

SL(5)355 – The Sea Fishing (Penalty Notices) (Wales) Order 2019

Background and Purpose

This Order creates a scheme for the issuing and payment of penalty notices for certain offences relating to sea fishing. It revokes the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 and replaces it with a scheme that applies to offences created under domestic legislation as well as those arising as a result of a breach of an enforceable community restriction or other obligation.

This Order provides for the issuing of a penalty notice (article 3), the content of such a notice (article 4), and the effect and method of paying a penalty (articles 5 and 6). It also makes provision for penalty notices to be issued to different persons for the same offence arising out of the same set of circumstances whereby payment by one person is treated as being payment by another, in the absence of objection from the other (article 7). Provision is also made for the withdrawal of a penalty notice (article 9).

A master, owner or charterer of a fishing boat that is from outside the United Kingdom and who has paid a penalty may request to be tried for the offence (article 10), in which case the penalty notice will be treated as never having been issued and the penalty will be repaid in the event of acquittal or discontinuance of the related court proceedings. In the event of conviction, the penalty notice will also be treated as never having been issued, but the penalty must be applied towards paying any fine imposed.

Procedure

Negative

Technical Scrutiny

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

The preamble cites section 294 of the Marine and Coastal Access Act 2009, which confers powers relating to penalty notices on the Welsh Ministers as the 'appropriate national authority' 'in relation to Wales or vessels within the Welsh zone' (section 294(8)). Powers 'in relation to England or vessels outside the Welsh zone' are conferred by that subsection on the Secretary of State.

However, article 1(3) of the Order states that "This Order applies in relation to Wales, the Welsh zone and Welsh fishing boats wherever they may be." Given the clear geographical limitation in section 294(8), the 'wherever they may be' element of article 1(3) appears to be beyond the powers of the Welsh Ministers.

[Standing Order 21.2(i) – there appears to be doubt as to whether it is *intra vires*.]



Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3(ii) in respect of this instrument – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

Article 6(2) of the Order prevents the use of cash to pay penalties imposed under this Order. The Explanatory Memorandum provides no explanation for the prohibition of the use of legal tender.

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

The Welsh Government notes and accepts the technical point in the above report relating to the scope of section 294 of the Marine and Coastal Access Act 2009. An SI amending the Sea Fishing (Penalty Notices) (Wales) Order 2019 to address this issue will be laid before the Assembly as soon as possible. The 21 day rule will be breached in respect of the amending SI so as to ensure that no part of the Sea Fishing (Penalty Notices) (Wales) Order 2019 is ultra vires when it comes into force.

In response to the merits point in the report, the instrument prevents payments being made by cash because such payments would be subject to more onerous checks in order to mitigate loss or fraud. In addition, not all Welsh Government offices are able to accept cash payments.

Committee Consideration

The Committee considered the instrument along with the Government response at its meeting on 18 March 2019 and reports to the Assembly in line with the reporting points above.

