WELSH STATUTORY INSTRUMENTS

2009 No. 2721 (W.232)

SEA FISHERIES, WALES

CONSERVATION OF SEA FISH

The Prohibition of Fishing for Scallops (Wales) Order 2009

Made - - - -	*7 October 2009*
Laid before the National Assembly for Wales - -	*8 October 2009*
Coming into force - -	*1 November 2009*

The Welsh Ministers, in exercise of the powers conferred by sections 5(1), 5A(1), 15(3) and 20(1) of the Sea Fish (Conservation) Act 1967(**1**), and now vested in them(**2**), make the following Order.

Title, commencement and application

1.—(1) The title of this Order is The Prohibition of Fishing for Scallops (Wales) Order 2009 and it comes into force on 1 November 2009.

(2) This Order applies in relation to Wales.

Interpretation

2.—(1) In this Order, unless the context requires otherwise—

"the Act" ("*y Ddeddf*") means the Sea Fish (Conservation) Act 1967;

"British fishing boat" ("*cwch pysgota Prydeinig*") means a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(**3**) or is wholly owned by persons qualified to own British ships for the purposes of that part of that Act;

(**1**) 1967 c. 84. Section 5(1) was substituted by the Fisheries Act 1981 (c. 29), section 22(1). Section 5A was inserted by the Environment Act 1995 (c. 25), section 103(1). Section 15(3) was substituted by the Sea Fisheries Act 1968 (c. 77), section 22(1), Schedule 1, Part II, paragraph 38(3) and amended by the Fishery Limits Act 1976 (c. 86), section 9(1), Schedule 2, paragraph 16(1) and further amended by S.I.1999/1820, article 4, Schedule 2, Part I, paragraph 43(1) and (2)(b). *See* section 22(2) for definitions of "the Ministers". Section 22(2) was amended by the Fisheries Act 1981, sections 19(2)(d) and 45(a), (b) and (c) and 46(2), Schedule 5, Part II and by S.I. 1999/1820, article 4, Schedule 2, paragraph 43(1), (12) and Part IV and by the Northern Ireland Constitution Act 1973, section 40, Schedule 5, paragraph 8(1).

(**2**) By virtue of article 2(a) of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under sections 5, 5A, 15 and 20 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 the Secretary of State in relation to the 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).

(**3**) 1995 c. 21.

"scallop" ("*cragen fylchog*") means the species Pecten maximus;

"Wales" ("*Cymru*") has the meaning given in section 158 of the Government of Wales Act 2006(**4**).

Prohibition

3. No person is to fish for, take or kill scallops in Wales during the period 1 November 2009 to 28 February 2010 inclusive by any means, including diving.

Powers of British sea-fishery officers

4.—(1) For the purposes of enforcing this Order a British sea fishery officer may exercise the powers conferred by this article in relation to any British fishing boat in Wales.

(2) The officer may go on board the boat, with or without persons assigned to assist in that officer's duties, and for that purpose may require the boat to stop and do anything else which will facilitate the boarding of the boat.

(3) The officer may require the attendance of the master and other persons on board the boat and may make any examination or inquiry which appears to the officer to be necessary for the purpose of enforcing this Order as read with the Act and, in particular–

(a) may examine any fish on the boat and the equipment of the boat, including the fishing gear, and require persons on board the boat to do anything which appears to be necessary for facilitating the examination;

(b) may require any person on board the boat to produce any document which is in that person's custody or possession relating to the boat, to its fishing operations or other operations ancillary thereto or to the persons on board and may take copies of any such document;

(c) for the purpose of ascertaining whether the master, owner or charterer of the boat has committed an offence under the Act as read with this Order, may search the boat for any such document and may require any person on board the boat to do anything which appears to the officer to be necessary for facilitating the search; and

(d) if the boat is one in relation to which the officer has reason to suspect that such an offence has been committed, may subject to paragraph (4) seize and detain any such document produced or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence.

(4) Nothing in paragraph 3(d) permits any document required by law to be carried on board the boat to be seized and detained except while the boat is detained in a port.

(5) A British sea-fishery officer to whom it appears that a contravention of any provision of this Order has at any time taken place may–

(a) take, or require the master of the boat to take, the boat and its crew to the port which appears to be the nearest convenient port; and

(b) detain, or require the master to detain, the boat in the port;

and where such an officer detains or requires the detention of a boat the officer must serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea-fishery officer.

(6) In this article, "officer" ("*swyddog*") means a British sea-fishery officer.

(**4**) 2006 c. 32.