

EXPLANATORY MEMORANDUM TO
THE MARINE AND COASTAL ACCESS ACT 2009 (COMMENCEMENT NO. 1,
CONSEQUENTIAL, TRANSITIONAL AND SAVINGS PROVISIONS) (ENGLAND
AND WALES) ORDER 2010

2010 No. 630 (C. 42)

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and the Department for Rural Affairs, Welsh Assembly Government, and is laid before Parliament by Command of Her Majesty.

[This memorandum contains information for the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]].

2. **Purpose of the instrument**

- 2.1 The Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010 is a composite Order made by the Welsh Ministers in relation to Wales and the Secretary of State for Environment, Food and Rural Affairs in relation to England.

- 2.2 The Order commences, in relation to Wales, section 187 (Abolition of local fisheries committees) of the Marine and Coastal Access Act 2009 (c.23) (“the 2009 Act”), which will have the effect of repealing (on 1 April 2010) the Sea Fisheries Regulation Act 1966 (c.38) (“the 1966 Act”).

- 2.3 The Order also commences, in relation to Wales, section 321 of, and Part 4 of Schedule 22 to, the 2009 Act which partially repeal a number of other enactments consequent to the repeal of the 1966 Act.

- 2.4 The Order further makes a number of consequential, transitional and savings provisions that are also needed as a result of the repeal of the 1966 Act in Wales. In order to deal with the staff and assets of the North Western and North Wales Sea Fisheries Committee (which is a cross-border body) the relevant provisions of this Order are made by the Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 This instrument is subject to annulment by a resolution of either House of Parliament or the National Assembly for Wales pursuant to section 316(8) and (10) of the Marine and Coastal Access Act 2009.

4. **Legislative Context**

- 4.1 The management of inshore fisheries throughout England and Wales has been considered in a number of reports in recent years, including the Prime Minister’s Net Benefits Report (March 2004), the DEFRA report on the Review of Marine and

Environmental Enforcement (November 2004), and the English Inshore Fisheries Working Group Report (March 2005). All three reports made recommendations for the modernisation of the inshore fisheries management system in England and Wales. As a result of the analysis undertaken in those reports, the Welsh Assembly Government reviewed the arrangements in Wales and decided (in the Wales Fisheries Strategy) that, in order to improve the management and enforcement of inshore fisheries and the marine environment in Wales, the most appropriate route (for Wales) would be for the Welsh Assembly Government to assume full responsibility for the management and enforcement of these fisheries in Wales.

4.2 This Order repeals the Sea Fisheries Regulation Act 1966 in relation to Wales, thereby removing the current local fisheries committee structure, and makes the necessary consequential provision to ensure that the Welsh Assembly Government can seamlessly assume the management and enforcement of inshore fisheries in Wales.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

5.2 Articles 1, 2, 9, 10, 11 and 12 of, and Schedule 2 to, the Order apply in relation to England and Wales and are made by The Secretary of State in relation to England and the Welsh Ministers in relation to Wales. Otherwise, the Order applies in relation to Wales and is made by the Welsh Ministers.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The management and enforcement of fisheries in Wales has, historically, been undertaken by Welsh Assembly Government Fisheries Inspectors, the two Sea Fisheries Committees (“SFCs”) which operate in Wales and the Environment Agency (EA). The overall aim of this Order is the simplification of the regulation and enforcement of sea fisheries in the inshore marine area adjacent to Wales.

7.2 There are two SFCs which currently operate in Wales, the South Wales Sea Fisheries Committee (which operates entirely within Wales (as defined by section 158 of the Government of Wales Act 2006, which includes the territorial sea adjacent to Wales)) and the North Western and North Wales Sea Fisheries Committee which extends over Welsh and English borders from Haverigg Point (north of the Dudden Estuary in Cumbria) to Cemaes Head in Ceredigion, Wales. Those SFCs currently exist and operate under the Sea Fisheries Regulation Act 1966.

7.3 Sea Fisheries Committees are joint committees of local authorities and are empowered to make byelaws for the management and conservation of their districts’

fisheries and marine environment. They also enforce some UK and EU legislation. Their byelaws regulate fishing activity such as use of gear, fishing seasons and minimum landings sizes. The Environment Agency (“EA”) has similar powers (pursuant to section 18 of the 1966 Act) to act as an SFC in certain estuaries. All byelaws made under powers in the 1966 Act must be confirmed by the Ministers before it can have effect.

7.4 The structure and role of SFCs in England and Wales has been considered in a number of reports in recent years, including the Prime Minister’s Net Benefits report (March 2004), the Defra report on the Review of Marine and Environmental Enforcement (November 2004), and the English Inshore Fisheries Working Group Report (March 2005). All three reports made recommendations for the modernisation of the inshore fisheries management system in England and Wales, and examined a number of options including the possibility of a single marine management agency which could combine the SFC functions with the functions of the Defra Marine and Fisheries Agency (MFA). It was accepted throughout these documents there was a need to improve the management and enforcement of inshore fisheries.

7.5 The production of these reports prompted the Welsh Assembly Government to reconsider its responsibilities and obligations for fisheries in the marine environment adjacent to Wales. In April 2008 the MFA fisheries inspectors stationed in Wales were transferred into the employment of the Welsh Assembly Government to create a fisheries enforcement team within the fisheries unit of the Welsh Assembly Government’s Rural Affairs department.

7.6 Following public consultation (see section 8 below) the Minister for Rural Affairs, one of the Welsh Ministers, decided to repeal the Sea Fisheries Regulation Act 1966 in relation to Wales and transfer into the Welsh Assembly Government the staff and assets (in Wales) of the two Sea Fisheries Committees in Wales. This would enable a more holistic approach to the management of fisheries around the Welsh coast, whilst retaining the existing expertise and providing sufficient resources for this additional role to be managed by the Welsh Assembly Government.

7.7 The main objective is to create a new, fit for purpose, fisheries and marine enforcement structure for Wales, building on the effectiveness of existing organisations. A single body responsible for fisheries management and enforcement in Wales will ensure a standardised level of service for its customers and a simplified management regime which is easier for users to understand and interact with. This will help the Welsh Ministers in achieving their aims as outlined by the Wales Fisheries Strategy.

7.8 The Welsh Assembly Government formally notified relevant employees of the Sea Fisheries Committees of the transfer of their employment contracts and their right to object, in a letter on 3 March 2010.

8. Consultation outcome

8.1 Two public consultations have taken place in relation to the restructuring of the management and enforcement of inshore fisheries in Wales – firstly, consultation on the proposals for the future management of inshore fisheries in Wales generally

and secondly (and more specifically), consultation on the future of the Several and Regulating Shellfish Fishery Orders that are currently held by the Welsh Sea Fisheries Committees. There was also public consultation upon the provisions of the Marine and Coastal Access Act 2009 which enable the provisions in this Order to be made. No public consultation has been held regarding the specific provisions of this Order as there has been no change in policy since the said consultations were undertaken, this Order is simply a mechanism to deliver that policy.

Proposals for the Future Management of Inshore Fisheries in Wales

8.2 The first consultation was on the proposals for the future management of inshore fisheries in Wales. This consultation launched on the 6 June 2008 and closed on the 4 August. The short consultation period was due to the necessity to consult in line with the time tabling of the draft Marine Bill (which later became the 2009 Act), in which provisions dealing with the reform of inshore fisheries management in Wales were needed. The 3 options presented were :

- **Option 1** - Modernise SFCs and give some role of supervision to central government whilst retaining local input to decision making.
- **Option 2** - Abolish SFCs and transfer responsibility for inshore fisheries management in Wales to the EA.
- **Option 3** - Bring the function in-house to create an all Wales fisheries management and enforcement body (within the Welsh Assembly Government).

8.3 70 responses were received in all. Responses were mixed. 28 supported option 3, 39 did not, and 3 were undecided. Most of those that did not support the proposal instead supported the modernisation of SFCs through the introduction of Inshore Fisheries and Conservation Authorities (IFCAs) (i.e. option 1). A large majority of those Local Authorities in membership of, and therefore financing SFCs, supported option 3. Further analysis of the concerns about option 3 expressed by those who preferred option 1, showed that the main concerns were issues which could be dealt with. The major concern was a lack of detail in the consultation document. The Minister for Rural Affairs, on the behalf of the Welsh Ministers, and Welsh Assembly Government officials reassured those concerned that the new structure (and details of the new management regime) would be developed via partnership working with them.

8.4 The Minister for Rural Affairs therefore took the decision that option 3 was the best option for Wales and the only way to give Welsh Ministers the control required to achieve the aims of the Wales Fisheries Strategy.

Future of Fishery Orders held by the Sea Fisheries Committees in Wales

8.5 As a result of the loss of the two Welsh Sea Fisheries Committees (upon the repeal of the 1966 Act), it is necessary to deal with all the assets and liabilities of those bodies, and this includes any extant Several and Regulating Shellfish Fishery Orders (made under section 1 of the Sea Fisheries (Shellfish) Act 1967) in Wales. Consequently, the order makes provision for the transfer of the two extant shellfish

fishery orders in Wales, currently held by the relevant Sea Fisheries Committees, to new grantees.

8.6 A consultation was launched on the 25 September 2009 and closed on the 20 November 2009 regarding how the Burry Inlet Cockle Fishery Order 1965 and the Menai Strait (East) Mussel and Oyster Fishery Order 1962 should be dealt with. The following options were consulted upon;

Option 1: Do nothing

This option was not recommended as the vital protection that these Fishery Orders give to shellfish fisheries would be lost, leaving valuable marine sites vulnerable to damage, and potentially causing loss of earnings to existing fishermen in those areas. Also, these Fishery Orders lie within European Marine Sites and Welsh Ministers have an obligation to protect species and habitats in these areas.

Option 2: Transfer Fishery Orders to Environment Agency Wales

The suggestion was to transfer these Orders to the Environment Agency (“EA”). The EA currently holds one Regulating Order for cockles in Wales (the Dee Estuary) and therefore has vital experience of running a regulated fishery. It also has existing responsibilities for the good management of estuaries under their current obligations, notably the Water Framework Directive.

Option 3: Transfer Fishery Orders to a company representing the fishing industry

In relation to the Menai Strait (East) Mussel and Oyster Fishery Order 1962, in particular, one option was for the Order to be transferred to a company, set up to represent the local fishing industry. This would give fishermen more ownership and a higher incentive for the good management of the Orders. This company would be responsible for the management of these Orders and the sustainable development of the shellfish industry in Wales. Enforcement could be carried out by the Assembly Government Fisheries Unit.

Option 4: Transfer Fishery Orders to a committee representing the fishing industry and environmental interests

Similar to Option 3, this Option involves the creation of a managing committee, representing a wider range of interests, including the fishing industry and environmental groups. This committee would be responsible for the management of these Orders and the sustainable development of the shellfish industry in Wales. The committee could be made up of representatives of the Assembly Government, EA, Countryside Council for Wales, environmental groups and industry bodies such as the Welsh Aquaculture Producers Association and the Sea Fish Industry Authority. Enforcement could be carried out by the Assembly Government Fisheries Unit.

8.7 18 responses were received from the fishing industry, environmental interests and other stakeholders. The option of the Environment Agency taking control of the Burry Inlet Cockle fishery received wide support, including importantly from two representative groups of the Burry Inlet Licence Holders. In total 13 of the responses commented on option 2 for the Burry Inlet, of those 11 were broadly in favour.

8.8 The second Order to which the consultation referred was the Menai Strait Oyster and Mussel Fishery Order 1962 (Menai East). In the consultation paper two suggested solutions were presented but no firm preference was stated by the Welsh Assembly Government. Of the 18 responses received, 13 commented on options 3 and 4. Of those respondents, 10 expressed a preference for option 4 as it would include a wider stakeholder involvement in the management of the fishery.

8.9 The Minister for Rural Affairs, one of the Welsh Ministers, announced on the 4 February 2010 that the Environment Agency would become grantee of the Burry Inlet fishery inline with the outcome of the consultation. The Minister for Rural Affairs also announced that a not for profit company would be established to be overseen by a board comprised of; fishermen's representatives (both the lessees and permit holders), the two Local Authorities, and local representatives from the Environment Agency and Countryside Council for Wales, to become the grantee of the Menai Strait (east) Mussel Fishery.

9. Guidance

9.1 Neither Defra nor the Welsh Assembly Government has issued any guidance in relation to this Order.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 The impact on the public sector is minimal. This is a straight forwards reorganisation of a role previously undertaken by a Local Authority body now being undertaken by the Welsh Ministers.

10.3 No Regulatory Impact Assessment has been prepared for this order as it is a Commencement Order for section 187 of the Marine and Coastal Access Act 2009 (c.23) which repeals the Sea Fisheries Regulation Act 1966 (c.38), and makes consequential provision and savings in relation to that repeal.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The monitoring and review of the exercise of new Welsh Fisheries Management Regime is a matter for the Welsh Assembly Government and/or the National Assembly for Wales.

13. Contact

Sarah Steeds at the Department for Environment, Food and Rural Affairs Tel: 020 7238 6363 or email: sarah.h.steeds@defra.gsi.gov.uk can answer any queries regarding the instrument.