

## **Explanatory Memorandum to the Whelk Fishing (Amendment) (Wales) 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 Whelk Fishing (Amendment) (Wales) Order 2019.

I am satisfied that the benefits justify the likely costs.

Lesley Griffiths

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

12 December 2019

## **Description**

The Whelk Fishing (Amendment) (Wales) Order (the Amending Order) will amend 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.

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

None.

## **Legislative Background**

The amendment of the carriage ban can be achieved using Section 1 of the Sea Fish (Conservation) Act 1967, the same power used to implement the current ban. Section 1(3) and (6) of the Sea Fish (Conservation) Act 1967 gives the Welsh Ministers the power to make the Order in relation to *the carriage of sea fish as prescribed by the Order*.

The relevant functions of the Secretary of State of the Sea Fish (Conservation) Act 1967 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and then to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

The Order is made under the Assembly's negative resolution procedure.

Currently, for fisheries management purposes, the Welsh Government only has powers to legislate for UK vessels fishing for whelk in the Welsh Zone. The possibility of legislating for non-UK vessels fishing within the Welsh zone will be considered in the light of the new legislative landscape post-Brexit.

## **Purpose and intended effect**

Currently, the Principal Order prohibits any UK boat carrying whelk below the new Welsh minimum size (55mm at the present time) under any circumstances. Therefore, even fishers who catch whelk under the prescribed minimum size outside the Welsh zone and intend to land them outside Wales but travel through the Welsh zone whilst carrying the whelk would be guilty of an offence. Prohibiting such activity does nothing to protect whelk living in Welsh waters.

To avoid the possibility of committing such an offence fishers may be forced to make longer journeys to avoid the Welsh zone. This may result in greater expense and risks to fishers, particularly in bad weather.

The Amending Order will prevent the problems discussed above by dis-applying the ban for vessels which have not fished in the Welsh zone during that fishing trip.

A minor textual amendment to article 4 of the Principal Order has been made to bring it into line with other comparable legislation.

## **REGULATORY IMPACT ASSESSMENT**

### **Options**

This Regulatory Impact Assessment considers two options:

- Option 1: Business as usual – under this option, no amendment would be made to the Whelk Fishing (Wales) Order 2019.
- Option 2: amend the Whelk Fishing (Wales) Order 2019 so that UK fishing boats which have not fished in the Welsh zone will be exempted from the carriage restriction on undersized whelk.

### **Costs and benefits**

#### **Option 1: Business as usual**

This is the baseline option and as such there are no additional costs and/or benefits associated with this option.

#### **Option 2: Amend the Whelk Fishing (Wales) Order 2019**

### **Cost to Industry**

There is not expected to be an additional cost to industry as a result of the Amending Order. The minimum size prescribed in the Principal Order will continue to apply for whelks caught in the Welsh zone or landed in a Welsh port (provided they are caught or landed by a UK fishing boat).

The number of UK fishers who catch whelk outside of the Welsh zone and who may then wish to transit the Welsh zone with whelk under the Welsh minimum size is not known, however, the number is believed to be small. There is a potential time and cost saving to these businesses from being allowed to transit the Welsh zone, however, this is not expected to have a significant impact on competition.

## **Cost to Welsh Government**

There is not expected to be an additional cost to Welsh Government as a result of the Amending Order. Marine Enforcement Officers (MEOs) will continue to carry out routine compliance checks at sea and at the point of landing to ensure minimum size requirements are adhered to. Furthermore, MEOs already have the ability to monitor a vessel's activity and to determine whether a vessel is (or has been) fishing in the Welsh Zone or simply transiting the Zone.

## **Benefit to fishing industry**

The scope of the Amending Order is so narrow that it should not have any significant impact, on the industry. It will ensure that the Principal Order operates in a fair and equitable manner.

The Amending Order will avoid unnecessarily criminalising a small group of fishers wishing to transit the Welsh zone with whelk fished exclusively outside of the Welsh zone.

The Amending Order removes the unintended consequence of fishers taking unnecessarily long or potentially dangerous journeys to avoid Welsh waters.

## **Consultation**

The initial proposal which resulted in the Principal Order was the result of a 12 week public consultation in 2017 where fishers were invited to comment on management proposals. No subsequent consultation was undertaken for the proposed amendments. The effect of the Amending Order is solely to ensure the Principal Order operates in a fair and equitable manner and in line with the original policy intent.

## **Post Implementation Review**

The Marine & Fisheries Division MEO's will monitor the impact of the proposed measures and continue to monitor fishing activity and carry out enforcement activities.

## Competition Assessment

<b>The competition filter test</b>	
<b>Question</b>	<b>Answer yes or no</b>
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No