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Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-L/LG/0517/19

Elin Jones AM

25 June 2019

Dear Llywydd,

The Whelk Fishing (Wales) Order 2019

In accordance with guidance, I am notifying you that section 11A(4) of the Statutory Instruments Act 1946, as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006, which affords the rule that statutory instruments come into force at least 21 days from the date of laying, will be breached for the introduction of the Whelk Fishing (Wales) Order 2019. The Explanatory Memorandum is attached for your information.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The Whelk Fishing (Wales) Order 2019 ('the Order') raises the minimum size of whelk (a type of sea snail) that can be fished or carried by UK boats in Welsh waters or landed by UK boats in Wales. Such a minimum size is known as a "Minimum Conservation Reference Size" or MCRS.

Currently, EC Regulation 850/1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine imposes an MCRS of 45mm. There are no other effective EU, UK or Welsh conservation management measures in place to protect the fishery. Scientific research has demonstrated that the fishery is under severe pressure and at risk of collapse with the current MCRS being inadequate to protect the fishery. Many immature whelks do not have the opportunity to breed before being fished. Any collapse of the Welsh whelk fishery could have severe consequences for fishers reliant on this particular resource and the industry which processes whelk.

A consultation on whelk management measures including increased MCRS was undertaken in 2017.

In December 2018, a package of measures was announced to support the Welsh whelk fishery and make it more sustainable (see: <https://gov.wales/written-statement-welsh-whelk-fishery-statutory-instrument>). A phased increase of the MCRS was a key part of the package.

Any increase in the domestic MCRS has to be compatible with EU law. Currently, Article 46 of Council Regulation (EC) No 850/98 allows Member States to introduce conservation measures (including a higher MCRS) applicable to their own fishing boats. However, Regulation 850/1998 will be abolished in early July 2019, making it impossible for the UK (or the Welsh Ministers) to raise the MCRS thereafter. It is our understanding that any Order made prior to the abolition of Article 46 will continue to apply after abolition.

Instead of allowing Member States to legislate individually, the new Regulation that replaces 850/98 will include a regionalised mechanism whereby a group of Member States will be able to request that the Commission implement a conservation measure, including raising an MCRS. Given this is a Wales specific issue, no EU countries target whelks in Welsh waters and the UK intends to leave the EU, it is unlikely that any other EU state or the Commission will be interested in cooperating with us in using this regional mechanism. Such a mechanism is likely to be lengthy and any new MCRS should be introduced as soon as possible.

Whilst the UK Government has been involved in negotiations about the replacement of Regulation 850/1998 for some time, Welsh Government officials have not been directly involved in those negotiations and were under the impression that the powers enshrined in Article 46 would be replicated in the Regulation that replaced Regulation 850/1998. It was only recently that DEFRA confirmed that this would not be the case. The increased pressure and workloads imposed by Brexit have further delayed detailed consideration of Order.

Welsh Government are not aware that any other part of the UK are intending to legislate in this area.

It is necessary to breach the 21 day rule to ensure that the Order can come into force prior to the abolition of Regulation 850/1998. The Employment, Social Policy, Health and Consumer Affairs Council approved the Regulation which will replace Regulation

850/1998 on 13 June 2019 and that instrument is expected to come into force at the end of June or the beginning of July. It is not currently possible to say when exactly the replacement Regulation will be published hence the need to bring the Order into force on 4 July 2019.

Due to the urgency involved it has not been possible to carry out an updated consultation in relation to the Order. A consultation on whelk management measures including increasing the MCRS was carried out in 2017 and a Written Statement announcing the introduction of new measures was published in December 2018. The proposed Order does not deviate in any significant way from the proposals contained in the 2017 consultation.

An Explanatory Memorandum and Regulatory Impact Assessment has been prepared and this has been laid, together with the Order, in Table Office.

A copy of this letter goes to Mick Antoniw, Chair of the Constitutional and Legislative Affairs Committee and Sian Wilkins, Head of Chamber and Committee Services.

Yours sincerely,



Rebecca Evans AC/AM

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