

2016 No. 665 (W. 182)

SEA FISHERIES, WALES

**The European Maritime and
Fisheries Fund (Grants) (Wales)
Regulations 2016**

EXPLANATORY NOTE

(This note is not part of the Regulations)

In Wales, these Regulations will apply to the operational programme established under Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund (“Regulation 508/2014”) and Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund. These Regulations provide that the Welsh Ministers may make payments for the purposes of Title V of Regulation 508/2014. These Regulations will regulate the programmes that are administered by the Welsh Ministers in relation to Wales.

These Regulations supplement the European Union legislation listed in the Schedule to the Regulations (“the EU legislation”). The provisions in the EU legislation are directly applicable and have direct effect in a member State. These Regulations provide a domestic legal framework for the operation of the EU legislation in Wales.

These Regulations provide the Welsh Ministers with the power to approve applications for the receipt of financial assistance (regulation 4) and to pay financial assistance (regulation 3) in connection with an approved operation. An “operation” means a project, contract, action or group of projects which is for any of the purposes specified in Title V of Regulation 508/2014 and is eligible for assistance from the European Maritime and Fisheries Fund. An “approved operation” means an operation which the Welsh Ministers have approved in writing for the receipt of

financial assistance. The Regulations also set out the circumstances in which approval of an operation may be revoked and financial assistance paid to a beneficiary, in respect of that operation, may be withheld or recovered (regulation 11).

These Regulations provide powers of entry and inspection to authorised persons in relation to premises to which an approved operation relates or where it is believed that documents relating to an approved operation are to be found (regulations 8 and 9) (“authorised person” is defined in regulation 2). The Regulations also require beneficiaries of financial assistance to keep records relating to an approved operation for a certain period (regulation 10), to supply such information relating to the approved operation as the Welsh Ministers may require (regulation 6) and to assist an authorised person in the exercise of their powers under regulation 9. Evidence that expenditure has been properly incurred may be required before payments of financial assistance are made (regulation 7).

Regulation 12 allows the Welsh Ministers to demand interest on sums due to them. Regulation 13 provides that sums payable to the Welsh Ministers are recoverable as a debt.

These Regulations make it an offence (regulation 14) to knowingly or recklessly make false statements, intentionally obstruct an authorised person acting in the execution of these Regulations and to fail (without reasonable excuse) to keep relevant records for the required period under regulation 10.

Regulation 15 applies to offences committed by a body corporate, partnership or other unincorporated association. Regulation 16 requires a beneficiary to give an undertaking if the Welsh Ministers consider this appropriate.

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

2016 No. 665 (W. 182)

SEA FISHERIES, WALES

**The European Maritime and
Fisheries Fund (Grants) (Wales)
Regulations 2016**

Made 22 June 2016

Laid before the National Assembly for Wales
24 June 2016

Coming into force 20 July 2016

The Welsh Ministers are designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the common agricultural policy of the European Union.

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972⁽³⁾.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972. It appears to the Welsh Ministers that it is expedient for the references in these Regulations to all EU instruments to be construed as references to those instruments as amended from time to time.

Title, application and commencement

1.—(1) The title of these Regulations is the European Maritime and Fisheries Fund (Grants) (Wales) Regulations 2016.

(1) S.I. 2010/2690.

(2) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

(3) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006.

(2) These Regulations apply in relation to Wales and come into force on 20 July 2016.

Interpretation

2.—(1) In these Regulations, unless the context requires otherwise—

“approved operation” (“*gweithrediad a gymeradwywyd*”) means an operation which the Welsh Ministers have approved in writing for the receipt of financial assistance under regulation 4, and “approve” (“*cymeradwyo*”) and “approval” (“*cymeradwyaeth*”) are to be construed accordingly;

“authorised person” (“*person awdurdodedig*”) means a person authorised by the Welsh Ministers for the purposes of these Regulations, and includes any duly appointed official of the Commission who accompanies such an authorised person;

“beneficiary” (“*buddiolwr*”) means a person who has been granted financial assistance or a person who has taken over the commitments of such a person;

“the Commission” (“*y Comisiwn*”) means the Commission of the European Union;

“EU assistance” (“*cymorth yr UE*”) means assistance from the European Maritime and Fisheries Fund granted pursuant to Regulation 508/2014;

“the EU legislation” (“*deddfwriaeth yr UE*”) means the instruments listed in the Schedule;

“financial assistance” (“*cymorth ariannol*”) means an amount paid or payable under these Regulations;

“operation” (“*gweithrediad*”) means a project, contract, action or group of projects which:

- (a) is for any of the purposes specified in Title V of Regulation 508/2014; and
- (b) is eligible for EU assistance;

“premises” (“*mangre*”) includes any vessel, place, vehicle, trailer or container;

“Regulation 508/2014” (“*Rheoliad 508/2014*”) means Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund⁽¹⁾.

(2) Any reference in these Regulations to an EU instrument is a reference to that instrument as amended from time to time.

(1) OJ No L 149, 20.05.2014, p. 1.

Financial assistance

3.—(1) The Welsh Ministers may pay financial assistance to a beneficiary in connection with an approved operation.

(2) Where the Welsh Ministers make payments of financial assistance, they may make such payments—

- (a) at such a time, or by such instalments at such intervals or times, as they think fit; and
- (b) subject to such conditions relating to payment as they may determine.

Approval of application

4.—(1) An application for approval of an operation must—

- (a) be made in such form and at such time as the Welsh Ministers may require; and
- (b) contain such information as the Welsh Ministers may require.

(2) The Welsh Ministers may approve the operation, and if so, may make the approval subject to such conditions as they may determine.

(3) The Welsh Ministers may vary an approval by varying any condition to which it is subject, or imposing conditions.

(4) Before varying an approval the Welsh Ministers must—

- (a) give the beneficiary notice in writing that they propose to do so with a statement of reasons;
- (b) give the beneficiary an opportunity to make written representations within such time (set out in the notice under sub-paragraph (a)) as the Welsh Ministers consider reasonable; and
- (c) consider any representations made.

Advertisement of financial assistance and claims

5.—The Welsh Ministers must advertise the financial assistance available, and provide application forms and guidance notes for completing applications.

Provision of information

6.—(1) A beneficiary must supply to the Welsh Ministers such information about an approved operation as the Welsh Ministers may require.

(2) Where the Welsh Ministers require information under paragraph (1), the beneficiary must supply that information within such period as the Welsh Ministers may determine.

Evidence of expenditure or action

7.—(1) The Welsh Ministers may not make any payments of financial assistance unless they are satisfied that a beneficiary has properly incurred expenditure or has carried out any necessary actions relating to the approved operation.

(2) For the purposes of paragraph (1), satisfactory evidence that the amount of expenditure for which financial assistance is claimed has been incurred may be supplied by the beneficiary to the Welsh Ministers.

Powers of entry

8.—(1) An authorised person may, at all reasonable times and on production, if so required, of their authority to do so, enter any premises, other than premises which are used wholly or mainly as a private dwelling—

- (a) to which an approved operation relates, or
- (b) on which the authorised person has reasonable grounds to believe that documents relating to an approved operation are to be found,

for any of the purposes mentioned in paragraph (2).

(2) Those purposes are—

- (a) verifying the accuracy of any information provided by a beneficiary relating to the approved operation;
- (b) ascertaining whether any financial assistance is payable or recoverable or the amount of such financial assistance that is payable or recoverable;
- (c) ascertaining whether an offence under these Regulations has been or is being committed;
- (d) otherwise ascertaining whether EU assistance is being efficiently and correctly used; and
- (e) determining whether there has been non-compliance with these Regulations or the EU legislation.

(3) Paragraph (1) does not affect any right of entry conferred by a warrant issued in accordance with paragraph (4).

(4) A justice of the peace may by signed warrant permit an authorised person to enter any premises (including premises which are used wholly or mainly as a private dwelling), if necessary by reasonable force, if the justice, on sworn information in writing, is satisfied that—

- (a) there are reasonable grounds for an authorised person to enter the premises for any purpose mentioned in paragraph (2); and
- (b) one of the conditions in paragraph (5) is met.

(5) The conditions are that—

- (a) entry to the premises has been refused, or is likely to be refused without a warrant, and
 - (i) notice of the intention to apply for a warrant has been served on the occupier, or
 - (ii) no such notice has been served on the occupier because serving such a notice would interfere with the purpose or effectiveness of the entry;
- (b) entry is required urgently; or
- (c) the premises are unoccupied or the occupier is temporarily absent.

(6) A warrant is valid for three months from the date of issue.

(7) An authorised person entering any premises by virtue of this regulation may be accompanied by such other persons as the authorised person considers necessary for any purpose mentioned in paragraph (2).

(8) An authorised person who enters any unoccupied premises must leave them as effectively secured as they were before entry.

Powers of an authorised person

9.—(1) An authorised person who has entered any premises by virtue of regulation 8 may—

- (a) inspect the premises and any document, record or equipment thereon which that person reasonably believes relates to the operation;
- (b) require the beneficiary, or any employee, servant or agent of the beneficiary, to produce any document, record or supply any additional information in that person's possession or under their control relating to the operation;
- (c) where any document, record or information referred to in sub-paragraph (b) is kept by means of a computer, have access to and inspect any computer and any associated apparatus or material which is or has been used in connection with that document, record or information;
- (d) require that copies of, or extracts from, any document, record or information relating to the operation be produced to the authorised person;
- (e) remove and retain for a reasonable period any document, record or information relating to the operation which the authorised person has reason to believe may be required as evidence in proceedings under these Regulations and,

where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away and in which it is visible and legible.

(2) A beneficiary or any employee, servant or agent of a beneficiary must render all reasonable assistance to an authorised person in relation to the matters mentioned in this regulation.

(3) Paragraphs (1) and (4) apply in relation to a person referred to in regulation 8(7) when such person is acting under the instruction of an authorised person, as if such person were an authorised person.

(4) An authorised person is not liable in any proceedings for anything done in purported exercise of the powers conferred on the authorised person by virtue of regulation 8 and 9 if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

(5) In this regulation, “the operation” (“*y gweithrediad*”) means the approved operation in relation to which entry onto premises has been sought pursuant to regulation 8.

Record keeping

10.—(1) Subject to paragraphs (2) and (3), a beneficiary must retain any invoice, account or other document relating to an approved operation until the end of six years after the last payment of financial assistance made to the beneficiary pursuant to these Regulations relating to an approved operation.

(2) Paragraph (1) does not apply in relation to any document removed by any person lawfully authorised to remove it.

(3) Where, in the normal course of business, a beneficiary transfers the original of any document referred to in paragraph (1) to another person, the beneficiary must retain a copy of that document until the end of the period specified in paragraph (1).

Powers of recovery etc.

11.—(1) The Welsh Ministers may exercise the powers specified in paragraph (2) where they are satisfied, as regards an approved operation, that—

- (a) any condition referred to in regulation 3 or 4 has not been complied with in whole or in part;
- (b) the application so approved under regulation 4 (or any part of it) was not an application (or part) which the beneficiary was eligible to make;

- (c) the beneficiary or an employee, servant or agent of the beneficiary has—
 - (i) failed to comply with any requirement under regulation 6, 9(1)(b), 9(1)(d) or 9(2); or
 - (ii) given information on any matter relevant to the giving of the approval which is false or misleading in a material respect;
 - (d) the approved operation was commenced before the date on which the Welsh Ministers gave written permission to do so;
 - (e) any undertakings given by the beneficiary under regulation 16 have not been complied with;
 - (f) the beneficiary has failed to comply with regulation 10;
 - (g) there is a material change in the nature, scale, costs or timing of the approved operation;
 - (h) the approved operation has not been or is not being properly carried out;
 - (i) the approved operation has been or is being unreasonably delayed or is unlikely to be completed;
 - (j) the financial assistance duplicates or would duplicate assistance provided or to be provided out of monies made available by—
 - (i) the European Union,
 - (ii) the Welsh Ministers, or
 - (iii) a body exercising public functions within the United Kingdom;
 - (k) the beneficiary is in breach of any requirement to which they are subject under these Regulations or under the EU legislation; or
 - (l) the approved operation is subject to penalties applicable under the EU legislation.
- (2) The powers conferred by paragraph (1) are to—
- (a) revoke the approval of the operation in whole or in part;
 - (b) reduce or withhold any financial assistance in respect of the approved operation;
 - (c) recover on demand the whole or any part of any financial assistance already paid to the beneficiary.
- (3) Where the Commission has decided to reduce or suspend assistance, the Welsh Ministers may exercise the powers referred to in paragraph (2).
- (4) For the purposes of paragraph (1)(j), a sum duplicates financial assistance if it is, or would be, paid for any of the same purposes.

Recovery of interest

12.—(1) Where the Welsh Ministers exercise the powers conferred by regulation 11(2)(c), they may also recover, on demand, interest on the sum to be recovered at the rate of one percentage point above the Bank of England base rate in respect of each day of the period from the day on which the financial assistance was granted until the day on which the Welsh Ministers recover the amount.

(2) In paragraph (1), “Bank of England base rate” (“*cyfradd sylfaenol Banc Lloegr*”) means—

- (a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short-term liquidity in the money markets; or
- (b) if an order under section 19 (reserve powers) of the Bank of England Act 1998(1) is in force, any equivalent rate determined by the Treasury under that section.

(3) In any proceedings relating to this regulation, a certificate of the Welsh Ministers stating the Bank of England base rate applicable during a period specified in the certificate is deemed to be conclusive evidence of the rate applicable in the specified period if the certificate also states that the Bank of England notified the Welsh Ministers of that rate.

Sums payable to the Welsh Ministers to be recoverable as a debt

13. In any case where an amount falls to be paid to the Welsh Ministers by virtue of these Regulations (or by virtue of action taken under these Regulations), such amount is recoverable as a debt.

Offences and penalties

14.—(1) A person is guilty of an offence if—

- (a) for the purposes of obtaining financial assistance under these Regulations for themselves or for any other person, that person knowingly or recklessly makes a statement which is false or misleading in a material particular;
- (b) in relation to the exercise by the Welsh Ministers of the powers specified in regulation 11(2), that person knowingly or recklessly makes a statement which is false or misleading in a material particular;

(1) 1998 c. 11.

- (c) without reasonable excuse, that person fails to comply with a requirement imposed by or under regulation 9(1)(b), 9(1)(d) or regulation 10; or
- (d) that person intentionally obstructs an authorised person (or a person accompanying and acting under the instruction of an authorised person) acting in the execution of these Regulations.

(2) A person guilty of an offence under paragraph (1)(a) or (b) is liable—

- (a) on summary conviction, to a fine or to imprisonment for a term not exceeding three months, or both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or both.

(3) A person guilty of an offence under paragraph (1)(c) or (d) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(4) Proceedings for an offence under paragraph (1)(c) or (d) may, subject to paragraph (5), be commenced within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the prosecutor's knowledge.

(5) No proceedings for an offence under paragraph (1)(c) or (d) may be commenced more than three years after the date of the commission of the offence.

(6) Where proceedings are instituted for the purposes of paragraph (4)—

- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient, in the opinion of the prosecutor, to justify the proceedings came to their knowledge is conclusive evidence of that fact;
- (b) a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved.

Corporate, partnership and unincorporated association offences

15.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a relevant individual (including a person

purporting to act in the capacity of a relevant individual),

the relevant individual as well as the body corporate, partnership or unincorporated association, is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” (“*unigolyn perthnasol*”) means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a partnership, a partner;
- (c) in relation to an unincorporated association, a person who is concerned in the management or control of the association.

(3) Proceedings for an offence under these Regulations alleged to have been committed by a partnership or an unincorporated association may be brought against the partnership or association in the name of the partnership or association.

(4) For the purpose of proceedings pursuant to paragraph (3) the following provisions apply as if the partnership or unincorporated association were a body corporate—

- (a) rules of court relating to the service of documents;
- (b) section 33 of the Criminal Justice Act 1925(1); and
- (c) Schedule 3 to the Magistrates’ Courts Act 1980(2).

(5) A fine imposed on a partnership or unincorporated association on its conviction of an offence under these Regulations is to be paid out of the funds of the partnership or unincorporated association.

(1) 1925 c. 86. Subsections (1), (2) and (5) were repealed by the Magistrates’ Courts Act 1952 (c. 55), section 132 and Schedule 6; subsection (3) was amended by the Courts Act 1971 (c. 23), section 56(1) and Schedule 8, Part 2, paragraph 19; subsection (4) was amended by the Courts Act 2003 (c. 39), section 109(1) and (3), Schedule 8, paragraph 71 and Schedule 10.

(2) 1980 c. 43. Paragraph 2(a) of Schedule 3 was repealed by the Criminal Justice Act 2003 (c. 44), sections 41 and 332, Schedule 3, Part 2, paragraph 51(1) and (13)(a), and Schedule 37, Part 4. Paragraph 5 was repealed by the Criminal Justice Act 1991 (c. 53), sections 25(2) and 101(2) and Schedule 13; paragraph 6 was amended by the Criminal Justice Act 2003, section 41, Schedule 3, Part 2, paragraph 51(1) and (13)(b).

Undertakings

16. The Welsh Ministers may require a beneficiary to give such undertakings as the Welsh Ministers consider appropriate to the case.

Revocation and transitional provisions

17.—(1) Subject to paragraph (2) the European Fisheries Fund (Grants) (Wales) Regulations 2009⁽¹⁾ (“the 2009 Regulations”) are revoked.

(2) Paragraph (1) does not affect the continuing application of the 2009 Regulations in respect of applications received by the Welsh Ministers before 31 December 2015.

(1) S.I. 2009/360 (W. 35).

Lesley Griffiths
Cabinet Secretary for Environment and Rural Affairs,
one of the Welsh Ministers

22 June 2016

THE EU LEGISLATION

1. Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006**(1)**.

2. Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000**(2)**.

3. Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC**(3)**.

4. Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council**(4)**.

5. Commission Implementing Regulation (EU) No 772/2014 of 14 July 2014 laying down the rules on intensity of public aid to be applied to the total eligible expenditure of certain operations financed under the European Maritime and Fisheries Fund**(5)**.

(1) OJ No L 347, 20.12.2013, p. 320.
(2) OJ No L 354, 28.12.2013, p. 1, amended by Regulation (EU) 2015/812, OJ No L133, 29.05.2015, p. 1.
(3) OJ No L 354, 28.12.2013, p. 22, amended by Regulation (EU) 2015/812, OJ No L133, 29.05.2015, p. 1.
(4) OJ No L 149, 20.05.2014, p. 1.
(5) OJ No L 209, 16.07.2014, p. 47.