

Explanatory Memorandum to the Marine, Fisheries and Aquaculture (Financial Assistance) Scheme (Wales) Regulations 2022

This Explanatory Memorandum has been prepared by the Marine and Fisheries Division, Climate Change and Rural Affairs Group and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Marine, Fisheries and Aquaculture (Financial Assistance) Scheme (Wales) Regulations 2022.

Lesley Griffiths MS
Minister for Rural Affairs and North Wales, and Trefnydd
25 November 2022

PART 1

1. Description

- 1.1 These Regulations establish a dynamic financial assistance scheme in respect of the marine, fisheries and aquaculture sectors in Wales.
- 1.2 Functions and obligations for the practical delivery of the financial assistance under the Scheme are conferred on the Welsh Ministers.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 Following the LJC Committee report on 11 October 2022 (reference number SL(6)260), the original draft Regulations were withdrawn. Changes have been made to reflect the issues raised. The Explanatory Memorandum also now includes a Regulatory Impact Assessment.

3. Legislative background

- 3.1 Paragraph 2 of Schedule 6 to the UK Fisheries Act 2020 confers powers on the Welsh Ministers to give, or arrange for, financial assistance to given in respect of nine prescribed purposes. The financial assistance, which can be by way of grant or loan, must be given under or in accordance with a scheme established by Regulations subject to the affirmative procedure.
- 3.2 This instrument establishes such a scheme and enables the Welsh Ministers to give grants and make loans in relation to Wales, the Welsh zone or Welsh fishing boats in respect of the activities listed in the Schedule to the Regulations.

4. Purpose and intended effect of the legislation

- 4.1 As a result of the UK leaving the European Union, and following the end of the European Maritime and Fisheries Fund (EMFF), Wales is no longer a beneficiary of the European Structural Investment Funds and the financial assistance powers previously exercised by the Welsh Ministers through [the European Maritime and Fisheries Fund \(Grants\) \(Wales\) Regulations 2016](#) are now obsolete.
- 4.2 Therefore, the Welsh Ministers do not currently have specific financial assistance powers for the marine and fisheries sectors. This instrument will correct that.
- 4.3 The Scheme created by this instrument delivers substantial continuity with previous funding schemes but allows greater flexibility in how the Scheme is managed in the longer term (outside the EU's regulatory

framework) whilst being consistent with international agreements such as the Trade and Cooperation Agreement.

- 4.4 The Scheme will allow the Welsh Ministers to continue to fund certain activities to invest in the marine, fisheries and aquaculture sectors in Wales and provide financial assistance to further the Wellbeing Goals under the Wellbeing of Future Generations Act 2015.
- 4.5 The Regulations allow for financial assistance to be given in relation to Wales, the Welsh zone and Welsh fishing boats in accordance with paragraph 2(3) of Schedule 6 to the UK Fisheries Act 2020.
- 4.6 Under the Scheme created by the Regulations, the Welsh Ministers can choose to provide financial assistance (by way of grants or loans) in respect of the activities specified in the Schedule so far as consistent with the purposes under which they are listed.

5. Consultation

- 5.1 The Fisheries Act 2020 does not require the Welsh Ministers to carry out a consultation prior to making regulations under their powers in paragraph 2(1) and (2) of Schedule 6 to that Act.
- 5.2 The Brexit and Our Seas consultation which ran from 1 May 2019 to 21 August 2019 contained specific questions on funding arrangements post EU exit. A [summary of responses](#) was published on 14 September 2020.
- 5.3 One key point raised was the need to incorporate environmental protection into decisions on funding for seafood production.
- 5.4 A key criticism of the EMFF in Wales has been inflexibility. The Regulations aims to deliver a more flexible approach to providing financial assistance to the marine, fisheries and aquaculture sectors in Wales.
- 5.5 This Scheme will cover broadly similar policy scope to the EMFF but allows for a more agile and responsive approach whereby decisions can be made on how funding is targeted (i.e. what activities will be funded and when) during the course of the Scheme.
- 5.6 The Welsh Government has established a Funding Policy Stakeholder Advisory Group to engage with the sector, to inform spending decisions and to evaluate the effectiveness of interventions.

PART 2 – REGULATORY IMPACT ASSESSMENT (RIA)

6. Options

6.1 Option 1 – Do nothing

Under this option, Welsh Ministers would have no specific powers to provide financial assistance to the marine and fisheries sectors in Wales.

6.2 Option 2 – Legislate to establish a new financial assistance scheme in respect of the marine, fisheries and aquaculture sectors in Wales

This option delivers a replacement to the EMFF and enables Welsh Ministers to provide financial assistance to the marine, fisheries and aquaculture sectors in Wales. This is the preferred option.

6.3 Option 3 – Recreate the EMFF in Wales

This represents a 'Business as usual' scenario, with the EMFF replicated in Wales. However, this option is not considered feasible now that the UK is outside the EU, not least because it would require cooperation and budget commitment over a seven to ten year timeframe from the UK Government. As a result, this option has not been taken forward for further consideration.

7. Rationale for scheme design

7.1. Paragraph 2 of Schedule 6 to the UK Fisheries Act 2020 provides Welsh Ministers with the ability to create financial assistance schemes in relation to Wales, Welsh Vessels and the Welsh (Exclusive Economic) Zone via subordinate legislation. Using this legislation is considered the most realistic approach to providing funding to the Marine, Fisheries and Aquaculture sectors.

7.2. As mentioned above, stakeholders have provided feedback to the Welsh Government regarding the operation of the EMFF in Wales via the Brexit and Our Seas consultation and via stakeholder advisory groups and informally. The broad scope of the EMFF is considered positive whereas thoughts on the management of the EMFF in Wales have been mixed.

7.3. There are substantial contextual uncertainties that any new scheme would need to navigate, including:

7.3.1. Outside the EU, the UK has the ability to make new trade agreements. The Welsh Government does not have jurisdiction on the scope of new trade agreements so must accept whatever the UK Government negotiates. There are already examples of trade agreements with Australia, New Zealand and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

- 7.3.2. The jurisdiction of the European Court of Justice and the framework provided by existing EU law no longer has a significant bearing on the way funding is provided in Wales (with the exception of any requirements of the EU-UK Trade and Cooperation Agreement).
- 7.3.3. The World Trade Organisation has been negotiating on an agreement for fisheries subsidies for many years. In June 2022, an agreement was made that limits subsidies to fishers of overfished stocks as well as Illegal, Unreported and Undocumented (IUU) fishing.
- 7.3.4. The UK Government's new Subsidy Control regime is complex and has substantial procedural requirements. It has the potential to be more restrictive than the EU state aid regime but this will not become clear for many years.
- 7.3.5. The UK Government's approach to 'Levelling-up' using the UK Internal Market Act 2020 to provide funding in Wales on topics that are devolved, such as Marine and Fisheries, is a potential cause for confusion. Without clear and early information from the UK Government as to how, when and what spending will be allocated in devolved issues, it is more difficult to plan interventions with the most impact in relation to cost.
- 7.3.6. Whilst the Welsh Government can set the budget for investing in Marine and Fisheries, practically, the level of budget available to allocate will depend on the UK Government's fiscal decisions and how this is transferred to Wales.
- 7.3.7. Marine and Fisheries is a global sector and market. The COVID-19 pandemic has led to unforeseen changes domestically and internationally. Global supply chains have been disrupted. Public finances effected. Some changes that were already underway, like working and travelling habits (which affect food and the environment) have accelerated. It is not possible to predict all the economic and social effects of the pandemic and the easing of restrictions.
- 7.3.8. More recently, the Russian invasion of Ukraine has drastically effected input costs like fuel, energy and food.
- 7.4. Each of these uncertainties have been taken into account in designing the new approach to providing financial assistance in Wales to invest in the Welsh marine and fisheries industry. The conclusion has been to aim to produce a financial assistance scheme that is flexible so that changes to the policy, legislative and constitutional context can be incorporated mid-scheme to avoid the risk of not being able to comply with UK and international rules.

8. Costs and benefits

8.1 Option 1 – Do nothing

There are no additional costs or benefits associated with this option. However, under this option, Welsh Ministers would have no specific powers to provide financial assistance to the marine, fisheries and aquaculture sectors. This means Welsh businesses and organisations would potentially be placed at a disadvantage to their counterparts elsewhere in the UK, where financial assistance schemes are in place.

8.2 Option 2 – Legislate to establish a new financial assistance scheme in respect of the marine, fisheries and aquaculture sectors in Wales

Administrative costs

- 8.3 The Scheme will operate application windows or ‘funding rounds’ for a particular objective or theme. There is scope for some variation of procedure to best deliver the objective at a proportionate scale to the expected funding commitment.
- 8.4 The Scheme has been designed to be able to revise the budget periodically to align with multi-year UK Government spending review and budget timeframes. As an example, the November 2021 UK Government Comprehensive Spending Review allocated £6.2m for financial years 2022/23 to 2025/26.
- 8.5 Welsh Ministers decide how this funding is allocated and have the option to increase the allocation from other funds. At this stage, no firm decision has been taken on the final financial allocation and the detail of the first funding rounds are in development. It could all be allocated to a single funding round in one financial year or divided between more than one funding round and other spending priorities.
- 8.6 It is anticipated that there will be a number of funding rounds each financial year but this will depend on budget, objectives and take-up. This is an initial assessment and is flexible dependent on budget and the resource available for scheme administration.
- 8.7 In developing each funding round, officials will engage with stakeholders to gather sectoral intelligence, identify priorities and learn lessons from previous funding rounds.
- 8.8 Rural Payments Wales (RPW) will be delivering the Scheme. This is similar to ensuring compliance with internal governance processes whilst maintaining flexibility of delivery. It is estimated that the administration cost for delivering the Scheme will be between five percent and ten percent of the Scheme budget with the range explained by the different processes that can be used.
- 8.9 It is important to note each funding round in isolation is only part of the Scheme and, as each funding round could target different objectives

and use different approaches depending on those objectives, it is not realistic to assume the total cost of the Scheme from the outset.

- 8.10 Using this methodology, officials seek to ensure the cost associated with providing financial assistance via the Scheme is proportionate to the funds committed in any funding round, financial year and budget timeframe.

Stakeholder costs

- 8.11 There will be time and administrative costs to those businesses and organisations choosing to apply for funding through the Scheme. However, it is not possible to quantify these costs at this stage. The intention is for the application requirements to be proportionate to the level of funding requested. For a streamlined 'standard cost' model this could be a relatively short amount of time (i.e. an opportunity cost). For more complex applications, more time would be required to justify Welsh Government investment to ensure value for money.
- 8.12 The Scheme is voluntary to apply for. It is expected that prospective applicants will only apply if they consider the benefits of the funding would outweigh the costs of making an application. There will be no direct cost to organisations who do not participate in the Scheme.
- 8.13 The assessment for each application will consider value for money before a grant or loan is made. Each funding round will also be evaluated to learn lessons and improve targeting and delivery for subsequent funding rounds. This is an integral attribute of the Scheme.

Benefits

- 8.14 The flexible nature of the Scheme, with different funding rounds being initiated when required to meet specific priorities and objectives, coupled with the uncertainty about the scale of funding available and Scheme take-up, means it is not possible to fully assess the benefits of the Scheme at this stage. The example in the section below provides an illustration of the potential benefits from the Scheme.
- 8.15 Furthermore, a final evaluation of the impacts of the EMFF is not available. In Wales the Fund was still open for applications as recently as June 2022 and the committed funding can still be claimed until the end of 2023. An official assessment of the benefits of the EMFF is not therefore available to help assess the impact of these Regulations.
- 8.16 One benefit of the Scheme is to be able to provide comparable support to Welsh stakeholders as the other fisheries administrations are able to, acknowledging the differences in sectors, legislative requirements, political aims and scale.

9. Illustrative example

- 9.1. An illustrative example of a funding round would be an open call funding round for applications to support projects or activities that would improve energy efficiency and mitigation of climate change. All the details for the Scheme would be published in accordance with these Regulations including: objective, eligibility criteria, intervention rate/match funding requirements, maximum grant or loan, conditions of funding, deadline for application and to claim committed funds. Such a round could, for example, focus on research projects to test decarbonisation and carbon sequestration or be open to all eligible applicants to define the project they need assistance for and explain how it meets the funding round objective. Appraisal of applications would then consider the strength of the evidence and plan to deliver the activities or projects for which funding has been requested.
- 9.2. An application procedure and assessment criteria would then be chosen to best deliver the funding objective. The example above may lead to a two-stage application procedure. Initially, an expression of interest stage could confirm strategic fit with the Scheme objectives, deliverability and value for money before a more detailed application is requested to assess the project against technical criteria.
- 9.3. The benefit from the funding in this scenario would be from direct activities that reduce climate degradation and/or new evidence to inform future interventions.

10. Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	no
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	no
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	no
Q4: Would the costs of the regulation affect some firms substantially more than others?	no
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	no
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	no
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	no
Q8: Is the sector characterised by rapid technological change?	no
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	no

10.1 As all questions are answered “no”, it is unlikely that this Regulation will have a significant impact on competition.

11. Post implementation review

11.1 Funding rounds delivering the Scheme will be reviewed regularly to learn lessons and improve future interventions. Officials anticipate a longer term review of the Scheme and the Regulation will also be undertaken at strategic intervals, between budget periods, as part of the budgeting process. This approach ensures evaluation throughout the life of the Scheme so improvements can be made as necessary. It will be for evaluations to consider the impact and benefits realised from the EMFF and this Scheme.