

# FISHERIES BILL [HL]

## EXPLANATORY NOTES ON COMMONS AMENDMENTS

### What these notes do

- 1 These Explanatory Notes relate to the Commons Amendments to the Fisheries Bill [HL] as brought from the House of Commons on 14 October 2020.
- 2 These Explanatory Notes have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader of the Bill and the Commons amendments, and to help inform debate on the Commons amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Commons amendments themselves, refer to Bill 153, the Bill as first printed for the Commons.
- 4 These Explanatory Notes need to be read in conjunction with the Commons amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Commons amendments.
- 5 Commons Amendments 1 to 101 were tabled in the name of the Minister.

### Commentary on Commons amendments

#### Commons Amendment to Clause 1: Fisheries objectives

##### Commons Amendment 1

- 6 This amendment alters Clause 1(1) by restoring the definition for the "sustainability objective" in subsection (3) so that it reflects the original drafting in the Bill at its introduction to the Lords. This amendment also removes subsection (2) which provides that the sustainable development objective is the "prime fisheries objective".

#### Commons Amendment to Clause 2: Joint fisheries statement

##### Commons Amendment 2

- 7 This amendment amends subsection (5) by increasing the time available for the fisheries policy authorities to prepare and publish the first edition of the joint fisheries statement from 18 months to two years following Royal Assent.

#### Commons Amendments to Clause 18: National landing requirement

##### Commons Amendment 3

- 8 This amendment removes Clause 18 from the Bill. That Clause, which was inserted into the Bill on Report in the Lords, requires the Secretary of State to establish, by regulations, a "national landing requirement" for all fishing boats licensed to fish in UK waters. It would require a consultation on setting an average landing requirement across all relevant species at not less than 65%.

## **Commons Amendment to Clause 27: Reservation of English fishing opportunities for new entrants and boats under 10 metres**

### **Commons Amendment 4**

- 9 This amendment removes Clause 27 from the Bill. That Clause, which was inserted into the Bill on Report in the Lords, requires the Secretary of State to establish an annual baseline allocation of English fishing opportunities for new entrants to the fishing sector and for boats that are under 10 metres in length.

## **Commons Amendment to Clause 35: Financial assistance powers of Secretary of State**

### **Commons Amendment 5**

- 10 This amendment enables the Secretary of State to require information to be published about financial assistance given under a scheme. It should not be taken to imply that, in the absence of the amendment, such information could not in many circumstances be published in compliance with the GDPR. Information published would be limited to information on:
  - the recipient of the financial assistance;
  - the amount of the financial assistance; and
  - the purpose for which the financial assistance was given.

This requirement, however, could not be in regulations if publication would contravene the Data Protection Act 2018.

## **Commons Amendment to Clause 39: Section 38: interpretation**

### **Commons Amendment 6**

- 11 This amendment removes the definition of "fishery products" from this Clause, in consequence of this term also being used in the new Clause on agency arrangements between sea fish licensing authorities. The definition is inserted into Clause 51 (interpretation) so it applies generally to relevant provisions in the Bill.

## **Commons Amendments to Clause 41: Scope of regulations under section 36 or 38**

### **Commons Amendment 7**

- 12 This amendment relates to the powers of the Secretary of State to make regulations applicable to Wales. This is consequential on the change made by Commons Amendment 73 to Schedule 8.

### **Commons Amendment 8**

- 13 This amendment inserts "sea fishing by" into subsection (4) to clarify the scope of the Secretary of State's powers to make regulations under Clauses 36 and 38 in relation to matters that also fall within the scope of the corresponding powers of the Devolved Administrations under Schedule 8. This confirms, for example, that the Secretary of State can make regulations relating to sea fishing by Scottish fishing boats outside of the Scottish zone, but not within the Scottish zone without the consent of the Scottish Ministers.

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### Commons Amendment 9

- 14 This amendment amends subsection (5) which prevents the regulation-making powers in Clauses 36 and 38 from being used to modify the licensing functions within the Bill. This amendment ensures that the licensing functions of the Marine Management Organisation are also included by making reference to the functions of "sea fish licensing authorities".

## Commons Amendments before Clause 45

### Commons Amendment 10

- 15 This amendment removes Clause 48 from the Bill. That Clause, which was inserted into the Bill at Lords Report, required the Secretary of State to make regulations to require all over 10 metre fishing vessels of whatever nationality fishing within the UK EEZ, and all over 10 metre UK vessels fishing outside the UK EEZ, to be fitted with remote electronic monitoring systems and cameras for the purposes of monitoring fishing activities and the compliance with marine management regulations. The Clause also required plans to be published to extend remote electronic monitoring systems to all boats of any nationality fishing in the UK EEZ.

### Commons Amendment 11

- 16 This amendment inserts a new Clause permitting the establishment of agency arrangements between the four sea fish licensing authorities (the Marine Management Organisation and Devolved Administrations) in relation to fisheries and product movement functions.

### Commons Amendment 12

- 17 This amendment inserts new provisions in the Bill that ensure compliance with a treaty entered into with Denmark in 1999 on maritime delimitation in the "Special Area" between the United Kingdom and the Faroe Islands.
- 18 The new provisions exempt Faroese authorised fishing boats from UK regulation (e.g. holding a UK foreign fishing boat licence or meeting the requirements of the secondary legislation included in Schedule 2) where they are fishing in the Special Area. This amendment also grants the Scottish Ministers a power to remove such exemptions from individual fishing boats by including them on a published list (e.g. if they have also been granted a fishing boat licence by the relevant fish licensing authority). This amendment also inserts definitions for "Special Area", "Faroe Islands licensed" and other terms for the purpose of the new provisions.

## Commons Amendment after Clause 45

### Commons Amendment 13

- 19 This amendment inserts a new Clause in the Bill that is consequential on Clause 45 (legislative competence of Senedd Cymru). This new Clause makes amendments to primary legislation to change the definition of "Wales" so that it includes the offshore area of the Welsh zone. Clause 45 provides that the "Welsh zone" includes the offshore area within the Welsh zone that is within British fishing limits and is beyond the seaward limit of the territorial sea adjacent to Wales.

## Commons Amendment to Clause 48: Regulatory enforcement and data collection scheme

### Commons Amendment 14

- 20 This amendment inserts a new Clause in the Bill that introduces a new Schedule that itself makes amendments to English and Welsh, and Northern Irish legislation on the conservation of seals.

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## **Commons Amendment to Clause 49: amendments that could have been made under existing powers.**

### **Commons Amendment 15**

- 21 This amendment removes the definition of "fishery products" from this Clause in consequence of this term also being used in the new Clause on agency arrangements between sea fish licensing authorities. A revised definition is inserted into Clause 51 (interpretation) so it applies generally to other relevant provisions in the Bill.

## **Commons Amendments to Clause 51: Interpretation**

### **Commons Amendment 16**

- 22 This amendment places a definition for "fishery products" into this Clause so that it applies to the Bill generally instead of in the individual provisions where it currently appears. This is consequential on the inclusion of the new Clause on agency arrangements between sea fish licensing authorities.

### **Commons Amendment 17**

- 23 This amendment inserts a definition for "Minister of the Crown" for the purposes of the Bill.

### **Commons Amendment 18**

- 24 This amendment would replace the definition of "minimum conservation reference size" to make clear that "reference size" in this context means the size of an individual fish or other relevant aquatic organism rather than the size of the marine stock.

### **Commons Amendment 19**

- 25 This amendment inserts a definition for "sea fish licensing authority" into this Clause so that it applies generally throughout the Bill, including in the new Clause on agency arrangements between those bodies, instead of to specific provisions.

### **Commons Amendment 20**

- 26 Commons Amendment 20 revises and relocates the definition of "subordinate legislation". This means that a revised definition that makes reference to retained direct EU legislation applies generally in the Bill instead of only to Clause 49 where it currently appears. This is consequential on the inclusion of the new Clause on agency arrangements between sea fish licensing authorities.

## **Commons Amendments to Clause 52: Extent**

### **Commons Amendment 21**

- 27 This amendment amends subsection (5) so that the repeal of legislation in paragraphs 3 and 4 of Schedule 4 extends to the Channel Islands and the Isle of Man.

### **Commons Amendment 22**

- 28 This amendment provides that Her Majesty may by Order in Council provide for provisions in the Bill to be extended to the Channel Islands or the Isle of Man for the purpose of implementing international obligations. The provisions are Clause 36(1)(a) (power to make provision for the purpose of implementing international obligations) and provisions connected to that regulation-making power.

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## Commons Amendments to Clause 53: Commencement

### Commons Amendment 23 and 26

29 These amendments provide that the following new Clauses would come into force at Royal Assent:

- agency arrangements between sea fish licensing authorities;
- foreign fishing boats exclusively Faroe Islands-regulated.

### Commons Amendment 24

30 This amendment provides that the new Clause on interpretation of Welsh legislation would come into force alongside Clause 45 (legislative competence of Senedd Cymru), two months following Royal Assent.

### Commons Amendment 25

31 This amendment relates to commencement of the provision in Commons Amendment 43 to Schedule 4. This clarifies the procedure in the Scottish Parliament applicable to Scottish statutory instruments made by Scottish Ministers under order-making powers in the Sea Fish (Conservation) Act 1967. Commencement of Schedule 4 is subject to new subsection (4B), which is inserted by Commons Amendment 27.

### Commons Amendment 27

32 This amendment provides that the new Clause and new Schedule on the conservation of seals would come into force on 1 March 2021. This is the date by which countries wishing to import seafood into the United States from January 2022 must comply with the US Marine Mammals Protection Act.

33 This amendment also inserts a new subsection (4B) relating to Commons Amendment 43 which states that the amendment made to the Sea Fish (Conservation) Act 1967 by paragraph 6(13)(d) of Schedule 4 is treated as though it has always had effect. This means that Scottish statutory instruments made before the coming into force of Commons Amendment 43 are treated as though the change made by that amendment was already in force.

## Commons Amendment to Clause 54: Short title

### Commons Amendment 28

34 This amendment removes the privilege amendment inserted at Lords Third Reading.

## Commons Amendments to Schedule 2: Regulation of foreign fishing boats

### Commons Amendments 29 to 39

35 These amendments amend secondary legislation applicable to Scotland and Northern Ireland to provide that relevant provisions would apply to foreign fishing boats as well as UK fishing boats when fishing in UK waters. Currently, within the rules of the Common Fisheries Policy, such local measures may not be applied to EU fishing boats fishing in UK waters. This mirrors the approach taken with UK and Welsh secondary legislation in Schedule 2.

## **Commons Amendments to Schedule 3: Sea fishing licences: further provision**

### **Commons Amendment 40**

- 36 This amendment clarifies the relationship between the power in paragraph 6 of Schedule 3 (power to arrange for licensing functions to be exercised by others) and the powers in the new Clause on agency arrangements. The former power is distinct from the latter.

### **Commons Amendment 41**

- 37 This amendment removes the definition of "sea fish licensing authority" from this Schedule (see Clause 51 above).

## **Commons Amendments to Schedule 4: Access and licensing: minor and consequential amendments**

### **Commons Amendment 42**

- 38 This amendment removes a power to extend section 2 of the Fishery Limits Act 1976 (access to British fisheries) to the Channel Islands and the Isle of Man. Section 2 of that Act is repealed by paragraph 3(1) of this Schedule.

### **Commons Amendment 43**

- 39 This amendment amends section 22A(11)(b) of the Sea Fish (Conservation) Act 1967 to clarify the procedure for Scottish statutory instruments made under that Act. Currently the wording incorrectly omits reference to the negative procedure. The amendment makes clear that both negative and affirmative procedures can be used.

### **Commons Amendments 44 to 50 and 52 to 63**

- 40 These amendments introduce an expedited process that allows for licences for foreign fishing boats to come into force by communicating them electronically to the European Commission (or in the case of a non-EU fishing boat the relevant regulatory authority) and publishing them on a website. The expedited licence would be temporary and would only be issued where there was sufficient time for each fishing boat to be licensed individually in time for the start of the agreement.

### **Commons Amendment 51**

- 41 This amendment makes a minor change to remove an ambiguity as to the words revoked by paragraph 18(2)(a).

### **Commons Amendment 64**

- 42 This amendment revokes statutory instruments that have not yet come into force and were made by the Secretary of State, Scottish Ministers and Welsh Ministers as part of contingency planning should the Bill not be passed before IP Completion Day. These statutory instruments would have introduced a licensing regime for foreign fishing boats which is now to be provided by Clauses 16 and 17 and supplemented by the expedited licensing process introduced by Commons Amendments 29 to 47.

### **Commons Amendment 65**

- 43 This amendment would insert a transitional provision to allow for any secondary legislation made under section 4B of the Sea Fish (Conservation) Act 1967 to be treated as though it was made under the power that replaces it in paragraph 7(1) of this Schedule (regulations about the licensing of fishing boats).

## **Commons Amendments to Schedule 6: Financial assistance: powers of the devolved administrations**

### **Commons Amendments 66 to 68**

- 44 These amendments would allow regulations introducing financial assistance schemes made by the Devolved Administrations to include requirements to publish information about grants or loans given under any future scheme. These amendments are equivalent to those made by Commons Amendment 5.

## **Commons Amendments to Schedule 8: Powers to make further provision: devolved authorities**

### **Commons Amendments 69, 71 and 75**

- 45 These amendments remove the definition of "fishery products" from each place it is included in this Schedule (see Commons Amendment 16 to Clause 51 above).

### **Amendments 70, 74 and 76**

- 46 These amendments make a minor change to each of the regulation-making powers of each Devolved Administration to ensure that they are prevented from modifying the licensing functions of the Marine Management Organisation, as well as those of the other Devolved Administrations, which is already provided for in this Schedule.

### **Commons Amendment 72**

- 47 This amendment would insert "sea fishing by" into paragraph 9(3) to clarify the scope of the Welsh Ministers' powers to make regulations under this Schedule to ensure that they are also within the scope of the corresponding powers of the Secretary of State under Clauses 36 and 38.

### **Commons Amendment 73**

- 48 This amendment clarifies that where the Senedd has legislative competence subject to the consent of a Minister of the Crown, the Welsh Ministers will also have executive competence to make regulations under Clauses 36 and 38 subject to the consent of the Secretary of State.

## **Commons Amendment after Schedule 8**

### **Commons Amendment 77**

- 49 This amendment inserts a new Schedule to the Bill that makes amendments to the Conservation of Seals Act 1970 and the Wildlife (Northern Ireland) Order 1985. The changes would greatly restrict the circumstances in which any intentional killing of a wild seal is lawfully permitted (e.g. animal welfare exemptions to euthanise a wild seal if found to suffer from unrecoverable injury, pain or disease).
- 50 This change is necessary for the UK to comply with new import regulations being implemented in the USA (the Marine Mammal Protection Act). From January 2022, the USA will only allow imports of fisheries products from countries which do not allow the deliberate killing, injuring or taking of marine mammals as part of commercial fisheries.

## **Commons Amendments to Schedule 9: Amendments of the Marine and Coastal Access Act 2009**

### **Commons Amendments 78 and 79**

- 51 These amendments make changes to two references to the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/940) so that they instead refer to the regulations which

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replace them (S.I. 2017/1012.)

### Commons Amendments 80 to 82

- 52 These amendments change the parliamentary procedure for the Scottish Ministers to make an order under new section 137A of the Marine and Coastal Access Act 2009 (orders relating to exploitation of sea fisheries resources: Scottish offshore region) to the affirmative procedure where it contains provisions on charging for permits. All other orders under section 137A that do not include permit charging provisions may continue to be made under the negative procedure.

### Commons Amendment 83

- 53 This amendment makes further provision in respect of emergency orders made by Scottish Ministers under new section 137A of the Marine and Coastal Access Act 2009. It would introduce time limits so that an emergency order will remain in force (unless revoked) for a specified period of up to 12 months. A further order can be made to extend it for a period of no more than 12 months.

### Commons Amendment 84

- 54 This amendment confirms that orders on the exploitation of sea fisheries resources made by the Scottish Ministers under new sections 137A and 137C of the Marine and Coastal Access Act 2009 may be amended or revoked by a further order.

### Commons Amendments 85 to 88, 90, 91 and 93 to 96

- 55 Commons Amendment 85 inserts new powers into this Schedule to provide the Northern Ireland Department with powers to make orders relating to the exploitation of sea fisheries resources in the Northern Ireland offshore region. These are substantially equivalent to the powers to make orders provided to the Scottish Ministers and Welsh Ministers in this Schedule. Commons Amendments 86 to 88, 90, 91 and 93 to 96 make minor amendments to the Schedule which are consequential on Commons Amendment 85.

### Commons Amendment 89

- 56 This amendment confirms that a contravention of an order made by the Welsh Ministers under new section 134B of the Marine and Coastal Access Act 2009 (exploitation of sea fisheries resources: Welsh offshore region) would be an offence under that Act.

### Commons Amendment 92

- 57 This amendment would alter the powers of the Welsh Ministers to make fisheries management orders in Wales under section 189 of the Marine and Coastal Access Act 2009. Section 189 provides that the Welsh Ministers have order-making powers equivalent to the byelaw-making powers of Inland Fisheries and Conservation Authorities in England. But subsection (2) of section 189 prevents Welsh Ministers from using this power to the extent that they have equivalent powers in other enactments. To ensure that they have maximum flexibility to manage fisheries and protect the marine environment, this amendment removes subsection (2).

## Commons Amendments to Schedule 10: Retained direct EU legislation: minor and consequential amendments

### Commons Amendments 97, 99 and 101

- 58 Commons Amendment 99 revokes from retained EU law Regulation (EU) 2017/2403 on the sustainable management of external fishing fleets. This Regulation, known as "SMEFF", relates

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to EU regulation of non-EU boats. Commons Amendments 97 and 101 make consequential changes to two Scottish statutory instruments that refer to SMEFF. SMEFF will no longer be needed because after IP Completion Day, any foreign fishing boats authorised to fish in UK waters as a result of negotiations will be subject to the licensing regime introduced by Clause 16 and bound by the same regulations as British fishing boats (e.g. see Schedule 2).

### Commons Amendments 98 and 100

- 59 These amendments extend some exemptions from the landing obligation in retained EU law until the end of 2021, rather than the end of 2020 when they are due to expire. The exemptions allow for the discarding of species with a scientifically evidenced high chance of survival if returned to the sea after being caught, and for the discarding of a certain small percentage of a catch where it is proven that the unwanted catches are unavoidable.
- 60 Commons Amendment 100 repeals provisions in Council Regulation (EU) 2020/123 in retained EU law concerning the catching of cod in the North Sea. This will allow the UK to adopt its own conservation measures for this stock which will apply to all vessels fishing in UK waters.

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