STATUTORY INSTRUMENTS

2015 No. 191

SEA FISHERIES, ENGLAND AND WALES
SEA FISHERIES, NORTHERN IRELAND

The Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015

Made - - - -	*8th February 2015*
Laid before Parliament	*12th February 2015*
Laid before the National Assembly for Wales - -	*12th February 2015*
Coming into force - -	*6th March 2015*

The Secretary of State and (acting only in relation to Wales and the Welsh zone [F1]) the Welsh Ministers make this Order in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981 [F2], which are now vested in them [F3].

The Secretary of State and the Welsh Ministers are each designated for the purposes of section 2(2) of the European Communities Act 1972 [F4] ("the 1972 Act") in relation to the common agricultural policy of the European Union [F5]. The Secretary of State is designated for the purposes of section 2(2) of the 1972 Act in relation to the environment and the Welsh Ministers are designated for those purposes in relation to the conservation of natural habitats and of wild fauna [F6]

This Order makes 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 this Order, the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005 [F7], the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 [F8], or the Tope (Prohibition of Fishing) Order 2008 [F9], to the following Regulations to be construed as a reference to those Regulations as amended from time to time:

(a) Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing [F10];

(b) Council Regulation (EC) No. 1010/2009 laying down detailed rules for the implementation of Council Regulation (EC) No. 1005/2008[F11];

(c) Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy [F12];

(d) Commission Implementing Regulation (EU) No. 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No. 1224/2009[F13]; and

(e) Council Regulation (EU) No. 1380/2013 on the Common Fisheries Policy [F14].

The Secretary of State and (acting only in relation to Wales) the Welsh Ministers make this Order (to the extent that it does not apply in relation to enforceable Community restrictions or obligations relating to sea fishing) in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 [F15] to, the 1972 Act.

F1 The Welsh zone is defined in 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 were specified in S.I. 2010/760. Article 5(3)(a) of S.I. 2010/2690 provides that the designation of the Welsh Ministers applies in relation to Wales and the Welsh zone.

F2 1981 c.29. See section 30(3) for the definition of "the Ministers".

F3 Section 30(2) provides for the Ministers to make provision for the enforcement of enforceable Community restrictions and obligations relating to sea fishing. The function of the Ministers under section 30(2) of the Fisheries Act 1981 ("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. In so far as that function was exercisable in relation to the Welsh zone, it has been 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). 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(1) 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, and the Schedule to, 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).

F4 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

F5 The Secretary of State is designated in relation to the common agricultural policy by S.I. 1972/1811. The Welsh Ministers are designated in relation to the common agricultural policy by S.I. 2010/2690. The function of the former Minister of Agriculture of making regulations under section 2(2) was transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order (S.I. 2002/794).

F6 The Secretary of State is designated in relation to the environment by S.I. 2008/301. The Welsh Ministers are designated in relation to the conservation of natural habitats and of wild fauna by S.I. 2002/248, amended by S.I. 2006/3329 and 2011/1043. The designation is subject to the exceptions set out in Schedule 2 to that Order. That Order continues to have effect, and the functions conferred on the National Assembly for Wales by means of that Order are now exercisable by the Welsh Ministers, by virtue of paragraphs 28(1) and 30 of Schedule 11 to, the Government of Wales Act 2006.

F7 S.I. 2005/1605, amended by S.I. 2009/1309.

F8 S.I. 2007/1842, to which there are amendments not relevant to these Regulations.

F9 S.I. 2008/691.

F10 OJ No. L 286, 29.10.2008, p. 1, as last amended by Commission Regulation (EU) No. 202/2011 (OJ No. L 57, 2.3.2011, p. 10).

F11 OJ No. L280, 27.10.2009, p.5, as last amended by Commission Implementing Regulation (EU) N.865/2013 (OJ No. L 241, 10.9.2013, p.1).
F12 OJ. No L343, 22.12.2009, p.1, as last amended Regulation (EU) No. 508/20144 (OJ) N. L 149, 20.5.2014, p.1).
F13 OJ No. L 112, 30.4.2011, p. 1, as corrected by a corrigendum (OJ No. L 328, 10.12.2011, p. 58).
F14 OJ No. L 354, 28.12.2013, p. 22, as amended by Council Regulation (EU) No. 1385/2013 (OJ No. L 354, 28.12.2013, p. 86).
F15 Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and was amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and by S.I. 2007/1388.

Citation, commencement and extent

1.—(1) This Order may be cited as the Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015 and comes into force on 6th March 2015.

(2) Subject to paragraph (3) and, as regards the Schedule, to any contrary provision in the third column, it extends to England and Wales and, except for articles 3 and 4, to Northern Ireland.

(3) The revocations of the British Fishing Boats Act 1983 (Guernsey) Order 1985 [F16] and the Undersized Lobsters Order 2000 [F17] in the Schedule, and article 7 in so far as it applies to those revocations, extend to the Bailiwick of Guernsey.

(4) In the Schedule—

(a) revocations which extend to Wales have effect, for the purposes of the application of the instruments revoked which apply to Wales and the Welsh zone, to Wales and the Welsh zone;

(b) revocations which extend to Northern Ireland have effect, for the purposes of the application of the instruments revoked which apply to Northern Ireland and the Northern Ireland zone, to Northern Ireland and the Northern Ireland zone [F18].

F16 S.I. 1985/1203.
F17 S.I. 2000/1503.
F18 The Northern Ireland zone is defined in section 98(1) of the Northern Ireland Act 1998 (c.47).

Competent authorities

2.—(1) The competent authorities responsible for fisheries monitoring centres for the purposes of Article 9(8) of the Control Regulation are—

(a) for the fisheries monitoring centre for English and Welsh fishing boats and for EU and third country fishing boats in British Fishery Limits (other than in Scotland, the Scottish zone [F19], Northern Ireland or the Northern Ireland zone), the Marine Management Organisation;

(b) for the fisheries monitoring centre for Northern Ireland fishing boats and for EU and third country fishing boats in Northern Ireland or the Northern Ireland zone, the Department of Agriculture and Rural Development.

(2) The competent authority acting as the contact point for the purposes of Article 80(5) of the Control Regulation is the Marine Management Organisation.

(3) The competent national authority for the purposes of Article 125 of the Commission Implementing Regulation is—

(a) in relation to vessels registered at a port in England, the Marine Management Organisation;

(b) in relation to vessels registered at a port in Wales, the Welsh Ministers;

(c) in relation to vessels registered at a port in Northern Ireland, the Department of Agriculture and Rural Development.

(4) In this article—

"the Commission Implementing Regulation" means Commission Regulation (EU) No. 404/2011 laying down detailed rules for the implementation of the Control Regulation, as amended from time to time;

"the Control Regulation" means Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, as amended from time to time;

"fishing boat" means a vessel equipped for the commercial exploitation of living aquatic resources, including sea fish, and—

(a) an "English fishing boat" is a fishing boat registered at a port in England;

(b) a "Northern Ireland fishing boat" is a fishing boat registered at a port in Northern Ireland;

(c) a "Welsh fishing boat" is a fishing boat registered at a port in Wales.

F19 The Scottish zone is defined in section 126(1) of the Scotland Act 1998 (c.46).

Recovery of fines

3.—(1) This article applies where a court in England or Wales imposes a fine on a person convicted of an offence under—

(a) section 30(1) of the Fisheries Act 1981 (enforcement of Community rules) [F20]; or

(b) an order extending to any part of the United Kingdom which is to any extent made under section 30(2) of that Act.

(2) The court may, for the purposes of recovering the fine—

(a) issue a warrant of distress against the fishing boat involved in the commission of the offence, its gear or catch or any property of the person convicted;

(b) order that the fishing boat, its gear or catch be detained until the earliest of—

(i) the expiry of a period not exceeding three months from the date of the conviction;

(ii) payment of the fine;

(iii) the recovery of the amount of the fine in pursuance of any such warrant.

(3) Sections 77(1) and 78 of the Magistrates' Courts Act 1980 [F21] (postponement of issue of, and defects in, warrants of distress) apply to a warrant of distress issued under this article as they apply to a warrant of distress issued under Part 3 of that Act.

(4) Where, in relation to a fine in respect of an offence referred to in paragraph (1), an order under article 95 of the Magistrates' Courts (Northern Ireland) Order 1981 [F22] or section 222 of the Criminal Procedure (Scotland) Act 1995 [F23] (which deal with the transfer of fines from one jurisdiction to another) specifies a local justice area in England or Wales, this article applies as if the fine were imposed by a court within that area.

(5) In this article, "fine" includes any pecuniary penalty, pecuniary forfeiture or pecuniary compensation payable under a conviction.

F20 Section 30(1) was amended by section 293(2) of the Marine and Coastal Access Act 2009 (c.23) and by S.I. 2011/1043.

F21 1980 c.43; section 77(1) was amended by paragraph 47 of Schedule 13 to the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 78 was amended by sections 37 and 46 of the Criminal Justice Act 1982 (c.48), and paragraph 219 of Schedule 8 to the Courts Act 2003.

F22 S.I. 1981/1675 (N.I. 26).

F23 1995 c.46; section 222 was amended by paragraph 20(3) of Schedule 1 to the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6

Amendment of the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005

4.—(1) The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005 [F24] are amended as follows.

(2) In regulation 1 (citation, commencement and extent)—

(a) in paragraph (3)(b) and (c)(iv), after "Wales" insert " or the Welsh zone "; and

(b) for paragraph (4) substitute—

"(4) In paragraph (3)(b) and (c)(iv), "Wales" and the "Welsh zone" have the same meanings as in section 158(1) of the Government of Wales Act 2006 ".[F25]

(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) after the definition of "British fishing boat" insert—

""the Control Regulation" means Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, as amended from time to time";

(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 "; and

(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 " Article 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 ".