

Explanatory Memorandum to the Marine and Coastal Access Act 2009 (Consequential Provisions) (Wales) Order 2010

This Explanatory Memorandum has been prepared by the Department for Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Marine and Coastal Access Act 2009 (Consequential Provisions) (Wales) Order 2010.

NAME OF MINISTER

DATE

1. Description

This Order will amend Part 1 of Schedule 4 to the Sea Fisheries Act 1981 to add a reference to offences under section 190 of the Marine and Coastal Access Act 2009.

2. Matters of special interest to the Constitutional Affairs Committee

None

3. Legislative background

This Order will be made pursuant to section 188(1) and (2)(d) of the Marine and Coastal Access Act 2009 ("the 2009 Act") which enables the Ministers to make such consequential provisions as appear necessary in consequence of the repeal of the Sea Fisheries Regulation Act 1966, including the amendment of another enactment.

Section 316(6) of the 2009 Act provides that this Order is subject to draft affirmative procedure

4. Purpose & intended effect of the legislation

This Order will amend Part 1 of Schedule 4 to the Fisheries Act 1981 ("the 1981 Act").

Section 33(1) of the 1981 Act provides that a person will not be guilty of an offence mentioned in Part 1 of Schedule 4 to that Act by reason of anything done by that person in the course of fish farming if it is done or omitted under the authority of an exemption conferred by the Minister and in accordance with any conditions attached to the exemption. Part 1 of Schedule 4 to the 1981 Act sets out a list of offences.

Paragraph 10 of Part 1 of Schedule 4 to the 1981 Act currently makes reference to byelaws made under section 5 of the Sea Fisheries Regulation Act 1966 ("the 1966 Act"). As a consequence of the repeal of that 1966 Act, paragraph 10 of Schedule 4 to the 1981 Act will be repealed. The repeal of the 1966 Act (and the removal of paragraph 10 of Schedule 4 to the 1981 Act) will take effect in Wales pursuant to the Marine and Coastal Access Act (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010 which will come into force on 1 April 2010 and will commence section 187 of and the relevant parts of Part 4 of Schedule 22 to the 2009 Act.

Section 189 of the 2009 Act enables the Welsh Ministers, to the extent that they do not already have the power in some other enactment, to make any provision, in relation to Wales, which an inshore fisheries and conservation authority may make for its district in England, pursuant to section 155 of the 2009 Act. Section 190 of the 2009 Act provides that it is an offence for any

person to contravene any provision of an order made under section 189 of the 2009 Act.

The said sections 189 and 190 of the 2009 Act effectively ensure that there is no gap in the powers of the Welsh Ministers as a result of the repeal of the 1966 Act in relation to Wales. As a further consequence of the repeal of the 1966 Act, therefore, it is necessary to add a reference to offences committed under section 190 of the 2009 Act to Schedule 4 of the 1981 Act.

In practical terms this Order updates the 1981 Act to ensure that in carrying out their day to day activities fish farmers are not guilty of offences under Orders made by the Welsh Ministers under the Marine and Coastal Access Act 2009. These Orders (under the 2009 Act) will be aimed at wild capture fisheries (recreational and commercial), this amendment prevents the unintended consequence of those Orders preventing fish farmers from continuing their operation.

5. Consultation

No consultation has taken place as this Order makes a consequential technical amendment.

6. Regulatory Impact Assessment (RIA)

No Regulatory Impact Assessment has been completed as this Order makes a consequential technical amendment and it will have no effect on the private or voluntary sectors.