

SL(6)260 – The Marine, Fisheries and Aquaculture (Financial Assistance) Scheme (Wales) Regulations 2022

Background and Purpose

The Marine, Fisheries and Aquaculture (Financial Assistance) Scheme (Wales) Regulations 2022 (“these Regulations”) are made by the Welsh Ministers, in exercise of the powers conferred on them by paragraph 2 of Schedule 6 to the Fisheries Act 2020 (“the 2020 Act”).

These Regulations establish a Scheme for the giving of grants and making of loans by the Welsh Ministers. Paragraph 2(1) of Schedule 6 to the 2020 Act specifies the purposes for which financial assistance can be given.

Part 1 of these Regulations contains general introductory provisions. Part 2 provides for the establishment of the Scheme. Part 3 constitutes the Scheme and makes provision for the payment of grants and the making of loans by the Welsh Ministers. The Welsh Ministers may pay grants or make loans in respect of the activities listed in the Schedule to these Regulations.

These Regulations set out the basis on which the Welsh Ministers may pay grants and make loans, and lays down a procedure for applications. Payment of a grant or loan is dependent on the Welsh Ministers being satisfied as to the expenditure incurred, or to be incurred, and as to compliance with any conditions of approval.

These Regulations also provide that payment of a grant or loan is conditional on the applicant retaining relevant records and notifying the Welsh Ministers of any material change in circumstances. The Welsh Ministers have the ability to vary, suspend and revoke the approval of an application for a grant or loan and may, by notice, require the repayment of a grant or loan if certain conditions are not satisfied (with any sums outstanding ultimately recoverable as a civil debt).

Representations may be made in respect of decisions relating to applications for grants and loans, and notices of variation, suspension and revocations. The Welsh Ministers must notify the applicant of their decision following such representations.

These Regulations confer an enforcement function on marine enforcement officers appointed by the Welsh Ministers under the Marine and Coastal Access Act 2009 (“the 2009 Act”). The function is for the enforcement of any potential offences committed in relation to an application for a grant or loan under the Scheme (for example, an offence under the Fraud Act 2006). Relevant enforcement powers for marine enforcement officers under Part 8 of the 2009 Act are also applied for the purposes of this function.



Procedure

Draft Affirmative

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In the definition of “marine enforcement officer”, there is a clear difference between both language texts as the English text refers to “section 235(1)(a)”, whereas the Welsh text refers to “section 235(1)”.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The definition of “marine enforcement officer” in regulation 14(3) is stated to have the same meaning as section 235(1)(a) of the Marine and Coastal Access Act 2009. However, section 235(1)(a) defines the term by reference to, “any person appointed as such an officer by the MMO”. The Explanatory Note states, “These Regulations confer an enforcement function on marine enforcement officers appointed by the Welsh Ministers under the Marine and Coastal Access Act 2009 (c. 23).” As such, it would appear the correct reference in regulation 14(3) should be to section 235(1)(b) of the Marine and Coastal Access Act 2009, which defines the term by reference to, “any person appointed as such an officer by the Welsh Ministers”.

However, taken together with reporting point 1, it is unclear whether the policy intention was to capture all marine enforcement officers as defined by section 235(1), or simply those designated by the Welsh Ministers under section 235(1)(b). If the intention was to capture all, then the Welsh text referred to in reporting point 1 is correct and the English text should be corrected accordingly.

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In the English text of regulation 14(3), the defined terms should both be followed by the corresponding Welsh definitions in brackets and italics as it is a list of definitions, and vice versa in the Welsh text (see Writing Laws for Wales (“WLW”) 4.15(6)).

4. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements



In the second paragraph of the preamble, it is incorrect to cite the provision that sets out the procedure which these Regulations should follow, “and paragraph 2(8) of Schedule 6 to” (see Statutory Instrument Practice (“SIP”) 3.11.22). Normally, only the provisions that require any conditions to be fulfilled are cited in these additional paragraphs of the preamble, such as the requirement to lay in draft before the Senedd, namely, “In accordance with section 51(4)(c) of” (see SIP 3.11.28).

In addition, only the provision that requires an instrument to be laid in draft is usually cited in the headnote at the top of the page in affirmative statutory instruments, and so it will correspond with those cited in the fulfilment of conditions paragraph in the preamble. But in these Regulations, the provisions cited in the headnote differ from those cited in the second paragraph of the preamble, due to the unnecessary citing of the provision that only sets out the procedure in the preamble.

5. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 7(1)(b) and regulation 9, in the Welsh text, the word “determine(d)” has been translated as “a bennir” in both places where it occurs. In this regard, it is true that “a bennir” is a phrase that can be used to convey the meaning of “determine(d)” in the Welsh text of bilingual legislation, depending on the context. However, “a bennir” has already been defined as meaning “specified” in regulation 2. There is no signpost in the definition of “specified”/ “a bennir” to alert the reader that the term may bear a different meaning in any particular provisions of these Regulations (signposting “specific cases or exceptions”) (see WLW 5.3(2)). Neither has a different word such as “a benderfynir” been used in the Welsh text which could have distinguished “determine(d)” from “specified”. Therefore, the reader of the Welsh text may be misled that “a bennir” is referring to the defined term “specified” rather than “determine(d)” in regulation 7(1)(b) and regulation 9.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

6. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

In It is noted that the Explanatory Memorandum states that a Regulatory Impact Assessment has not been carried out because:

“An RIA has not been prepared for this instrument because it is not regarded as a significant change of policy. Having left the EU, the legislation that administered financial assistance in accordance with the EMFF is no longer operable. This instrument allows for comparable assistance to be provided outside the EU. Practical amendments to the policy are therefore mainly due to the change in constitutional and legislative context and to improve provision of financial assistance.”



And:

“As the scheme created by this instrument is intended to be flexible, any specific assessment of costs, benefits or the impacts of those costs or benefits would be conjecture and not rational or based on evidence.”

However, the Explanatory Memorandum also explains that the Scheme created by these Regulations *“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 allowing *“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.”*

Paragraph 3.2 of the *Welsh Ministers’ regulatory impact assessment code for subordinate legislation* (“the Code”) sets out various exceptions to carrying out a regulatory impact assessment, and the only one that may be considered relevant is:

“Where factual amendments are being made to update subordinate legislation and which do not alter the policy (or its impact) in any significant way or how it is applied in a given situation”.

However, these Regulations and the accompanying Explanatory Memorandum taken together suggest that the new Scheme constitutes more than routine or factual amendments, and it is not clear that any of the other exceptions otherwise apply. Further, bearing in mind the potential charge on Consolidated fund, and the fact there is a ready comparator in the previous EMFF Scheme as to likely take up, it is unclear why it was not possible to generate a forecast as to the likely cost of the Scheme.

The Welsh Government is asked to confirm which exception under the Code applies to the decision not to produce a regulatory impact assessment.

7. Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment

It is noted that the Scheme under these Regulations is made by the Welsh Ministers and will impose a charge on the Consolidated Fund.

8. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

No formal consultation has been undertaken for these Regulations and the following from the Explanatory Memorandum is noted in this regard:



“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.”

And:

“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.”

Welsh Government response

A Welsh Government response is required in relation to reporting points 1 to 6.

Committee Consideration

The Committee considered the instrument at its meeting on 17 October 2022 and reports to the Senedd in line with the reporting points above.

