

**Department for Environment, Food & Rural Affairs  
National Assembly for Wales**

**Several and Regulating Orders  
for  
Oysters, Mussels, Cockles, Clams,  
Scallops, Queens, Lobsters and Crabs**

***Notes for Guidance***

**This Note explains the procedure for applying for a Several or Regulating Order under Section 1 of the Sea Fisheries (Shellfish) Act 1967.**

**Data Protection Act 1998**

Defra will use this information, including personal data, provided on form FIS 3A (Several & Regulating Orders Management Plan) primarily for purposes of considering applications and the issuing and monitoring of Several and/or Regulating Orders as described in form FIS 3 (Notes for Guidance).

Defra may also use the information, including personal data and annual return figures, for other legitimate purposes including Disease control (both in monitoring and outbreak situations) and compliance with quotas and other fisheries restrictions. The information may also be disclosed to other Fisheries Departments in the UK, their agencies and authorised agents and to other government departments for these same purposes.

Information (including personal data) may also be released on request, including under the Environmental Information Regulations, the Code of Practice on Access to Government Information and the Freedom of Information Act 2000. Defra or its appointed agents may contact you in connection with occasional customer research aimed at improving the services that Defra provides to you.

# INTRODUCTION

## **What are Several and Regulating Orders ?**

The purpose of a **Several Order** is to encourage the establishment or improvement of a shellfishery. Mere harvesting of shellfish is not normally sufficient to justify the granting of a Several Order.

**Regulating Orders** are designed to improve the management of natural shellfisheries.

Several and Regulating Orders are granted by the Minister of Agriculture, Fisheries and Food/the National Assembly for Wales under the terms of the Sea Fisheries (Shellfish) Act 1967 ("the Act"). Section 1 of the Act allows for Orders to be made, in the name of a person or a Company, to restrict the right of fishing in a defined area of the sea or tidal waters to that person or Company. An Order will relate to named species of shellfish and will be granted for a set period.

## **For which species can Orders be made?**

Orders can be made to cover one or more of the following shellfish species: oysters, mussels, cockles, clams, scallops, queens, lobsters and crabs. They may also be made for any other molluscs or crustaceans of a kind specified in Regulations made by Ministers.

## **How long do Orders last?**

Whilst the Act provides for Orders to be made for up to 60 years, current policy of the Departments is to award them for shorter periods of around 5-10 years for Several Orders and 20-30 years for Regulating Orders.

## **What powers are conferred by Several rights?**

Section 2 of the Act gives the Grantees of the Order exclusive rights to fish, dredge or take, within a defined area, shellfish of a description to which the Several Order applies. The right of several fishery is a property right and may be leased or transferred. In exercising this right the Grantees may create and maintain shellfish beds and may collect, move or deposit shellfish as they see fit within the defined area. The Order which confers this right will set out the extent of such powers and any conditions to which they are subject.

Whilst an Order only applies to a named species, it will place restrictions on other fishing practices which may take place within the area of the Order. These could generally be practices which would damage or place at risk the shellfish stock for which the Order has been given.

## **What powers are conferred by the Regulating Order?**

Grantees have the power to carry into effect and enforce regulations and restrictions relative to the dredging, fishing for or taking of any specified description of shellfish within a designated area. These Orders provide licensing provisions under which a Grantee may issue licences authorising the dredging of, fishing for or taking of shellfish at a time, in a manner and to a (geographical) extent determined by the Grantees. Unlicensed persons are excluded from the Regulated fishery. Grantees of Regulating Orders do not therefore benefit directly from property rights.

## **What legal protection of Several Order shellfish stocks exists?**

A Several Order holder has legal ownership of the particular species of shellfish identified in the Order within the area of

the Order. Any unauthorised disturbance or injury of the shellfish, their beds or the fishery itself is an offence, punishable by a fine up to a current maximum of £5,000. The offender is also liable to make full compensation for damage or loss caused by the unlawful act.

## **What legal protection of Regulating Order shellfish stocks exists?**

It is an offence to dredge, fish for or take shellfish in contravention of any restriction or regulation or without paying any toll or royalty within the regulated fishery. Offences are punishable by a fine up to a current maximum of £5,000.

## **Are there any restrictions on how an Order can be run?**

An Order may impose conditions or restrictions on the holder in relation to the operation of a Several Order area, for example specifying the methods by which shellfish will be harvested, and different conditions may be imposed in respect of different parts of the area to which the Order relates. These conditions will be determined by the Minister/National Assembly in the light of the application, of comments from those consulted about the application and of the conclusions of any public inquiry.

In addition, Ministerial consent may be required before certain actions can be taken (e.g. on the issue of licences or the imposition of restrictions or regulations) and the Minister may choose to direct the Grantees in the carrying out of these actions.

## **If I am a Several Order holder, do I need to register as a shellfish farm?**

Registration of shellfish farms is required for disease control purposes. For advice on whether your business needs to be registered, please contact CEFAS Weymouth Laboratory, Barrack Road, The Nothe, Weymouth, Dorset, DT4 8UB. Tel no: 01305 206673/4; Fax no: 01305 206602. The Registration of Fish Farming and Shellfish Farming Businesses Order 1985 (as amended), requires all shellfish farming businesses to register with the Ministry of Agriculture, Fisheries and Food within 2 months of starting business. Registered businesses are required to keep records of all movements of shellfish to and from the registered site(s) and these records must be retained for 4 years.

Registered shellfish farms are also subject to health inspections and inspectors from the Centre for Environment, Fisheries and Aquaculture Science (CEFAS) Weymouth Laboratory shall examine the records at that time and take samples as necessary and as required by EU legislation to ensure their continuing disease free status.

## **Do I need to keep the Ministry informed of activity in the fishery?**

The Grantees of Several and Regulating Orders are required to provide certified accounts and annual returns showing activity in the fishery for each financial year.

## **What information is needed when applying for an Order?**

The remainder of this note contains advice and guidance on the procedures for applying for a Several/Regulating Order. In addition to submitting a completed application form, all

applicants must provide a detailed management plan showing the intentions of the Grantees over a five year period. A management plan pro forma prepared by the Ministry is available to assist you in preparing this plan, and is available from Defra either at the address on this page or online at [www.defra.gov.uk/fish/aquacult.htm](http://www.defra.gov.uk/fish/aquacult.htm)

### Who is responsible for the costs of the application?

The applicant will be responsible for the costs associated with the application, including advertisement, the costs of any inquiry and any further costs incurred by the Ministry/Department.

### Preliminary requirements

1. Before you apply you must first establish the identity of whoever owns, or is entitled to rights in or over, the area which you wish to cultivate/manage because:
  - (a) the sea shore, in the main, belongs to the Crown or is under the charge of the Duchy of Lancaster or of Cornwall; therefore the consent of the Crown Estate Commissioners or the Chancellor of the Duchy of Lancaster or the Duke of Cornwall, must be obtained before an Order can be made;
  - (b) alternatively where any parts of the sea shore are subject to private rights the **consent** of the holders of those rights **must** also be obtained (please also see Note 9).
2. The Crown Estate Commissioners, whose office is at 16 Carlton House Terrace, London SW1Y 5AH, will, on being provided with adequate plans showing the area, let you know whether the area is:
  - (a) in Crown ownership; and whether they are prepared to issue a consent or;
  - (b) whether the land is leased or affected by grants made by the Crown.The Commissioners will, where appropriate, advise you to consult the Duchy of Lancaster or of Cornwall. You will be advised similarly to make your proposals known to their Lessees or Grantees.
3. It is advisable for you to consult other parties likely to be affected by the granting of the order before making an application. These should include not only fisheries interests, but also other users of the area, such as recreational and sporting interest, along with navigation and harbour authorities. Undertaking a consultation before application can reduce the chances of objections being made once the draft order is advertised. For several orders, where the area to be covered by the order is within, or might affect, a Special Area of Conservation (including candidate sites), designated under the Habitats Directive, or a Special Protection Area designated under the Wild Birds Directive, you should also consult English Nature or the Countryside Council for Wales and, if appropriate, the Royal Society for the Protection of Birds.
4. **Please note that once an Order is made it cannot be subsequently amended or its duration extended without repeating the full application process.** You should ensure, therefore, that the application covers all your foreseeable needs for the period of the Order.

### Formal Procedure

5. **You will be responsible for the costs associated with the application, including advertisement, the costs of any environmental assessment or public inquiry and any costs incurred by the Ministry/Department.**
6. When you have fully established the position regarding ownership, lessees and rights, and have written consents to your planned operations, you should complete and submit the application form which is contained in The Several and Regulating Fisheries (Form of Application) Regulations 1987, (SI 1987/217) – available from The Stationery Office).
7. Once completed, the application should be submitted, for applications in England, to:
  - Department for Environment, Food and Rural Affairs  
Fisheries Division IIA,  
Nobel House, 17 Smith Square,  
London SW1P 3JR  
Tel: 020 7238 5939  
e-mail [s.fish@fishll.defra.gsi.gov.uk](mailto:s.fish@fishll.defra.gsi.gov.uk)for applications in Wales, to:
  - National Assembly for Wales Agriculture  
Department  
Agriculture Policy Division, Branch 5,  
Crown Buildings, Cathays Park,  
Cardiff CF1 3NQ  
Tel: 0122 823184
8. You must enclose with the application:
  - the necessary written consents from owners of rights to the land under application (see Note 1);
  - two copies of the latest Admiralty Chart of the area – one must be the original chart and from this the definitive map may be prepared; the second, which may be a photocopy, should show accurately the proposed area of the fishery;
  - if you are a company incorporated under the Companies Acts, a copy of the memorandum and Articles of Association and any registered Special Resolution of the company relating to its objects;
  - if you are a corporate body in any other manner, a copy of every instrument of incorporation, charter or local Act of Parliament relating to that body. (The application must be signed by an authorised officer of the corporate body.);
  - details of the species and length of time you are applying for;
  - a management plan to show your intentions for the fishery over a five year period.
9. On receipt of the application, the Minister of Agriculture, Fisheries and Food/National Assembly for Wales will decide whether to allow it to proceed further. In this connection, the following will be considered:
  - (a) the potential for cultivation/enhancement/conservation of the proposed fishery;
  - (b) whether there is any statutory impediment to the application.

10. For several orders the minister/National Assembly will also consider whether the proposed development is likely to have a significant effect on any special Area of Conservation (including candidate sites), designated under the Habitats Directive, or a special Protection Area, designated under the Wild Birds Directive. Where the proposed development is likely to have a significant affect on such a site, an appropriate assessment of implications of the development for the conservation objectives of the site must be undertaken. If the assessment indicates that the proposed development would adversely affect the integrity of the site, the Minister/National Assembly will not allow the application to proceed unless there is an overriding public interest in favour of the development.
11. Applications cannot be taken forward unless the Minister is satisfied that the consents of all owners of rights to the land under application have been received (see notes 1 and 10).
12. Under Section 1(5) of the Act the existence of certain rights on, to or over the sea shore may limit the exercise of rights obtained under a Several or Regulating Order. Where you wish to include areas subject to private rights within your application, the Ministry/Department will require evidence **that the consents of interested parties have been obtained**. Occasionally, a person entitled to private rights may attach conditions to the giving of consent. The Ministry/Department takes the view that such consents should be expressed in "private" agreements between the parties concerned rather than in the Order itself.
13. If, after preliminary consideration, the Minister/National Assembly decides to reject the application we will let you know, with reasons for the rejection.
14. If the Minister/National Assembly decides to allow the application to proceed a draft Order will be prepared and sent to other government departments and other interested bodies for comments.
15. Comments will then be assessed, and any proposals for amendments considered in order for the Order to proceed. A draft Order will be prepared and a copy will be sent to you. It is then your responsibility to advertise the draft Order. To assist you in this, we will supply a draft advertisement and will advise you of the papers in which the advert should be placed. The draft advertisement will contain the following information:
  - a statement of the principal objectives of the Order;
  - the address where copies of the draft Order can be seen and obtained;
  - the address where a copy of the plan, map or chart of the locality showing the limits of the proposed fishery can be inspected; and
  - a statement that any objections should be made in writing to the Minister/National Assembly, with a copy to the applicant, to be received within one month of the date of the advertisement.
16. You must let us know the actual date of the advertisement and confirm that you have complied with our instructions, enclosing copies of the newspapers carrying the advertisements.

## ***Objections and a Public Inquiry*** ---

17. Any written objections received by the Minister/Secretary of State will be copied to you. A period, normally not exceeding three months, will be allowed so that you may, if you wish, seek their withdrawal by agreement. Experience has shown that objections to an application may be based on interference with established fishing, yachting or other amenities; or from a misunderstanding of what the proposed Order is meant to achieve.
18. If objections, which are not frivolous or irrelevant, are not formally withdrawn then the Minister/National Assembly will appoint an Inspector to hold a local public inquiry to hear and consider objections to the proposed Order. You will be asked to arrange the public inquiry and bear the costs of the Ministry in providing the Inspector.
19. We will send to you the text of a Notice announcing the proposed inquiry. You must then place the notice in the same newspapers that previously carried the notice of the application. You should also send a copy to all persons who have made objections to the proposed Order. You must immediately notify the Ministry/Department when this has been done.
20. Although not a statutory requirement, it will help the inquiry if you circulate in advance to the objectors, and to the Ministry/Department, a written statement of the case you propose to make at the inquiry.

## ***Decision by the Minister/ National Assembly*** ---

21. Following these procedures, the Minister/National Assembly will reach a decision on whether to make the Order or refuse the application. We will notify you of the Minister's/National Assembly's decision and the reasons for that decision. Where the decision follows a public inquiry, objectors will also be notified of the decision.
22. If the Minister/National Assembly decides to make an Order, a copy will be sent to you with a public notice for you to advertise (as with the draft Order and Notice of Inquiry) that the Order has been made and will come into operation on the prescribed date.
23. Printing of the Order will be arranged by the Ministry/Department. A copy of the Order and the plan, map or chart of the locality showing the limits of the fishery must be kept at your local address for anyone who wishes to see it.

## ***Timing*** ---

24. Several and Regulating Orders restrict the public right to fish in certain areas. In order to safeguard the rights of all those who have an interest in the area, very careful consideration is given to every application. The procedures outlined above cannot be circumvented and as such they can be lengthy and time consuming. Applicants are asked to bear in mind that the process of obtaining an Order may take up to two years.