

SL(5)484 – The Whelk Fishing (Wales) (Amendment) Order 2019

Background and Purpose

The Whelk Fishing (Amendment) (Wales) Order (the Amending Order) amends the Whelk Fishing (Wales) Order 2019 (the Principal Order) so as to narrow the scope of the existing ban on carriage of undersized whelk by UK fishing boats within the Welsh zone. Specifically, UK fishing boats which have not fished in the Welsh zone but travel through it will be exempted from the carriage ban. This change will affect a very limited number of fishers. The Amending Order will also make a minor textual amendment to the Principal Order by changing 'purpose' to 'purposes' in article 4.

Procedure

No procedure.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

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

Sections 1(3) and (6) of the Sea Fish (Conservative) Act 1967 contain the enabling powers relied on to make the Amending Order. Section 20(3) of the Sea Fish (Conservation) Act 1967 requires an order made under section 1 to be laid before the Parliament. The National Assembly for Wales (Transfer of Functions) Order 1999 transfers the order making function to the Welsh Ministers, and by virtue of paragraphs 30 and 33 of Schedule 11 to the Government of Wales Act 2006, the Amending Order must be laid before the Assembly rather than Parliament.

The incorrect procedure has been selected for the Amending Order. The enabling powers require the Amending Order to be laid but do not require the negative procedure to be followed. By following the negative procedure the Amending Order could be subject to annulment by the Assembly.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

The Explanatory Memorandum explains that the Welsh Government only has powers to legislate for UK vessels fishing in the Welsh zone and the possibility of legislating for non-UK vessels fishing within the Welsh zone will be considered in the light of the new legislative landscape after the UK exits from the EU.

Government Response

The Welsh Government accepts the technical point noted in the CLAC report on the Whelk Fishing (Wales) (Amendment) Order 2019. In future, the Welsh Government will ensure that the correct procedure is used for Orders made under the Sea Fish (Conservation) Act 1967.



Legal Advisers
Constitutional and Legislative Affairs Committee
18 December 2019

