

Rural Affairs and Islands Committee

6th Meeting, 2024 (Session 6), Wednesday, 28 February

Subordinate legislation

Introduction

1. This paper supports the Committee's consideration of the Sandeel (Prohibition of Fishing) (Scotland) Order 2024 (SSI 2024/36).

Sandeel (Prohibition of Fishing) (Scotland) Order 2024

Title of Instrument:	Sandeel (Prohibition of Fishing) (Scotland) Order 2024
Type of Instrument:	Negative
Laid date:	5 February 2024
Reporting deadline:	18 March 2024
Coming into force:	26 March 2024
Instrument drawn to Parliament's attention by DPLRC:	No
Instrument made using powers conferred by:	The Sea Fish (Conservation) Act 1967
Supporting documentation:	Policy note attached Annexe A

Purpose of the instrument

2. The purpose of the instrument is to prohibit all fishing for sandeel in Scottish waters. The prohibition applies to all fishing boats, not just to Scottish or British fishing boats. The relevant area for the prohibition (known as the Scottish zone) is defined in section 22(1) of the Sea Fish (Conservation) Act 1967, it means the sea adjacent to Scotland up to the 200 nautical miles limit.

Policy objectives

3. The policy note discusses the importance of sandeel to the wider ecosystem and the subsequent benefit provided by the species in aiding long-term sustainability and resilience of the marine environment.
4. The policy note further highlights the Scottish Government's long-standing position not to support fishing for sandeel in Scottish waters, which is reflected in Scotland's Future Fisheries Management Strategy. It states that, for this reason, the UK, supported by the Scottish Government, has not allocated sandeel quota to UK vessels since 2021.

Consultation

5. The Scottish Government conducted a 12-week public consultation from 21 July to 13 October 2023 on the proposal to ban sandeel fishing in all Scottish waters for environmental and ecosystem benefits. The consultation received 494 written representations from individuals and organisations, and 9,815 campaign submissions. These covered a range of issues including the scientific evidence base, potential effects of sandeel fisheries management, and the applicability of alternative measures. According to the policy note, representations relating to the proposed closure of fishing for sandeel in Scottish waters have been considered in finalising the draft Order.
6. The analysis of the consultation responses is available on the [Scottish Government website](#) and individual responses have also been [published where permission has been given](#). The analysis of the consultation responses demonstrated support (97%) for the preferred option to close fishing for sandeel in all Scottish waters.

Impact assessment

7. A Business and Regulatory Impact Assessment (BRIA) and Data Protection Impact Assessment have been conducted on the Order. An Equality Impact Assessment (EQIA) was not completed as the Order does not impact specific protected characteristics. Since no sandeel fishing quota has been allocated to UK vessels since 2021, the legislation does not additionally impact individuals. An Island Communities Impact Assessment (ICIA) was not conducted as the Order's effect on island communities is not significantly different from its effect on other communities.
8. A Strategic Environmental Assessment (SEA) was completed, aligning with environmental principles of integrating environmental protection into policy-making, applying the precautionary principle to the environment, and taking preventative action to avert environmental damage.

EU alignment consideration

9. According to the policy note, the objectives of the instrument align with the EU's overall approach of managing fish stocks in a sustainable manner with catches of stocks at risk of over-exploitation subject to a variety of restrictions.

Consideration by the Delegated Powers and Law Reform Committee

10. [The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 20 February 2024 and agreed that no points arose.](#)

Parliamentary procedure – negative instruments

11. The negative parliamentary procedure is set out in Chapter 10 of the Parliament's Standing Orders. Instruments subject to the negative procedure come into force on a specified date and remain in force unless it is annulled by the Parliament. Thus, the Parliament does not need to agree to the instrument in order for it to come into force.
12. The Parliament may, however, and on the recommendation of the lead committee, recommend the instrument be annulled within 40 days of the instrument being laid. Any MSP may by motion propose to the lead committee that the committee recommends "that nothing further is to be done under the instrument". Any motion for annulment would be debated by the lead committee and a report made to Parliament.

For decision

13. **The Committee is invited to make any recommendations in relation to the instrument.**

**Rural Affairs and Islands Committee clerks
February 2024**

Policy Note

The Sandeel (Prohibition of Fishing) (Scotland) Order 2024

SSI 2024/36

The above instrument is to be made in exercise of powers conferred by section 5 of the Sea Fish (Conservation) Act 1967. The instrument is subject to negative procedure.

Summary

The Sandeel (Prohibition of Fishing) (Scotland) Order 2024 makes provision to prohibit all fishing for sandeel in Scottish waters, using powers provided in section 5 (Powers to restrict fishing for sea fish including for marine environmental purposes) of the Sea Fish (Conservation) Act 1967.

Policy Objectives

1. Given the importance of sandeel to the wider ecosystem and the subsequent benefit provided by the species in aiding long-term sustainability and resilience of the marine environment, it remains an over-arching and long-held Scottish Government position not to support fishing for sandeel in Scottish waters (where “Scottish waters” includes internal waters, territorial sea and that part of the UK’s exclusive economic zone (EEZ) adjacent to Scotland), which is reflected in Scotland’s Future Fisheries Management Strategy. For this reason, the UK, supported by the Scottish Government, has not allocated sandeel quota to UK vessels since 2021.
2. In 2021, Scottish Government officials worked closely with UK counterparts on a call for evidence to gather information to better inform considerations on future management for sandeel. The Scottish Government is committed to considering how best to manage fishing for sandeel in Scottish waters, with the aim to benefit both sandeel stocks and the wider ecosystem.
3. Taking this into account, the Cabinet Secretary for Rural Affairs, Land Reform and Islands announced in May 2023 that the Scottish Government would be consulting in summer 2023 on proposals to close fishing for sandeel in all Scottish waters. The consultation period ran from 21 July to 13 October 2023. Analysis was completed in the months that followed.
4. The purpose of The Sandeel (Prohibition of fishing) (Scotland) Order 2024 is to prohibit fishing for sandeel in all Scottish waters with the aim of bringing about wider environmental and ecosystem benefits, which include potential benefits to sandeel, seabirds, marine mammals, and other fish species. The Scottish Ministers make this Order in exercise of the powers conferred by section 5 of the Sea Fish (Conservation) Act 1967.

5. The Order will cover all Scottish waters including that part of the UK's EEZ adjacent to Scotland. The Order will also apply to all vessels fishing in these waters.

EU Alignment Consideration

6. The Order is aligned with the EU's overall approach of managing fish stocks in a sustainable manner with catches of stocks at risk of over-exploitation subject to a variety of restrictions.
7. Current management measures in place within sandeel management area 4 were included in EU regulations and remain in assimilated law. A prohibition of fishing for sandeel in Scottish waters to protect sensitive marine species aligns with the delivery of Good Environmental Status for biodiversity and commercial fish under the UK Marine Strategy. This is an obligation that stems from the EU's Marine Strategy Framework Directive. It also aligns with EU principles in the Common Fisheries Policy by taking a precautionary approach to supporting the protection of marine ecosystems.

Consultation

8. The Scottish Ministers have undertaken a 12-week public consultation which sought views on proposals to close fishing for sandeel in all Scottish waters, with the purpose of bringing about wider environmental and ecosystem benefits, which include potential benefits to sandeel, seabirds, marine mammals, and other fish species. The consultation ran from 21 July to 13 October 2023
9. As a result of the consultation, a total of 494 written representations were received from individuals and organisations including the fishing sector, renewable energy developers and recreational interests, as well as 9,815 campaign submissions. These covered a range of issues, including questions on the scientific evidence base on the potential effects of sandeel fisheries management on the marine environment and the applicability of alternative measures. Recurring issues or themes raised in the comments also included issues relating to the UK-EU trade and cooperation agreement, benefits for biodiversity, wellbeing and wildlife. All representations relating to the proposed closure of fishing for sandeel in Scottish waters have been considered in finalising the draft Order. Additionally, an outcome report answering the general points raised across the representations has been produced.
10. A full list of those consulted and who agreed to the release of this information is attached to the consultation analysis report published on the Scottish Government website.

Impact Assessments

11. A Business and Regulatory Impact Assessment (BRIA) and Data Protection Impact Assessment have been completed on the Order, and the BRIA has been

attached to this instrument. An Equality Impact Assessment (EQIA) has not been completed for this instrument as they do not impact on specific protected characteristics set out in the Equalities legislation. No quota for sandeel fishing has been allocated to UK vessels since 2021, therefore the introduction of formal legislation is not impacting additionally on individuals. A full Island Communities Impact Assessment (ICIA) has not been completed as the Order is not likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities).

12. A Strategic Environmental Assessment (SEA) has been completed in implementing this Order, which align with the following environmental principles:
 - a. protecting the environment should be integrated into the making of policies
 - b. the precautionary principle as it relates to the environment; and
 - c. preventative action should be taken to avert environmental damage.

Financial Effects

13. A BRIA has been completed and is attached. The impact of this policy on business is minimal, as no quota has been issued to UK vessels for sandeel since 2021, and no sandeel has been landed into Scottish ports since 2020. The Order also has no bearing on quota, which remains unchanged.
14. The Order will not give rise to further costs to the Scottish Government. Enforcement of this Order will be achieved by virtue of enforcement powers implemented by Marine Directorate Compliance.

Marine Directorate
January 2024