

SL(5)425 – The Whelk Fishing (Wales) Order 2019

Background and Purpose

The new Statutory Instrument will increase the Minimum Conservation Reference Size (MCRS) of Welsh whelks. Their minimum size will increase from 45mm to 55mm from the date on which the Statutory Instrument comes into force, and further increasing to 65mm one year later. This measure will enhance the sustainability of the Welsh whelk fishery and will apply to all UK vessels which fish within the Welsh zone.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3(i) in respect of this instrument.

Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

The Order is being laid under the negative procedure with deviation from the standard 21 day laying day period.

The 21 day rule under the Statutory Instruments Act 1946 (incorporated in Schedule 10 of the Government of Wales Act 2006) provides that instruments should be laid 21 days before they come into force. This enables Members to seek to annul such instruments before they have effect, as confusion can be caused if legislation is annulled after it has been implemented. However, in this case, the Welsh Government consider that the circumstances justify a breach of that rule. The Minister for Finance and Trefnydd, as required under section 11A of the Statutory Instruments Act 1946, has notified the Presiding Officer of the breach so that the matter can be brought to the attention of Members.

The Explanatory Memorandum ("the EM") sets out the reasons for the breach of the 21 day rule:

"The ability of an EU Member State to increase the MCRS for its vessels is contained within Article 46 of the Technical Conservation Regulation 850/1998. Officials have recently become aware that Article 46 of the Technical Conservation EC Regulation 850/98 will be repealed imminently.

On 13 June 2019 the EC's Employment, Social Policy, Health and Consumer Affairs Council approved the new Technical Conservation Regulation, which will replace Regulation 850/1998. The new regulation is expected to come into force at the end of June or the beginning of July 2019 (the exact date will be twenty days after its publication of the new Regulation in the Official Journal of the EU which has not yet occurred).



The replacement Technical Conservation Regulation does not include any equivalent power for Member States to legislate unilaterally in relation to an MCRS. The new EU legislation will provide a system whereby groups of Member states can submit proposals for conservation measures to the European Commission. Given that 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.

Due to the timescales involved the Whelk Fishing (Wales) Order 2019 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 Order comes into force before the repeal of Article 46 of the Technical Conservation Regulation 850/1998."

Implications arising from exiting the European Union

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

Government Response

A government response is not required.

The relevant Welsh Minister has written to the Llywydd to give notification of the 21 day rule breach and detailed reasons for the breach are given in the EM.

Legal Advisers

Constitutional and Legislative Affairs Committee

July 2019

