STATUTORY INSTRUMENTS

2018 No. 643

SEA FISHERIES

The Sea Fishing (Miscellaneous Amendments) Regulations 2018

Made - - - -	*22nd May 2018*
Laid before Parliament	*25th May 2018*
Laid before the National Assembly for Wales - -	*25th May 2018*
Coming into force - -	*18th June 2018*

The Secretary of State, and the Welsh Ministers in relation to Wales, the Welsh zone and Welsh fishing boats beyond the seaward limits of the Welsh zone(**1**), make these Regulations in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(**2**), which are now vested in them(**3**).

(**1**) The Welsh zone has the meaning given by section 158(1) of the Government of Wales Act 2006 (c. 32), as amended by section 43(1) and (2) of the Marine and Coastal Access Act 2009 (c. 23). The boundaries of the Welsh zone are specified in S.I. 2010/760. 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. "Welsh fishing boats" has the meaning given in section 53(4) of the Wales Act 2017 (c. 4).

(**2**) 1981 c. 29 ("the 1981 Act"). See section 30(3) for the definition of "the Ministers" (as modified in relation to Scotland by section 30(5)).

(**3**) The function of the Ministers under section 30(2) of the 1981 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 was transferred to the Welsh Ministers by article 4(1) (e) of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760) insofar as it was exercisable in relation to the Welsh zone. The function was further transferred, on a concurrent basis, in relation to Welsh fishing boats beyond the seaward limit of the Welsh zone by section 59A of and paragraph 2(1) of Schedule 3A to the Government of Wales Act 2006. The function under section 30(2) of the 1981 Act exercisable in relation to British fishing boats (other than Scottish ones) within the Scottish zone, and Scottish fishing boats outside that zone but within British fishery limits, remains exercisable by the Ministers despite being transferred to the Scottish Ministers under section 53(1) of the Scotland Act 1998 (c. 46): see article 3(1) of, and Schedule 1 to, the Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592). The function under section 30(2) exercisable in relation to the Northern Ireland zone and Northern Ireland fishing boats outside that zone remains exercisable by the Ministers despite being transferred to the Department of Agriculture and Rural Development in Northern Ireland under article 3(2) of, and paragraph 3 of Schedule 2 to, the Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790): see paragraph 3(2) of Schedule 2 to that Order. Any remaining functions of the Secretaries of State concerned with sea fishing in Scotland and Wales under section 30(2) of the 1981 Act were transferred to the Minister of Agriculture, Fisheries and Food: see article 2(1) of the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812). The function of that Minister and the Secretary of State concerned with sea fishing in Northern Ireland acting jointly under section 30(2) was transferred to the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland acting jointly: see article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794). The function of the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland was transferred to the Secretary of State by article 3(1)(d) of the Transfer of Functions (Sea Fisheries) Order 2012 (S.I. 2012/2747). Import and export control is a matter reserved to the United Kingdom Government under section 30 of and section C5 of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46) and under section 4(1) of and part 20 of Schedule 3 to the Northern Ireland Act 1998 (c. 47).

The Secretary of State, and the Welsh Ministers in relation to Wales and the Welsh zone, also make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 ("the 1972 Act")(**4**).

The Secretary of State and the Welsh Ministers are each designated for the purposes of section 2(2) of the 1972 Act in relation to the common agricultural policy of the European Union(**5**).

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Secretary of State and the Welsh Ministers that it is expedient for any reference in these Regulations to Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (**6**) to be construed as a reference to that Regulation as amended from time to time.

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Sea Fishing (Miscellaneous Amendments) Regulations 2018 and come into force on 18th June 2018.

(2) Subject to paragraphs (3) and (4), they extend to England and Wales only.

(3) The following regulations also extend to Scotland—

(a) this regulation;

(b) regulations 2 to 5, so far as they relate to article 9(6A)(e) and (12)(a) of the 2009 Order (as inserted by regulation 5); and

(c) regulations 9 and 10, and regulation 8 so far as it relates to those regulations.

(4) The following regulations also extend to Northern Ireland—

(a) this regulation;

(b) regulations 2 to 5, so far as they relate to article 9(6A)(e) and (12)(b) of the 2009 Order (as inserted by regulation 5); and

(c) regulations 8 to 11.

(5) In these Regulations, "the 2009 Order" means the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009(**7**).

Amendment of the 2009 Order

2. The 2009 Order is amended in accordance with regulations 3 to 7.

(**4**) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and was amended by section 3(3) of and Part 1 of the Schedule to the European Union (Amendment) Act 2008, and S.I. 2007/1388. The function of the former Minister of Agriculture, Fisheries and Food of making regulations under section 2(2) was transferred to the Secretary of State by S.I. 2002/794. Under section 57(1) of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Scotland. The Secretary of State's power, as a Minister so designated, to make regulations which extend to Northern Ireland is confirmed by S.I. 2000/2812.

(**5**) The Secretary of State is designated in relation to the common agricultural policy by S.I. 1972/1811 and the Welsh Ministers by S.I. 2010/2690. The designation in relation to the common agricultural policy extends to the common fisheries policy: under Article 38(1) of the Treaty on the Functioning of the European Union, the EU's common agricultural policy includes its common fisheries policy (OJ No. C 326, 26.10.2012, p. 62). Article 5(3)(a) of S.I. 2010/2690 provides that the designation of the Welsh Ministers for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy applies in relation to the Welsh zone.

(**6**) OJ No. L 343, 22.12.2009, p. 1, as last amended by Regulation (EU) No. 2015/812 of the European Parliament and of the Council (OJ No. L 133, 29.5.2015, p. 1).

(**7**) S.I. 2009/3391, to which there is an amendment not relevant to these Regulations.

Amendment of article 2

3. For article 2 (application) substitute—

"**Extent and application**

2.—(1) Subject to paragraphs (2) and (3), this Order extends to England and Wales only, except for the following provisions which also extend to Scotland and Northern Ireland—

(a) articles 1 to 3; and

(b) article 9(6A)(e).

(2) Article 9(12)(a) also extends to Scotland.

(3) Article 9(12)(b) also extends to Northern Ireland.

(4) Subject to paragraph (5), this Order applies—

(a) in England and Wales and the Welsh zone;

(b) in relation to English fishing boats and Welsh fishing boats, wherever they are; and

(c) in relation to other fishing boats which are within the Exclusive Economic Zone(**8**) but not in—

(i) the Scottish zone; or

(ii) the Northern Ireland zone.

(5) Article 9(6A)(e) applies to offences committed—

(a) in England, in relation to English fishing boats;

(b) in Wales, in relation to Welsh fishing boats;

(c) in Scotland, in relation to Scottish fishing boats; and

(d) in Northern Ireland, in relation to Northern Ireland fishing boats.".

Amendment of article 3

4. In article 3 (interpretation)—

(a) for the definition of "England" substitute—

""England" includes the area within the seaward limits of the territorial sea adjacent to England but does not include any area in the Welsh zone, the Scottish zone or the Northern Ireland zone;";

(b) after the definition of "England" insert—

""English fishing boat" means a fishing boat which is—

(a) registered at a port in England, under section 8 of the Merchant Shipping Act 1995(**9**); or

(b) owned wholly by persons qualified to own British ships for the purposes of Part 2 of the Merchant Shipping Act 1995, other than a Welsh fishing boat, a Northern Ireland fishing boat or a Scottish fishing boat;";

(c) after the definition of "local authority" insert—

(**8**) The Exclusive Economic Zone was designated in S.I. 2013/3161.
(**9**) 1995 c. 21.