

## **Explanatory Memorandum to The Sea Fishing (Miscellaneous Amendments) Wales Regulations 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.

### **Cabinet Secretary/Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of **The Sea Fishing (Miscellaneous Amendments) Wales Regulations 2019**

Lesley Griffiths

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

11 October 2019

## **PART 1**

### **1. Description**

These Regulations make amendments in relation to Wales to secondary legislation that relates to sea fisheries.

The amendments replace existing references to Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures, with a reference to Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources, which has repealed and replaced Council Regulation (EC) 850/98.

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

None.

### **3. Legislative background**

The Sea Fisheries (Miscellaneous Amendments) (Wales) Regulations 2019 are being made pursuant to sections 1 and 5 of the Sea Fish (Conservation) Act 1967 and paragraph 1A of Schedule 2 to the European Communities Act 1972.

Section 1 of the Sea Fish (Conservation) Act 1967 enables the Welsh ministers to make an order prescribing the minimum size at which any specified sea fish may be landed or carried on board a fishing vessel. Section 5 allows the Welsh ministers to prohibit fishing for any specified sea fish.

Paragraph 1A of Schedule 2 to the European Communities Act 1972 provides that if an instrument gives effect to an EU obligation and contains a reference to an EU instrument, and it appears to the person making the legislation that it is necessary or expedient for the reference to be construed as a reference to that instrument as amended from time to time, then the instrument may provide that it the EU instrument is construed as amended from time to time.

These Regulations are being made under the negative resolution procedure, pursuant to section 20 of the Sea Fish (Conservation) Act 1967.

### **4. Purpose and intended effect of the legislation**

The following Orders currently reference Council Regulation (EC) 850/98 for the conservation of fishery resources through technical measures, which was repealed by the European Union on 20 June 2019 and replaced by Regulation (EU) 2019/1241 on the conservation of fisheries resources. On EU exit day Regulation (EU) 2019/1241 will become part of the UK statute as retained EU law under the European Union (Withdrawal) Act 2019. The purpose of this legislation is to ensure the existing SIs are operable and enforceable in relation to their relevant jurisdiction.

The Prohibition of Fishing with Multiple Trawls (Wales) Order 2003 (2003/1855) prohibits fishing with any trawl other than a single trawl, save in specified circumstances. The prohibition applies to a British fishing boat in Welsh waters and introduces a definition of “single trawl” The prohibition does not apply to beam trawlers or to fishing with a trawl having a specified mesh size of not less than 80 millimetres. The SI includes a definition of “the Council Regulation” as meaning Council Regulation (EC) No 850/98. This requires amending to Regulation (EU) 2019/1241.

The Scallop Fishing (Wales) (No 2) Order 2010 (2010/269) regulates scallop fishing in Welsh waters (out to 12 nautical miles) by British fishing boats, putting in place a number of technical and conservation measures, including temporal and spatial restrictions, as well as restricted engine output capacity and gear allowed. The SI also fixes a minimum size of scallop which may be carried and the method to be used for measuring and currently states the size of a scallop is to be measured in accordance with paragraph 6 of Annex III to Council Regulation (EC) No 850/98. This requires amending to reference paragraph 6 of Annex IV of Regulation (EU) 2019/1241.

The Whelk Fishing (Wales) Order 2019 (2019/1042) regulates the fishing, landing and carriage of whelk by British fishing boats in Wales and the Welsh zone, specifying a minimum size for whelk. The SI currently states the size of a whelk is to be measured in accordance with paragraph 7 of Annex XIII to Council Regulation (EC) No 850/98. This requires amending to reference paragraph 9 of Annex IV to Regulation (EU) 2019/1241.

## **5. Consultation**

The amendments required are of a purely technical nature and do not alter the intended purpose of the specified Regulations, therefore, no consultation was undertaken.

## **6. Regulatory Impact Assessment (RIA)**

The amendments required within this regulation are of a technical nature and do not alter the intended purpose of the specified Regulations therefore no Regulatory Impact Assessment has been undertaken.