

ENVIRONMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Fisheries for Shellfish

Section 73 – Power to serve notices for protection of European marine sites

279. *Section 73* of the Act inserts new sections 5B, 5C and 5D into the 1967 Act. These new sections enable the Welsh Ministers to issue a site protection notice (“SPN”) and deal with related matters.
280. In order to ensure that the Welsh Ministers have appropriate powers to prevent “harm” (as defined by section 5F(1) of the 1967 Act, inserted by section 75 of the Act) to an EMS as a result of the operation of a several or regulated shellfishery, section 5B(1) provides a new power for the Welsh Ministers to serve a SPN on the grantee of the relevant shellfishery in the specified circumstances.
281. Section 5B(2) and (3) specify the requirements that may be included in a SPN. In some cases a SPN might identify the activities being undertaken as part of the management of the fishery that may harm (or become harmful to) an EMS, and then specify what steps must be taken or what actions must be avoided in order to prevent that harm from happening. A SPN can include a requirement to take action as well as a requirement to abstain from taking certain actions.
282. Section 5B(4) makes provision regarding the form and content of the SPN (which can include provision that the grantees are required to comply with beyond the period of the several or regulating fishery, see section 5B(8) of the 1967 Act).
283. Section 5B(5) requires the Welsh Ministers to consult with the relevant grantee before issuing a SPN unless they are of the view that urgent action to prevent harm is needed and subsection (7) requires the Welsh Ministers to publish every SPN in such a way as to bring the SPN to the attention of anyone likely to be affected by it.
284. Section 5B(6) enables the Welsh Ministers to adjust or cancel a SPN.
285. Section 5B(9) provides that the enforcement powers set out at section 5(2) to (7) of the 1967 Act (which include powers to make inquiries and examinations and to enter onto certain land for those purposes etc.) are available for the purposes of the new section 5B (i.e. the power to serve a SPN).
286. Section 5C (inserted into the 1967 Act by section 73 of the Act) provides an appeal mechanism in relation to SPNs. An appeal may be made to the First-tier Tribunal. This section specifies the decisions which can be appealed and the persons that may bring or be party to such an appeal.
287. Section 5C(4) enables the First-tier Tribunal to suspend or adjust a SPN while the appeal is ongoing and subsection (5) enables the Tribunal to confirm, amend or cancel the relevant SPN. Subsection (6) enables the Tribunal to order the Welsh Ministers, where

*These notes refer to the Environment (Wales) Act 2016
(c.3) which received Royal Assent on 21 March 2016*

the Tribunal varies or cancels a SPN, to pay compensation to any party to the appeal who has suffered loss or damage as a result of the relevant SPN.

288. If a grantee who has been served with a SPN fails to comply with its terms, section 5D (inserted into the 1967 Act by section 73 of the Act) enables the Welsh Ministers to take the necessary steps themselves and recover any costs associated with those actions from the Grantee.
289. The provisions of the new sections 5B, 5C and 5D will not apply in relation to any shellfishery order made under section 1 of the 1967 Act before Part 5 of the Act comes into force (see section 5F(3) of the 1967 Act, inserted by section 75 of the Act).