

ENVIRONMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Fisheries for Shellfish

272. This Part of the Act makes amendments to sections 1 and 3 of the Sea Fisheries (Shellfish) Act 1967 (“the 1967 Act”) and introduces new sections 5A to 5F into it. The main purpose of these changes is to enable the Welsh Ministers to make the necessary provision and take the necessary action in relation to shellfishery orders, granted under section 1 of the 1967 Act, for the purposes of the protection and the prevention of harm to European Marine Sites (EMS). “European marine sites” is defined by new section 5F(1) of the 1967 Act (as inserted by section 50 of this Act) by reference to regulation 8 of the Conservation of Habitats and Species Regulations 2010 which includes Special Areas of Conservation (designated pursuant to the Habitats Directive [92/43/EEC](#)) and Special Protection Areas (designated pursuant to the Wild Birds Directive [79/409/EEC](#)).

Section 71 – Applications for orders relating to fisheries

273. Section 1 of the 1967 Act enables the Welsh Ministers to make an order conferring a right of several fishery or a right of regulating a fishery. A several order transfers ownership of the specified shellfish to the person (known as the grantee) upon whom that fishery is conferred. A regulating order enables a person to manage fishing activity (for the specified shellfish) within a specified area, often by issuing permits to others to fish.
274. Section 1(2) of the 1967 Act enables the Welsh Ministers to specify, in a statutory instrument, the form and manner in which an application for a several or regulating shellfishery order must be made. Section 71 of the Act amends section 1 of the 1967 Act so that it is no longer necessary to make a statutory instrument for these purposes. Section 1(2A) of the 1967 Act will enable the Welsh Ministers to specify the form and manner in which an application for a shellfishery order must be made, without the need to make subordinate legislation for that purpose.
275. **Section 71** of the Act further inserts a new section 1(2B) into the 1967 Act which enables the Welsh Ministers to require any person that applies for an order under section 1 of the 1967 Act to provide any information that the Welsh Ministers consider necessary (which could include environmental information) in order to consider such an application.
276. These amendments to section 1 of the 1967 Act will apply in relation to any application made after section 71 of this Act comes into force. Any such applications received before that date will be processed pursuant to the previous wording of section 1(2) of the 1967 Act.

Section 72 – Requirement to include environmental provisions in orders relating to fisheries

277. Section 72 of the Act inserts a new section 5A into the 1967 Act which requires the Welsh Ministers to ensure that an order made under section 1 of the 1967 Act includes any provisions considered appropriate to prevent harm to any EMS or to otherwise protect the marine environment. “Marine environment” is defined by the new section 5A(2). Definitions of “European marine site” and “harm” for these purposes are provided at section 5F(1) of the 1967 Act, inserted by section 75 of the Act.
278. The provisions of the new section 5A will not apply in relation to any shellfishery order made under section 1 of the 1967 Act before Part 5 of the Act comes into force (see section 5F(3) of the 1967 Act, inserted by section 75 of the Act).

Section 73 – Power to serve notices for protection of European marine sites

279. Section 73 of the Act inserts new sections 5B, 5C and 5D into the 1967 Act. These new sections enable the Welsh Ministers to issue a site protection notice (“SPN”) and deal with related matters.
280. In order to ensure that the Welsh Ministers have appropriate powers to prevent “harm” (as defined by section 5F(1) of the 1967 Act, inserted by section 75 of the Act) to an EMS as a result of the operation of a several or regulated shellfishery, section 5B(1) provides a new power for the Welsh Ministers to serve a SPN on the grantee of the relevant shellfishery in the specified circumstances.
281. Section 5B(2) and (3) specify the requirements that may be included in a SPN. In some cases a SPN might identify the activities being undertaken as part of the management of the fishery that may harm (or become harmful to) an EMS, and then specify what steps must be taken or what actions must be avoided in order to prevent that harm from happening. A SPN can include a requirement to take action as well as a requirement to abstain from taking certain actions.
282. Section 5B(4) makes provision regarding the form and content of the SPN (which can include provision that the grantees are required to comply with beyond the period of the several or regulating fishery, see section 5B(8) of the 1967 Act).
283. Section 5B(5) requires the Welsh Ministers to consult with the relevant grantee before issuing a SPN unless they are of the view that urgent action to prevent harm is needed and subsection (7) requires the Welsh Ministers to publish every SPN in such a way as to bring the SPN to the attention of anyone likely to be affected by it.
284. Section 5B(6) enables the Welsh Ministers to adjust or cancel a SPN.
285. Section 5B(9) provides that the enforcement powers set out at section 5(2) to (7) of the 1967 Act (which include powers to make inquiries and examinations and to enter onto certain land for those purposes etc.) are available for the purposes of the new section 5B (i.e. the power to serve a SPN).
286. Section 5C (inserted into the 1967 Act by section 73 of the Act) provides an appeal mechanism in relation to SPNs. An appeal may be made to the First-tier Tribunal. This section specifies the decisions which can be appealed and the persons that may bring or be party to such an appeal.
287. Section 5C(4) enables the First-tier Tribunal to suspend or adjust a SPN while the appeal is ongoing and subsection (5) enables the Tribunal to confirm, amend or cancel the relevant SPN. Subsection (6) enables the Tribunal to order the Welsh Ministers, where the Tribunal varies or cancels a SPN, to pay compensation to any party to the appeal who has suffered loss or damage as a result of the relevant SPN.
288. If a grantee who has been served with a SPN fails to comply with its terms, section 5D (inserted into the 1967 Act by section 73 of the Act) enables the Welsh Ministers to

take the necessary steps themselves and recover any costs associated with those actions from the Grantee.

289. The provisions of the new sections 5B, 5C and 5D will not apply in relation to any shellfishery order made under section 1 of the 1967 Act before Part 5 of the Act comes into force (see section 5F(3) of the 1967 Act, inserted by section 75 of the Act).

Section 74 – Power to vary or revoke orders to protect European marine sites

290. **Section 74** of the Act introduces a new section 5E into the 1967 Act. Section 5E(2) enables the Welsh Ministers to vary or revoke a several or regulating order in certain circumstances. Section 5E(1) provides that the power in subsection (2) is only available where the Welsh Ministers have served a SPN, which has not been cancelled (by the Welsh Minister or the First-tier Tribunal) and no appeal is pending in relation to that SPN (the meaning of a pending appeal is further described at section 5E(4)). Once those conditions have been met, subsection (2) then enables the Welsh Ministers to vary or revoke the relevant several or regulating shellfishery order in order to reflect the effect of the SPN. Subsection (3) sets out the relevant consultation requirements.
291. The provisions of section 5E will not apply in relation to any shellfishery Order made under section 1 of the 1967 Act before Part 5 of the Act comes into force (see section 5F(3) of the 1967 Act, inserted by section 75 of the Act).

Section 75 – Supplementary provision

292. **Section 75** of the Act inserts section 5F into the 1967 Act which defines various terms that are relevant to sections 5A to 5E inserted into the 1967 Act by this Act and identifies the fishery orders to which those new sections apply.