EXPLANATORY MEMORANDUM TO

THE WELSH ZONE (BOUNDARIES AND TRANSFER OF FUNCTIONS) ORDER 2010

2010 No. [Draft]

1. This explanatory memorandum has been prepared by the Wales Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order in Council specifies the boundaries of the "Welsh zone" for the purposes of the Government of Wales Act 2006 ("the 2006 Act").

2.2 In addition the Order vests in the Welsh Ministers a number of functions of Ministers of the Crown connected with fishing, fisheries and fish health in relation to that part of the Welsh zone that is outside the territorial sea.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. This is the first Order in Council under section 58 of the 2006 Act to make provision in relation to the Welsh zone, following amendments made for the purpose of establishing that zone by the Marine and Coastal Access Act 2009 ("the 2009 Act").

4. Legislative Context

Background

4.1 The Welsh Ministers exercise functions in relation to Wales under a wide range of enactments. Many of those functions were originally functions of Ministers of the Crown, and were vested in the National Assembly for Wales constituted by the Government of Wales Act 1998 ("the 1998 Act") by Orders in Council under section 22 of that Act. They were then transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the 2006 Act (and the relevant provisions of the Orders in Council now have effect as if contained in Orders in Council under section 58 of the 2006 Act: see paragraph 26 of Schedule 11 to the 2006 Act).

4.2 Orders in Council under section 22 of the 1998 Act, and under section 58 of the 2006 Act as originally enacted, could make provision in relation to functions so far as they were exercisable in relation to "Wales". Accordingly, the functions which have been included in such Orders are vested in the Welsh Ministers only in relation to Wales. Similarly, following devolution under the 1998 Act, various enactments conferred functions directly on the National Assembly for Wales in relation to "Wales" as defined for the purpose of the 1998 Act (which were then transferred to the Welsh Ministers by the 2006 Act); and following the 2006 Act, enactments have conferred functions directly on the Welsh

Ministers in relation to "Wales" as defined for the purpose of the 2006 Act.

4.3 "Wales", as defined for these purposes in section 158(1) of the 2006 Act (and as previously defined in section 155(1) of the 1998 Act) includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea. That means for 12 nautical miles from the baselines which have effect under the Territorial Sea Act 1987.

4.4 For these purposes, the definition of Wales is to be read with article 6 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) which determines the boundaries between the waters in the Severn and Dee estuaries which are to be treated as adjacent to Wales and those which are not. That Order was made under section 22 of the 1998 Act but article 6 now has effect as if contained in an order under section 158(3) of the 2006 Act (see paragraph 26(3) of Schedule 11 to the 2006 Act).

The Welsh zone

4.5 Section 43 of the 2009 Act amended section 158(1) of the 2006 Act to insert a definition of the "Welsh zone". The Welsh zone is defined as the sea adjacent to Wales which is within British fishery limits and specified in an Order in Council under section 58 of the 2006 Act or an order of the Secretary of State under section 158(3). British fishery limits are defined by and under section 1 of the Fishery Limits Act 1976.

4.6 The definition of the Welsh zone in section 158(1) of the 2006 Act applies to the references to that zone which were inserted into the 2006 Act by Part 2 of Schedule 4 to the 2009 Act. It is also relevant to references to the "Welsh offshore region" in the 2009 Act, since section 322 defines that region as the part of the Welsh zone which lies beyond the seaward limits of the territorial sea. For the purposes of Part 3 of the 2009 Act, the Welsh Ministers will be the marine plan authority for the Welsh offshore region (as well as for the Welsh inshore region: see section 50). The Secretary of State will also be required to consult the Welsh Ministers before designating a marine conservation zone in the Welsh offshore region under Part 5 (see section 119(9)(a) of the 2009 Act).

4.7 In addition, the 2009 Act made some amendments to other enactments which included inserting references to the Welsh zone and to the definition in the 2006 Act (see sections 212 and 313).

4.8 Section 43 of the 2009 Act substituted a new section 158(3) of the 2006 Act. An order under that subsection may now make provision for the purpose of the definition of the Welsh zone, to determine any boundary between waters which are to be treated as parts of the sea within British fishery limits adjacent to Wales, and those which are not. By virtue of section 158(4) of the 2006 Act an Order in Council under section 58 may

include any provision that may be included in an order under section 158(3).

4.9 Article 3 of this Order (together with article 2 and the Schedule) specifies the part of the sea within British fishery limits which is to be treated as adjacent to Wales for the purposes of this definition (and which is therefore to form the Welsh zone).

Transfer of functions

4.10 Paragraph 6(3) of Schedule 4 to the 2009 Act amended section 58 of the 2006 Act so that an Order in Council under that section may now provide that functions exercisable by a Minister of the Crown in relation the Welsh zone are to be exercisable by the Welsh Ministers. It also inserted a new section 58(1A), which provides that an Order in Council may not make provision about a function which is exercisable in relation to the area of the Welsh zone beyond the seaward limit of the territorial sea, unless the function is connected with fishing, fisheries or fish health.

4.11 Articles 4 and 5 of the Order provide for functions under specified legislation relating to fishing, fisheries and fish health, including various powers to regulate sea fishing, to be exercisable by the Welsh Ministers in relation to the Welsh zone.

4.12 Functions under the legislation in question are already exercisable by the Welsh Ministers in relation to Wales, including the part of the Welsh zone that lies within the territorial sea, having been vested in the National Assembly for Wales constituted by the 1998 Act by virtue of the National Assembly for Wales (Transfer of Functions) Orders 1999 and 2000 (S.I. 1999/672 and 2000/253). In addition, some of the enactments mentioned in articles 4 and 5 have been amended (e.g. by Part 7 of the 2009 Act) to confer functions directly on the Welsh Ministers in relation to Wales.

5. Territorial Extent and Application

5.1 This Order applies only in relation to the Welsh zone, but the Order is made under powers which extend to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 The Secretary of State for Wales has made the following statement in relation to human rights:

"In my view the provisions of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 Fishing regulation is complex, as the Marine Bill White Paper (*A Sea Change: A Marine Bill While Paper*, March 2007) acknowledged. The UK Government has reviewed the existing primary fisheries enactments and, through the 2009 Act, is amending them to simplify the enforcement of regulation of fishing activities.

7.2 This complex situation is exemplified around the Welsh Coast where five agencies (Welsh Assembly Government, the Marine Fisheries Agency, two local government Sea Fisheries Committees and the Environment Agency) have responsibility for enforcing fisheries legislation. The seas around "Wales" beyond the territorial sea (over which DEFRA currently exercises fisheries functions) are fished by vessels from Wales and all around the UK and Europe. However the activities of the Welsh fishing fleet (fishing vessels registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Wales as the port to which the boat is to be treated as belonging) are concentrated in what would be the "Welsh zone".

7.3 The changes effected by the 2009 Act aim to greatly simplify fishing regulation around the Welsh coast. They include amending the 2006 Act to establish the Welsh zone, vest in the Welsh Ministers functions relating to fishing, fisheries, and fish health and reform inshore fisheries management and enforcement.

7.4 The Welsh Assembly Government's policy in respect of the Welsh zone is to enable a more rationalised, efficient and coherent management of fisheries off the Welsh coast. As noted above, the Welsh Ministers have a number of functions in respect of fishing, fisheries and fish health in relation to "Wales", which includes the 12 nautical miles of territorial sea adjacent to the landmass of Wales. Functions outside the 12 nautical miles of territorial sea adjacent to Wales but within British fishery limits are currently exercisable by the UK Government and, in relation to functions connected with fishing, fisheries and fish health, are exercised by the Secretary of State for Environment Food and Rural Affairs.

7.5 The Welsh Assembly Government's policy in connection with the creation of a "Welsh zone" is to simplify the jurisdiction, better reflect practical realities and enable the more coherent management of these functions off the Welsh coast. The Welsh zone will also put the Welsh Ministers in a similar position to the other devolved administrations as there are already corresponding Scottish and Northern Ireland Zones.

7.6 The creation of the Welsh zone will, in the longer term, make the regulatory framework over this area more easily understood by members of the public, businesses and other organisations. As soon as this Order comes into force the fisheries subordinate legislation made under the

functions vested by this Order will be administered by the Welsh Assembly Government. In addition, once the programmed review of fisheries legislation currently in force in the Welsh zone has taken place, the Welsh Assembly Government proposes to rationalise and consolidate that subordinate legislation. The intention is to produce a clear body of identifiable legislation all made by the Welsh Ministers and not, as is currently the position, two sets of legislation (one applying to the territorial sea and made by the Welsh Ministers, and the other made by the Secretary of State and applying to the area of the Welsh zone which lies beyond the territorial sea).

Boundaries of the Welsh zone

7.7 The Welsh zone is to constitute the sea within British fishery limits, measured from baselines in Wales, which lies between the northern and southern boundaries specified in article 3 of the Order. The Schedule to the Order sets out the co-ordinates of the northern boundary (out to the point where it meets the boundary of the territorial sea adjacent to the Isle of Man) and southern boundary (out to British fishery limits).

7.8 The northern boundary starts in the Dee estuary, extending in a north westerly direction into the Irish Sea. Outside that estuary it follows a simplified median line which is equidistant between England and Wales, until it meets the seaward limit of the territorial sea of the Isle of Man on its south coast. It then follows that limit in a westerly direction to the point where it meets the boundary of the Northern Ireland zone. Finally, the northern boundary follows the boundary of the Northern Ireland zone in a southerly direction until it meets British fishery limits.

7.9 In the Irish and Celtic Seas, the boundary of British fishery limits is the median line, i.e. the line that is equidistant from the baselines of the UK and the Republic of Ireland. The boundary of the Welsh zone follows that median line between the northern and southern boundaries specified in the Order.

7.10 The southern boundary of the Welsh zone starts in the Severn estuary extending in a westerly direction into the Bristol Channel. Outside that estuary it follows a simplified median line which is equidistant from England and Wales until it reaches British fishery limits.

7.11 The boundaries of the Welsh zone within the Severn and Dee estuaries are co-terminous with the boundaries of Wales within those estuaries as determined in article 6 of the National Assembly for Wales (Transfer of Functions) Order 1999.

Transfer of functions

7.12 All of the functions which are to become exercisable by the Welsh Ministers in relation to the Welsh zone as a result of the Order are already exercisable by them in relation to Wales. The Order will enable the Welsh

Ministers to exercise these functions in relation to the whole of the Welsh zone, on the same terms that they are currently able to exercise them in relation to Wales. The functions mentioned in article 4 are transferred to the Welsh Ministers, whereas those mentioned in article 5 are made exercisable concurrently by the Welsh Ministers and UK Ministers (i.e. by either of them).

7.13 As a result of article 4, functions under the following legislation will be transferred:

- Sea Fisheries (Shellfish) Act 1967 (powers to take action for elimination of disease or pest affecting shellfish in public fisheries, to consent to the taking of oysters for cultivation, and to constitute districts within which oysters may be taken and sold for cultivation);
- Sea Fish (Conservation) Act 1967 (including powers to restrict the commercial use of undersized sea fish, to regulate nets and other fishing gear, to restrict fishing for sea fish and regulate landing of sea fish, to take measures to increase or improve marine resources, and powers in relation to enforcement of orders);
- Sea Fisheries Act 1968 (power to regulate the conduct of sea fishing other than in relation to identification and marking of fishing boats);
- Fishery Limits Act 1976 (powers to regulate access of foreign fishing boats to British fisheries and to regulate the stowing of fishing gear on foreign fishing boats within British fishery limits);
- Fisheries Act 1981 (powers to make schemes of financial assistance for the sea fish industry and fish farming, to take certain other measures to promote fish farming, and to make provision for the enforcement of Community restrictions and obligations relating to sea fishing);
- Sea Fisheries (Wildlife Conservation) Act 1992 (duty to have regard to conservation of marine flora and fauna in discharging functions under sea fisheries legislation);
- Sea Fish (Marketing Standards) Regulations 1986 (power to authorise officers to enforce EU law relating to sea fish marketing standards).

7.14 As a result of article 5, functions under the following legislation will be exercisable by the Welsh Ministers concurrently with Ministers of the Crown:

- Sea Fish (Conservation) Act 1967 (including powers to license fishing boats, license trans-shipment of fish within British fishery limits, and confer functions on British sea fishery officers);
- Sea Fisheries Act 1968 (power to regulate the conduct of sea fishing operations so far as relating to the identification and marking of fishing boats);
- British Fishing Boats Act 1983 (powers to prescribe qualifications for British fishing boats to be used in fishing, trans-shipment and landing of sea fish, to specify restricted fishing areas in which boats

must be qualified, and specify how fishing gear is to be stowed on British fishing boats which are not qualified).

Consolidation

7.15 The Order vests in the Welsh Ministers functions relating to fishing, fisheries and fish health in respect of that part of the Welsh zone that lies outside the territorial sea adjacent to Wales.

7.16 Those functions are already exercisable by the Welsh Ministers in relation to Wales (including the territorial sea) by virtue of the National Assembly for Wales (Transfer of Functions) Orders 1999 and 2000 (S.I. 1999/672 and 2000/253), as read with paragraph 30 of Schedule 11 to the 2006 Act. This Order does not amend either of those Orders. It would not be appropriate to consolidate those Orders as the vesting of functions by those Orders has already taken place.

8. Consultation outcome

8.1 The Order has been the subject of detailed discussion between the Welsh Assembly Government and interested UK Government departments. The Welsh Ministers have approved this Order under section 58(4)(b) of the 2006 Act.

8.2 The Welsh Assembly Government carried out a public consultation on the proposals for a Welsh fisheries zone in 2008, writing directly to over 300 individuals and organisations across the UK. There were 13 responses. Of these, 2 raised concerns. One requested a UK-wide approach to fisheries management. The other was concerned that resources would be redirected from inshore fisheries management.

8.3 The Welsh Assembly Government is confident that the creation of the Welsh zone will not weaken the UK position in EU fisheries matters. The Welsh Assembly Government also does not intend to redirect any resources away from the management of inshore fisheries due to the creation of the Welsh zone.

9. Guidance

9.1 No formal guidance has been or will be issued in relation to the Order. This Explanatory Memorandum explains the scope and policy context of the Order

9.2 The Welsh Assembly Government intends that a press release and a Written Statement to the Assembly will be issued to inform of the creation of the Welsh zone and the transfer of fisheries functions.

10. Impact

10.1 An impact assessment has not been prepared for this Order as no impact on business, charities or voluntary bodies is foreseen. There will be no change to business as a result of this Order as the current regulatory framework under the fishing, fisheries and fish health legislation covered by the Order is not changed by the Order. The impact of any future changes to that regulatory framework proposed by the Welsh Ministers in subordinate legislation will be addressed through statutory regulatory impact assessment under section 76 of the 2006 Act.

10.2 The impact on the public sector is not expected to be significant. The administrative burden for the Welsh zone will transfer from the Department for Environment, Food and Rural Affairs to the Welsh Assembly Government. There will be no budgetary transfer from the UK Government to the Welsh Assembly Government in connection with this Order.

11. Regulating small business

11.1 No impact on small businesses is foreseen as a result of the Order. The Order does not apply directly to small business. It effects a redistribution of functions between the UK Government and the Welsh Assembly Government.

12. Monitoring & review

12.1 The monitoring and review of the exercise of the functions vested in the Welsh Ministers by this Order is a matter for the Welsh Assembly Government and/or the National Assembly for Wales.

13. Contact

Queries about the content of the Order or this memorandum should be addressed to Geth Williams (Tel:020 7270 0554 or email geth.williams@walesoffice.gsi.gov.uk)

James George (Tel: 029 2089 8484 or email james.george@walesoffice.gsi.gov.uk) can answer legal queries about the Order.