

Explanatory Memorandum to the Sea Fishing (Penalty Notices) (Wales) (Amendment) Order 2021

This Explanatory Memorandum has been prepared by the Marine and Fisheries Division and is laid before Senedd Cymru 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 Fishing (Penalty Notices) (Wales) (Amendment) Order 2021.

Lesley Griffiths MS
Minister for Environment, Energy and Rural Affairs

23 March 2021

PART 1

Description

1. The Sea Fishing (Penalty Notices) (Wales) (Amendment) Order 2021 (“the Amending Order”) amends the Sea Fishing (Penalty Notices) (Wales) Order 2019 (“the 2019 Order”) to update the list of offences set out in its Schedule, in relation to which a financial administrative penalty (“FAP”) may be issued on a person by a marine enforcement officer appointed by the Welsh Ministers.

Matters of special interest to the Legislation, Justice and Constitution Committee

2. The Amending Order has been laid today and as such 34 of the 40 calendar days within which the Senedd may resolve that the instrument be annulled will fall within the next Senedd. It is also noted that the Order is laid after the last meeting of the Legislation, Justice and Constitution Committee as such the Committee constituted under Standing Order 21 will not be able to consider the Order until the next Senedd.

Legislative background

3. The Amending Order is made in exercise of the power conferred on the Welsh Ministers by section 294(1) of the Marine and Coastal Access Act 2009 (“the MCAA”).
4. The Amending Order is subject to the negative procedure, in accordance with section 316(8) of the MCAA.

Purpose and intended effect of the legislation

Summary of the 2019 Order, its interaction with the Fisheries Act 2020 and the need for amendment

5. The 2019 Order established a regulatory framework enabling a marine enforcement officer appointed by the Welsh Ministers to issue a FAP not exceeding £10,000 in respect of the fishing-related offences listed in its Schedule. This is used as an alternative to criminal prosecution in certain circumstances. Anyone offered a FAP is under no obligation to pay the penalty if they wish to have the matter dealt with by a court.
6. A FAP may only be issued on a person where there is evidence of an offence having been committed. Payment of the penalty will discharge any liability to be convicted of the offence. However, if a FAP is not paid within 28 days, the matter may proceed to court.
7. The Fisheries Act 2020 (the “2020 Act”) makes various amendments to fisheries-related legislation applicable in Wales.

8. Certain provisions which establish an offence in relation which, by virtue of the inclusion of reference to them in the Schedule to the 2019 Order, a FAP could previously have been issued, have been rendered obsolete by the 2020 Act. The 2020 Act replaces the provisions in question with new provisions.
9. The 2020 Act also amends the MCAA to create new offences.
10. The changes made by the 2020 Act, described above, give rise to the need to amend the Schedule to the 2019 Order. In the absence of such amendments, a marine enforcement officer appointed by the Welsh Ministers could not lawfully issue a FAP in relation to the full range of offences which are considered relevant in that context, throughout Wales and the Welsh zone.
11. The recent EU-UK Trade and Cooperation Agreement allows for certain rights of access for EU vessels in UK waters. In line with all other parts of the UK, the FAP regime will be an important control and enforcement tool, including in relation to EU vessels fishing illegally in Welsh waters.
12. The UK government has also amended their equivalent Order (the Sea Fishing (Penalty Notices) (England) Order 2011) to reflect changes made by the 2020 Act.

The amendments to the 2019 Order

13. The Schedule to the 2019 Order, as it stands, lists the offences in section 2 of the Fishery Limits Act 1976 (access to British Fisheries) and section 4 of the Sea Fish (Conservation) Act 1967 (licensing of fishing boats) as being offences in relation to which a FAP may be issued. Those provisions are now obsolete, given paragraphs 3(1) and 6(2), respectively, of Schedule 4 to the 2020 Act.
14. New replacement provisions are contained in the 2020 Act which will enable FAPs to be issued for offences of an equivalent nature, which relate to:
 - access to British fisheries by foreign boats (see section 12(3) of the 2020 Act);
 - the requirement for British fishing boats to be licensed (see section 14(6) of the 2020 Act);
 - the requirement for foreign fishing boats to be licensed if within British fishery limits (see section 16(6) of the 2020 Act); and
 - the requirement to comply with conditions attached to a fishing licence (see paragraph 1(4) of Schedule 3 to the 2020 Act).
15. Paragraph 23(2)(b) of Schedule 10 to the 2020 Act amends section 139(1)(b) of the MCAA to create offences in respect of, amongst other things, the contravention of orders made by the Welsh Ministers under the following sections of the MCAA (those sections having been inserted by paragraphs 17 and 19(2) of Schedule 10 to the 2020 Act):
 - sections 134A (orders related to the exploitation of sea fisheries resources in Wales);

- 134B (orders related to the exploitation of sea fisheries resources in the Welsh offshore region); and
- 136(1A) (interim orders related to the exploitation of sea fisheries resources in the Welsh offshore region where there is an urgent need to protect a feature in an area of that region where there are or may be reasons to consider designating the area as a marine conservation zone).

16. The Amending Order therefore inserts reference to the offences referred to in paragraphs 145 and 16 above, so that a marine enforcement officer appointed by the Welsh Ministers may issue a FAP in relation to them.

Consultation

17. These amendments are of a technical nature, do not arise from changes in policy, and do not significantly change the scope of the 2019 Order or its impact. Therefore, no consultation was carried out in relation to the Amending Order.

18. A public consultation, 'Extending Financial Administrative Penalties (FAPs) within Fisheries', ran from 5 December 2018 to 28 January 2019, prior to the introduction of the 2019 Order. The consultation proposed the inclusion of all domestic sea fisheries offences in the FAP scheme and included a list of the domestic sea fisheries offences relevant at the time in Appendix 2. The appendix stated the list would be available online and updated as required. The list, contained within the FAP guidance notes, has been updated to include the offences now within the scope of the FAP scheme by virtue of the Amending Order.

Regulatory Impact Assessment (RIA)

19. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to the Amending Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with the Amending Order, as it falls within the exemption in the Code applicable where routine technical or factual amendments are required to update legislation.

20. The Amending Order has no impact on the statutory duties of the Welsh Ministers related to equality of opportunity (see section 77 of the Government of Wales Act 2006 ("GoWA 2006")), the Welsh language (section 78 of GoWA 2006), or sustainable development (see section 79 of GoWA 2006), and will have no impact on the local government, voluntary sector or business schemes under sections 73, 74 and 75 of GoWA 2006 respectively.