

GUERNSEY STATUTORY INSTRUMENT

2021 No. 151

**The European Union (Sea Fisheries, etc.) (Brexit)
(Bailiwick of Guernsey) (Amendment) (No. 3) Regulations,**

2021

Made 23rd November, 2021

Coming into operation See regulation 14

Laid before the States , 2022

THE POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred on it by sections 5(1) and 11 of the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018^a, and upon receipt of the certificate required under section 5(3) of that Law, hereby makes the following Regulations:-

Amendment of the Law.

1. The Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012^b ("the Law") is amended as set out below.

^a Order in Council No. I of 2019.

^b No. X of 2012; as amended by Ordinance No. IX of 2016; No. II of 2017; G.S.I. No. 10 and 163 of 2020; No. 26 of 2021.

2. For the title of Part IA, substitute the following title -

"PART IA
EU FISHING BOATS".

3. In section 5A -

- (a) for subsection (1), substitute the following subsection -

"(1) Fishing for any fish within the authorised zone by EU fishing boats is prohibited unless authorised by -

- (a) on or before 31st January 2022, an interim authorisation,

- (b) on or after 1st February 2022, a licence,

granted by the Committee and for the time being in force.",
and

- (b) in subsection (2) -

- (i) for "this Part", substitute "this Part and Part IAA",

- (ii) immediately after the definition of the "**designated line**", insert the following definition -

""EU fishing boat" means a fishing boat which is registered in accordance with the relevant national legislation relating to the registration of fishing boats of a Member State of the European Union, and", and

(iii) delete the definition of "French fishing boat".

4. In section 5B, for "French fishing boat" (wherever it appears), substitute "EU fishing boat".

5. Sections 5C to 5G are hereby repealed.

6. In section 5H, immediately after "this Part", insert "or Part IAA".

7. After Part IA, insert the following Part -

"PART IAA

LICENCES FOR EU FISHING BOATS

General provisions as to licences for EU fishing boats.

5HA. (1) Where a licence is granted under section 5A, that licence shall be granted to the owner or charterer in respect of a named EU fishing boat.

(2) A licence may only authorise fishing in the authorised zone, but may also be limited by reference to any factor which

the Committee thinks fit for the purposes of the regulation of sea fish, in particular -

- (a) the area within the authorised zone in which fishing is authorised,
- (b) the periods, times or particular voyages during which fishing is authorised,
- (c) the descriptions and quantities of fish which may be taken,
- (d) the method of sea fishing, or
- (e) any factor determined by the Committee in relation to, and for the purposes of, the Trade and Cooperation Agreement.

(3) A licence may authorise fishing subject to such conditions as may appear to the Committee to be necessary or expedient for the regulation of sea fishing (including conditions which do not relate directly to fishing), and in particular a licence may contain conditions -

- (a) as to the landing of fish or parts of fish taken under the authority of the licence (including specifying the ports at which the catch is to be landed), or

(b) as to the use to which the fish taken may be put.

(4) The conditions subject to which a licence may be granted include conditions imposed for the purposes of -

(a) conserving or enhancing the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas, or

(b) conserving flora or fauna which are dependent on, or associated with, a marine or coastal environment.

(5) The conditions subject to which a licence may be granted may differ as between different vessels or between vessels of different descriptions.

(6) A licence under section 5A -

(a) may be varied from time to time,

(b) may be suspended or revoked if it appears to the Committee -

(i) to be necessary or expedient for the regulation of sea fishing,

(ii) to be appropriate in a case where there is an offence under this Law or any other enactment relating to sea fishing, or

(iii) to be necessary or expedient to protect the interests of the Bailiwick (whether environmental, economic or other),

(c) where it is granted before 1st February 2022, shall only come into force on 1st February 2022, and

(d) shall only be valid until such date specified in the licence (which shall not be later than 2 years after the day on which the licence is granted).

(7) Where a condition of a licence prohibits fishing in a specified area for a specified description of sea fish, there must, except so

far as the conditions of the licence provide otherwise, be returned to the sea forthwith -

(a) any fish of that description taken on board an EU fishing boat in contravention of the condition, and

(b) any fish of that description taken on board a fishing boat in that area in the course of fishing for sea fish of a different description,

but, where the condition applies only to fishing by a specified method or during a specified period or by boats of a specified description, paragraph (b) applies only if the fish are caught by that method, during that period or by a boat of that description.

(8) Where any fish of any description, other than that specified in a licence granted under section 5A, has been taken on board -

(a) an EU fishing boat fishing in accordance with such a licence, and

(b) in an area where only fish of a specified description may be taken on board,

that fish must be returned to the sea forthwith.

(9) If a licence is varied, revoked or suspended, the Committee may, if it considers it appropriate in all the circumstances of the case, refund the whole or any part of any charge made for that licence.

(10) For the avoidance of doubt -

(a) sections 6 (powers of British sea-fishery officers for enforcement of Law), 7 (powers of entry, search and seizure), and 8 (exclusion of liability of British sea-fishery officers), and

(b) section 11 (false statements),

shall have effect in relation to licences granted under section 5A as they do in relation to licences granted under section 1.

Effect of licences.

5HB. For the avoidance of doubt -

(a) a licence granted under section 5A is a valid fishing authorisation for the purposes of Regulation (EU) 2017/2403^c, and

^c Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017.

(b) the grant of a licence under section 5A is not a recognition of any right of -

(i) an EU fishing boat, or

(ii) the master, owner or charterer (if any) of any such boat,

to fish in Bailiwick fishery limits otherwise than by virtue of that licence.

Matters to be taken into account.

5HC. In deciding whether or not to grant a licence, the Committee shall take into account only if an EU fishing boat -

(a) is identified by the European Union (whether by inclusion on a list or otherwise), and

(b) represents a qualifying vessel for the purposes of Article 502 of the Trade and Cooperation Agreement.

Provision of information.

5HD. The Committee may require the master, owner and charterer (if any) of an EU fishing boat named in a licence to provide the

Committee with such information, in such form and manner, and within such time or at such times and intervals, as it may direct.

Regulations as to licences and charges for licences.

5HE. (1) Section 5 shall have effect in relation to licences granted under section 5A as it does in relation to licences granted under section 1.

(2) For the avoidance of doubt -

(a) the Sea Fish Licensing (Documents and Notices) (Bailiwick of Guernsey) Regulations, 2015 shall have effect in relation to any document or notice required to be given or delivered under, or for the purposes of, this Part or Part IA, and

(b) any reference in those Regulations to a "British fishing boat" shall also include an EU fishing boat."

8. In section 5I(4), for "French fishing boat", substitute "EU fishing boat".

9. In section 9 -

(a) in subsection (2), immediately before "or a required licence" insert ", a licence granted under section 5A",

(b) in subsection (3), for "section 4 or section 5F", substitute "section 4, section 5F or section 5HD", and

(c) in subsection (4), for "section 2(7) or section 5C(9)", substitute "section 2(7), section 5C9, or section 5HA(7) or (8)".

10. In section 15 -

(a) in subsections (2), and (3)(a) and (c)(i), for "an enforceable Community restriction", substitute "Preserved EU Law", and

(b) in subsection (3)(c)(ii), immediately after "section 4", insert ", section 5F or section 5HD".

11. In section 19 -

(a) in subsection (1) -

(i) delete the definition of "enforceable Community restriction",

(ii) immediately after the definition of "enforceable Community restriction", insert the following definition -

"EU fishing boat" has the meaning given in section 5A(2),

- (iii) delete the definitions of "exit day", "French fishing boat" and "Transition Period",
- (iv) in the definition of "interim authorisation", for "has the meaning" until the end, substitute ": see section 5C",
- (v) in the definition of "licence", immediately after the words "section 1", insert "or under section 5A",
- (vi) immediately after the definition of "mile", insert the following definition -

"Preserved EU Law" has the meaning given in section 3 of the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018", and

- (vii) immediately after the definition of "territorial seas adjacent to Alderney and Sark", insert the following definition -

"the Trade and Cooperation Agreement" means the Trade and Cooperation Agreement

between the European Union and the European Atomic Energy Community, of the one part and the United Kingdom of Great Britain and Northern Ireland, of the other part, signed at Brussels and London on 30th December 2020.", and

- (b) in subsection (5), for "Community instrument (within the meaning of section 1(1) of the European Communities (Bailiwick of Guernsey) Law, 1973)", substitute "Preserved EU Law".

Extent.

12. These Regulations have effect throughout the Bailiwick of Guernsey and the territorial waters adjacent thereto.

Citation.

13. These Regulations may be cited as the European Union (Sea Fisheries, etc.) (Brexit) (Bailiwick of Guernsey) (Amendment) (No. 3) Regulations, 2021.

Commencement.

14. (1) These Regulations (with the exception of regulations 3(b)(iii), 4, 5, 8 and 11(a)(iii)) shall come into force on 23rd November 2021.

(2) Regulations 3(b)(iii), 4, 5, 8 and 11(a)(iii) shall come into force on 1st February 2022.

Dated this 23rd day of November, 2021



H. J. R. Soulsby MBE

Vice-President of the Policy & Resources Committee

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in consequence of the withdrawal of the United Kingdom from the European Union.

These Regulations permit the States of Guernsey Committee for Economic Development to license EU fishing boats by inserting a Part IAA in the Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012. This Part sets out a comprehensive licensing regime which will have effect from 1st February 2022; however, the previous interim authorisations continue to be in force until that same date. These Regulations also make consequential changes on the basis of the temporary retention of the interim authorisation regime and its subsequent replacement.

These Regulations (other than regulations 3(b)(iii), 4, 5, 8 and 11(a)(iii)) will come into force on 23rd November 2021. Regulations 3(b)(iii), 4, 5, 8 and 11(a)(iii) will come into force on 1st February 2022.