

# **SL(6)503 – The Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024**

## **Background and Purpose**

This Order introduces management measures and a permitting regime for the management of the exploitation of cockles from cockle beds within the specified area in Wales.

The Order, which applies in relation to Wales, amends or revokes and replaces the Byelaws of the former North Western and North Wales Sea Fisheries Committee and the former South Wales Sea Fisheries Committee and provisions of the Cockles and Mussels (Specified Areas) (Wales) Order 2011 in so far as they regulate cockle fishing.

The Sea Fisheries Committees were abolished in relation to Wales on 1 April 2010 when the Sea Fisheries Regulation Act 1966 was repealed by section 187 of the Marine and Coastal Access Act 2009.

The Byelaws of the former North Western and North Wales Sea Fisheries Committee and former South Wales Sea Fisheries Committee have had effect since 1 April 2010 as if made by the Welsh Ministers in a statutory instrument by virtue of article 13(1) and (3) and Schedules 3 and 4 to the Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010.

Part 1 of this Order (articles 1 and 2) deals with introductory matters.

Part 2 of this Order (articles 3 to 7) makes provision for the management of cockle beds within the specified area. Fishing for and taking cockles from cockle beds which are closed and without a permit is prohibited under article 3. Articles 5 to 7 provide for the assessment and the opening and closing of cockle beds within the specified area.

The specified area is described in Schedule 1.

Part 3 of this Order (articles 8 to 13 and Schedule 2) makes provision for a new cockle permitting regime setting out the requirement for a permit to fish and making provision about eligibility, the duration of a permit and fees. Article 9 and Schedule 2 provide for conditions to be attached to permits.

Part 4 of this Order (articles 14 to 18 and Schedule 3) makes provision for exemptions from the provisions of this Order, the re-deposit of cockles and for the revocation and amendment of various Byelaws of the former North Western and North Wales and the former South Wales Sea Fisheries Committees and the amendment of the Cockles and Mussels (Specified Area) (Wales) Order 2011.

## **Procedure**



Negative

The Order was made by the Welsh Ministers before it was laid before the Senedd. The Senedd can annul the Order within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was laid before the Senedd.

## Technical Scrutiny

The following seventeen points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### 1. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In article 2, there is a difference between the English and Welsh text. In the Welsh text, there is an additional definition “manteisio ar” (“exploitation”) which is not found in the English text. The term is not used in this Order; therefore, the English text appears to be correct.

### 2. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In article 2, in the English text, the definition of “cockles” is not listed according to alphabetical order as is the convention. It should appear after the definition of “cockle bed” in the English text of this Order.

### 3. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In article 2, in the definition of “harvestable surplus”, there are several differences between the English and Welsh text as follows—

- a) in the English text, the corresponding Welsh definition that usually appears in brackets afterwards is incomplete because the word “cynaeafu” is missing along with the closing brackets; it should also be formatted in italics rather than regular font;
- b) in addition, in the Welsh text, it states that ““harvestable surplus” ... **is the live weight of the cockles that can** be fished for or taken...”. Therefore, there are additional words in the Welsh text that are not found in the English text of the definition.

### 4. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In article 2, in the English text, the definition of “Wales” is not listed according to alphabetical order as is the convention. It should appear after the definition of “vessel”.



The definition is noted in single quotation marks rather than double quotation marks, and the words “of the” are missing from the reference “section 158(1) **of the** Government of Wales Act 2006” in the English text.

Finally, this defined term only appears to be used on a single occasion in the application provision found in article 1(2) of this Order. If a defined term is only used on a single occasion in a statutory instrument it should appear in the same provision and only be defined for that provision -see WLW 4.3(1).

#### **5. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In article 8(3), there is a difference between the English and Welsh text. In the English text, the term “the permit period” has been used which is not the defined term “a single permit period” found in article 2.

In addition, the Welsh text differs from the English text in this provision as it states, “between 1 June in a calendar year and the end of 31 May in the following year” rather than “during the permit period”.

#### **6. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

In article 9(1)(b), the term “specified cockle bed” has been used but it has not been defined and given a meaning by article 2 of the Order. The defined term in article 2 is “cockle bed” which is found within the specified area described by Schedule 1 to this Order.

#### **7. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In article 10(1)(a), there is a difference between the English and Welsh text. In the English text, it states “are 16 years of age or over” but the Welsh text includes some additional words so that it means “are 16 years of age or over at the time the permit is issued”.

#### **8. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

In article 10(2), in the definition of “relevant offence” for that article, in sub-paragraph (c)(i), it states that a relevant offence includes an offence under “section 139 (**contravention of orders under sections 134, 134A, 134B or 136**)”. However, the words in parentheses suggest that an offence under section 139 of the 2009 Act is limited to a contravention of orders made under those listed sections of the 2009 Act.

However, offences under section 139 include contraventions of both byelaws and orders made under other sections of the 2009 Act. Therefore, the words in parentheses are potentially misleading and confusing for the reader as it is unclear whether there is any intention to limit the relevant offences under section 139 of the 2009 Act for article 10 of this Order.



### **9. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

In article 12(1)(c) of, and paragraph 5 of Schedule 2 to, this Order the terms “a permit period” and “the permit period” are used in the Order. But the term has been defined in article 2 as “single permit period” which has been used elsewhere in this Order.

### **10. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In Schedule 1, in paragraph 1(1)(c), there is a difference between the English and Welsh text. In the English text, it states “High Water Mark or Ordinary Tides”, but the meaning given by the Welsh text is “High Water Mark **of** Ordinary Tides”.

### **11. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In Schedule 2, in paragraph 7, in the Welsh text, the word “deemed” has been expressed as “ystyriir” which means “considered”. The Glossary of the Welsh Government’s Legislative Translation Unit has standardised “barnu” as the recommended choice of word for “deem” in the Welsh text of legislation. Therefore, “bernir” should have been used in the Welsh text to express the meaning of “deemed”.

### **12. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

In Schedule 2, in paragraph 9, the heading refers to the “Requirement to carry **and produce** the permit” as one of the conditions which will apply to all permits. However, paragraph 9 only includes a requirement for the permit holder to carry their permit at all times while gathering cockles from a cockle bed.

There does not appear to be a requirement to produce a permit included in paragraph 9 of Schedule 2. Therefore, the heading is confusing and potentially misleading to the reader of the Order.

### **13. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In Schedule 3, in paragraph 2(6)(b), there is a difference between the English and Welsh text. Both paragraphs (a) and (b) of paragraph 2(6) attempt to introduce amendments to article 8(1) of the Cockles and Mussels (Specified Area) (Wales) Order 2011.

In the English text, the amendment in paragraph 2(6)(b) does not succeed to clearly identify the existing text in article 8(1) for amendment because the word “shellfish” also occurs in the phrase “specified shellfish” which is amended by paragraph 2(6)(a).

In the Welsh text, the amendment made by paragraph 2(6)(b) does clearly identify the existing text for amendment by adding some additional words so that it states for “**those** shellfish”



substitute “**those** mussels””. This is sufficient to identify the existing text in article 8(1) that is amended by paragraph 2(6)(b) of Schedule 3, and to distinguish it from the text amended by paragraph 2(6)(a) of that Schedule.

#### **14. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In Schedule 3, in paragraph 3(3), the amendment inserts a new sentence that includes a reference to this Order at the end of Byelaw 13 of the Byelaws of the former North Western and North Wales Sea Fisheries Committee.

However, the title of the Order is incorrectly noted in the new insertion as the word “**Fishing**” is missing. It should be cited as “the Cockle **Fishing** Management and Permitting (Specified Area) (Wales) Order 2024”.

#### **15. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In Schedule 3, in paragraph 3(4), a series of amendments are made to omit any references to “cockle” and phrases where it is used from Byelaw 13A of the Byelaws of the former North Western and North Wales Sea Fisheries Committee.

The amendment made by paragraph 3(4)(c) omits a reference to “cockle or” from paragraph 2 of Byelaw 13A in those Byelaws. However, there is also a reference to “cockle or” found in paragraph 3 of Byelaw 13A in those Byelaws which is not omitted following these amendments. Therefore, these amendments have not succeeded in removing all the references to “cockle” from Byelaw 13A of those Byelaws.

#### **16. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In Schedule 3, in paragraph 6(1), there is a difference between the English and Welsh text. In the English text, it states that “The Byelaws of the former South Wales Sea Fisheries Committee” are amended. But the meaning given by the Welsh text is that “The Byelaws of the former North Western and North Wales Sea Fisheries Committee” are amended as follows.

#### **17. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

In this Order, the verb “will” is found in several provisions but it is unclear whether it is being used as a future tense or to impose an obligation. For example, in article 9(4), it states that “the Welsh Ministers **will** consult with permit holders and other relevant stakeholders before varying or removing additional conditions”.

Also, in article 16(2), it states “Declarations and notifications made under the Order **will** be published on the Welsh Government website and, whenever practicable, declarations **will** be placed in clearly visible locations...”.



If these provisions are imposing obligations, they should use a phrase such as “must” or possibly “are to be” – see the Welsh Government’s drafting guidelines WLW 3.14(4) and (5).

In addition, there are other examples of the use of “will” in the Order such as in article 12(1)(b) and (c) where it is also unclear whether it is being used as a future tense, an obligation or as a declaration.

## Merits Scrutiny

The following three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### **18. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

We note the breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Huw Irranca-Davies AS/MS and Cabinet Secretary for Climate Change & Rural Affairs in a letter to the Llywydd dated 26 June 2024.

In particular, we note the following paragraphs:

*“Public cockle fisheries in Wales have been managed by the Welsh Government since the dissolution of the former Sea Fisheries Committees in 2010. The first sale value of these fisheries is estimated to be between £3M and £10M per annum. They support approximately 350 commercial hand gatherers and 50 workers in processing plants.*

*The Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024 will introduce the following measures to conserve cockle stocks and ensure the sustainability of the fishery:*

- a) An all-Wales cockle permit to gather on any cockle bed within a specified area.*
- b) Carrying out uniform eligibility checks for cockle permit applications*
- c) Charging an annual fee for cockle permits*
- d) Attaching a number of universal permit conditions to all cockle permits*
- e) Making provision to allow for additional local conditions specific to individual named fisheries for the purposes of adaptive cockle fishery management. Any additional conditions will also be attached to all permits.*
- f) Standardising the daily personal recreational allowance within the specified areas.*

*Finalisation of the Order took longer than anticipated to ensure the Order delivered the changes required to establish the new permitting system. Contravention of the convention is thought necessary and justifiable to avoid delaying the opening of the Three Rivers Fishery to ensure cockle gatherers do not lose out on valuable income. Any*



*delay in opening the fishery on 17 July would penalise those cockle gatherers who rely on this income alone and could lead to cockle 'die off' as summer temperatures increase."*

**19. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

We note from the Explanatory Memorandum that a 12-week public consultation on proposals for new cockle fishery management measures was launched on 11 February 2022 and closed on 6 May 2022.

The letter to the Llywydd dated 26 June 2024 states that the finalisation of the Order took longer than anticipated to ensure the Order delivered the changes required to establish the new permitting system.

Can clarification be provided as to the justification for the delay from the consultation in 2022 and to laying the Order in June 2024?

**20. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

The specified area is the area described in Schedule 1 to this Order. The Explanatory Memorandum at paragraph 4.3 and 4.4 states that *"Maps of the specified area will be provided to permit holders when permits are issued to permit holders under the Order. A programme of work is underway to produce new mapping of the whole of the specified area. The updated mapping will be made available on [www.GOV.WALES](http://www.GOV.WALES) when the Order comes into force."* It would be helpful for the reader to be referred to the maps of the specified area in this Order.

## Welsh Government response

A Welsh Government response is required to all the reporting points.

### Legal Advisers

Legislation, Justice and Constitution Committee

10 July 2024

