

**EXPLANATORY MEMORANDUM TO
THE EELS (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2011**

2011/2976

This explanatory memorandum has been prepared by the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Eels (England and Wales) (Amendment) Regulations 2011.

Carwyn Jones

First Minister of Wales

9 December 2011

1. Description

The purpose of this instrument is to correct a defect in the Eels (England and Wales) Regulations 2009.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The Joint Committee on Statutory Instruments, in its seventh report for the 2009/2010 session, reported a defect in regulation 7(1) (a) of the Eels (England and Wales) Regulations 2009. Regulation 7 relates to duties on those who receive consignments of eels.

The Committee identified that the Regulation 7(1) did not specify that the provisions only applied to consignments of live eels – while Regulation 5 (imports) and Regulation 6 (exports), to which Regulation 7 refers, did only apply to live eels. Furthermore the cross reference in Regulation 7 to Regulation 6 (exports) applied the duty on consignees to people outside UK jurisdiction receiving eels exported from England and Wales.

The Department for Environment, Food and Rural Affairs acknowledged the error and undertook to correct regulation 7(1).

The 2009 Regulations were made on a composite basis because they implement Council Regulation (EC) No 1100/2007 (establishing measures for the recovery of the stock of European eel) and there were no policy differences in the intended method of implementation throughout England and Wales. In addition, the use of one instrument imposing one regulatory regime across England and Wales has the benefit of

simplicity for those required to comply with the various provisions. It is for this reason that the amending Regulations are also being made on a composite basis by both the Secretary of State and Welsh Ministers.

This instrument is made under the power conferred by section 2(2) of the European Communities Act 1972 and as such could be subject to either the affirmative or negative resolution procedure. This instrument is made subject to the negative resolution procedure as there was no factor indicating the use of affirmative procedure (for instance, the instrument does not substantially affect primary legislation).

3. Legislative Background

The Eels (England and Wales) Regulations 2009 implemented Council Regulation (EC No. 1100/2007 of 18 September 2007 establishing measures for the recovery of the stock of European Eel). The Council Regulation requires Member States to implement a number of short and long-term measures to achieve a target of ensuring that at least 40% of the potential production of adult eel's returns to the sea to spawn on an annual basis.

Subject to an exception for the River Tweed, this instrument applies to England and Wales.

4. Purpose and intended effect of the legislation

The International Council for the Exploration of the Sea (ICES) advised in 2006 that the stock of the European eel (*Anguilla anguilla*) was outside safe biological limits across European waters. The population level was only about 5% of the stock levels in the 1980s. Following this advice, the EU regulated in Council Regulation (EC) No. 1100/2007 establishing measures for the recovery of the stock of the common eel.

5. Consultation

There has been no public consultation on the new instrument.

6. Regulatory Impact Assessment

An Impact Assessment was produced in respect of the original instrument and is available with the Explanatory Memorandum on www.legislation.gov.uk. No Regulatory Impact Assessment has been conducted in respect of these Regulations as they simply correct an error identified in the 2009 Regulations