Draft Order laid before Parliament under section 58(4)(a) of the Government of Wales Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. 0000

CONSTITUTIONAL LAW
DEVOLUTION, WALES

The Welsh Zone (Boundaries and Transfer of Functions) Order 2010

Made - - - - ***

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the *** day of ***

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order has been laid before, and approved by a resolution of, each House of Parliament in accordance with section 58(4)(a) of the Government of Wales Act 2006(**1**) and has been approved by the Welsh Ministers in accordance with section 58(4)(b) of that Act.

Her Majesty, in exercise of the powers conferred by sections 58, 157(2) and 158(4) of, and paragraph 7 of Schedule 3 and paragraph 2 of Schedule 4 to, the Government of Wales Act 2006(**2**), is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation and commencement

1.—(1) This Order may be cited as the Welsh Zone (Boundaries and Transfer of Functions) Order 2010.

(2) This article, articles 2 and 3 and the Schedule come into force on the day after the day on which this Order is made.

(3) Articles 4 to 8 come into force on 31st March 2010, but this is subject to paragraph (4).

(**1**) 2006 c. 32.

(**2**) In the Government of Wales Act 2006, section 58 is amended by paragraph 6(3) of Schedule 4 to the Marine and Coastal Access Act 2009 to include provision relating to the Welsh zone, and section 158 is amended by section 43 of that Act and includes provision for and in connection with the definition of the "Welsh zone".

(4) If this Order is made on or after 31st March 2010, articles 4 to 8 come into force on the day after the day on which this Order is made.

Interpretation

2. In this Order—

"co-ordinate" means a co-ordinate of latitude and longitude on the World Geodetic System 1984;

"Northern Ireland zone" has the same meaning as in the Northern Ireland Act 1998(**3**);

"the transfer date" means the date on which articles 4 to 8 come into force.

The boundaries of the Welsh zone

3.—(1) For the purposes of the definition of "the Welsh zone" in section 158(1) of the Government of Wales Act 2006(**4**), the part of the sea within British fishery limits which is to be treated as adjacent to Wales is, subject to paragraph (2), the part which is within limits measured from baselines in Wales(**5**).

(2) Any part of the sea within British fishery limits which is within limits measured from baselines in Wales but which is separated from Wales by—

(a) the northern boundary described in paragraph (3), or

(b) the southern boundary described in paragraph (4),

is not to be treated as adjacent to Wales for the purposes mentioned in paragraph (1).

(3) The northern boundary—

(a) follows a geodesic line joining the co-ordinates numbered 1 to 11 in Part 1 of the Schedule,

(b) then follows the seaward limit of the territorial sea adjacent to the Isle of Man(**6**) to the point where it meets the boundary of the Northern Ireland zone,

(c) then follows the boundary of the Northern Ireland zone to the co-ordinate numbered 12 in Part 1 of the Schedule.

(4) The southern boundary follows a geodesic line joining the co-ordinates numbered 1 to 22 in Part 2 of the Schedule.

Transfer of functions

4.—(1) Subject to articles 5 and 6, the following functions of a Minister of the Crown are, so far as exercisable in relation to the Welsh zone(**7**), transferred to the Welsh Ministers—

(**3**) 1998 c. 47. See section 98(1) and (8) of that Act and also the Adjacent Waters Boundaries (Northern Ireland) Order 2002 (S.I. 2002/791) which specifies the boundaries of the Northern Ireland zone.

(**4**) This Article also has effect for the purposes of the definition of the Welsh zone for the purposes of the Marine and Coastal Access Act 2009 (see section 322(1), (6) and (7)(b) of that Act), section 17 of the Sea Fisheries (Shellfish) Act 1967 (as amended by section 212 of the Marine and Coastal Access Act 2009) and sections 132 and 134 of the Environmental Protection Act 1990 (c. 43) (as amended by section 313 of the Marine and Coastal Access Act 2009).

(**5**) The baselines from which British fishery limits are measured are those from which the territorial sea of the United Kingdom is measured (see section 1(1) of the Fishery Limits Act 1976). The baselines were promulgated in the Territorial Waters Order in Council 1964 and the Territorial Waters (Amendment) Order in Council 1979, which were made under the Royal Prerogative but later had effect as Orders in Council made by virtue of section 1(1)(b) of the Territorial Sea Act 1987 (c. 49) (see section 1(4) of that Act). The 1979 Order in Council was superseded and revoked by the Territorial Sea (Amendment) Order 1996 (S.I. 1996/1628), which was itself superseded and revoked by the Territorial Sea (Amendment) Order 1998 (S.I. 1998/2564).

(**6**) See the Territorial Sea Act 1987 (Isle of Man) Order 1991 (S.I. 1991/1722).

(**7**) So far as relating to Wales (which, by virtue of the definition in section 158(1) of the Government of Wales Act 2006, includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea), the functions in question are already functions of the Welsh Ministers, either having been conferred or imposed directly on them, or having been transferred to them from the National Assembly for Wales by paragraph 30 of Schedule 11 to the Government of Wales Act 2006. The

(a) functions conferred or imposed by or under section 15 or 16 of the Sea Fisheries (Shellfish) Act 1967(**8**);

(b) functions conferred or imposed by or under the Sea Fish (Conservation) Act 1967(**9**), except the functions of the "Board of Trade" under section 8(**10**);

(c) functions conferred or imposed by or under the Sea Fisheries Act 1968(**11**);

(d) functions conferred or imposed by or under the Fishery Limits Act 1976(**12**);

(e) functions conferred or imposed by or under Parts 2 to 4 of the Fisheries Act 1981(**13**);

(f) functions conferred or imposed by or under the Sea Fisheries (Wildlife Conservation) Act 1992(**14**);

(g) functions under the Sea Fish (Marketing Standards) Regulations 1986(**15**).

(2) In consequence of the transfer effected by paragraph (1)(b), the Sea Fish (Conservation) Act 1967 is amended as follows.

(3) In section 1 (size limits etc for fish) in subsection (9) (as substituted by section 194(5) of the Marine and Coastal Access Act 2009(**16**)) in paragraph (a) of the definition of "the appropriate national authority" after "Wales" insert "or the Welsh zone".

(4) In section 5 (power to restrict fishing for sea fish) in subsection (9) (as substituted by section 198(3) of the Marine and Coastal Access Act 2009) in paragraph (a) of the definition of "the appropriate national authority" after "Wales" insert "or the Welsh zone".

(5) Paragraphs (2) to (4) are without prejudice to the effect of paragraph (1) in relation to other provisions of the Acts and instruments mentioned in that paragraph.

Functions which are to be concurrently exercisable

5.—(1) The following functions of a Minister of the Crown, so far as exercisable in relation to the Welsh zone(**17**), are exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom they are exercisable—

(a) functions conferred or imposed by or under section 4 or 4A of the Sea Fish (Conservation) Act 1967(**18**);

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functions so transferred from the National Assembly for Wales were transferred to it from Ministers of the Crown by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), in the case of the functions mentioned in sub-paragraphs (a) to (f), and by the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253) in the case of the functions mentioned in paragraph (g).

(**8**) 1967 c. 83. There are amendments to section 16 which are not relevant to this Order.

(**9**) 1967 c. 84.

(**10**) Section 8 is amended by paragraph 43 of Part 1 of Schedule 2 to the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820). For the meaning of "the Board of Trade" and the vesting of functions under section 8 in the Secretary of State for Business, Innovation and Skills, see the following statutory instruments: 1970/1537, 1974/692, 1983/1127, 2007/3324 and 2009/2748.

(**11**) 1968 c. 77.

(**12**) 1976 c. 86.

(**13**) 1981 c. 29.

(**14**) 1992 c. 36.

(**15**) S.I. 1986/1272. The Regulations are amended by S.I. 1989/687 and S.I. 1994/452 and have been revoked in relation to Scotland by S.S.I. 2004/498.

(**16**) 2009 c. 23.

(**17**) So far as relating to Wales (including the sea adjacent to Wales out as far as the seaward boundary of the territorial sea), the functions in question are already concurrently exercisable by the Welsh Ministers and a Minister of the Crown. The National Assembly for Wales (Transfer of Functions) Order 1999 made these functions exercisable concurrently by the National Assembly for Wales and a Minister of the Crown, and the functions of the National Assembly for Wales were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

(**18**) Section 4 was substituted by section 3 of the Fishery Limits Act 1976 and is amended by section 20 of the Fisheries Act 1981, section 1 of the Sea Fish (Conservation) Act 1992 (c. 60), paragraph 43 of Part 1 of Schedule 2 to the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999, section 4(6) of the Marine and Coastal Access Act 2009 and, in relation to Scotland, by paragraph 3(a) of the Schedule to the Aquaculture and Fisheries (Scotland) Act 2007 (2007 asp 12). Section

(b) functions conferred or imposed by or under section 15(3) of that Act(**19**);

(c) functions conferred or imposed by or under section 5 of the Sea Fisheries Act 1968(**20**), so far as relating to the identification and marking of fishing boats;

(d) functions conferred or imposed by or under the British Fishing Boats Act 1983(**21**).

(2) Subject to paragraph (3), functions conferred or imposed by or under any of the enactments mentioned in article 4 which—

(a) are exercisable by a Minister of the Crown in relation to a cross-border body, but

(b) by their nature are not functions that can be specifically exercised in relation to the Welsh zone,

are exercisable by the Welsh Ministers in relation to that body concurrently with the Minister of the Crown.

(3) Paragraph (2) does not apply in the case of functions which are exercisable by the Welsh Ministers "jointly" with a Minister of the Crown.

Certain provisions that are subject to the consent or approval of the Treasury

6.—(1) Any provision of section 4 or 4A of the Sea Fish (Conservation) Act 1967 requiring the consent of the Treasury to the exercise of a function does not apply in relation to the exercise of the function by the Welsh Ministers.

(2) Any provision of Part 2 of the Fisheries Act 1981 requiring the approval of the Treasury for the exercise of a function continues to apply in relation to the exercise of the function by the Welsh Ministers.

Powers to confer or impose functions

7.—(1) Any pre-commencement power to confer or impose a relevant function on a Minister of the Crown includes power—

(a) to confer or impose the function on the Welsh Ministers, the First Minister or the Counsel General, or

(b) to direct that the function is to be exercisable by the Welsh Ministers, the First Minister or the Counsel General concurrently with a Minister of the Crown.

(2) For the purposes of paragraph (1)—

"pre-commencement power" means a power which was exercisable immediately before the transfer date;

"relevant function" means a function which, had it been a function of a Minister of the Crown immediately before the transfer date—

(a) would have been transferred to the Welsh Ministers by article 4, or

(b) would, by virtue of article 5, have become concurrently exercisable by the Welsh Ministers and the Minister of the Crown.

4A was inserted by section 21(1) of the Fisheries Act 1981 and is amended by section 3 of the Sea Fish (Conservation) Act 1992 and paragraph 43 of Part 1 of Schedule 2 to the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999.

(**19**) Section 15(3) was substituted by Part 2 of Schedule 1 to the Sea Fisheries Act 1968 and is amended by paragraph 16 of Schedule 2 to the Fishery Limits Act 1976 and paragraph 43 of Part 1 of Schedule 2 to the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999.

(**20**) Section 5 is amended by section 4(2) of, and paragraphs 3(1) of Schedule 1 and 17 of Schedule 2 to, the Fishery Limits Act 1976, section 24(2) of the Fisheries Act 1981, Part 3 of Schedule 4 to the Criminal Justice Act 1991 (c. 53) and paragraph 48 of Part 1 of Schedule 2 to the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999.

(**21**) 1983 c. 8.