
WELSH STATUTORY INSTRUMENTS

2019 No. 363 (W. 86)

SEA FISHERIES, WALES

The Sea Fishing (Penalty Notices) (Wales) Order 2019

<i>Made</i>	- - - -	<i>20th February 2019</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>26th February 2019</i>
<i>Coming into force</i>	- -	<i>22nd March 2019</i>

The Welsh Ministers, in exercise of the powers conferred by section 30(2) and (2ZA) of the Fisheries Act 1981(1) now vested in them(2) and sections 294 and 316(1)(b) of the Marine and Coastal Access Act 2009(3), make the following Order.

Title, commencement and application

- 1.—(1) The title of this Order is the Sea Fishing (Penalty Notices) (Wales) Order 2019.
- (2) This Order comes into force on 22 March 2019.
- (3) This Order applies in relation to Wales, the Welsh zone and Welsh fishing boats wherever they may be.

Interpretation

2. In this Order—
 - “officer” (“*swyddog*”) means a marine enforcement officer within the meaning of section 235(1)(b) of the Marine and Coastal Access Act 2009;
 - “penalty” (“*cosb*”) means the amount specified in a penalty notice;

(1) 1981 c. 29 (“the 1981 Act”); section 30(2ZA) was inserted by section 293(3) of the Marine and Coastal Access Act 2009 (c. 23). See section 30(3) for the definition of “the Ministers”.

(2) The functions of the Ministers under section 30 of the 1981 Act, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales and then transferred from that body to the Welsh Ministers: see article 2(a) of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order (S.I. 1999/672) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). The functions of the Ministers under section 30 of the 1981 Act, so far as exercisable in relation to the Welsh zone, were transferred to the Welsh Ministers by article 4(1)(e) of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760). Those functions were further transferred, on a concurrent basis, in relation to Welsh fishing boats beyond the seaward limit of the Welsh zone by section 59A of and paragraph 2(1) of Schedule 3A to the Government of Wales Act 2006.

(3) 2009 c. 23.

“penalty notice” (“*hysbysiad cosb*”) means a notice offering the opportunity, by payment of a specified amount in accordance with this Order, to discharge any liability to be convicted of the penalty offence to which the notice relates;

“penalty offence” (“*trosedd cosb*”) means an offence (other than one involving assault, obstruction or failure to comply with a requirement imposed by a person) listed in the Schedule.

Issue of penalty notice

3.—(1) Where an officer has reason to believe that a person has committed a penalty offence, the officer may issue that person with a penalty notice for an amount not exceeding £10,000.

(2) In determining the penalty, an officer must have regard to any guidance given by the Welsh Ministers on matters to be taken into account when making such a determination.

(3) A penalty notice is issued at the time when it is sent by post or delivered by hand to the person to whom it relates.

Content of penalty notice

4.—(1) A penalty notice issued under article 3 must—

- (a) give particulars of the penalty offence;
- (b) state the amount of the penalty;
- (c) state the period during which, by virtue of article 5, proceedings will not be taken for the offence;
- (d) state the person to whom, and the address at which, the penalty may be paid; and
- (e) state that payment must not be in cash.

Restriction on proceedings for penalty offence

5.—(1) Where a person is issued with a penalty notice—

- (a) no proceedings may be brought against that person for the penalty offence to which that notice relates before the end of the period of 28 days beginning with the date on which that notice was issued; and
- (b) that person may not be convicted of the offence if the penalty is paid before the end of that period.

(2) Paragraph (1)—

- (a) is subject to article 10; and
- (b) does not apply if the penalty notice is withdrawn in accordance with article 9.

Payment of penalty

6.—(1) Payment of a penalty must be made to the person specified in the penalty notice by sending it by post or by such method as may be specified in the notice.

(2) It may not be made in cash.

Payment of one penalty treated as payment of connected penalties

7.—(1) Where a person (“A”) pays the penalty in accordance with article 6, an officer must give a notice (a “notice of deemed payment” (“*hysbysiad taliad tybiedig*”)) to all other persons who have been issued with a connected penalty notice.

(2) A penalty notice is a “connected penalty notice” (*“hysbysiad cosb cysylltiedig”*) if the penalty offence to which that notice relates is the same as, and arises out of the same set of circumstances as, the penalty offence to which the penalty notice issued to, and paid by, A relates.

(3) A notice of deemed payment must—

- (a) be sent by post or delivered by hand;
- (b) indicate that A has paid the penalty for A’s connected penalty notice;
- (c) indicate that the penalty notice issued to the recipient of the notice of deemed payment will be treated as having been paid unless that person gives written notice indicating that it should not be so treated (a “notice of objection” (*“hysbysiad gwrthwynebu”*)); and
- (d) state the name and address of the person to whom any notice of objection must be given.

(4) A notice of objection must be sent by post or delivered by hand to the person stated in paragraph (3)(d) within—

- (a) 28 days beginning with the date on which the penalty notice was issued; or
- (b) if later, 5 days beginning with the date on which the notice of deemed payment was given.

(5) If no notice of objection is given in accordance with this article, the penalty notice issued to a person who has been given a notice of deemed payment is to be treated as having been paid.

Certificate of payment or non-payment of penalty notice

8. In any proceedings a certificate purporting to be signed by or on behalf of the Welsh Ministers stating that payment in respect of a penalty notice was or was not received on or before a date specified in the certificate is evidence of the facts stated.

Withdrawal of penalty notices

9.—(1) A penalty notice may be withdrawn by an officer who has reason to believe that it ought not to have been issued (whether to the person named in the penalty notice or otherwise).

- (2) A penalty notice may be withdrawn before or after payment of the penalty.
- (3) If a penalty notice is withdrawn any penalty paid must be repaid.

Commencement of proceedings after payment of penalty in relation to fishing boats from outside the United Kingdom

10.—(1) This article applies in relation to a penalty notice issued to the master, owner or charterer of a fishing boat other than an English, Northern Ireland, Scottish or Welsh fishing boat.

(2) Where a person in receipt of a penalty notice has paid the penalty, that person may give written notice requesting that proceedings be brought for the penalty offence to which the penalty notice relates.

- (3) Such notice must—
 - (a) indicate that the person giving the notice wishes proceedings to be brought for the penalty offence to which the penalty notice relates; and
 - (b) be given no later than the end of the period of 28 days beginning with the date on which the penalty notice was issued.

(4) Where a person has given such notice, proceedings may be brought against that person.

(5) Where such proceedings are discontinued or the person is acquitted of the offence, the penalty notice is to be treated as never having been issued and any penalty paid must be repaid.

(6) Where a person is convicted of the offence, the penalty notice is to be treated as never having been issued and paragraph (7) or (8) applies as appropriate.

(7) If a fine is imposed on the person in respect of the penalty offence an officer must—

(a) apply so much of the penalty as does not exceed the amount of the fine in or towards payment of the fine; and

(b) repay any amount of the penalty in excess of the amount of the fine.

(8) If no fine is imposed on the person in respect of the penalty offence, any penalty paid must be repaid.

Transitional provision

11.—(1) This article applies where—

(a) a person has been issued with a penalty notice under the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008⁽⁴⁾; and

(b) the penalty has not been paid in accordance with article 6, nor has the penalty notice been withdrawn under article 9 of that Order.

(2) The penalty notice is deemed to have been issued under this Order.

Revocation

12. The Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 is revoked.

20th February 2019

Lesley Griffiths
Minister for Environment, Energy and Rural
Affairs, one of the Welsh Ministers

(4) S.I. 2008/984.

SCHEDULE

Article 2

Offences relating to sea fishing

1. In the Sea Fisheries (Shellfish) Act 1967(**5**), an offence under—
 - (a) section 3 (effect of grant of right of regulating a fishery);
 - (b) section 7 (protection of fisheries);
 - (c) section 14 (supplementary provisions as to orders under sections 12 and 13);
 - (d) section 16 (oysters not to be sold between certain dates);
 - (e) section 17 (taking and sale of certain crabs and lobsters prohibited).
2. In the Sea Fish (Conservation) Act 1967(**6**), an offence under—
 - (a) section 1 (size limits, etc for fish);
 - (b) section 2 (size limits for fish for use in course of any business);
 - (c) section 3 (regulation of nets and other fishing gear);
 - (d) section 4 (licensing of fishing boats);
 - (e) section 4A (licensing of vessels receiving trans-shipped fish);
 - (f) section 5 (power to restrict fishing for sea fish);
 - (g) section 6 (prohibition on landing of sea fish caught in certain areas);
 - (h) section 8 (regulation of landing of foreign-caught sea fish).
3. An offence under section 5 of the Sea Fisheries Act 1968(**7**) (regulation of conduct of fishing operations).
4. An offence under section 2 of the Fishery Limits Act 1976(**8**) (access to British fisheries).
5. An offence under section 30 of the Fisheries Act 1981(**9**) (enforcement of Community rules).
6. An offence under section 190 of the Marine and Coastal Access Act 2009(**10**) (offences).

(5) 1967 c. 83; Section 3 was amended by sections 204, 206 and 207 of the Marine and Coastal Access Act 2009, section 72 of the Environment (Wales) Act 2016 (anaw 3) and S.I. 2015/664. Section 7 was amended by sections 210 and 211 of the Marine and Coastal Access Act 2009, section 2 of the Sale of Goods (Amendment) Act 1994 (c. 32), and S.I. 2015/664. Section 14 was amended by section 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48), Schedule 8 to the Criminal Justice and Public Order Act 1994 (c. 33), and section 6 of the Diseases of Fish Act 1983 (c. 30). Section 16 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982, Schedule 8 to the Criminal Justice and Public Order Act 1994 and section 1 of the Sea Fisheries (Shellfish) Act 1973 (c. 30). Section 17 was amended by section 212 and 213 of the Marine and Coastal Access Act 2009, sections 35, 37, 38 and 46 of the Criminal Justice Act 1982, and Schedule 8 to the Criminal Justice and Public Order Act 1994.

(6) 1967 c. 84; Section 1 was substituted by section 19 of the Fisheries Act 1981 (c. 29) and amended by section 314 and paragraph 38 of Schedule 13 to the Merchant Shipping Act 1995 (c. 21), section 194 of the Marine and Coastal Access Act 2009, S.I. 1999/1820 and S.I. 2010/760. Section 2 was amended by section 19 of the Fisheries Act 1981 and S.I. 1999/1820. Section 3 was amended by section 195, paragraph 7 of Schedule 14, paragraph 2 of Schedule 15 and Part 4 of Schedule 22 to the Marine and Coastal Access Act 2009, Schedule 2 to the Fishery Limits Act 1976 (c. 83) and S. I. 1999/1820. Section 4 was substituted by section 3 of the Fishery Limits Act 1976 and amended by section 20 of the Fisheries Act 1981, section 1 of the Sea Fish (Conservation) Act 1992 (c.60), sections 4, 196 and 197 of the Marine and Coastal Access Act 2009 and S.I. 1999/1820. Section 4A was inserted by section 21 of the Fisheries Act 1981 and amended by section 3 of the Sea Fish (Conservation) Act 1992, section 6 of the Marine and Coastal Access Act 2009 and S.I. 1999/1820. Section 5 was amended by section 22 of the Fisheries Act 1981, section 198 and paragraph 3 of Schedule 15 to the Marine and Coastal Access Act 2009, paragraph 38 of Schedule 13 to the Merchant Shipping Act 1995, S.I. 1999/1820 and S.I. 2010/760. Section 6 was amended by section 23 of the Fisheries Act 1981 and S.I. 1999/1820. Section 8 was amended by S.I. 1999/1820.

(7) 1968 c.77; section 5 was amended by section 4 of, and paragraph 3 of Schedule 1 and paragraph 17 of Schedule 2 to the Fishery Limits Act 1976, section 24 of the Fisheries Act 1981 and S.I. 1999/1820.

(8) Section 2 was amended by S.I. 1999/1820 and S.I. 2015/664.

(9) Section 30 was amended by section 293 of the Marine and Coastal Access Act 2009, S.I. 2011/1043 and S.I. 1999/1820.

(10) Section 190 was amended by S.I. 2015/664.

Status: This is the original version (as it was originally made).

7. An offence under regulations 3 to 11 of the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006⁽¹¹⁾.

8. An offence under article 9 of the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009⁽¹²⁾.

9. In this Schedule, reference to a section includes subordinate legislation made under that section.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order creates a scheme for the issuing and payment of penalty notices for certain offences relating to sea fishing. It revokes the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 and replaces it with a scheme that applies to offences created under domestic legislation as well as those arising as a result of a breach of an enforceable community restriction or other obligation.

This Order provides for the issuing of a penalty notice (article 3), the content of such a notice (article 4), and the effect and method of paying a penalty (articles 5 and 6). It also makes provision for penalty notices to be issued to different persons for the same offence arising out of the same set of circumstances whereby payment by one person is treated as being payment by another, in the absence of objection from the other (article 7). Provision is also made for the withdrawal of a penalty notice (article 9).

A master, owner or charterer of a fishing boat that is from outside the United Kingdom and who has paid a penalty may request to be tried for the offence (article 10), in which case the penalty notice will be treated as never having been issued and the penalty will be repaid in the event of acquittal or discontinuance of the related court proceedings. In the event of conviction, the penalty notice will also be treated as never having been issued, but the penalty must be applied towards paying any fine imposed.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

⁽¹¹⁾ S. I. 2006/1495.

⁽¹²⁾ S. I. 2009/3391.