

Explanatory Memorandum to The Sea Fish Licensing (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 Sea Fish Licensing (Wales) Order 2019. I am satisfied the benefits justify the likely costs.

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

7 March 2019

1. Description

- 1.1. This Order seeks to consolidate the Sea Fish Licensing Order 1992 (SI 1992/2663) with subsequent orders which varied and amended it and to make provisions about the licensing of fishing boats from outside the UK when fishing in Welsh waters after the UK leaves the EU.

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

- 2.1. None

3. Legislative background

- 3.1. Regulation (EU) No 1380/2013 sets out the objectives for the conservation and sustainable exploitation of European fisheries resources under the Common Fisheries Policy (CFP).
- 3.2. Article 5 of Regulation (EU) No 1380/2013 sets out general rules on access to EU waters. EU vessels have equal access to all Union waters and resources in areas between 12 and 200 nautical miles from Member State baselines.
- 3.3. When the UK leaves the EU and the CFP, article 5 of Regulation (EU) No 1380/2013 will cease to apply and foreign vessels will not have automatic rights to fish within UK waters. New licensing provisions are required to control and manage access by foreign vessels within UK waters after the UK leaves the EU.
- 3.4. Section 4 of the Sea Fish (Conservation) Act 1967 provides the power to prohibit fishing within British Fishery Limits by fishing vessels without the authority of a licence.
- 3.5. This Order is made in exercise of the powers conferred by Sections 4(1) and (2), 4A, 15(3) and 20(1) of the Sea Fish Conservation Act 1967.
- 3.6. Powers under sections 4, 4A, 15(3) 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). So far as exercisable in relation to the Welsh zone, those functions were transferred to the Welsh Ministers by article 4(1) (b) of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760) on a concurrent basis. In relation to Welsh fishing boats beyond the seaward limit of the Welsh zone, the same functions were further transferred, on a concurrent basis by paragraph 2(1) of Schedule 3A to the Government of Wales Act 2006.
- 3.7. Section 20(1), so far as is relevant, provides that any Order made under sections 4 and 4A may be varied or revoked by a further order under the same section. Since this provision is parasitic upon the powers in sections 4 and 4A it did not need to be separately transferred to the Welsh Ministers.

3.8. This Order applies to Wales, the Welsh zone and Welsh fishing boats wherever they may be.

4. Purpose & intended effect of the legislation

4.1. There are two purposes of this instrument:

- To make provision about the licensing of fishing boats from outside the UK when fishing in Welsh waters after the UK leaves the EU. This provision is essential for Wales to control access by non-UK vessels to its domestic waters, and endorse any international agreements on fisheries access to UK waters post EU exit. This provision will be required if the Fisheries Bill does not receive Royal Assent by 29 March 2019. This will ensure continuity of current management measures in Welsh waters and allow us to progress our policy objectives beyond EU exit day.
- To consolidate and update existing legislation, including the Sea Fish Licensing Order 1992 (S.I. 1992/2663) with the subsequent orders which varied and amended it. The consolidated instrument prohibits fishing, subject to exceptions, by Welsh fishing boats unless they are licensed by the Welsh Ministers. The Order revokes the existing legislation (listed in Schedule I).

Policy background

- 4.2. The UK will be an independent coastal state upon leaving the EU and the Common Fisheries Policy (CFP) which means EU vessels will no longer have automatic access to fish within Welsh waters. Access to waters and fish stocks will be the subject of an annual coastal states agreement.
- 4.3. Future access by foreign vessels to UK and Welsh waters will need to be authorised and controlled under the saved Sustainable Management of the External Fishing Fleet regulation. New legislation to specify which countries are allowed access, and ensure their compliance with domestic fisheries management rules, will be required. Failure to manage fishing activity can lead to over exploitation of fish stocks and resultant wider damage to the marine ecosystem. This could jeopardise our vision of a more competitive, profitable and sustainable UK fishing industry, and meeting international commitments on sustainable fishing.
- 4.4. The preferred approach is to introduce these powers through the UK Fisheries Bill, so that there is a consistent approach across the UK. However in the event that the UK Fisheries Bill does not gain Royal Assent before the UK leaves the EU, it is important that foreign vessels access to Welsh waters can still be controlled and managed.
- 4.5. It is intended to achieve this by prohibiting foreign vessels from fishing within Welsh waters without the authority of a licence issued by the Welsh Ministers. This will allow the Welsh Government to regulate the activity of foreign fishing vessels. Conditions attached to licences will detail the specific requirements for fishing within Welsh waters, such as vessel monitoring systems (VMS) and catch reporting. It will also allow fisheries managers to respond quickly to issues, such as introducing closed areas or gear requirements following scientific advice.

- 4.6. Vessel licensing is an effective method for managing fisheries sustainably, and is currently applied to the domestic fishing fleet. It is intended that foreign vessels will comply with the same standards applied to the domestic fleet, along with additional requirements such as catch and position reporting. This will help ensure fishing opportunities are managed fairly across both fleets, and that wider sustainability objectives are met.
- 4.7. Failure to introduce this legislation would mean fishing by foreign vessels within Welsh waters post EU exit would be unlicensed and therefore uncontrolled and unmanaged. There would be no provision to license foreign vessels under current domestic legislation, or EU legislation being retained under the Withdrawal Act. This could jeopardise the UK's ability to enter into international fisheries agreements as provision to license and allow managed access to foreign vessels in Welsh waters would not be in place. This could also result in the UK not being able to demonstrate the management of marine resources effectively, which could have an adverse impact on fish stocks in Welsh waters and could attract criticism internationally.

European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 4.8. This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union, because it introduces provisions for controlling access to Welsh waters as a result of leaving the EU and CFP.

5. Consultation

- 5.1. The provisions in this instrument are being implemented to align Wales with the rest of the UK and to give consistency for the interim period between exit from the EU and the UK Fisheries Bill gaining Royal Assent. A decision was required urgently and it was deemed the introduction of this legislation was the only realistic option available to Ministers and therefore, taking account of a fixed EU exit day over which Welsh Government has no control, no consultation was carried out.
- 5.2. To address any concerns from Welsh licence holders, this legislation will be brought to the attention of affected stakeholders (all Welsh fishing vessel licence holders and the Wales Marine and Fisheries Advisory Group) immediately it comes into force.

Part 2 - Regulatory Impact Assessment (RIA)

6. Options

Option 1 - Do nothing

- 6.1. Upon exit from the EU, existing legislation (Article 5 of Regulation (EU) No 1380/2013) which sets out general rules on access to EU waters, allowing EU vessels equal access to all UK waters and resources between 12 and 200 nautical miles from the baselines will no longer apply to any part of the UK. A new mechanism is therefore required to control and manage access by foreign vessels within UK waters. If the UK came to an international agreement with another coastal state we would not have the powers to be able to comply with it in response of licensing. We would have powers under retained EU legislation (Sustainable Management of External Fishing Fleet Regulations (SMEFF)) to allow access to Welsh waters through an authorisation, however this does not provide the necessary vires to effectively control & manage foreign vessels. This could result in the UK not being able to demonstrate the management of marine resources effectively, which could have an adverse impact on fish stocks in Welsh waters and could attract criticism internationally.

Option 2 - The UK Fisheries Bill

- 6.2. The UK Fisheries Bill provides a range of powers including changes to existing legislation to allow UK and Devolved Ministers to license foreign fishing vessels. This is the preferred approach so that there is a consistent approach across the UK. However, in the event that the UK Fisheries Bill does not gain Royal Assent before the UK leaves the EU, it is important that foreign vessels access to Welsh waters can still be controlled and managed.

Option 3 – The Sea Fish Licensing (Wales) Order 2019

- 6.3. In the absence of the UK Fisheries Bill, this is our **preferred option**. It would introduce powers for Wales to license foreign vessels, and prohibit foreign vessels from fishing within Welsh waters without a valid licence. Vessel licensing is currently in place for domestic vessels, which the Welsh Government are responsible for in Welsh waters. We expect the EU and other third countries will send lists of vessels seeking access to fish within Welsh waters. In response, the Welsh Government (through the Marine Management Organisation (MMO) as the Single Issuing Authority) will licence those vessels Welsh Government wishes to allow to fish in Welsh waters. Each vessel will be issued with an individual licence to fish within Welsh waters, which will refer to the conditions that vessels must comply with. Under a separate draft SI (The Sea Fishing (Licences and Notices) (Wales) Regulations 2019) licences for foreign vessels could be issued electronically and variations of the same could be issued on the Welsh Government website. Welsh Government staff will be able to amend foreign licence conditions in response to specific issues, by electronically updating the Welsh Government website. These powers are essential to effectively manage access by foreign vessels post EU exit.

7. Costs and benefits

Option 1

- 7.1. There are no costs identified to Welsh business, charities and/or the voluntary sector as Welsh vessels will be unaffected by these measures.
- 7.2. Any benefits for the domestic fleet by not licensing foreign vessels are difficult to assess and are likely far outweighed by the risk of not having the powers to manage our marine resources effectively and comply with international agreements.

Options 2 and 3 (The costs of both these options are the same).

- 7.3. There are no direct costs identified to Welsh business, charities and/or the voluntary sector as these measures will only significantly change the licensing regime in relation to foreign vessels. We anticipate that between 100 and 200 foreign vessels would likely come into Welsh waters. As foreign businesses, these are outside of the scope of the RIA.
- 7.4. There will be a cost to Government to license the foreign vessels, these costs are set out in the RIA for the Sea Fishing (Licenses and Notices) (Wales) Order 2019.
- 7.5. A benefit of these options is that they ensure a level playing field for UK and foreign vessels and give maximum enforcement possibilities in relation to individual vessels.
- 7.6. Option 3 is the preferred option if the UK Fisheries Bill is not passed by EU exit day as it will allow Wales to endorse any international agreements the UK enters which require signatories to manage access to fisheries by foreign boats. The SI will act as a stop-gap until such time as the UK Fisheries Bill gains Royal Assent. Option 1 is not considered appropriate as it does not allow the full suite of control and enforcement methods in place for domestic vessels to be deployed against individual foreign vessels. Option 2 is the preferred long term option, however in the event that the UK Fisheries Bill does not gain Royal Assent before the UK leaves the EU, it is important that foreign vessels access to Welsh waters can still be controlled and managed.