and the Welsh Ministers already have under MCAA, except that the Scottish Ministers would have to make such orders in where the need for protection arose in relation to the exploitation of sea fisheries. New section 137D would impose a duty on Scottish Ministers to send a copy of a draft order to the Secretary of State and any person they have consulted under section 137B.

299 The remainder of Schedule 7 would make further amendments to MCAA which are consequential on the new sections. These include amendments to provisions in MCAA on offences and penalties, so that they apply to the contravention of the new byelaws and orders. Provisions on the enforcement of nature conservation legislation are amended to include the new byelaws and orders, so that powers of marine enforcement officers extend to enforcing them.

## Commencement

300 Clauses 39 to 43 come into force on the day on which this Act is passed. Clauses 29 and 38 and Schedule 7 will come into force two months after the Bill gains Royal Assent. The remainder of the clauses in the Bill will come into force on a day which is appointed by the Secretary of State in regulations. The regulations may say that they come into force at different times.

## Financial implications of the Bill

301 The Bill will have few immediate financial implications but some items of new expenditure are to be paid out of money provided by Parliament following regulations made under the provisions of this Bill:

- Administrative costs of setting up a scheme for the licensing of foreign fishing boats (these will arise immediately)
- Administrative costs of establishing any future scheme to sell or tender quota under clause 23;
- Payments to charge collectors to cover expenditure incurred in the carrying out of their functions related to any future Discards Reduction Charging Scheme under clauses 25 to 29 and costs covering the administration of the scheme;
- Giving financial assistance via future funding schemes under clause 30. Funding is currently available through the EMFF.

## Compatibility with the European Convention on Human Rights

302 The Government considers that the Fisheries Bill is compatible with the European Convention on Human Rights (ECHR). Accordingly the Secretary of State for Environment, Food and Rural Affairs has made a statement under clause 19(1)(a) of the Human Rights Act 1998 to this effect.

## Equalities statement

303 During the passage of the European Union (Withdrawal) Act 2018 through the House of Commons, the Government committed to providing a statement on the impact of EU-exit primary legislation on either the Equality Act 2006 or the Equality Act 2010

304 The Fisheries Bill does not amend, repeal or revoke any provision of the Equality Act 2006, the Equality Act 2010 or any subordinate legislation made under either of those Acts (the equalities legislation).

305 In relation to the policy which is given effect by the Bill, the Secretary of State for Environment, Food and Rural Affairs has had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.

## Related documents

306 The following documents are relevant to the Bill and can be read at the stated locations:

- [Fisheries white paper: sustainable fisheries for future generations](#)

## Annex A: Territorial extent and application in the United Kingdom

The following provisions extend and apply UK wide:

- Clauses 1-36 and 39-43; Schedules 1 to 4

The following provision extends UK wide, but applies in England, Wales and Scotland:

- Clause 38 and Schedule 7

The following provision extends UK wide but applies in Scotland, Wales and Northern Ireland:

- Clause 37 and Schedule 6

The following provision extends UK wide but applies in Northern Ireland:

- Schedule 5

Repeals and amendments made by the Fisheries Bill have the same territorial extent and application as the legislation that they are repealing or amending. The information provided is the view of the UK Government.<sup>1</sup>

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clauses 1-6 (Fisheries objectives and fisheries statements)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 7: Revocation of requirement for equal access for EU fishing vessels	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 8: Access to British fisheries	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W,

<sup>1</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
by foreign boats								NI)
Clauses 9-13 (Licensing of fishing boats)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clauses 14-17 (Access and licensing: offences and consequential amendments)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clauses 18-20 (Secretary of State to determine fishing opportunities)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 21: Duties to ensure fishing opportunities not exceeded	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 22: Sale of English fishing opportunities for a calendar year	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clauses 23-27 (Discard prevention charging schemes)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 28: Financial Assistance	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 29: Power for MMO to impose charges	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 30: Sea Fish Industry Authority	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clauses 31-36 (Power to make provision about fisheries, aquaculture, aquatic animal diseases and	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)

*These Explanatory Notes relate to the Fisheries Bill as introduced in the House of Commons on 25 October 2018 (Bill 278)*

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
scope)								
Clause 37: Powers of Scottish Ministers, Welsh Ministers and Northern Ireland Department	No	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 38: Powers to make byelaws etc. relating to marine conservation	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes (W, S)
Clauses 39-43 (Final provisions)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Schedule 1: Fisheries statements	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Schedule 2: Sea fishing licences: further provision	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Schedule 3: Access and licencing	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Schedule 4: Financial assistance (Wales, Northern Ireland)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (W, NI)
Schedule 5: Power of Northern Ireland to impose charges	No	No	No	Yes	N/A	N/A	N/A	Yes (NI)
Schedule 6: Powers of Scottish Ministers, Welsh Ministers and Northern Ireland department	No	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Schedule 7: Powers to make byelaws relating to marine conservation	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes (S, W)

*These Explanatory Notes relate to the Fisheries Bill as introduced in the House of Commons on 25 October 2018 (Bill 278)*

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## Glossary

Definitions are sourced from both [www.parliament.uk](http://www.parliament.uk) and the Guide to making legislation on [www.gov.uk](http://www.gov.uk).

**Affirmative resolution procedure:** a type of parliamentary procedure that applies to statutory instruments (SIs) and describes the form of scrutiny that the SI receives from Parliament. An SI laid under the affirmative procedure must be actively approved by both Houses of Parliament before it can become law.

**Chapter:** A grouping of clauses under a subheading within a Part of a bill.

**Clause:** The basic unit of a bill, divided into subsections, then paragraphs, then sub-paragraphs. Once the Bill becomes an Act, a clause becomes a section.

**Commencement:** The coming into effect of legislation. In the absence of a commencement provision, the Act comes into force from the beginning of the day on which Royal Assent was given (at midnight).

**EMFF:** European Maritime Fisheries Fund.

**IFCAs:** Inshore Fisheries Conservation Authorities.

**LFC:** London Fisheries Convention.

**Long title:** The passage at the start of a bill that begins “a Bill to...” and then lists its purposes. This defines the scope of the Bill and as such, the content of the bill must be covered by the long title.

**MCAA:** Marine and Coastal Access Act 2009.

**MMO:** Marine Management Organisation.

**Money resolution:** A Money resolution must be agreed by the House of Commons if a new Government Bill proposes spending public money on something that hasn't previously been authorised by an Act of Parliament. Money resolutions, like Ways and Means resolutions, are normally put to the House for agreement immediately after the Bill has passed its Second reading in the Commons.

**Negative resolution procedure:** An SI laid under the negative procedure becomes law on the day the Minister signs it (when it is made) and remains law unless a motion – or ‘prayer’ – to reject it is agreed by either House within 40 sitting days.

**Part:** A grouping of clauses under a heading in the body of a bill. Also a subdivision of a schedule.

**Retained EU legislation:** As the UK leaves the EU, the EU (Withdrawal) Act 2018 will convert the body of existing EU law into domestic law and preserve the body of laws we have made in the UK to implement our EU obligations. "Retained EU legislation" refers to this these bodies of legislation.

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Retained direct EU legislation: is defined in section 20 of the European Union (Withdrawal) Act 2018. It is any direct EU legislation which forms part of domestic law by virtue of section 3 of that Act, and includes directly applicable EU regulations, decisions or tertiary legislation. It does not include the body of domestic laws we have made in the UK to implement our EU obligations.

Regulation: secondary legislation made through SIs.

RFMOs: Regional Fisheries Management Organisations.

Schedule: Bills may have a number of Schedules that appear after the main clauses in the text. They are often used to spell out in more detail how the provisions of the bill are to work in practice. Schedules can still be amended by parliamentarians.

Section: When the bill becomes an Act, “clauses” become “sections” but the names of the other subdivisions stay the same.

Short title: The title by which a bill is known during its passage through Parliament; for example “Fisheries Bill”, and when it passes the “Fisheries Act 2018”.

Statutory instrument: Statutory instruments are the most common form of secondary (or delegated) legislation.

Territorial application: Territorial application refers to the territory where a Bill (or provisions of a bill) has a practical effect.

Territorial extent: The extent of a Bill refers to the legal jurisdiction of which a bill, or provisions of a bill, will become a part. There are three legal jurisdictions in the UK: (1) England and Wales, (2) Scotland and (3) Northern Ireland. The extent of a Bill or provision can be different from its application.

UNCLOS: United Nations Convention on the Law of the Sea 1982.



# **FISHERIES BILL**

## **EXPLANATORY NOTES**

These Explanatory Notes relate to the Fisheries Bill as introduced in the House of Commons on 25 October 2018 (Bill 278).

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