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WELSH STATUTORY INSTRUMENTS

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**2018 No. 1095 (W. 228)**

**SEA FISHERIES, WALES**

**The Sea Fishing (Miscellaneous  
Amendments) (Wales) Order 2018**

<i>Made</i>	- - - -	<i>16 October 2018</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>18 October 2018</i>
<i>Coming into force</i>	- -	<i>20 November 2018</i>

The Welsh Ministers make the following Order in exercise of the powers conferred by sections 3(1), 5(1), 5(6), 6(1), 6(1A) and 15(3) of the Sea Fish (Conservation) Act 1967<sup>(1)</sup>, which are now vested in them<sup>(2)</sup>, and section 2(2) of, and paragraph 1A of Schedule 2<sup>(3)</sup> to the European Communities Act 1972<sup>(4)</sup> (“the 1972 Act”).

The Welsh Ministers are designated for the purposes of section 2(2) of the 1972 Act in relation to the common agricultural policy of the European Union<sup>(5)</sup>.

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- (1) 1967 c. 84 (“the 1967 Act”). Section 3(1) was amended by article 4 of and paragraph 43(1) and (2)(b) of Part 1 of Schedule 2 to S.I. 1999/1820. Section 5(1) was substituted by section 198(1) and (2) of the Marine and Coastal Access Act 2009 (c. 23) (“the 2009 Act”). See section 5(9) of the 1967 Act for a definition of “the appropriate national authority”. Section 5(9) was inserted by section 198(3) of the 2009 Act and amended by article 4(2) and (4) of S.I. 2010/760. Section 5(6) was amended by section 22(2) of the Fisheries Act 1981 (c. 29) and section 201 of and paragraphs 3(1) and 4(a), (b) and (c) of Schedule 15 to the 2009 Act. Section 6(1) was amended by article 4 of, and paragraph 43(1) and (6)(a) of Part 1 of Schedule 2 to S.I. 1999/1820. Section 6(1A) was inserted by section 23(2) of the Fisheries Act 1981 and amended by article 4 of and paragraph 43(1) and (2)(b) of Part 1 of Schedule 2 to S.I. 1999/1820. Section 15(3) was substituted by section 22(1) of and Part 2 of Schedule 1 to the Sea Fisheries Act 1968 (c. 77) and amended by section 9(1) of and paragraph 16(1) of Schedule 2 to the Fishery Limits Act 1976 (c. 86) and further amended by article 4 of and paragraphs 43(1) and (2)(b) of Schedule 2 to S.I. 1999/1820. See section 22(2) of the 1967 Act for a definition of “the Ministers” for the purposes of sections 3, 5, 6, and 15(3) of that Act. Section 22(2) was amended by sections 19(2)(d), 45(a), (b) and (c) and 46(2) of, and Part 2 of Schedule 5 to the Fisheries Act 1981, and by article 4 of and paragraph 43(1) and (12) of Part 1 and Part 4 of Schedule 2 to S.I. 1999/1820.
- (2) By virtue of article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under sections 3, 5, 6 and 15 of the 1967 Act were transferred to the National Assembly for Wales (as constituted under the Government of Wales Act 1998 (c. 38)) in so far as exercisable in relation to Wales (acting concurrently with any Minister of the Crown by whom they are exercisable in relation to section 15(3)). Those functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32) (“the 2006 Act”). By virtue of articles 4(1)(b) and 5(1)(b) of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760), functions exercisable under sections 3, 5, 6 and 15 of the 1967 Act were further transferred to the Welsh Ministers in so far as exercisable in relation to the Welsh zone (acting concurrently with any Minister of the Crown by whom they are exercisable in relation to section 15(3)).
- (3) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51) and was amended by section 3(3) of and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7) and by article 3 of and paragraph 1 of Schedule 1 to S.I. 2007/1388. It is prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) from exit day (see section 20 of that Act).
- (4) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 and section 3(3) of and Part 1 of the Schedule to the European Union (Amendment) Act 2008. It is prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 from exit day (see section 20 of that Act).
- (5) S.I. 2010/2690.

This Order makes provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Welsh Ministers that it is expedient for any reference in this Order, the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006(6), the Tope (Prohibition of Fishing) (Wales) Order 2008(7) or the Shrimp Fishing Nets (Wales) Order 2008(8), to the following Regulations to be construed as a reference to those Regulations as amended from time to time—

- (a) [Commission Regulation \(EC\) No. 517/2008](#) of 10 June 2008 laying down detailed rules for the implementation of Council Regulation (EC) No. 850/98 as regards the determination of the mesh size and assessing the thickness of twine of fishing nets(9), and
- (b) Council Regulation (EC) No. 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy(10).

### **Title, application, interpretation and commencement**

1.—(1) The title of this Order is the Sea Fishing (Miscellaneous Amendments) (Wales) Order 2018.

(2) Save as provided in paragraph (3), this Order applies in relation to Wales and the Welsh zone.

(3) Articles 3 and 4 of this Order apply in relation to Wales.

(4) In this article, “Wales” (“*Cymru*”) and the “Welsh zone” (“*parth Cymru*”) have the meanings given by section 158(1) of the Government of Wales Act 2006(11).

(5) This Order comes into force on 20 November 2018.

### **Amendments to the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006**

2.—(1) The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006(12) are amended as follows.

(2) In regulation 1 (title, commencement and application), in paragraph (2), after “Wales” insert “and the Welsh zone”.

(3) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) omit the definition of “Article 9”;

(ii) omit the definition of “the CFP Regulation”;

(iii) insert in the appropriate place in alphabetical order—

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(6) [S.I. 2006/1495 \(W. 145\)](#).

(7) [S.I. 2008/1438 \(W. 150\)](#).

(8) [S.I. 2008/1811 \(W. 175\)](#).

(9) OJ No L 151, 11.6.2008, p. 5.

(10) OJ No L 343, 22.12.2009, p. 1, as last amended by Regulation (EU) 2015/812 (OJ No L 133, 29.5.2015, p. 1).

(11) [2006 c. 32](#). There are amendments to section 158 which are not relevant to this definition. For the purposes of the definition of “Wales” in section 158(1) of the 2006 Act, the boundary between those parts of the sea within the Severn and Dee Estuaries which are to be treated as adjacent to Wales and those which are not are, in each case, a line drawn between the co-ordinates set out in Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 1999 ([S.I. 1999/672](#)). By virtue of section 162 of and paragraph 26 of Schedule 11 to the 2006 Act, [S.I. 1999/672](#) continues to have effect. The definition of “Welsh zone” in section 158(1) was inserted by section 43 of the 2009 Act. The Welsh zone is specified in the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 ([S.I. 2010/760](#)).

(12) [S.I. 2006/1495 \(W. 145\)](#).

“the Control Regulation” (“*y Rheoliad Rheolaeth*”) means Council Regulation (EC) No. 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, as amended from time to time;”;

“Wales” (“*Cymru*”) has the same meaning as it has by virtue of section 158 of the Government of Wales Act 2006;”;

“Welsh zone” (“*parth Cymru*”) has the same meaning as it has by virtue of section 158 of the Government of Wales Act 2006.”;

(iv) in the definition of “equivalent provisions”, for “Article 9, or Article 22 of the CFP Regulation” substitute “Chapter II of Title V”; and

(v) in the definition of “fish”, for “Article 9 or Article 22 of the CFP Regulation” substitute “the Control Regulation”;

(b) for paragraph (3) substitute—

“(3) Terms used in these Regulations which are not defined in paragraph (1) or (2) and which appear in the Control Regulation have the same meaning in these Regulations as they have for the purposes of the Control Regulation.

(4) In these Regulations, a reference to an Article means an Article of the Control Regulation, and a reference to Chapter II of Title V means Chapter II of Title V of the Control Regulation.”

(4) In regulation 3 (registration of fish sellers)—

(a) in paragraph (1), for “Article 9” substitute “Chapter II of Title V (Control of marketing : post-landing activities)”;

(b) in paragraph (4), for “Article 9, Article 22 of the CFP Regulation” substitute “Articles 59, 62, 63, 64, 66 and 67”; and

(c) in paragraph (8)(b) for “Article 9, Article 22 of the CFP Regulation” substitute “Articles 59, 62, 63, 64, 66 or 67”.

(5) In regulation 5 (maintenance of records by registered fish seller), in paragraph (3), for “until the end of the second calendar year following that sale” substitute “for 3 years”.

(6) In regulation 6 (designation of fish auction sites)—

(a) in paragraph (1), for “Article 9 and Article 22 of the CFP Regulation” substitute “Chapter II of Title V”;

(b) in paragraph (3), for “Article 9, Article 22 of the CFP Regulation” substitute “Chapter II of Title V”; and

(c) in paragraph (7)(b), for “Article 9, Article 22 of the CFP Regulation” substitute “Chapter II of Title V”.

(7) In regulation 7 (registration of fish buyers)—

(a) in paragraph (1), for “Article 22(2)(b) of the CFP Regulation” substitute “Article 59”;

(b) in paragraph (3), for “Article 9, Article 22 of the CFP Regulation” substitute “Articles 62, 63, 64, 66 and 67”; and

(c) in paragraph (7)(b), for “Article 9, Article 22 of the CFP Regulation” substitute “Articles 62, 63, 64, 66 or 67”.

(8) For regulation 8 (purchase of fish by an unregistered buyer) substitute—

“8. Any person who buys fish contrary to Article 59(2) is guilty of an offence, unless the exemption in Article 59(3) applies.”

(9) In regulation 9 (maintenance of records by registered fish buyer), in paragraph (3), for “until the end of the second calendar year following that purchase” substitute “, for 3 years”.

(10) In regulation 13 (powers of British sea-fishery officers in relation to fishing boats), in paragraph (1), after “Wales” insert “and the Welsh zone”.

(11) For regulation 15 (powers of British sea-fishery officers to seize fish) substitute—

“15. Any British sea-fishery officer may seize any fish (including any receptacle which contains the fish) in respect of which the officer has reasonable grounds to suspect that an offence under these Regulations or under any equivalent provision has been committed.”

(12) In Schedule 1 (conditions applicable to registrations of fish sellers), in paragraph 2, for “Article 9” substitute “Articles 62 to 64”.

(13) In Schedule 3 (conditions applicable to registrations of fish buyers), in paragraph 2, for “Article 22(2) of Council Regulation (EC) 2371/2002” substitute “Articles 62 to 64”.

### **Amendments to the Tope (Prohibition of Fishing) (Wales) Order 2008**

**3.** In the Tope (Prohibition of Fishing) (Wales) Order 2008(13), in article 1 (title, commencement and application), for paragraph (3) substitute—

“(3) This Order only applies to British fishing boats which are either—

- (a) registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995(14); or
- (b) owned wholly by persons qualified to own British ships for the purposes of that Part of that Act.”

### **Amendments to the Shrimp Fishing Nets (Wales) Order 2008**

**4.** In the Shrimp Fishing Nets (Wales) Order 2008(15), in article 2 (interpretation), in paragraph (2), for the words “[Commission Regulation \(EC\) No. 129/2003](#)” to the end, substitute “[Commission Regulation \(EC\) No. 517/2008](#) of 10 June 2008 laying down detailed rules for the implementation of Council Regulation (EC) No. 850/98 as regards the determination of the mesh size and assessing the thickness of twine of fishing nets”.

16 October 2018

*Lesley Griffiths*  
Cabinet Secretary for Energy, Planning and  
Rural Affairs, one of the Welsh Ministers

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(13) S.I. 2008/1438 (W. 150).

(14) 1995 c. 21.

(15) S.I. 2008/1811 (W. 175); relevant amending instruments are S.I. 2008/3144 (W. 279) and 2011/1043.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006 ([S.I. 2006/1495 \(W. 145\)](#)) in order to correct errors and update references to the relevant EU legislation. It also amends the Tope (Prohibition of Fishing) (Wales) Order 2008 ([S.I. 2008/1438 \(W. 150\)](#)) and the Shrimp Fishing Nets (Wales) Order 2008 ([S.I. 2008/1811 \(W. 175\)](#)) in order to update references to the relevant EU legislation.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order.