

2009 No. 360(W. 35)

SEA FISHERIES, WALES

**The European Fisheries Fund
(Grants) (Wales) Regulations 2009**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply in relation to Wales and supplement Council Regulation 1198/2006 on the European Fisheries Fund (“the Council Regulation”) and Commission Regulation 498/2007 laying down detailed rules for the implementation of the Council Regulation (“the Commission Regulation”). In exercise of power introduced by the Legislative and Regulatory Reform Act 2006, references to the Council Regulation and the Commission Regulation are to these instruments as amended from time to time.

The Council Regulation provides for assistance (“Community aid”) to be paid from the European Fisheries Fund established by the European Community in respect of certain categories of investments, projects and actions (“relevant operations”) in the fisheries and aquaculture sector and in the industry sector processing and marketing its products.

These Regulations provide for and regulate the payment of Community aid and grants in addition to that aid by the Welsh Ministers towards expenditure on operations which the Welsh Ministers have approved in accordance with these Regulations, the Council Regulation and the Commission Regulation.

These Regulations (regulations 3, 4 and 5) lay down a procedure for applications for the approval of relevant operations and expenditure to be made and approved for the purpose of the payment of Community aid and, if the Welsh Ministers so determine, grant in addition to that aid. Such aid and grant together is referred to as “financial assistance”. In determining whether to pay grant in addition to Community aid and, if they determine to pay such grant, the amount of the grant, the Welsh Ministers are required to have regard to the requirements of the

Council Regulation and the Commission Regulation (regulation 3). Among other things the Council Regulation requires a certain level of financial participation by Member States to enable relevant operations to qualify for Community aid, the requisite levels of participation being set out in Annex II to the Council Regulation.

Payment of financial assistance is dependent on the provision of satisfactory evidence of the expenditure incurred and of the proper execution of the relevant operation (regulation 6).

Provision is made concerning the method of payment of financial assistance (regulation 7). The Welsh Ministers may require undertakings to be given by a person whose application is approved (regulation 8).

Provision is made (regulation 9) for persons whose applications for financial assistance have been approved to supply to the Welsh Ministers such information as the Welsh Ministers may from time to time reasonably require and (under regulation 10) for them to retain certain records for a period of 6 years. That period may be extended by the Welsh Ministers.

Applicants are required, on request, to give assistance to authorised officers, who are given power of entry and inspection for specified purposes (regulations 11 and 12). Provision is made for the reduction, withholding and recovery, in certain circumstances, of financial assistance (regulation 13) and for the payment of interest on amounts recovered (regulation 14). Regulation 11 provides that sums payable to the Welsh Ministers are recoverable as a debt.

The Regulations create offences and provide penalties in respect of false statements made to obtain financial assistance, failure to keep records or provide information reasonably requested by the Welsh Ministers, failure to comply with requests made by authorised officers in exercise of their powers of entry and inspection and the obstruction of such officers in the exercise of those powers (regulation 16). They also make provision in relation to offences committed by bodies corporate (regulation 17).

A regulatory impact assessment has been carried out in connection with these Regulations and is available from the Welsh Assembly Government, Cathays Park, Cardiff, CF10 3NQ.

2009 No. 360 (W. 35)

SEA FISHERIES, WALES

**The European Fisheries Fund
(Grants) (Wales) Regulations 2009**

Made *23 February 2009*

*Laid before the National
Assembly for Wales* *25 February 2009*

Coming into force *18 March 2009*

The Welsh Ministers are designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the common agricultural policy of the European Community.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for any reference in these Regulations to Council Regulation (EC) 1198/2006 and Commission Regulation (EC) 498/2007 to be construed as references to those instruments as amended from time to time.

In exercise of the powers conferred upon them under section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972⁽³⁾, the Welsh Ministers make the following Regulations.

Title, application and commencement

1. The title of these Regulations is the European Fisheries Fund (Grants) (Wales) Regulations 2009.

⁽¹⁾ S.I. 2005/2766 (as amended by S.I. 2006/3329). By virtue of sections 59(1) and 162 of and paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006 (c.32), functions conferred on the National Assembly for Wales are exercisable by the Welsh Ministers.

⁽²⁾ 1972 c.68.

⁽³⁾ Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).

They apply in relation to Wales and come into force on 18 March 2009.

Interpretation

2.—(1) In these Regulations, unless the context requires otherwise-

“application” (“*cais*”) means an application for payment of financial assistance under regulation 3(1), and “applicant” (“*ceisydd*”) is to be construed accordingly;

“approval” (“*cymeradwyaeth*”) means an approval granted under regulation 5 and includes the terms and conditions subject to which such approval has been given, and “approve” (“*cymeradwyo*”) and “approved” (“*a gymeradwywyd*”) are to be construed accordingly;

“approved operation” (“*gweithrediad a gymeradwywyd*”) means a relevant operation which the Welsh Ministers have approved in writing;

“authorised officer” (“*swyddog awdurdodedig*”) means a person authorised in writing to be an officer for the purposes of these Regulations by the Welsh Ministers, and includes any duly appointed official of the Commission who accompanies such an authorised officer;

“beneficiary” (“*buddiolwr*”) means a person whose application for financial assistance has been approved, and “beneficiaries” (“*buddiolwyr*”) will be construed accordingly;

“the Commission” (“*y Comisiwn*”) means the Commission of the European Communities;

“Community aid” (“*cymorth Cymunedol*”) means aid towards eligible expenditure available from the European Fisheries Fund and payable in accordance with Council Regulation 1198/2006 and Commission Regulation 498/2007;

“Community fishing vessel” (“*cwch pysgota Cymunedol*”) means a fishing boat flying the flag of and registered in a Member State of the European Community;

“Council Regulation 1198/2006” (“*Rheoliad y Cyngor 1198/2006*”) means Council Regulation (EC) No. 1198/2006 of 27 July 2006 on the European Fisheries Fund (1);

“Commission Regulation 498/2007” (“*Rheoliad y Comisiwn 498/2007*”) means Commission Regulation (EC) No. 498/2007 of 26 March 2007 laying down detailed rules for the implementation

(1) OJ No. L223, 15.8.2006, p.1.

of Council Regulation (EC) No. 1198/2006 on the European Fisheries Fund **(1)**;

“eligible expenditure” (“*gwariant cymwys*”) means expenditure which is incurred or to be incurred in connection with an approved operation and which the Welsh Ministers have approved for the purpose of receiving financial assistance under regulation 5;

“financial assistance” (“*cymorth ariannol*”) means any amount paid or payable by way of grant or Community aid under these Regulations;

“grant” (“*grant*”) means a grant towards eligible expenditure payable under these Regulations in addition to any Community aid;

“LIBOR” (“*LIBOR*”), in relation to any particular day, means the sterling three month London interbank offered rate in force for that day as notified to the Welsh Ministers by the Bank of England, rounded if necessary to two decimal places;

“relevant conditions” (“*amodau perthnasol*”) means any conditions relating to the approval of an application or the making of a payment of any financial assistance which have been notified to a beneficiary under regulations 5(3)(b) or 7;

“relevant documents” (“*dogfennau perthnasol*”) means any receipt, invoice, account, drawing, plan, technical specification or other document relating to the approved operation;

“relevant equipment” (“*offer perthnasol*”) means any plant, machinery or other equipment for which financial assistance has been claimed or paid;

“relevant operation” (“*gweithrediad perthnasol*”) means an investment, project or action which is eligible for Community aid; and

“works” (“*gweithfeydd*”) means any construction, harbour or other building works, whether completed or not, for which financial assistance has been claimed or paid.

(2) Expressions used in these Regulations which appear or are referred to in Council Regulation 1198/2006 or Commission Regulation 498/2007 and which are not defined in this regulation have, unless the context otherwise requires, the same meaning in these Regulations as in that legislation.

(3) Any reference in these Regulations to Council Regulation 1198/2006 or Commission Regulation 498/2007 is a reference to those instruments as amended from time to time.

(4) Any reference in these Regulations to a numbered regulation is, unless the context otherwise

(1) OJ No. L120, 10.5.2007, p.1.

requires, to be construed as a reference to the regulation so numbered in these Regulations.

(5) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(1), which has been recorded and is consequently capable of being reproduced.

Financial assistance

3.—(1) Subject to the provisions of Council Regulation 1198/2006, Commission Regulation 498/2007 and these Regulations, the Welsh Ministers may pay Community aid and, if they so determine, a grant to any person—

- (a) who has applied, in accordance with regulation 4, for the purpose of obtaining such financial assistance, for approval under regulation 5 of—
 - (i) a relevant operation; and
 - (ii) expenditure incurred or to be incurred in connection with that operation; and
- (b) whose application they have approved.

(2) In determining under paragraph (1)—

- (a) whether to pay a grant in addition to Community aid; and
- (b) the amount of any such grant,

the Welsh Ministers must have regard to the requirements of Council Regulation 1198/2006 and Commission Regulation 498/2007 and, in particular, the limits on total State financial participation (national, regional and other) as set out in Annex II to Council Regulation 1198/2006.

Applications

4.—(1) Applications must—

- (i) be made in such form and manner;
- (ii) be made at such time;
- (iii) include such information; and
- (iv) be delivered to such address,

as the Welsh Ministers may from time to time require.

(2) Applicants must furnish further information and documents relating to the application as the Welsh Ministers may require.

(1) 2000 c.7.

Determination of applications

5.—(1) Subject to Council Regulation 1198/2006 and Commission Regulation 498/2007 the Welsh Ministers may—

- (a) refuse to approve an application for financial assistance; or
- (b) approve it in whole or in part, either unconditionally or subject to such conditions as they may determine.

(2) The Welsh Ministers may at any time vary an approval by amending any conditions to which it has been made subject, or by adding conditions.

(3) The Welsh Ministers must notify—

- (a) applicants in writing of their decision in respect of that application;
- (b) beneficiaries of any conditions to which their approval has been made subject or which have been varied under this regulation.

(4) Where the Welsh Ministers notify an applicant that they have refused to approve an application, or a beneficiary that they have granted an approval subject to conditions, or have varied the terms of an existing approval, they must give such applicant or beneficiary—

- (a) written reasons for their decision; and
- (b) an opportunity to make representations in relation to that decision within such reasonable time as is notified to the applicant or beneficiary by the Welsh Ministers.

(5) The Welsh Ministers must—

- (a) consider any representations received under paragraph (4);
- (b) make a decision which will either confirm their decision under paragraph (4) or substitute a different decision; and
- (c) notify the applicant or beneficiary in writing accordingly.

Eligibility and claims for payment of financial assistance

6.—(1) Subject to paragraph (2) and to regulation 14, a beneficiary will be eligible for payment of financial assistance.

(2) No financial assistance will be paid in respect of an approved application unless the Welsh Ministers have been supplied with—

- (a) satisfactory evidence that the amount of expenditure for which financial assistance is claimed has been incurred by the beneficiary, including details of any discount received by the beneficiary; and

- (b) satisfactory evidence that the approved operation to which the application relates has been properly executed.

Method of payment of financial assistance

7. Payments by way of financial assistance may be made—

- (a) at such time, or by such instalments at such intervals or time; and
- (b) subject to such conditions,

as the Welsh Ministers may reasonably determine, and any conditions in relation to any payment must be notified to the beneficiary in writing.

Undertakings

8. A beneficiary must give the Welsh Ministers such undertakings as the Welsh Ministers consider appropriate for the purposes of these Regulations.

Information

9.—(1) A beneficiary must supply the Welsh Ministers with such information in relation to an approved operation as the Welsh Ministers may from time to time reasonably require.

(2) Where the Welsh Ministers require information under paragraph (1), the beneficiary must supply them with that information within such period as the Welsh Ministers may reasonably determine.

Records

10.—(1) A beneficiary must—

- (a) keep a record of all receipts and expenditure incurred in connection with an approved operation; and
- (b) during the carrying out and after completion of the approved operation for the duration of the control period, retain such record together with any relevant documents relating to the approved operation, except to the extent that an authorised officer has removed and retained any of the same under regulation 12(6).

(2) Subject to paragraph (3), "the control period" is—

- (a) the period of six years commencing with the last payment of financial assistance in respect of the approved operation; or
- (b) such further period beyond the end of that six year period as has been notified in writing by

the Welsh Ministers to the beneficiary at any time before the expiry of that six year period.

(3) In determining in any case the date on which the control period expires, no account will be taken of any time between the commencement and final determination of any proceedings brought under regulation 13 for the recovery of any financial assistance paid in respect of that approved operation.

(4) Where, in the normal course of business, a beneficiary transfers the original of any document referred to in paragraph (1) to another person, the beneficiary must retain a copy of that document until the end of the relevant control period.

Assistance to authorised officers

11. Any beneficiary and any employee, servant or agent of a beneficiary must give to an authorised officer such assistance as that officer may reasonably require to exercise any power conferred on the officer by regulation 12.

Powers of authorised officers

12.—(1) An authorised officer may, at all reasonable times and on production, if requested to do so, of a duly authenticated document showing the authority of the officer, exercise the powers specified in this regulation for the purposes of—

- (a) verifying the accuracy of any information or evidence contained in or included with an application or supplied under regulation 6;
- (b) ascertaining whether and to what extent any expenditure for which financial assistance is claimed should be approved;
- (c) ascertaining whether and to what extent any undertaking given by a beneficiary under regulation 8 or any relevant condition has been complied with;
- (d) ascertaining whether and to what extent any amount of financial assistance is payable, or should be reduced, withheld or recovered under regulation 13;
- (e) ascertaining whether an offence under regulation 16 has been or is being committed; or
- (f) otherwise ascertaining, pursuant to Article 57 of Council Regulation 1198/2006, whether Community aid is being properly managed and controlled;

and such powers are exercisable for those purposes on a random, spot-check or sample basis as well as by reference to the particular circumstances or suspected circumstances of individual cases.

(2) Subject to paragraph (3), an authorised officer may enter upon any premises which are, or which such officer has reasonable cause to believe are, relevant premises.

(3) The power conferred by paragraph (2) may be exercised in relation to premises used as a dwelling house only where reasonable notice of the intended exercise of the power has been given to all residents of that dwelling house.

(4) Any authorised officer who has entered any premises in accordance with paragraph (2) may inspect—

- (a) those premises;
- (b) any equipment which is, or which such officer has reasonable cause to believe is, relevant equipment; and
- (c) any documents on those premises which are, or which such officer has reasonable cause to believe are, relevant documents.

(5) An authorised officer entering any premises by virtue of this regulation may be accompanied by such other person as the officer considers necessary, and paragraphs (2), (4), (6) and (7) and regulation 11 apply in relation to such other person when acting under the instructions of the officer as if they were authorised officers.

(6) An authorised officer may—

- (a) require any beneficiary or an employee, servant or agent of a beneficiary to produce any relevant documents and to supply such additional information in the possession of that person or under their control relating to an application or an approved operation as the officer may reasonably request;
- (b) inspect any such documents and, where any such documents are kept by means of a computer, have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with those documents;
- (c) require that copies of, or extracts from, any relevant documents be produced; or
- (d) remove and retain for a reasonable period any such relevant document which the officer has reason to believe may be required as evidence in proceedings under these Regulations or which the Welsh Ministers may be required to make available to the Commission pursuant to Article 87 of Regulation 1198/2006;

and, where any such document is kept by means of a computer, require it to be produced in a form in which

it may be taken away and in which it is visible and legible.

(7) An authorised officer will not be liable in any proceedings for anything done in purported exercise of the powers conferred on an authorised officer by these Regulations if the court hearing such proceedings is satisfied that—

- (a) the act was done in good faith;
- (b) there were reasonable grounds for doing it; and
- (c) it was done with reasonable skill and care.

(8) In this regulation—

“premises” (“*mangre*”) includes any vessel, place, vehicle, trailer or container; and

“relevant premises” (“*mangre berthnasol*”) means any premises to which an approved operation relates or in which relevant documents or relevant equipment are retained or in which an authorised officer has reasonable grounds to believe such documents or equipment may be retained.

Reduction, withholding and recovery of financial assistance

13.—(1) Subject to the provisions of this regulation if, at any time after the Welsh Ministers have approved an application, it appears to them that—

- (a) any relevant condition has not been complied with in whole or in part;
- (b) the application so approved or any part of it was not an application which the beneficiary was eligible to make;
- (c) the beneficiary or an employee, servant or agent of a beneficiary—
 - (i) has failed to comply with regulation 9, 10, 11 or 12(6);
 - (ii) has intentionally obstructed any authorised officer in the exercise of their powers under regulation 12; or
 - (iii) has given information on any matter relevant to the giving of the approval or the making of a payment relevant to the approval which is false or misleading in a material respect;
- (d) the approved operation was commenced before the date on which the Welsh Ministers gave written permission to do so;
- (e) the approved operation for which the expenditure was incurred has not been carried out or has not been carried out properly or in accordance with the approval;

- (f) the approved operation has been or is being unreasonably delayed beyond the time limit set out in the notification of approval or is unlikely to be completed;
- (g) any undertaking given by the beneficiary under regulation 8 has not been complied with;
- (h) the Commission has decided pursuant to Article 89 of Council Regulation 1198/2006 to reduce or suspend Community aid;
- (i) in any case of financial assistance for the construction or modernisation of a fishing vessel, any of the events specified in paragraph (2) has occurred before ten years have elapsed from the date of completion of the construction, or five years have elapsed from the date of completion of modernisation, of the vessel;
- (j) in any case of financial assistance for any relevant operation other than for the construction or modernisation of a fishing vessel, any of the events specified in paragraph (3) has occurred before six years have elapsed from the date of purchase of the relevant equipment, or ten years have elapsed from the date of purchase of the premises or the completion of the works;
- (k) the financial assistance duplicates or would duplicate assistance provided or to be provided out of monies made available by-
 - (i) the European Communities,
 - (ii) the Welsh Ministers, or
 - (iii) a body exercising public functions within the United Kingdom;
- (l) the beneficiary is in breach of any requirement to which he or she is subject under these Regulations or under Council Regulation 1198/2006 or Commission Regulation 498/2007; or
- (m) the approved operation is subject to penalties applicable under Council Regulation 1198/2006 or Commission Regulation 498/2007,

the Welsh Ministers may revoke the approval in whole or in part or reduce or withhold any financial assistance in respect of the approved operation and, where any such financial assistance has been paid, may recover on demand as a debt an amount equal to the financial assistance which has been so paid or such part of it as they determine.

- (2) The events referred to in paragraph (1)(i) are—
 - (a) the total loss of the vessel;

- (b) the damage or destruction of any relevant equipment resulting in payment under an insurance policy or by way of compensation or damages;
- (c) a mortgage of the vessel (other than a mortgage created for the raising of money applied to the cost of construction or modernisation of the vessel, being a mortgage approved by the Welsh Ministers before it was made);
- (d) the use of the vessel primarily for purposes other than those for which financial assistance was approved;
- (e) a disposal whether by sale or otherwise of the vessel or any part of it, its engine or any part of it or any relevant equipment or other equipment or apparatus used on or in connection with the vessel; or
- (f) the vessel ceasing to be a Community fishing vessel.

(3) The events referred to in paragraph (1)(j) are—

- (a) the total loss of the relevant equipment;
- (b) the damage or destruction of any relevant equipment, premises, or works resulting in payment under an insurance policy or by way of compensation or damages;
- (c) the creation of a right in security over the relevant equipment, premises, or works (other than a right in security created for the raising of money applied to the cost of construction or modernisation of the relevant equipment, premises, or works, being a right in security approved by the Welsh Ministers before it was made);
- (d) the use of the relevant equipment, premises, or works primarily for purposes other than those in respect of which financial assistance was approved; or
- (e) a disposal whether by sale or otherwise of the relevant equipment, premises, or works or any part of them.

(4) For the purposes of paragraph (1)(k), a sum duplicates financial assistance if it is, or would be, paid for any of the same purposes.

(5) Where paragraph (1)(i) or (j) applies and none of the other sub-paragraphs of paragraph (1) apply, the maximum amount which the Welsh Ministers may recover from a beneficiary under this regulation is that proportion of the total payment of financial assistance which the unexpired part of the ten, or as the case may be, five or six year period bears to that period together with interest thereon under regulation 14.

(6) Before revoking an approval in whole or in part or reducing or withholding any financial assistance or making a demand under paragraph (1), the Welsh Ministers must—

- (a) give the beneficiary a written explanation of the reasons for the step proposed to be taken;
- (b) afford the beneficiary the opportunity of making written representations within a reasonable time; and
- (c) consider any representations.

Interest

14.—(1) Where the Welsh Ministers intend to recover on demand financial assistance in whole or in part in accordance with regulation 13, they may, in addition, recover interest on that amount at a rate of 1 per cent above LIBOR calculated on a daily basis for the period from—

- (a) in any case to which regulation 13(4) applies, the date when the event in question occurred until the date of recovery; or
- (b) in any other case, the date of payment of the financial assistance,

until the day on which the Welsh Ministers recover the amount.

(2) In any proceedings for recovery under these Regulations, a certificate issued by the Welsh Ministers showing the rate or rates of interest, the amount of such interest recoverable and the period for which interest is calculated is, unless the contrary is shown, conclusive of those matters.

Sums payable to the Welsh Ministers to be recovered as a debt

15. In any case where an amount falls to be paid to the Welsh Ministers by virtue of these Regulations (or by virtue of action taken under these Regulations), such amount is recoverable as a debt.

Offences and penalties

16.—(1) Any person, who for the purposes of obtaining financial assistance for themselves or any other person—

- (a) in furnishing any information in purported compliance with a requirement imposed by or under regulation 4 or 12(6)(a), knowingly or recklessly makes a statement which is false or misleading in a material particular; or
- (b) in purported compliance with a requirement imposed under regulation 4(2), or 12(6)(a) or (c), knowingly or recklessly produces a

document which is false or misleading in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Any person who—

- (a) fails to comply with regulations 9, 10 or 11; or
- (b) intentionally refuses to supply any information, make any return, or produce any document when required to do so by, or otherwise intentionally obstructs, an authorised officer (or a person accompanying and acting on the instructions of the officer) acting in exercise of a power conferred by regulation 12,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Proceedings for an offence under these Regulations may, subject to paragraph (4), be commenced at any time within the period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(4) No proceedings for an offence under these Regulations may be commenced more than 5 years after commission of the offence.

(5) For the purposes of this regulation—

- (a) a certificate signed by or on behalf of the prosecutor stating the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the knowledge of the prosecutor is conclusive evidence of that fact; and
- (b) a certificate stating that matter purporting to be so signed is deemed to be so signed unless the contrary is proved.

Offences by bodies corporate

17.—(1) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any person to whom this paragraph applies, that person as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Paragraph (1) applies to any director, manager, secretary or other similar officer of the body corporate and to any person who was purporting to act in any such capacity.

(3) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the functions of management of the member as if the member were a director of the body corporate.

Elin Jones

Minister for Rural Affairs, one of the Welsh Ministers.

23 February 2009