

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Tenth Delegated Legislation Committee

DRAFT COMMON FISHERIES POLICY
(AMENDMENT ETC.) (EU EXIT) (NO. 2)
REGULATIONS 2020

Wednesday 9 December 2020

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The Committee consisted of the following Members:

Chair: JULIE ELLIOTT

Abbott, Ms Diane (*Hackney North and Stoke Newington*) (Lab)

† Bradley, Ben (*Mansfield*) (Con)

† Carmichael, Mr Alistair (*Orkney and Shetland*) (LD)

† Colburn, Elliot (*Carshalton and Wallington*) (Con)

† Doogan, Dave (*Angus*) (SNP)

† Furniss, Gill (*Sheffield, Brightside and Hillsborough*) (Lab)

Holden, Mr Richard (*North West Durham*) (Con)

† Jenkinson, Mark (*Workington*) (Con)

Johnson, Kim (*Liverpool, Riverside*) (Lab)

† Jones, Fay (*Brecon and Radnorshire*) (Con)

† Mayhew, Jerome (*Broadland*) (Con)

Mishra, Navendu (*Stockport*) (Lab)

† Morris, James (*Lord Commissioner of Her Majesty's Treasury*)

† Peacock, Stephanie (*Barnsley East*) (Lab)

† Prentis, Victoria (*Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs*)

† Roberts, Rob (*Delyn*) (Con)

† Williams, Craig (*Montgomeryshire*) (Con)

Chloe Freeman, *Committee Clerk*

† **attended the Committee**

Tenth Delegated Legislation Committee

Wednesday 9 December 2020

[JULIE ELLIOTT *in the Chair*]

Draft Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020

9.25 am

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Victoria Prentis): I beg to move,
That the Committee has considered the draft Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020.

It is a pleasure to serve for the first time under your chairmanship, Ms Elliott. The draft regulations, laid under the European Union (Withdrawal) Act 2018, cover all four nations of the UK. We have worked closely with the devolved Administrations, who have given their consent. The idea is to ensure an approach consistent with both the devolution settlements and the existing systems of fisheries management.

The draft regulations will make technical changes to UK law to reflect the EU common fisheries policy legislation that is directly applicable in Northern Ireland by virtue of the Northern Ireland protocol. That is required to enable the enforcement of EU law, where that is directly applicable, to enable the UK to play its part in ensuring sustainable and traceable fishing practices and to meet obligations under the withdrawal agreement and several other international agreements to which we are—or will become—-independent contracting parties. The draft regulations do not make amendments that will change our fisheries management policy.

Mr Alistair Carmichael (Orkney and Shetland) (LD): Is the Minister confirming that the Factortame case will continue to be enforced in respect of fisheries in Northern Ireland?

Victoria Prentis: As the right hon. Gentleman knows, the Factortame case was the bane of my life as a young lawyer. We are not quite clear yet of the precise implications of yesterday's announcement from the Joint Committee. I will go to a briefing immediately after the Committee, and the Chancellor of the Duchy of Lancaster will make a statement to the House at, I believe, 12.30 today. Following that, I am sure we will have much greater clarity. I know I am to meet the right hon. Gentleman next week to discuss another fisheries matter and I would be delighted if he wanted to go into the details of what we will hear this afternoon at any point between now and our meeting next week or at that meeting.

Mr Carmichael: For the avoidance of doubt, if I never have to talk about Factortame again in my life, that will still be too soon for me.

Victoria Prentis: Me too.

Mr Carmichael: But the Minister will know as well as I do that there is that wonderful bit in the Factortame judgment where it speaks about the indirect effect of

non-directly affected directors. It seems to me that, in respect of fisheries in Northern Ireland, that is exactly what the Minister has just described.

Victoria Prentis: I absolutely refuse to confirm or deny that because I know no more than the right hon. Gentleman at this point. It is important that we listen to what the CDL has to say at, I think, 12.30—the Whip will confirm—and then, I hope, we will have much greater clarity. I am really pleased that the Joint Committee came to the agreement that it did and I am really looking forward to learning the details.

I turn to the changes on enforcement. First, the draft regulations will amend the 2019 fisheries regulations, updating the wording in relation to the amendment to section 30 of the Fisheries Act 1981 to ensure that, after the end of the transition period, criminal prosecutions can continue to be brought in Great Britain and Northern Ireland for breaches of EU fisheries rules that are directly applicable in Northern Ireland by virtue of the protocol. That does not represent a change in practice since prosecutions can currently be brought relying on section 30 of the 1981 Act for breaches of directly applicable EU fisheries rules.

Secondly, the draft regulations will amend regulations concerning sustainable and traceable fishing, correcting deficiencies and reflecting the direct application of EU law in Northern Ireland under the protocol. That will allow the UK to fulfil its obligations under ICAT, the International Commission for the Conservation of Atlantic Tunas, and CCAMLR—that may be less familiar to hon. Members, and is the Commission for the Conservation of Antarctic Marine Living Resources—to which the UK is an independent contracting party. The UK, rather than the European Commission, will be responsible for the submission of information to the relevant secretariat as required by the obligations of each regional fisheries management organisation. To clarify, the UK will continue to submit the same level of information to ICCAT and CCAMLR, which is required by these international agreements, to which we will be an independent contracting party.

Thirdly, the draft regulations apply certain aspects of retained EU law relating to illegal, unreported or unregulated fishing to Northern Ireland. This is necessary to ensure that the UK is able to comply with its obligations under the port states measures agreement—the PSMA—once it accedes to that agreement at the end of the transition period. The PSMA requires the UK to apply controls to all non-UK vessels, including requiring them to land into designated ports. The draft regulations serve to implement that requirement in relation to EU vessels landing in Northern Ireland by applying the retained version of the illegal, unreported and unregulated fishing regulation to Northern Ireland, supplementing the direct application of the EU's IUU regulation under the protocol.

The port state measures agreement does not require the UK to apply controls to vessels that are registered in the UK. Once the draft regulations are in force, all non-UK fishing vessels will be subject to PSMA-related controls when landing anywhere in the United Kingdom, thus meeting the UK's obligations under the agreement.

The draft regulations do not impose significant changes to what the public sector or businesses will have to do. They will ensure UK vessels are subject to largely the

same rules as they are subject to at the moment. Accordingly, a full impact assessment has not been prepared. I commend the draft regulations to the Committee.

9.31 am

Stephanie Peacock (Barnsley East) (Lab): It is a pleasure to serve under your chairship, Ms Elliott, and it is also good to see the Minister in her place. We have spent many hours debating fisheries policies over the last few months.

The draft regulations make further changes to retained EU law relating to the common fisheries policy to ensure that it continues to operate effectively once the transition period has come to an end. I have a few questions for the Minister that I hope she will be able to answer regarding the proposed changes to retained EU law, which could potentially limit the UK's role in international collaboration on important marine issues post Brexit.

As noted by ClientEarth in its submission to the Secondary Legislation Scrutiny Committee,

“certain delegated powers currently held by the EU have not been transferred to the UK.”

These powers relate to the implementation of the UK's international obligations on the Convention for the Conservation of Antarctic Marine Living Resources. The draft regulations remove the Council regulation article that required EU members to provide the Commission with a summary of the list of catch documentations issued or received into territory regarding landings, import or export. Catch documentation schemes for Antarctic and Patagonian toothfish are an important tool to support the conservation and management of Antarctic marine living resources.

The Minister referred to this point, but will she confirm that post Brexit the UK will continue to implement its international obligations, including those relating to the regulation that I have just mentioned? Will she also provide assurances that the UK will continue to co-operate and collaborate with other countries on marine and fisheries after the end of the transition period? As the Minister knows, many marine issues are trans-boundary and it is vital that the UK maintains a close relationship with our overseas partners to protect the marine environment and end the over-exploitation of certain fish stocks. It is important that the Government provide more detail and more clarity on what our post-Brexit fisheries regime will look like.

Labour will not divide the Committee on the draft regulations today, but I would be grateful if the Minister could answer those few questions.

9.33 am

Mr Carmichael: It is a pleasure to serve under your chairmanship, Ms Elliott. The draft regulations are probably a fairly sensible and necessary step. It is in nobody's interests that somehow or another we should move into unregulated waters on 1 January. However, it is worth reflecting that the draft regulations are the consequence of a political management strategy that has been somewhat less than what was promised to the fishing industry right at the start.

It is worth remembering that when article 50 was triggered in March 2017, that anticipated that the UK would leave the European Union on 29 March 2019.

The industry was told that that was the point at which we would come out of the common fisheries policy—that was to be the big bang day. Of course, the arrangement, the agreement, made by the former Prime Minister put fisheries management into the political declaration. Had it been part of the withdrawal agreement, we would not be here today; this would all have happened by now. It has carried on in that way ever since. The withdrawal agreement that was apparently part of the oven-ready deal was one that, as far as fisheries were concerned, went along exactly the same course. The fact that we are in this position and the big bang that was promised has still to come—and will not now come even on 1 January—is a consequence of the decision, and the lack of political will, to put fisheries into the withdrawal agreement, leaving it in the political declaration. That is where we are now with the negotiations that are going on as we speak.

I have no interest in seeing fisheries left unregulated—that is in nobody's interests and certainly not in the interests of the fishing industry—but I think it is important that we place it on the record that we understand that this falls very far short of what the industry was promised.

The Chair: Does no other Member wish to speak? I call Minister Prentis to respond. [*Interruption.*] Oh, did you indicate, Mr Doogan? I do apologise. I call Dave Doogan.

9.36 am

Dave Doogan (Angus) (SNP): Nevertheless, it is a pleasure to serve under your chairmanship, Ms Elliott. The Minister will not be surprised to learn that there are no salvos of discord to come from the Scottish National party this morning. As she has already pointed out, the Ministers in the Scottish Government have provided their legislative consent for this measure and, just as importantly, the Scottish Parliament's Rural Economy and Connectivity Committee is content to provide its consent to Scottish Ministers, once removed. Nevertheless, it noted to the Scottish Government their ongoing dialogue with the UK Government around the Northern Ireland protocol and requested that the Committee of the Scottish Parliament be kept up to date on progress with those negotiations.

I think I understand the concerns that the Rural Economy and Connectivity Committee has on the Northern Ireland protocol. Much of the change in language that we are discussing this morning is a result of the separation, in administrative and operational terms, of Northern Ireland from the rest of the UK and therefore GB, for fisheries purposes, in line with the protocol. This will see fishermen in Northern Ireland continuing to fish UK waters, but free to export both harvested and processed fish to the EU internal market without the burden of tariffs.

Does the Minister agree—I am happy to accept that she may not—that, subject to the outcome of the negotiations with the EU, the separation of Northern Ireland in this way poses a profound commercial and operational threat to Scottish fishing, should a deal not be done, owing to the tariffs that will inevitably be placed on harvested and processed fish from Scotland in a no-deal scenario? I wonder—continuing that theme—whether Department for Environment, Food and Rural Affairs Ministers have given due consideration to the

[*Dave Doogan*]

issue of skippers under GB Administrations, although most likely from Scotland, registering their vessels in Northern Ireland to take advantage of those favourable terms and avoid any post-Brexit barriers to the EU. Does the Minister agree that that is a material risk and, if so, what are DEFRA's views on how to mitigate it?

We are just a few days away from a deadline without any details of a deal, meaning that the risk of calamity for the fishing industry is high. Should there not be a deal, tariffs will pose a huge threat to Scottish fishermen and Scottish fishing communities and processors, unlike their fellow seafarers a mere 12.5 miles across the North channel. The reality of the Government still amending vital legislation just weeks away from the end of the transition period highlights keenly how sub-optimal this process has become.

If I am mistaken in any of what I have said, I look forward to the Minister correcting me.

The Chair: Does any other Member wish to speak? I am looking very carefully this time. No. I call Minister Prentis.

9.39 am

Victoria Prentis: I thank everyone who has contributed to this morning's debate. I am glad that there is broad agreement on the new fisheries regulations, and I am genuinely grateful to the DAs for their co-operation in getting this secondary legislation through.

I will set the mind of the hon. Member for Barnsley East at rest on the issues that she raised. We will of course continue to abide by international regulations, which is the purpose, really, of what we are doing today. ClientEarth raised some concerns that DEFRA answered in full in a letter to the Committee in the other place. In brief, the UK will continue to submit the same level of data to CCAMLR. The EU Commission currently does that, but we will now do it directly. The obligation in question, which simply requires member states to communicate the data to the Commission, has been omitted because we will no longer need to use it as a middleman and will go directly to the CCAMLR secretariat, which I understand is in Tasmania. The delegated powers that concern the hon. Lady, which were previously held by the EU, have not been transferred because they were never used by the EU. We plan to use other powers that we already have to implement the international obligations regarding Antarctic and Patagonian toothfish. I think that deals with the hon. Lady's points.

Turning to the hon. Member for Angus, this statutory instrument will not affect Northern Ireland vessels landing into Northern Ireland. However, referring to what I said earlier, we will have to see what happens when the CDL speaks to the House this afternoon, and I am very much looking forward to listening to him. Under the

agreement on port state measures, to which this instrument refers, the UK is required to impose controls and landing requirements on foreign vessels only, including vessels from EU member states. Imposing controls on UK vessels landing into UK ports is not required. We have been clear that there should be no unacceptable new requirements for vessels registered in Northern Ireland.

I say to both the right hon. Member for Orkney and Shetland and the hon. Member for Angus that I very much hope that there will be a deal. That will be in the interests of all British fishermen, and there is not a great deal of purpose in going into further detail at the moment, because we are about to hear much more detail.

Mr Carmichael: I am grateful to the Minister, because she has been generous in giving way. However, the point made by the hon. Member for Angus is a good one. If, for example, the Minister were the skipper of inshore boat on Islay, where I was born and brought up—just 12 miles to the north-east of Northern Ireland—she could register that boat in Northern Ireland while continuing to fish the same waters around Islay. However, she could land in Northern Ireland, rather than in mainland Scotland, because doing so in Northern Ireland would avoid any tariffs. Would the Minister not do that? If she did, what would be the consequences for processors on mainland Scotland?

Victoria Prentis: I know that I have a very good note, which I temporarily cannot lay my hands on, about the concerns that were rightly raised about the registration of vessels. We have good, robust rules on where vessels should be registered, and reasons must be given for that registration. We do not anticipate that there will be either multiple breaches of the rules or attempts to try to get around them following the end of the transition period. However, we need to look at what the rules are, and we will know much more at lunchtime. I encourage the right hon. Gentleman to welcome the good news that came from the Joint Committee yesterday and then wait to find out what it means in some detail. Can we park the rest of this discussion till after we know where we are?

The amendments in this SI, which is what we should be discussing, are essential to ensure that retained fisheries law is effective and enforceable. I think the Committee is broadly in agreement that that is a good thing. The SI enables compliance with our obligations under international agreements. It is a key part of our preparation for the end of the transition period, and it will help us to meet our commitment to deliver a prosperous and sustainable fishing industry for future generations. I commend the draft regulations to the Committee.

Question put and agreed to.

9.44 am

Committee rose.

