

## **Explanatory Memorandum to The Sea Fishing (Penalty Notices)(Wales) (Amendment) Order 2019**

This Explanatory Memorandum has been prepared by the Marine and Fisheries Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Sea Fishing (Penalty Notices) (Wales) (Amendment) Order 2019.

Lesley Griffiths AM

**Minister for Environment, Energy and Rural Affairs**

19 March 2019

## **PART 1**

### **Description**

1. The Sea Fishing (Penalty Notices) (Wales) Order 2019 (the “Principal Order”), creates a scheme for the issuing and payment of penalty notices for certain offences relating to sea fishing. It revokes the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 and replaces it with a scheme that applies to offences created under domestic legislation as well as those arising from a breach of an enforceable community restriction or other obligation.
2. The Sea Fishing (Penalty Notices) (Wales) (Amendment) Order 2019 (the “Amending Order”) amends the Principal Order so as to ensure it is intra vires. Specifically, the Amending Order removes the reference in Article 1(3) to Welsh fishing boats “wherever they may be”, thereby restricting the application of the instrument to Wales and Welsh zone.

### **Matters of special interest to the Constitutional and Legislative Affairs Committee**

3. The Amending Order is being laid under the negative procedure with deviation from the standard 21 day laying day period. It is necessary to breach the 21 day rule to ensure the Principal Order is not ultra vires when it comes into force on 22 March 2019.
4. The effect of the Amending Order is to render the Principal Order intra vires by reducing its scope. To assist in this regard, two definitions are added to the Principal Order for clarity.
5. The Constitutional and Legislative Affairs Committee report on the Principal Order queried why that instrument prohibited payments in cash being made in respect of a penalty notice. The reason for this prohibition is that cash payments would be subject to more onerous checks in order to mitigate loss or fraud. In addition, not all Welsh Government offices are able to accept cash payments. It is noteworthy that the equivalent English scheme contains a prohibition on paying in cash.

### **Legislative background**

6. The Amending Order is made in exercise of powers conferred by Section 30(2) of the Fisheries Act 1981 and Sections 294 and 316(1) (b) of the Marine and Coastal Access Act 2009. The functions of the Ministers under section 30 of the 1981 Act, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales and then transferred from that body to the Welsh Ministers: see article 2(a) of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order (S.I. 1999/672) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006

(c.32). The functions of the Ministers under section 30 of the 1981 Act, so far as exercisable in relation to the Welsh zone, were transferred to the Welsh Ministers by article 4(1)(e) of the Welsh Zone (Boundaries and Transfer of Functions Order 2010 (S.I. 2010/760).

7. The Amending Order follows the negative resolution procedure, pursuant to Section 316(8) of the Marine and Coastal Access Act 2009.

### **Purpose and intended effect of the legislation**

8. Although it is not made under the EU Withdrawal Act 2018, the Principal Order is considered desirable in advance of the United Kingdom's withdrawal from the European Union. In addition, the scheme is necessary in order to provide more flexibility in the enforcement of fisheries law. The UK government implemented a scheme of this type for England only in 2011. It should be noted the English scheme applies to Welsh fishing boats outside the Welsh zone.

### **Consultation**

9. Due to the urgency involved it has not been possible to carry out a consultation in relation to the Amending Order. It should be noted however, the effect of the Amending Order is solely to render the Principal Order *intra vires* and therefore to ensure Welsh Government acts lawfully. Further, the Amending Order will restrict, rather than increase, the impact of the Principal Order on the Welsh fishing industry.