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WELSH STATUTORY INSTRUMENTS

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**2010 No. 2369 (W.203 )**

**SEA FISHERIES, WALES**

**SEA FISH INDUSTRY**

**The Fishing Boats (Electronic Transmission of Fishing Activities Data) (Wales) Scheme 2010**

<i>Made</i>	- - - -	<i>28 September 2010</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>28 September 2010</i>
<i>Coming into force</i>	- -	<i>20 October 2010</i>

The Welsh Ministers, in exercise of the powers conferred by section 15(1) and (2) of the Fisheries Act 1981(1), and now vested in them(2), make the following Scheme with the approval of the Treasury.

**PART 1**

Preliminary

**Title, commencement and application**

1.—(1) The title of this Scheme is the Fishing Boats (Electronic Transmission of Fishing Activities Data) (Wales) Scheme 2010 and it comes into force on 20 October 2010.

(2) This Scheme applies in relation to Wales.

**Interpretation**

2.—(1) In this Scheme—

“application” (“*cais*”) means an application for a grant under this Scheme and “applicant” (“*ceisydd*”) is to be construed accordingly;

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- (1) 1981 c. 29. See section 18(1) for the definition of “the Ministers”. Sections 15(2) and 18(1) were amended by S.I.1999/1820, Schedule 2, paragraph 68(1), (2) and (3).
- (2) By virtue of article 2(a) of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under section 15 of the 1981 Act were transferred to the National Assembly for Wales (as constituted under the Government of Wales Act 1998 (c. 38)) in so far as exercisable in relation to Wales. Those functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). The Treasury approval requirements under section 15 of the 1981 Act continue in effect.

“approved software” (“*meddalwedd a gymeradwywyd*”) means software specified in a list published by the Welsh Ministers under paragraph 3(1);

“approved supplier” (“*cyflenwr a gymeradwywyd*”) means a supplier specified in a list published by the Welsh Ministers under paragraph 3(1) in respect of the approved software;

“the closing date” (“*y dyddiad cau*”) means such date as the Welsh Ministers may from time to time determine and publish as the date on or before which an application for grant must be lodged;

“eligible Welsh fishing boat” (“*cwch pysgota Cymreig cymwys*”) means a fishing boat which—

- (a) is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995<sup>(3)</sup>;
- (b) has its port of administration in Wales at the date of the application for grant; and
- (c) measures 15 metres or more overall in length;

“the EU Regulation” (“*y Rheoliad UE*”) means—

- (a) until 31 December 2010, the provisions relating to recording and transmission of fishing activities data set out in—
  - (i) Articles 1 to 3 of Council Regulation (EC) No. 1966/2006 of 21 December 2006 on electronic recording and reporting of fishing activities and on means of remote sensing<sup>(4)</sup>; and
  - (ii) Chapter 2 of Commission Regulation (EC) No. 1077/2008 of 3 November 2008 laying down detailed rules for the implementation of Council Regulation (EC) No. 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing and repealing Regulation (EC) No. 1566/2007<sup>(5)</sup>;
- (b) on and after 1 January 2011, the provisions relating to recording and transmission of fishing activities data set out in Section 1 of Chapter 1 of Title 4 of Council Regulation (EC) No. 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/ 2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006<sup>(6)</sup>;

“fishing activities data” (“*data gweithgareddau pysgota*”) means the logbook data, transshipment declaration data and landing declaration data required under the EU Regulation to be recorded and transmitted by electronic means;

“grant” (“*grant*”) means a grant under this Scheme;

“port of administration” (“*porthladd gweinyddu*”) means the port from which the licence granted in respect of a fishing boat under section 4 of the Sea Fish (Conservation) Act 1967<sup>(7)</sup> is issued; and

“Wales” (“*Cymru*”) has the meaning given in section 158 of the Government of Wales Act 2006<sup>(8)</sup>.

(2) Any obligation of the Welsh Ministers to publish material under this Scheme means an obligation to make that material available in a manner that will ensure it is reasonably likely to be seen by those eligible for a grant.

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(3) 1995 c. 21.

(4) OJ No L409, 30.12.2006, p. 1

(5) OJ No L295, 4.11.2008, p. 3.

(6) OJ No L343, 22.12.2009, p. 1.

(7) 1967 c. 84.

(8) 2006 c. 32.

## PART 2

### Grant for approved software

#### Approved software and approved suppliers

3.—(1) The Welsh Ministers must publish a list specifying—

- (a) software that is capable of—
  - (i) electronically recording fishing activities data; and
  - (ii) electronically transmitting fishing activities data in the required format; and
- (b) the suppliers of that software.

(2) In this paragraph, “required format” (“y ffurf ofynnol”) means a format determined and published by the Welsh Ministers for the purposes of the EU Regulation.

#### Eligibility for grant

4.—(1) A person may apply, in accordance with the provisions of this Scheme, to the Welsh Ministers for a grant, if the person—

- (a) is the master, owner or charterer of an eligible Welsh fishing boat; and
- (b) has purchased from an approved supplier, or has commissioned an approved supplier to supply, approved software for use on that boat.

(2) In this paragraph, “master” (“*meistr*”) includes the person for the time being in charge of the fishing boat.

#### Payment of grant

5.—(1) The Welsh Ministers may make payment of a grant, or of any part of it, after the application has been approved under paragraph 9(1) and the Welsh Ministers are satisfied that—

- (a) the approved supplier has supplied the applicant with the approved software and the software has been installed in the eligible Welsh fishing boat;
- (b) the applicant has successfully used the approved software to electronically record and transmit fishing activities data in accordance with the EU Regulation; and
- (c) any condition for payment of the grant, or of any part of it, has been complied with.

(2) The Welsh Ministers may—

- (a) make payment of grant to the applicant or direct to the approved supplier on behalf of the applicant;
- (b) make payment of grant at such time, or by such instalments at such intervals or times, as the Welsh Ministers may determine; and
- (c) make only one grant in respect of any eligible Welsh fishing boat.

#### Amount of grant

6. The amount of the grant—

- (a) must not exceed the cost of purchase or supply of the approved software; and
- (b) may be such lesser amount as determined by the Welsh Ministers.

## PART 3

### Applications for grant

#### Invitation to apply for grant

7.—(1) The Welsh Ministers may from time to time publish an invitation for applications for grant.

(2) An invitation must contain—

- (a) details of approved software and approved suppliers;
- (b) details of the conditions of eligibility for a grant;
- (c) requirements as to the form and manner of making an application;
- (d) any requirements for providing documents, information and undertakings in support of the application; and
- (e) the closing date for making an application.

#### Applications

8.—(1) An application for a grant must be made in writing to the Welsh Ministers in accordance with the requirements of the invitation made under paragraph 7(1).

(2) Save as provided in sub-paragraph (3), an application must be received by the Welsh Ministers on or before the closing date.

(3) The Welsh Ministers may accept an application after the closing date if satisfied that—

- (a) the particular circumstances of the applicant render it unreasonable to expect the application to be made by the closing date; and
- (b) the date by which the application is made is as early as can reasonably be expected.

(4) The Welsh Ministers may, before determining any application, require the applicant to provide additional information.

#### Determination of application

9.—(1) As soon as reasonably practicable after the closing date, or after the supply of any additional information requested pursuant to paragraph 8(4), the Welsh Ministers must—

- (a) identify and approve, subject to such conditions as they consider appropriate, those applications made in pursuance of an invitation made under paragraph 7(1) which satisfy the provisions of this Scheme; and
- (b) reject any other applications.

(2) The Welsh Ministers must reject an application if they are of the opinion that the port of administration of the fishing boat has been changed to a port in Wales for the primary purpose of ensuring that the fishing boat is an eligible Welsh fishing boat for the purposes of this Scheme.

(3) Where the Welsh Ministers approve an application under sub-paragraph (1)(a), they must notify the applicant in writing of that approval and any conditions to which it is subject.

(4) Where the Welsh Ministers reject an application under sub-paragraphs (1)(b) or (2), or approve an application subject to any condition under sub-paragraph (1)(a), they must notify the applicant in writing of—

- (a) the reasons for that rejection or the imposition of the condition; and
- (b) the right to apply for a review under paragraph 10.

### **Review of determination**

**10.**—(1) Where the Welsh Ministers reject an application under paragraphs 9(1)(b) or 9(2), or approve an application subject to any condition under sub-paragraph 9(1)(a), the person who applied for grant may apply to the Welsh Ministers, in accordance with the provisions of this paragraph, for a review of that determination.

(2) An application for a review under this paragraph must be received by the Welsh Ministers on a date no later than 6 months from the date of the relevant determination under paragraphs 9(1) or 9(2).

(3) An application for review under this paragraph must be in writing and specify—

- (a) the name and address of the person applying for the review and, where that person is not the person named in the determination, the name and address of the person named in the determination and the basis upon which the person is seeking review;
- (b) the determination of the Welsh Ministers which is to be reviewed and its date;
- (c) details of the grounds upon which review is sought; and
- (d) the change sought to the determination.

(4) An application made under this paragraph may be made by post or by fax or other means of electronic communication which is capable of reproduction.

(5) Where an application is made under this paragraph, the Welsh Ministers must review the determination which is specified in it, reach a final decision and notify in writing the person applying for the review of that decision and the reasons for it.

(6) In reviewing a determination the Welsh Ministers may—

- (a) consider any document or other evidence produced by the applicant (whether or not that document or evidence was available at the time of the determination);
- (b) invite the applicant to provide such further information relevant to the review as they consider appropriate; and
- (c) give the applicant an opportunity to give evidence and to make representations in person or through a representative.

## **PART 4**

### **Revocation, withholding and recovery of grant**

#### **Revocation, withholding and recovery of grant**

**11.**—(1) If at any time after the Welsh Ministers have approved an application under paragraph 9(1)(a), it appears to them—

- (a) that any condition imposed under that paragraph has been breached or has not been complied with; or
- (b) the applicant has committed or may have committed an offence under section 17 of the Fisheries Act 1981<sup>(9)</sup>,

they may revoke the approval of such application or withhold the grant, or any part of the grant, in respect of the application and, where any payment of grant has been made, may recover from the applicant on demand an amount equal to the whole or any part of the payment which has been so made, irrespective of whether payment of grant was made to the applicant direct or to the approved supplier on the applicant's behalf by virtue of paragraph 5(2)(a).

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(9) 1981 c. 29.

- (2) Before revoking an approval or withholding any grant or making a demand by virtue of subparagraph (1), the Welsh Ministers must—
- (a) give the applicant a written explanation of the reasons for the step proposed to be taken;
  - (b) afford the applicant the opportunity of making written representations within such time as the Welsh Ministers consider reasonable; and
  - (c) consider any such representations.

### **Interest**

**12.**—(1) Where the Welsh Ministers decide to recover on demand an amount in accordance with paragraph 11(1), they may, in addition, recover interest on that amount at a rate of 1% above LIBOR calculated on a daily basis for the period beginning with the day following that on which the amount was paid and ending on the day on which the amount is recovered.

(2) In this paragraph “LIBOR” (“LIBOR”), in relation to any day, means the sterling three-month London inter-bank offered rate in force for that day rounded if necessary to two decimal places.

(3) In any proceedings for recovery under this Scheme, a certificate issued by the Welsh Ministers stating the LIBOR applicable for any day is conclusive evidence of the LIBOR in question if the certificate also states that the Bank of England notified the Welsh Ministers of the LIBOR in question.

28 September 2010

*Elin Jones*  
Minister for Rural Affairs, one of the Welsh  
Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Scheme)*

This Scheme, made with the approval of the Treasury, provides for the payment of grants as a contribution towards the cost of purchase or supply of software necessary to record and electronically transmit fishing activities data in accordance with—

- (a) Council Regulation (EC) No. 1966/2006 of 21 December 2006 on electronic recording and reporting of fishing activities and on means of remote sensing;
- (b) Commission Regulation (EC) No. 1077/2008 of 3 November 2008 laying down detailed rules for the implementation of Council Regulation (EC) No. 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing and repealing Regulation (EC) No. 1566/2007; and
- (c) Council Regulation (EC) No. 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/ 2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006.

In Part 2, paragraph 3 provides for published lists of approved software and approved suppliers, paragraph 4 specifies the eligibility criteria for the grant, paragraph 5 deals with payment of grant and paragraph 6 deals with the amount of grant.

In Part 3, paragraph 7 provides for making invitations to apply for grant, paragraph 8 deals with the making of an application for grant, paragraph 9 provides for the determination of applications for grant, including the power to attach conditions to any approval and requirements as to notification. Paragraph 10 provides for the review of a determination to refuse an application or a determination to attach a condition to an approval of an application.

In Part 4, paragraph 11 provides for the revocation, withholding and recovery of grant in certain circumstances and paragraph 12 enables interest to be payable on sums which are recovered.

A regulatory impact assessment has not been produced in relation to this instrument as no impact on the private or voluntary sectors is foreseen.