
STATUTORY INSTRUMENTS

2010 No. 630

**The Marine and Coastal Access Act 2009 (Commencement
No. 1, Consequential, Transitional and Savings
Provisions) (England and Wales) Order 2010**

PART 1

Introduction

Title, commencement and application

1.—(1) The title of this Order is the Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010.

(2) This Order comes into force on 1st April 2010.

(3) Articles 1, 2, 9, 10, 11 and 12 of, and Schedule 2 to, this Order apply in relation to England and Wales.

(4) Save as provided in paragraph (3), this Order applies in relation to Wales.

Interpretation

2.—(1) In this Order—

“the 1966 Act” means the Sea Fisheries Regulation Act 1966(1);

“the 2006 Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006(2);

“England” includes the sea adjacent to England to a distance of 12 nautical miles from the baselines from which the breadth of the territorial sea is measured;

“Menai Strait Fishery Order Management Association” means the Menai Strait Fishery Order Management Association (Company Registration Number 07163689);

“North Western and North Wales Sea Fisheries Committee” means the local fisheries committee for the North Western and North Wales Sea Fisheries District referred to in the North Western and North Wales Sea Fisheries District Order 1999(3);

“relevant employee” has the meaning given in paragraph (2);

“South Wales Sea Fisheries Committee” means the local fisheries committee for the South Wales Sea Fisheries District created by Order of the Board of Agriculture and Fisheries on 27th June 1912(4);

“the transfer date” means 1st April 2010; and

(1) 1966 c. 38.

(2) S.I. 2006/246.

(3) S.I. 1999/1043.

(4) S.R. & O. 1926/1121 as varied by S.I. 1973/2203; S.I. 1980/823; S.I. 2003/3036 (W.284); S.I. 2003/3072 (W.294).

“Wales” has the meaning given by section 158(1) and (3) of the Government of Wales Act 2006⁽⁵⁾.

- (2) In this Order, “relevant employee” means—
- (a) for the purposes of article 5, any person—
 - (i) who was employed by or on behalf of the South Wales Sea Fisheries Committee immediately before the transfer date, and
 - (ii) whose contract of employment has not terminated before the transfer date (whether by expiry of notice, effluxion of time or otherwise); and
 - (b) for the purposes of articles 9 and 10(3), any person—
 - (i) who was employed by or on behalf of the North Western and North Wales Sea Fisheries Committee immediately before the transfer date,
 - (ii) whose contract of employment has not terminated before the transfer date (whether by expiry of notice, effluxion of time or otherwise), and
 - (iii) who was employed in one of the following positions—
 - (aa) Principal Fishery Officer,
 - (bb) Senior Fishery Officer, whose principal place of employment immediately before the transfer date was in Wales,
 - (cc) Fishery Officer, whose principal place of employment immediately before the transfer date was in Wales,
 - (dd) Fishery Patrol Vessel Master,
 - (ee) Fishery Patrol Vessel Crew,
 - (ff) Fishery Patrol Vessel Engineer,
 - (gg) Traeth Lafan Project Officer, or
 - (hh) Marine Biodiversity Officer.

Appointed day

3. 1st April 2010 is the day appointed for the coming into force in relation to Wales of the following provisions of the Marine and Coastal Access Act 2009—

- (a) section 187 (abolition of local fisheries committees); and
- (b) Part 4 (management of inshore fisheries) of Schedule 22 (repeals) and section 321 (repeals) so far as relating to those provisions.

Consequential amendments to, and revocations of, existing enactments

4. On the transfer date—
- (a) the enactments specified in Part 1 of Schedule 1 are amended in relation to Wales in accordance with that Part; and
 - (b) the enactments specified in Part 2 of Schedule 1 are revoked in relation to Wales.

(5) 2006 c. 32. The boundary between the sea adjacent to Wales and that adjacent to England is described by article 6 of and 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.

PART 2

South Wales Sea Fisheries Committee

Transfer of employees

5.—(1) Subject to the provisions of this article, all relevant employees transfer to and become, on the transfer date, members of the staff of the Welsh Assembly Government.

(2) The contract of employment of a relevant employee whose employment is transferred under paragraph (1)—

- (a) is not terminated by the transfer; and
- (b) has effect on and after the transfer date as if that employee had become a member of the staff of the Welsh Assembly Government on the date that that employee's employment by or on behalf of the South Wales Sea Fisheries Committee began.

(3) Without prejudice to paragraph (2)—

- (a) all the rights, powers, duties and liabilities under, or in connection with, the contract of employment of a relevant employee whose employment is transferred under paragraph (1), transfer to and vest in the Welsh Ministers on the transfer date; and
- (b) anything done before that date by, or in relation to, the South Wales Sea Fisheries Committee in respect of that contract of employment or that employee, is deemed on and after the transfer date to have been done by, or in relation to, the Welsh Ministers.

(4) Notwithstanding regulation 3(5) of the 2006 Regulations, the transfer effected by articles 5 and 6(1) is to be treated for all purposes as a relevant transfer within the meaning of the 2006 Regulations.

(5) Where a relevant employee becomes a member of the staff of the Welsh Assembly Government pursuant to paragraph (1), the period of employment with that employee's employer immediately before the transfer date—

- (a) counts as a period of employment as a member of the staff of the Welsh Assembly Government; and
- (b) is to be treated as continuous employment as a member of the staff of the Welsh Assembly Government for the purposes of section 218(3) of the Employment Rights Act 1996(6).

(6) Nothing in this article affects any right a person has to terminate a contract of employment if (apart from the change of employer) a substantial detrimental change is made in that person's working conditions.

(7) Notwithstanding regulation 4(7) of the 2006 Regulations, paragraphs (1) to (5) do not transfer a relevant employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if that employee objected to that transfer of that employee's contract of employment and had informed the Welsh Ministers in writing of that objection on or before 31st March 2010.

(8) Notwithstanding regulation 4(8) of the 2006 Regulations, where an employee has objected in accordance with paragraph (7)—

- (a) that employee's contract of employment is terminated on the transfer date; and
- (b) that employee is not to be treated for any purposes as having been dismissed.

Transfer of property, rights and liabilities

6.—(1) Save as provided by articles 5 and 7, on the transfer date—

- (a) all the property held by, on behalf of or for the purposes of the South Wales Sea Fisheries Committee immediately before that date; and
- (b) all rights and liabilities to which the South Wales Sea Fisheries Committee was entitled or subject immediately before that date,

are transferred to and vest in the Welsh Ministers.

(2) A certificate issued by the Welsh Ministers that any property has been transferred by paragraph (1) is conclusive evidence of the transfer.

(3) Paragraph (1) has effect in relation to the property, rights and liabilities to which it applies in spite of any provision (of whatever nature) which would prevent or restrict the transfer of those property, rights or liabilities otherwise than by that paragraph.

(4) The liabilities falling within paragraph (1)(b) include liabilities in respect of persons formerly employed by or on behalf of the South Wales Sea Fisheries Committee.

The Burry Inlet Cockle Fishery Order 1965

7.—(1) Article 6(1) does not apply to any functions, property, rights or liabilities transferred by paragraph (2).

(2) On the transfer date—

- (a) the functions that were exercisable by the South Wales Sea Fisheries Committee immediately before the transfer date; and
- (b) the property, rights and liabilities to which the South Wales Sea Fisheries Committee was entitled or subject immediately before the transfer date,

pursuant to the Burry Inlet Cockle Fishery Order 1965⁽⁷⁾ are transferred to the Environment Agency.

(3) On the transfer date the Burry Inlet Cockle Fishery Order 1965 is amended as follows—

- (a) in article 2(1), for “Local Sea Fisheries Joint Committee for the South Wales Sea Fisheries District” substitute “Environment Agency”; and
- (b) in each place where it occurs, for “Committee” substitute “Agency”.

(4) Paragraph (2) has effect in relation to the functions, property, rights and liabilities to which it applies in spite of any provision (of whatever nature) which would prevent or restrict the transfer of those functions, property, rights or liabilities otherwise than by that paragraph.

Transitional provisions

8.—(1) Nothing in article 3, 5, 6 or 7 affects the validity of anything done by or in relation to the South Wales Sea Fisheries Committee before the transfer date.

(2) There may be continued by or in relation to the Welsh Ministers anything (including legal proceedings) which—

- (a) relates to any of the functions, other than those transferred by article 7(2), that were exercisable by the South Wales Sea Fisheries Committee immediately before the transfer date or to any property, rights or liabilities transferred by article 5 or 6(1);
- (b) is in the process of being done by or in relation to the South Wales Sea Fisheries Committee immediately before the transfer date; and
- (c) could lawfully be undertaken by or in relation to the Welsh Ministers.

(7) [S.I. 1965/1235](#).

(3) Anything—

- (a) done by the South Wales Sea Fisheries Committee for the purpose of or in connection with any of the functions, other than those transferred by article 7(2), which were exercisable by it immediately before the transfer date or for the purpose of or in connection with any property, rights or liabilities transferred by article 5 or 6(1); and
- (b) in effect immediately before the transfer date,

has effect on and after the transfer date as if done by the Welsh Ministers to the extent that the Welsh Ministers could lawfully undertake that action.

(4) The Welsh Ministers are substituted for the South Wales Sea Fisheries Committee in any instruments or contracts which are either made or commenced before the transfer date and which relate to any of the functions, other than those transferred by article 7(2), that were exercisable by the South Wales Sea Fisheries Committee immediately before the transfer date.

(5) There may be continued by or in relation to the Environment Agency anything (including legal proceedings) which—

- (a) relates to any of the functions, property, rights or liabilities transferred by article 7(2);
- (b) is in the process of being done by or in relation to the South Wales Sea Fisheries Committee immediately before the transfer date; and
- (c) could lawfully be undertaken by or in relation to the Environment Agency.

(6) Anything which—

- (a) was done by the South Wales Sea Fisheries Committee for the purpose of or in connection with any of the functions, property, rights or liabilities transferred by article 7(2); and
- (b) is in effect immediately before the transfer date,

has effect on and after the transfer date as if done by the Environment Agency to the extent that the Environment Agency could lawfully undertake that action.

PART 3

North Western and North Wales Sea Fisheries Committee

Transfer of employees

9.—(1) Subject to the provisions of this article, all relevant employees transfer to and become, on the transfer date, members of the staff of the Welsh Assembly Government.

(2) The contract of employment of a relevant employee whose employment is transferred under paragraph (1)—

- (a) is not terminated by the transfer; and
- (b) has effect on and after the transfer date as if that employee had become a member of the staff of the Welsh Assembly Government on the date that that employee's employment by or on behalf of the North Western and North Wales Sea Fisheries Committee began.

(3) Without prejudice to paragraph (2)—

- (a) all the rights, powers, duties and liabilities under, or in connection with, the contract of employment of a relevant employee whose employment is transferred under paragraph (1), transfer to and vest in the Welsh Ministers on the transfer date; and
- (b) anything done before that date by, or in relation to, the North Western and North Wales Sea Fisheries Committee in respect of that contract of employment or that employee, is

deemed on and after the transfer date to have been done by, or in relation to, the Welsh Ministers.

(4) Notwithstanding regulation 3(5) of the 2006 Regulations, the transfer effected by articles 9 and 10 is to be treated for all purposes as a relevant transfer within the meaning of the 2006 Regulations.

(5) Where a relevant employee becomes a member of the staff of the Welsh Assembly Government pursuant to paragraph (1), the period of employment with that employee's employer immediately before the transfer date—

- (a) counts as a period of employment as a member of the staff of the Welsh Assembly Government; and
- (b) is to be treated as continuous employment as a member of the staff of the Welsh Assembly Government for the purposes of section 218(3) of the Employment Rights Act 1996⁽⁸⁾.

(6) Nothing in this article affects any right a person has to terminate a contract of employment if (apart from the change of employer) a substantial detrimental change is made in that person's working conditions.

(7) Notwithstanding regulation 4(7) of the 2006 Regulations, paragraphs (1) to (5) do not transfer a relevant employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if that employee objected to that transfer of that employee's contract of employment and had informed the Welsh Ministers in writing of that objection on or before 31st March 2010.

(8) Notwithstanding regulation 4(8) of the 2006 Regulations, where an employee has objected in accordance with paragraph (7)—

- (a) that employee's contract of employment is terminated on the transfer date; and
- (b) that employee is not to be treated for any purposes as having been dismissed.

Transfer of property, rights and liabilities

10.—(1) On the transfer date—

- (a) all property held by, on behalf of or for the purposes of the North Western and North Wales Sea Fisheries Committee immediately before the transfer date; and
- (b) all rights and liabilities to which the North Western and North Wales Sea Fisheries Committee was entitled or subject immediately before the transfer date,

in relation to all the premises listed in Part 1 of Schedule 2, including any fixtures, fittings and trade fixtures at, in or on such premises, transfer to and vest in the Welsh Ministers.

(2) Save as provided by paragraph (1) and articles 9 and 11, on the transfer date—

- (a) all the property held by, on behalf of or for the purposes of the North Western and North Wales Sea Fisheries Committee immediately before the transfer date; and
- (b) all rights and liabilities to which the North Western and North Wales Sea Fisheries Committee was entitled or subject immediately before the transfer date,

in relation to the assets mentioned in paragraph (3), transfer to and vest in the Welsh Ministers.

(3) The assets referred to in paragraph (2) are—

- (a) the personal or other moveable assets at, in or on any of the premises listed in Part 1 of Schedule 2;

(8) 1996 c. 18.

- (b) the personal or other moveable assets not included in sub-paragraph (a) and provided by, on behalf of or for the purposes of the North Western and North Wales Sea Fisheries Committee for the sole use of—
 - (i) those of its staff whose principal place of employment immediately before the transfer date was in Wales, or
 - (ii) any relevant employee whose employment is transferred under article 9(1); and
 - (c) the assets listed in Part 2 of Schedule 2.
- (4) Save as provided by paragraphs (1) and (2) and articles 9 and 11, all rights and liabilities to which the North Western and North Wales Sea Fisheries Committee was entitled or subject in relation to Wales immediately before the transfer date are, on the transfer date, transferred to and vest in the Welsh Ministers.
- (5) A certificate issued by the Welsh Ministers that any property has been transferred by paragraphs (1) and (2) is conclusive evidence of the transfer.
- (6) Paragraphs (1), (2) and (4) have effect in relation to the property, rights and liabilities to which they apply in spite of any provision (of whatever nature) which would prevent or restrict the transfer of those property, rights or liabilities otherwise than by those paragraphs.
- (7) The liabilities falling within paragraph (4) include liabilities in respect of any person who meets all of the criteria set out in paragraph (8).
- (8) For the purposes of paragraph (7), the criteria are—
- (a) that person was formerly employed by or on behalf of the North Western and North Wales Sea Fisheries Committee; and
 - (b) that person was entirely or substantially employed in carrying out the functions of the North Western and North Wales Sea Fisheries Committee in relation to Wales.

The Menai Strait Oyster and Mussel Fishery Order 1962

11.—(1) Article 10 does not apply to any functions, property, rights or liabilities transferred by paragraph (2).

(2) On the transfer date—

- (a) the functions that were exercisable by the North Western and North Wales Sea Fisheries Committee⁽⁹⁾ immediately before the transfer date; and
- (b) the property, rights and liabilities to which the North Western and North Wales Sea Fisheries Committee was entitled or subject immediately before the transfer date,

pursuant to the Menai Strait Oyster and Mussel Fishery Order 1962⁽¹⁰⁾ are transferred to the Menai Strait Fishery Order Management Association.

(3) On the transfer date the Menai Strait Oyster and Mussel Fishery Order 1962 is amended as follows—

(a) for article 2, substitute—

“**2.** The Menai Strait Fishery Order Management Association (Company Registration Number 07163689) (in this Order called “the Company”) is the grantee of this Order.”;

⁽⁹⁾ The local fisheries committee in respect of the Lancashire and Western Sea Fisheries District was the original Grantee in relation to the Menai Strait Oyster and Mussel Fishery Order 1962. The name of the Lancashire and Western Sea Fisheries District was changed to the North Western and North Wales Sea Fisheries District, and the corresponding local fisheries committee underwent a similar change of name, by virtue of The North Western and North Wales Sea Fisheries District Order 1986 (S.I. 1986/1201). S.I. 1986/1201 was revoked and replaced by the North Western and North Wales Sea Fisheries District Order 1999 (S.I. 1999/1043).

⁽¹⁰⁾ S.I. 1962/705 as amended by S.I. 1964/550.

- (b) in each place where it occurs, for “the Grantees” substitute “the Company”;
- (c) in article 5, delete the word “themselves”;
- (d) in paragraphs (a) and (b) of article 7, in each place where it occurs, for “they” substitute “it”;
- (e) in article 8, omit paragraph (3);
- (f) in article 10—
 - (i) for “they” substitute “it”, and
 - (ii) for “arrange” substitute “arranges”;
- (g) in article 13, in each place where it occurs, for “their” substitute “the Company’s”;
- (h) in article 14(6), for “their” substitute “the Company’s”; and
- (i) in article 15, in each place where it occurs, for “their” substitute “the Company’s”.

(4) Paragraph (2) has effect in relation to the functions, property, rights and liabilities to which it applies in spite of any provision (of whatever nature) which would prevent or restrict the transfer of those functions, property, rights or liabilities otherwise than by that paragraph.

Transitional provisions

12.—(1) Nothing in article 3, 9, 10 or 11 affects the validity of anything done by or in relation to the North Western and North Wales Sea Fisheries Committee in relation to Wales before the transfer date.

(2) There may be continued by or in relation to the Welsh Ministers anything (including legal proceedings) which—

- (a) relates to any of the functions, other than those transferred by article 11(2), that were exercisable by the North Western and North Wales Sea Fisheries Committee in relation to Wales immediately before the transfer date or to any property, rights or liabilities transferred by article 9 or 10;
- (b) is in the process of being done by or in relation to the North Western and North Wales Sea Fisheries Committee in relation to Wales immediately before the transfer date; and
- (c) could lawfully be undertaken by or in relation to the Welsh Ministers.

(3) Anything—

- (a) done by the North Western and North Wales Sea Fisheries Committee in relation to Wales for the purpose of or in connection with any of the functions, other than those transferred by article 11(2), which were exercisable by it immediately before the transfer date or for the purpose of or in connection with any property, rights or liabilities transferred by article 9 or 10; and
- (b) in effect immediately before the transfer date,

has effect on and after the transfer date as if done by the Welsh Ministers to the extent that the Welsh Ministers could lawfully undertake that action.

(4) The Welsh Ministers are substituted for the North Western and North Wales Sea Fisheries Committee in any instruments or contracts which are either made or commenced before the transfer date and which relate to any of the functions, other than those transferred by article 11(2), that were exercisable by the North Western and North Wales Sea Fisheries Committee in relation to Wales immediately before the transfer date.

(5) There may be continued by or in relation to the Menai Strait Fishery Order Management Association anything (including legal proceedings) which—

- (a) relates to any of the functions, property, rights or liabilities transferred by article 11(2);

- (b) is in the process of being done by or in relation to the North Western and North Wales Sea Fisheries Committee immediately before the transfer date; and
 - (c) could lawfully be undertaken by or in relation to the Menai Strait Fishery Order Management Association.
- (6) Anything which—
- (a) was done by the North Western and North Wales Sea Fisheries Committee in relation to Wales for the purpose of or in connection with any of the functions, property, rights or liabilities transferred by article 11(2); and
 - (b) is in effect immediately before the transfer date,
- has effect on and after the transfer date as if done by the Menai Strait Fishery Order Management Association to the extent that that company could lawfully undertake that action.

PART 4

Byelaws

Byelaws of the South Wales Sea Fisheries Committee, the North Western and North Wales Sea Fisheries Committee and the Environment Agency whilst exercising the powers of a local fisheries committee

13.—(1) Any provision of the byelaws of the South Wales Sea Fisheries Committee listed at Schedule 3 which—

- (a) is in force immediately before article 3 comes into force; and
- (b) could have been made in a statutory instrument by the Welsh Ministers under any enactment other than the 1966 Act,

takes effect after article 3 comes into force as if made by the Welsh Ministers in a statutory instrument under that other enactment in relation to the same area of Wales as the area to which that provision originally applied.

(2) To the extent that it could have been made in a statutory instrument by the Welsh Ministers under section 5 of the Sea Fish (Conservation) Act 1967⁽¹¹⁾ and section 189 of the Marine and Coastal Access Act 2009⁽¹²⁾, byelaw 38 (maximum vessel size) of the South Wales Sea Fisheries Committee takes effect, with the omission of paragraph 3 of that byelaw, after article 3 comes into force as if made by the Welsh Ministers in a statutory instrument under those Acts in relation to the same area of Wales as the area to which that provision originally applied.

(3) Any provision of the byelaws of the North Western and North Wales Sea Fisheries Committee listed at Schedule 4 which—

- (a) is in force immediately before article 3 comes into force;
- (b) relates to any part of Wales; and
- (c) could have been made in a statutory instrument by the Welsh Ministers under any enactment other than the 1966 Act,

takes effect after article 3 comes into force as if made by the Welsh Ministers in a statutory instrument under that other enactment in relation to the same area of Wales as the area to which that provision originally applied.

⁽¹¹⁾ 1967 c. 84.

⁽¹²⁾ 2009 c. 23.

(4) Any provision of the byelaws made by the Environment Agency, or its predecessors, whilst exercising the powers of a local fisheries committee⁽¹³⁾ and listed at Schedule 5 which—

- (a) is in force immediately before article 3 comes into force;
- (b) relates to any part of Wales; and
- (c) could have been made in a statutory instrument by the Welsh Ministers under any enactment other than the 1966 Act,

takes effect after article 3 comes into force as if made by the Welsh Ministers in a statutory instrument under that other enactment in relation to the same area of Wales as the area to which that provision originally applied.

(5) There may be continued by or in relation to the Welsh Ministers anything (including legal proceedings) which relates to any of the byelaws falling within paragraphs (1) to (4), and is in the process of being done immediately before article 3 comes into force to the extent that the Welsh Ministers could lawfully undertake or be involved in that action.

(6) Anything which was done by—

- (a) the South Wales Sea Fisheries Committee;
- (b) the North Western and North Wales Sea Fishery Committee; or
- (c) the Environment Agency, or its predecessors, whilst exercising the powers of a local fisheries committee,

for the purpose of or in connection with any of the byelaws falling within paragraphs (1) to (4) and which is in effect immediately before the transfer date, has effect on and after the transfer date as if done by the Welsh Ministers to the extent that the Welsh Ministers could lawfully undertake or be involved in that action.

(7) The Welsh Ministers are substituted for the Environment Agency, or its predecessors, in any instruments or contracts which are either made or commenced before the transfer date and which relate to any of the byelaws falling within paragraph (4).

5th March 2010

8th March 2010

Elin Jones
Minister for Rural Affairs, one of the Welsh
Ministers
Huw Irranca-Davies
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

(13) Section 18(1) of the Sea Fisheries Regulation Act 1966 (c. 38) enabled the Minister, when defining a sea fisheries district, to draw a line at or near the mouth of every river, stream or estuary within that district, which would constitute the boundary of the district, and provide that above that line the relevant river authority would have the powers of a local fisheries committee. In reliance upon section 18(1) of the 1966 Act, S.I. 1980/823 amended the order made by the Board of Agriculture and Fisheries on 27th June 1912 (which created the South Wales Sea Fisheries District) to insert a new article 1 which gave the Severn-Trent Water Authority and the Welsh Water Authority the powers of a local fisheries committee in the rivers, streams and estuaries beyond the area of the South Wales Sea Fisheries District. Since that enactment, powers exercisable by those river authorities have passed to the Environment Agency (see sections 2 and 55 of the Environment Act 1995 (c. 25)). Also in reliance upon section 18(1) of the 1966 Act, article 2(3) of S.I. 1999/1043 gave the Environment Agency the powers of a local fisheries committee in the rivers, streams and estuaries beyond the area of the North Western and North Wales Sea Fisheries District.