

Explanatory Memorandum to the Sea Fishing (Licences and Notices) (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.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Sea Fishing (Licences and Notices) (Wales) Regulations 2019. I am satisfied the benefits justify the likely costs.

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

7 March 2019

1. Description

- 1.1. These Regulations relate to licences issued in respect of both Welsh and foreign fishing boats and the manner in which such licences are granted, varied, suspended or revoked. Currently, similar provisions apply to Welsh fishing boats but not to foreign boats. The regulations revoke and replace the Sea Fishing (Licences and Notices) Regulations 1994 (S.I.1994/2813) (The 1994 Regulations).

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

- 2.1. None

3. Legislative background

- 3.1. Section 4 of the Sea Fish (Conservation) Act 1967 provides the power to prohibit fishing within British Fishery Limits by fishing vessels without the authority of a licence.
- 3.2. These Regulations are made in exercise of the powers conferred by section 4B of the Sea Fish (Conservation) Act 1967. The function under section 4B of the 1967 Act in relation to Wales was transferred to the National Assembly for Wales and then transferred from that body to the Welsh Ministers: see article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32). The function under section 4B in relation to the Welsh zone was transferred to the Welsh Ministers by article 4(1)(b) of the Welsh Zone (Boundaries and Transfer of Functions Order 2010 (S.I. 2010/760).
- 3.3. The Sea Fish Licensing (Wales) Order 2019 (laid at the same time as these regulations) will prohibit, subject to exceptions, fishing by Welsh fishing boats unless they are licensed by the Welsh Ministers. It also prohibits fishing by non-British owned Crown Dependency boats and foreign boats within the Welsh zone unless they are licensed by the Welsh Ministers.

4. Purpose & intended effect of the legislation

- 4.1. This instrument is made to update and replace the Sea Fishing (Licences and Notices) Regulations 1994 (SI 1994/2813) and to extend provisions:
- To allow for the notification of variations, suspensions and revocations to vessel licences to be communicated by publication on a website
 - To include foreign fishing boats.
- 4.2. Current Regulations stipulate that notices (which may vary, suspend or revoke a licence) may be transmitted to the licence holder personally, by sending it to or leaving it at their home address, or place of business, or by transmitting it by electronic means to their address or place of business. In line with these provisions, Welsh Government currently

issue all notices individually This instrument will allow for notices to be communicated by publishing the notice on a website, with the onus being on the licence holder to check the website at a given time. This will align us with the other administrations in the UK who have previously introduced similar provisions.

4.3. Following the UK's exit from the EU, new legislation means that foreign fishing boats will have to be licensed when fishing in UK waters, with Welsh Ministers having the power to issue licences in relation to the Welsh zone. This will substantially increase the burden on Welsh Government to notify the increased number of licence holders individually. However this instrument will alleviate that burden by allowing us to communicate notices via a website.

4.4. We are working with other UK administrations to set up a Single Issuing Authority (SIA) who will administer licensing for foreign vessels on behalf of the four fisheries administrations. For this system to work all four administrations need to have the power to issue notifications via a website.

4.5. These powers are therefore essential to effectively manage access by foreign vessels post EU exit.

5. Consultation

5.1. The Consultation section has been completed in the RIA in Part 2.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Option 1 – Do nothing

6.1. Continuing with the current system where our Operations Team produce and send out hard copies of licences and notices of variations to Licence holders. Although burdensome, this is currently a manageable option as there are only the 400 Welsh vessels that are currently licensed and these licences last indefinitely or until a notification is recorded. Licence conditions are updated as required, around once a month but more frequently at certain times of the year. These too are currently issued in paper. Following EU exit, the introduction of licensing to manage foreign vessels which are granted access to Welsh waters will significantly increase this burden. Foreign vessel licences would be for a single year only and the licence conditions, which change monthly or more frequently, would need to be sent to foreign vessel owners in paper form. There are likely to be between 1,500 and 5,000 foreign vessels seeking an annual authorisation in the UK, of which between 100 and 200 would likely come into Welsh waters. Further, Wales would be out of step with the other three fisheries administrations who can currently communicate notices via a website and enforce against licence conditions arising from those notices (which are also indicated on a website. Further, the option of being part of a SIA will not be open to Welsh Government without the power to notify vessel licence holders via a website.

Option 2 – The UK Fisheries Bill

- 6.2. The UK Fisheries Bill is the preferred option as it provides a range of powers including changes to existing legislation to allow UK and Devolved Ministers to licence foreign fishing vessels and to notify vessel licence holders of licence conditions via a website. However, in the event that the UK Fisheries Bill does not gain Royal Assent before the UK leaves the EU, it is important that foreign vessels access to Welsh waters can still be controlled and managed.

Option 3 – Make the Sea Fishing (Licences and Notices) (Wales) Regulations 2019

- 6.3. In the absence of the UK Fisheries Bill this is our **preferred option**. We introduce new legislation which replaces the Sea Fishing (Licences and Notices) Regulations 1994 but extends them to foreign vessels and provides for notification via a website. By introducing the provision to issue notifications via a website we will alleviate the burdensome requirement to notify vessel licence holders individually by post. This will reduce the administrative burden currently on Welsh Government when varying licences for Welsh fishing boats. It will also allow for a consistent mechanism to apply throughout the UK, with the intention being to establish a UK Single Issuing Authority (SIA) to deal with licensing of foreign vessels in UK waters and Welsh vessels outside of UK waters. It is a necessary requirement that an SIA has the ability to notify via website on cost and efficiency grounds. The establishment of an SIA is essential to avoid a greatly increased burden on Welsh Government when the licensing of foreign vessels is introduced.

7. Costs and benefits

Option 1

- 7.1. Welsh Government direct costs and staff time for sending out notifications manually is already substantial and will increase as notifications will also need to be sent to foreign vessels that are granted an annual licence. Stationary and postage costs are approximately £250 each time a notification is sent out and the process takes around 7 staff hours. Approximately 90 notifications¹ were sent out in 2018, resulting in a cost of £20-25,000 and 630 staff hours per annum. This figure will increase pro-rata depending on the number of foreign vessels being granted licences². Based on these figures the estimate of 200 foreign vessel licences being sent 20 notifications per year suggest the additional postage cost would be £2,500 and involve 70 staff hours.
- 7.2. There are no costs to Welsh Business, charities and/or the voluntary sector.
- 7.3. There are no benefits associated with this option.

¹ Not all notifications were sent to all vessels, therefore the figures quotes are an over-estimate

² The number of foreign vessel needed to be licenced in 2017 was 800.

Option 2 and 3 (The costs of both these options are the same)

- 7.4. The existing 400 vessel licence holders in Wales are the only Welsh Businesses to be impacted by this policy change and will require access to the Welsh Government website. This could result in a cost to licence holders who do not already have the necessary IT hardware and skills to access the website. Examples of this cost could be the purchase of a tablet/laptop, undergoing basic IT training, or to buy in the skills to monitor the relevant website (eg from an agent). However, this is not considered to be the case for many of the licence holders in current times where the use of IT to access public services is considered a necessity in every day life. Indeed, owners of vessels over 12 metres are already submitting electronic returns of fish catches and therefore already have, or have access to, the IT equipment and skills necessary. Also, there is free public access to the internet in many public places; therefore the changes will not necessarily result in individuals/businesses in Wales incurring additional costs.
- 7.5. Initial cost to Welsh Government will be the administrative costs of notifying Welsh licence holders of the change to procedure, which will be equivalent to one notification cost (£250). Additionally we intend running a 'phased in approach' which means that both systems will be operated for a period of 3 months and the costs of the current system will continue during this period. There will also be a cost associated with the staff time spent adding content to the Welsh Government website (approximately 3 hours per variation). In the long term, these costs will be entirely negated by the savings made when there is no further requirement to send variations manually.
- 7.6. A benefit to Welsh Government will be the cost savings on existing direct costs and staff resources when moving away from manual notification (referred to above).
- 7.7. A benefit to vessel licence holders will be immediate real time access to current quota / restrictions.
- 7.8. The new instrument will provide the necessary tools to allow Welsh Government to become part of a UK Single Issuing Authority which will licence those vessels Welsh Government wishes to grant access to Welsh waters. Each vessel will be issued with an individual licence to fish within Welsh waters, which will refer to the conditions that vessels must comply with. Licences will be issued electronically, and any notifications (together with licence conditions arising from them) specified on the Welsh Government website. Welsh Government staff will be able to amend foreign licence conditions in response to specific issues, by electronically updating the Welsh Government website. This will greatly reduce the burden on the Welsh Government Fisheries Operations Team.
- 7.9. There will be setup and administrative costs for the UK Government to manage access by foreign vessels via a Single Issuing Authority. UK Government has committed to cover these costs in the first year (2019).

- 7.10. In subsequent years it is anticipated that Welsh Government will contribute by a proportionate percentage of the costs involved in running the SIA (including staff costs and potential upgrades to IT systems). Currently the MMO carry out the role of maintaining vessel licences for around 2,800 domestic vessels. Evidence from MMO estimates that annual maintenance for these vessel licences is approximately £615,000. These estimates are based on recorded staff hours detailed as part of a ten week time recording exercise³. The annual maintenance cost for domestic vessels provides an estimate for annual costs for foreign vessel licencing⁴. Assuming 800 foreign vessels this cost would equate to approximately £176,000.
- 7.11. There is an established mechanism for payment for other enforcement tools delivered by UK Governmental bodies (such as UK Fisheries Monitoring Centre) where we contribute 5% of the total cost. Based on the evidence above and assuming a pro-rata split of the additional cost for foreign vessels it is anticipated the cost to Welsh Government would be below £10,000 per annum. Alternatively, if based on a pro-rata split of the cost of all vessels it is anticipated the cost to Welsh Government would be below £40,000 per annum.
- 7.12. Option 3 is the preferred option if the UK Fisheries Bill is not passed by EU exit day as it will alleviate the burdensome requirement to notify Welsh vessel licence holders individually by post and introduce the new system of website notification to both Welsh and foreign vessels fishing in Welsh waters, should an access agreement be agreed. Additionally, it will allow for a UK approach to licensing and the establishment of an SIA to deal the additional burden when licensing of foreign vessels is introduced.

8. Consultation

- 8.1. The provisions in this instrument are being implemented to align Wales with the rest of the UK to ensure we can manage our waters effectively.
- 8.2. The preferred option was for these measures to be introduced via the UK Fisheries Bill, which provides a range of powers including changes to existing legislation to allow UK and Devolved Ministers to license foreign fishing vessels. However, in the event that the UK Fisheries Bill does not gain Royal Assent before the UK leaves the EU, it is important that foreign vessels access to Welsh waters can still be controlled and managed. A decision was required urgently and it was deemed the introduction of this legislation was the only realistic option available to Ministers and therefore, taking account of a fixed EU exit day, over which Welsh Government has no control, no consultation was carried out.
- 8.3. To address any concerns from Welsh licence holders, this legislation will be brought to the attention of affected stakeholders (all Welsh fishing vessel licence holders and the Wales Marine and Fisheries

³ The reliability of these figures is based on the time recording data provided.

⁴ The number of foreign vessel needed to be licenced will be smaller (800 in 2017).

Advisory Group) immediately it comes into force and prior to any implementation of the power. We will offer them an opportunity to put their views forward on how we introduce the new system for Welsh vessels. We will propose the introduction of a phased in approach where we will administratively commit to continue to send out paper notices of variations for an agreed period (to Welsh fishing vessels) after the introduction of the new system allowing website notifications. We will continue to send hard copies of licences to Welsh fishing vessels and the new system will only apply to variations and notices.

9. Competition Assessment

- 9.1. A competition assessment has been completed and the Regulations are not expected to have a significant impact on competition in Wales or the competitiveness of businesses.