



# Environment (Wales) Act 2016

2016 anaw 3

## PART 5

### FISHERIES FOR SHELLFISH

#### *Protection of marine environment*

#### **72 Requirement to include environmental provisions in orders relating to fisheries**

- (1) The Sea Fisheries (Shellfish) Act 1967 is amended as follows.
- (2) After section 5 insert—

#### **“5A Orders made by Welsh Ministers: protection of marine environment**

- (1) An order made by the Welsh Ministers under section 1 of this Act must contain—
  - (a) such provision (if any) as the Welsh Ministers consider appropriate for the purpose of preventing harm to any European marine site identified in the order, and
  - (b) such other provision (if any) as they consider appropriate for the purpose of protecting the marine environment.
- (2) For the purposes of this section, “the marine environment” includes—
  - (a) the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features);
  - (b) features of archaeological or historic interest in such areas;
  - (c) flora and fauna which are dependent on, or associated with, a marine or coastal environment.”
- (3) In section 3, in subsection (2), for “section 4” substitute “sections 4 and 5A”.

### 73 Power to serve notices for protection of European marine sites

In the Sea Fisheries (Shellfish) Act 1967, after section 5A (as inserted by section 72) insert—

#### **“5B European marine sites: power of Welsh Ministers to serve site protection notice**

- (1) If it appears to the Welsh Ministers that harm to a European marine site has occurred, or is likely to occur, as a result of any activity—
  - (a) carried on in the exercise of a right conferred by an order made by them under section 1 of this Act, or
  - (b) authorised in pursuance of provision made by or under such an order which confers a right of regulating a fishery,the Welsh Ministers may serve a site protection notice on the grantees of the order.
- (2) A site protection notice is a notice which requires the grantees to take steps specified in the notice for the purpose of preventing harm (or further harm) to the European marine site.
- (3) The provision that may be made by a site protection notice includes provision prohibiting, restricting or interfering with the exercise of any right conferred by the order.
- (4) A site protection notice must—
  - (a) be in writing,
  - (b) set out the reasons for giving the notice, and
  - (c) specify the time by which, or the period for which, the steps specified in the notice must be taken.
- (5) The Welsh Ministers must consult the grantees of the order before serving a site protection notice on them, unless it appears to the Welsh Ministers that there is an urgent need to take steps to prevent harm (or further harm) to the European marine site.
- (6) The Welsh Ministers may vary or cancel a site protection notice by serving notice of the variation or cancellation on the grantees of the order.
- (7) The Welsh Ministers must publish every notice served by them under this section in such manner as they consider appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by it.
- (8) Provision under subsection (4)(c) may specify a time after, or a period which ends after, the expiry of the order; and in such a case, references in sections 5C and 5D of this Act to the grantees of the order are, in relation to any time after its expiry, references to the persons who were the grantees immediately before the order expired.
- (9) Subsections (2) to (7) of section 5 of this Act apply for the purposes of this section as they apply for the purposes of subsection (1) of that section.

### **5C Appeal against site protection notice**

- (1) An appeal lies to the First-tier Tribunal against—
  - (a) a site protection notice;
  - (b) any provision of a site protection notice;
  - (c) the variation of a site protection notice;
  - (d) the refusal of a request for the variation or cancellation of a site protection notice.
- (2) An appeal may be brought—
  - (a) in the case of an order made under section 1 of this Act which confers a right of several fishery, by the grantees of the order;
  - (b) in the case of such an order which confers a right of regulating a fishery—
    - (i) by the grantees of the order, or
    - (ii) by a person authorised to carry on an activity in pursuance of provision made by or under the order who is affected by the site protection notice or variation.
- (3) Where an appeal is brought by a person mentioned in subsection (2)(b)(ii), the grantees of the order are entitled to be parties to the appeal.
- (4) The First-tier Tribunal may suspend a site protection notice, or a variation of such a notice, pending the determination of an appeal.
- (5) On an appeal the Tribunal may confirm, vary or cancel a site protection notice.
- (6) If the Tribunal varies or cancels the notice, it may order the Welsh Ministers to pay compensation to any other party to the appeal for loss or damage suffered by that party as a result of the notice.

### **5D Failure to comply with site protection notice**

- (1) If the grantees of an order made under section 1 of this Act fail to comply with a site protection notice, the Welsh Ministers may themselves do anything that could be done by the grantees for the purpose of complying with the notice.
- (2) If the Welsh Ministers incur expenses in doing anything under subsection (1), they may recover those expenses from the grantees as a debt.”

## **74 Power to vary or revoke orders to protect European marine sites**

- (1) The Sea Fisheries (Shellfish) Act 1967 is amended as follows.
- (2) After section 5D (as inserted by section 73) insert—

### **“5E European marine sites: power of Welsh Ministers to vary or revoke order under section 1**

- (1) This section applies where—
  - (a) the Welsh Ministers have served a site protection notice on the grantees of an order made under section 1 of this Act,

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- (b) the notice has not been cancelled under section 5B(6) or 5C(5) of this Act, and
  - (c) no appeal under section 5C of this Act is pending.
- (2) The Welsh Ministers may vary or revoke the order to reflect the effect of the site protection notice.
- (3) Before making an order by virtue of this section, the Welsh Ministers must consult—
- (a) any persons who are entitled to a right of several fishery or a right of regulating a fishery in any part of the area to which the order relates, and
  - (b) any other persons the Welsh Ministers think are likely to be interested in the order or affected by it.
- (4) For the purposes of subsection (1)(c), an appeal under section 5C is pending if—
- (a) an appeal under that section (or a further appeal) has been brought and has not been determined or withdrawn, or
  - (b) an appeal under that section (or a further appeal) has not been brought but the period for bringing such an appeal is still running.”
- (3) In section 1 (power to make orders as to fisheries for shellfish), in subsection (8), after “subsection (10) below” insert “or by virtue of section 5E of this Act”.

## 75 **Supplementary provision**

In the Sea Fisheries (Shellfish) Act 1967, after section 5E (as inserted by section 74) insert—

### **“5F Protection of marine environment: supplementary provision**

- (1) In sections 5A to 5E of this Act—
- “European marine site” has the same meaning as in the [Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#) (see regulation 8);
  - “the grantees”, in relation to a right of several fishery, means the persons for the time being entitled to that right;
  - “harm”, in relation to a European marine site, means—
    - (a) an adverse effect on the integrity of the site,
    - (b) the deterioration of a relevant natural habitat or of the habitat of a relevant species, or
    - (c) the disturbance of a relevant species, in so far as the disturbance could be significant in relation to the objectives of the Habitats Directive.
- (2) For the purposes of the definition of “harm” in subsection (1)—
- a “relevant” natural habitat or species is one for which the site in question has been designated or classified as a European marine site;
  - “the Habitats Directive” means Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora.

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- (3) Sections 5A to 5E of this Act do not apply in relation to an order made under section 1 of this Act before the coming into force of Part 5 of the Environment (Wales) Act 2016.”