



Northern Ireland
Assembly

Committee for Agriculture, Environment and
Rural Affairs

OFFICIAL REPORT (Hansard)

Common Fisheries Policy (Amendment etc.)
(EU Exit) Regulations 2020:
Department of Agriculture, Environment
and Rural Affairs

1 October 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Declan McAleer (Chairperson)
Mr Philip McGuigan (Deputy Chairperson)
Ms Clare Bailey
Mrs Rosemary Barton
Mr John Blair
Mr Maurice Bradley
Mr Harry Harvey
Mr William Irwin
Mr Patsy McGlone

Witnesses:

Mr Patrick Smith	Department of Agriculture, Environment and Rural Affairs
Mr David Steele	Department of Agriculture, Environment and Rural Affairs

The Chairperson (Mr McAleer): We move on to SI DEFRA CFP/12, the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020. I welcome from the Department, via StarLeaf, David Steele, grade 7 in the marine and fisheries policy division; and Patrick Smith, also from the marine and fisheries policy division.

Mr David Steele (Department of Agriculture, Environment and Rural Affairs): Can you hear me OK?

The Chairperson (Mr McAleer): Yes. We can. That is great.

Mr Patrick Smith (Department of Agriculture, Environment and Rural Affairs): May I check that I can be heard OK? Can members hear me?

The Chairperson (Mr McAleer): Yes.

Mr Steele: If I may, Chair, I will make some short introductory remarks on the Fisheries (EU Exit) (Northern Ireland) Regulations 2020, and we will take it from there. The regulations had been included as a marker in the AERA Committee's work programme for consideration of an SL1 in October to include amendments to the following EU exit statutory instruments (SIs) in order to align with the protocol. Those EU exit SIs were the Fisheries (Amendment) (Northern Ireland) (EU Exit) Regulations

2019 and the Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (Northern Ireland) (EU Exit) Regulations 2019.

As you have noted, Chair, part 2 of the written briefing that was provided on the proposed amendments showed that we were initially going to bring that forward in an SL1, but, more recently, it has been decided that it will be taken forward instead in CFP/20, the Marine and Fisheries Northern Ireland Protocol Implementation Regulations 2020, which we will come to in more detail later, and in AH/22, which are the Agriculture, Animals and Aquaculture (Health Identification and Welfare Trade etc.) (Amendment) (EU Exit) Regulations (Northern Ireland) 2020. They certainly do not make those titles short and snappy. We will, of course, inform the Committee of further progress on CFP/20 and on AH/22 when we are in a position to do so. At present, there is nothing that can be added on those regulations.

The Chairperson (Mr McAleer): Do members have any questions? No?

Mr Steele: Do you want to move on to CFP/12 next?

The Chairperson (Mr McAleer): Yes, if that is OK.

Mr Steele: The Committee will have noted from the written briefing provided on CFP/12 that that SI is the most advanced in its development and is the one on which the Department is able to present the Committee with the most information. CFP/12 relates to the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020 and is needed to ensure that there is continuity in the regulation of UK waters at the end of the transition period. The territorial extent of the SI is the UK.

The Committee will have noted that the indicative laying date for that SI in Parliament is 13 October 2020. It is a technical SI, and there are no policy changes involved with those regulations. They are simply there to provide operability fixes where provisions would either no longer operate effectively or not make sense come the end of the transition period. They will amend aspects of retained EU law on demersal fish discard plans, on 2020 total allowable catch and quota regulation and on the EU's data collection multi-annual programme. Chair, with your agreement, I will not go into the detail of each of those at this point. There is a summary of what is proposed on each of them in the written briefing provided.

CFP/12 will also revoke a number of pieces of EU legislation from retained EU law and amend a number of EU exit SIs. Again, Chair, those are listed in the written briefing. For members' information, they are in part 1, paragraphs 3, 4 and 5. In addition, CFP/12 will make amendments in consequence of the EU withdrawal agreement to revoke previous deficiency corrections to retained EU law, as that retained EU law will no longer be created, by operation of the European Union (Withdrawal) Act 2018.

I know that there has been some ongoing discussion this week and that there has been some earlier in the proceedings. We had asked the Committee to indicate its position on whether the provisions of this CFP should extend to the UK. Obviously, however, we are in the Committee's hands as to how it wants to approach that matter.

The Chairperson (Mr McAleer): Patsy McGlone, can you hear me?

Mr McGlone: I am online now, I think.

The Chairperson (Mr McAleer): Good man, Patsy.

Mr McGlone: I want to ask David about the use of the phrase "revoke deficiency corrections". What exactly does that mean?

Mr Steele: They were operability corrections that were applied the first time around. Those have been overturned because we are now operating under the European Union (Withdrawal) Act 2018.

Mr McGlone: Forgive me if I labour the point but, if you correct the deficiency, why would you revoke that correction?

Mr Smith: May I come in there? There are quite a lot of amendments in that regard to remove references to the European maritime and fisheries fund (EMFF) regulation EU 508/1214, which was

referenced in a whole lot of amendments to the EU exit SI programmes previously. As a consequence of article 138 of the withdrawal agreement, the UK will be relying on the EU version of the EMFF regulation. There are a whole host of amendments therein to correct those deficiencies. I would safely count, maybe, 50 lines saying, "We are removing the reference to a previous EMFF regulation, because we are now relying on the article in the EU withdrawal agreement."

Mr McGlone: I am sorry; I am not getting into the specifics of it. I was only trying to understand the wording. Why would you revoke a deficiency correction, if it has already been corrected?

Mr Smith: The deficiency correction was incorrect. *[Laughter.]*

Mr McGlone: That is OK; I have you now. Thank you for that.

Mr McGuigan: There is no reference to the Rural Needs Act 2016. Has DAERA done any work to satisfy itself that there are no issues there?

Mr Steele: I appreciate that there is no reference to rural needs. As colleagues said earlier with regard to the other SI, because the UK Government are taking a UK-wide SI through Parliament, that was not necessary. However, we take cognisance of equality and rural needs assessments in each of these SIs, and it is for business areas to determine the extent to which they do that. This particular SI is making operability fixes to the legislation and there are no policy changes involved in it, so we decided that there were no implications for rural needs. I accept that there is no direct reference in the written briefing provided, Chair. We will ensure that that is rectified for any further SIs that are brought to the Committee's attention.

The Chairperson (Mr McAleer): I cannot see much or any information on consultation. Are there any plans for consultation with stakeholders who could be impacted by this? I have asked this question before: is DAERA reassured that there will be no major changes for people who may be impacted by this SI?

Mr Steele: On your first point, Chair, earlier in the process we explained to DAERA's Brexit fishery stakeholder group the purpose of this particular SI and the fact that it is to make technical amendments to retained EU regs to make them operable. That engagement took place at that point. On your second point about being reassured, yes, we are content that this particular SI reflects the need or requirement to make operability fixes only.

Mr Harvey: Thank you, David. What about impacts such as operational practices or financial implications?

Mr Steele: Again, because this is purely a technical SI, it should not have any financial implications per se.

Mr M Bradley: From what I have read, my understanding is that the UK Government are working on a three-year phasing out of the EU. How will that impact on the Northern Ireland/Ireland protocol or, for that matter, the Internal Market Bill?

Mr Steele: Is Paddy still on the line to answer the first part of that question? No, he is not. With regard to the impact of the protocol, again, because this is related to technical changes, there really should not be any impact on the protocol from this particular SI.

Paddy is trying to rejoin. Can you hear us, Paddy? No, he cannot.

I am afraid I am not in a position to answer the first part of that question around the three-year phasing out.

Mr M Bradley: What about the Internal Market Bill? Will that have an impact?

Mr Steele: We will have to await the final version of the Internal Market Bill and see what its provisions are when it passes through Westminster. At present, we cannot provide any great analysis of the implications of the Internal Market Bill. We will have to wait and take that forward once we are clearer about its provisions.

Mrs Barton: You spoke earlier about the SI being recategorised from category 3 to category 1. Can you give some explanation on why this happened?

Mr Steele: Yes, certainly. Obviously, it has been a developing process, if I can put it that way. Initially, DEFRA considered that all fisheries legislation, because of its nature, could be considered as controversial. On that basis, at the time we categorised it as category 3. Obviously, as we received more information on CFP/12 and came to appreciate that it involved operability fixes, there was an opportunity to recategorise it as a category 1.

Mr Blair: I was going to ask a question about the categorisation. For clarification, I understand that the change was in relation to it being a purely technical fix. In future, where categorisation of these SIs has changed, will it be possible to put a sub-note on it to let us know that they have changed or been reconsidered, and the rationale behind that?

In addition to that, would it be possible to have some written report on the application of the Rural Needs Act, as mentioned earlier by Philip, on these SIs and other legislative processes as they come forward? By and large, with some exceptions, the matters that we are considering are likely to have a greater impact on our rural communities than elsewhere. It might be useful to reflect, as a matter of course, what note is taken of the Rural Needs Act with regard to the processes coming forward, if that is possible.

Mr Steele: On your first point on the request for some indication of the rationale behind the categorisation, the issue there was that the system was catching up, basically. We had categorised it initially as a category 3, and that was in the system. Then, as we received more information, it was recategorised, but I accept your point and we will ensure that there is some rationale for the categorisation, especially should there be any change to the categorisation.

On your second point on the application of the Rural Needs Act, again, I accept the point made. We will ensure that that information is provided for subsequent SIs.

Mr Blair: Or even how it is being applied to SIs in general. I do not want to increase the resource that you require for these matters or increase the workload, but if we could have an oversight of how the Rural Needs Act applies in general to these, I would be content with that.

Mr Steele: We will do that.

Ms Bailey: Thanks for the briefing. We have not seen the SI, obviously, but we have been told that it is only operability fixes. Can you reassure us that there are no big policy shifts, or even that the operability fixes contained in this SI do not potentially need the policy changes?

Mr Smith: On the latter point in respect of the operability fixes, I will give you a flavour of what they are. I have a few examples here. Right across the EU regulations which are amended, there are many references to "Union waters". The operability fixes are changing those to read "UK waters". In other circumstances, it reads, "The member states shall make regulations". The UK SI is now saying, "A fisheries administration, of which DAERA is one, shall make regulations". Things like, where there is reference to euros for monetary values, changed it to pounds sterling. In some other cases, where it previously stated "exit day", we are changing that to read "implementation day". It goes back to David's first point. In his opening remarks, he said that all the amendments in CFP/12 are to ensure continuity of regulations in UK waters. That just gives you a flavour of some of the things that are coming through. In the main, that is essentially what is provided for in CFP/12.

Ms Bailey: In the previous briefing, we heard that negotiations are not going very well. We passed the LCM for the Fisheries Bill in the Chamber this week. The operability fixes are moving ahead, and it is going to take a couple of years to come up with the full fisheries policies. If we get to 31 December with no deal, and there is no agreement between the UK and EU on this, what will happen with the CFP/12? I know that language is very important, but if we go into a void without having a proper policy for a number of years, potentially, is there an opening there? For example, if we are going to be capturing data for the scientific, technical and economic committee on fisheries (STECF), where will that be going? In that void of two years, where will it be going?

Mr Smith: The STECF is an EU body. There will be a replacement, through this CFP/12, to replace that with a reference to "an internationally recognised body". These regulations will be rolled over. The

three EU regulations that were referenced earlier on demersal discard plans, TAC (total allowable catch) and quota and data collection were made by the EU in late 2019. Therefore, there was not a chance in the earlier EU exit programme to roll those forward. They need to be rolled forward now so that they are operational, with the operability fixes, from the end of December.

Mr Steele: Obviously, Clare, as you said, the Assembly gave its consent to the Fisheries Bill last week. Patrick and I, and a few others, worked on that as well. As was made clear, that is a piece of framework legislation that provides regulation-making powers. If it receives Royal Assent, those provisions will extend to Northern Ireland. Beyond that, come the start of next year, we will want to start to develop our own fisheries policies, given that it is a devolved matter. DAERA will have a team to scope all of the issues that will be needed for that domestic fisheries policy. Ultimately, subject to the Executive's agreement and programme, we hope that we will be able to introduce a Northern Ireland fisheries Bill. It is fair to say that we have a marker down for that in the next mandate, given the length of time that it takes to develop a policy and to get it through the legislative process.

Ms Bailey: Do any provisions in this SI apply only to Northern Ireland? Have you had any feedback on it from Scotland, Wales or England?

Mr Steele: Each of the devolved Administrations has worked very closely with DEFRA in bringing forward this SI. I think that the devolved Administrations are content with the operability fixes that are provided within it. Sorry, Clare, I have forgotten your first point.

Ms Bailey: Does anything here apply only to Northern Ireland? If not, is there anything that is unique to Northern Ireland?

Mr Steele: No, it is a UK-wide SI. It will apply across the UK.

Ms Bailey: Will it have any specific impact for Northern Ireland, as opposed to other GB regions?

Mr Steele: No.

The Chairperson (Mr McAleer): Thank you.

Is the Committee content to note that the Minister of Agriculture, Environment and Rural Affairs has given his consent for the UK Minister to lay a statutory instrument in the UK Parliament on the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020?

Members indicated assent.