

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-L/LG/0293/19

Elin Jones AM

19 March 2019

Dear Elin,

The Sea Fishing (Penalty Notices) (Wales) (Amendment) Order 2019

In accordance with guidance I am notifying you that section 11A(4) of the Statutory instruments Act 1946, as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006, which affords the rule that statutory instruments come into force at least 21 days from the date of laying, will be breached for the introduction of the Sea Fishing (Penalty Notices) (Wales) (Amendment) Order 2019. The Explanatory Memorandum is attached for your information.

The Sea Fishing (Penalty Notices) (Wales) (Amendment) Order 2019 ('the Amending Order') amends the Sea Fishing (Penalty Notices) (Wales) Order 2019 ('the Principal Order') so as to ensure that the Principal Order is intra vires. Specifically, the Amending Order removes Welsh fishing boats fishing outside of Wales and the Welsh Zone from the scope of the Principal Order, thereby restricting the application of that instrument to Wales and the Welsh zone.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Background

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.

Article 1(3) of the Principal Order states that it applies to Wales, the Welsh zone and Welsh fishing boats wherever they may be. In fact, the relevant enabling power (section 294 of the Marine and Coastal Act 2009) only allows the Welsh Ministers to create a scheme for penalty notices which applies to Wales and the Welsh zone. Therefore, to the extent that the Principal Order applies to Welsh fishing boats outside the Welsh zone it is ultra vires.

The Amending Order would amend the Principal Order so as to remove the reference in Article 1(3) to Welsh fishing boats wherever they may be. The Principal Order would then apply only to Wales and the Welsh zone and so be intra vires.

It is necessary to breach the 21 day rule to ensure that the Principal Order is not ultra vires when it comes into force on 22 March 2019. Due to the complexity of the relevant provisions dealing with the transfer of functions and the unprecedented workload being undertaken by Legal Services in relation to Britain's exit from the EU, the error in Article 1(3) of the Principal Order has only recently been identified.

Although it is not made under the EU Withdrawal Act 2018, the Principal Order is considered desirable in advance of the United Kingdom's withdrawal from the European Union. In addition, the scheme is necessary in order to provide more flexibility in the enforcement of fisheries law. The UK Government implemented a scheme of this type for England only in 2011. It should be noted that the English scheme applies to Welsh fishing boats outside the Welsh zone.

Due to the urgency involved it has not been possible to carry out a consultation in relation to the Amending Order. It should be noted, however, that the effect of the Amending Order is solely to render the Principal Order intra vires and therefore to ensure that Welsh Government and the Assembly act lawfully. Further, the Amending Order will restrict, rather than increase, the impact of the Principal Order on the Welsh fishing industry.

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A copy of this letter goes to Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee and Sian Wilkins, Head of Chamber and Committee Services.

Yours sincerely,



Rebecca Evans AC/AM

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