

# SL(5)405 – The Sea Fishing (Penalty Notices) (Wales) (Amendment) Order 2019

## Background and Purpose

The Sea Fishing (Penalty Notices) (Wales) Order 2019 (“the principal 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. It comes into force on 22 March 2019.

The Committee reported on that Order on 18 March under Standing Order 21.2(i) – there appears to be doubt as to whether it is *intra vires* - as follows:

“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.”

The present Order amends the principal Order so as to ensure it is *intra vires*. Specifically, this Order removes the reference in Article 1(3) to Welsh fishing boats “wherever they may be”, thereby restricting the application of the instrument to Wales and Welsh zone. It comes into force on 21 March 2019.

The Minister for Finance and Trefnydd wrote to the Llywydd on 19 March to explain that the present Order would be in breach of the “21 day rule” to enable it to amend the principal Order before that Order comes into force on 22 March.

## Procedure

Negative

## Technical Scrutiny

No point is identified for reporting under Standing Order 21.2 in respect of this instrument.

## 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.



In its response to the draft report on the principal Order considered by the Committee, the Government said:

“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.”

The Committee welcomes the fact that work was already in hand to remedy the defect, and that it has been possible to do so before the principal Order comes into force. This is an excellent example of when a breach of the “21 day rule” for the coming into force of a statutory instrument is justified.

## 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

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A government response is not required.

### **Legal Advisers**

**Constitutional and Legislative Affairs Committee**

**19 March 2019**

