Status: *This version of this Instrument contains provisions that are prospective.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Registration of Fish Sellers and Buyers and Designation of Auction Sites (Scotland) Regulations 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCOTTISH STATUTORY INSTRUMENTS

2005 No. 286

SEA FISHERIES

The Registration of Fish Sellers and Buyers and Designation of Auction Sites (Scotland) Regulations 2005

Made - - - - 26th May 2005
Laid before the Scottish Parliament - - - - 26th May 2005
Coming into force in accordance with regulation 1(2)

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Registration of Fish Sellers and Buyers and Designation of Auction Sites (Scotland) Regulations 2005.

(2) These Regulations shall come into force in accordance with this paragraph–

(a) regulations 1 to 3, 6, 7, 9 and 12 to 18 shall come into force on 20th June 2005; and

(b) regulations 4, 5, 8, 10 and 11 shall come into force on 1st September 2005.

(3) Subject to paragraph (4), these Regulations extend to Scotland and the Scottish zone and insofar as they extend beyond Scotland and the Scottish zone, they do so only as a matter of Scots law.

(4) Proceedings for an offence under these Regulations may be taken, and for all incidental purposes the offence may be treated as having been committed, in any place in the United Kingdom.

Commencement Information
I1 Reg. 1 in force at 20.6.2005, see **reg. 1(2)(a)**

Interpretation

2.—(1) In these Regulations–

(**1**) 1972 c. 68; section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The functions of the Minister of the Crown, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

"Article 9" means Article 9 of Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the Common Fisheries Policy(**2**) as last amended by Council Regulation (EC) No. 806/2003(**3**) and any reference to a paragraph of Article 9 shall be interpreted accordingly;

"the CFP Regulation" means Council Regulation 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy(**4**);

"designated auction site" means a site where fish are marketed which has been designated by the Scottish Ministers under regulation 6(3);

"equivalent provision" means any provision in any other regulations made under section 2(2) of the European Communities Act 1972 for the purposes of implementing Article 9 or Article 22 of the CFP Regulation, extending to any part of the United Kingdom, which has equivalent effect to a specified provision in these Regulations;

"first sale fish" means fish which are being sold for the first time but does not include farmed fish;

"fish" means fishery products to which Article 9 or Article 22 of the CFP Regulation applies and which are landed from a fishing vessel;

"licensed fishing vessel" means a fishing vessel in respect of which a licence has been issued under section 4 of the Sea Fish (Conservation) Act 1967(**5**) or under similar provisions by another Member State or by another country;

"PLN number" means a vessel's port letters and number within the meaning of regulation 31 of the Merchant Shipping (Registration of Ships) Regulations 1993(**6**);

"registered fish buyer" means a person who is registered by the Scottish Ministers in accordance with regulation 7;

"registered fish seller" means a person who is registered by the Scottish Ministers in accordance with regulation 3.

"Scottish fishing boat" means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995(**7**) and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging; and

"the Scottish zone" has the same meaning as in section 126(1) of the Scotland Act 1998(**8**).

(2) In these Regulations, any reference to a registered fish buyer or registered fish seller shall include an agent who buys or sells fish on behalf of the buyer or seller, and any similar expressions shall be interpreted accordingly.

Commencement Information

I2 Reg. 2 in force at 20.6.2005, see **reg. 1(2)(a)**

Registration of fish sellers

3.—(1) A registered fish seller is authorised for the purposes of Article 9(1), insofar as that seller sells first sale fish by way of competitive bidding at a designated auction site.

(**2**) O.J. No. L 261, 20.10.93, p.1.
(**3**) O.J. No. L 122, 16.5.03, p.1.
(**4**) O.J. No. L 358, 31.12.02, p.59.
(**5**) 1967 c. 84.
(**6**) S.I.1993/3138; the relevant amending instrument is 1999/3206.
(**7**) 1995 c. 12.
(**8**) 1998 c. 46.

(2) Any person may apply to the Scottish Ministers to be registered as a fish seller.

(3) Such an application shall be in writing, shall be made in such form and manner, shall include such information and undertakings and shall be delivered to such address as the Scottish Ministers may specify in a notice or from time to time require.

(4) On receipt of such an application the Scottish Ministers may–

(a) register the applicant;

(b) determine conditions to which the registration shall be subject; and

(c) require the applicant to provide such undertakings as the Scottish Ministers consider appropriate to the application.

(5) The Scottish Ministers shall in writing–

(a) notify applicants of the result of their applications;

(b) notify applicants whose applications for registration have been approved of any conditions which they have determined or undertakings required under paragraph (4); and

(c) notify applicants whose applications for registration have been approved of the registration number allocated to them for the purposes of these Regulations.

(6) The Scottish Ministers shall publish the fact that a person is a registered fish seller in such manner as they see fit.

(7) Any registered fish seller who fails to comply with any–

(a) condition to which the registration of that seller is subject; or

(b) undertaking provided,

is guilty of an offence.

(8) Any person who knowingly or recklessly makes a statement which is false in a material particular in an application under this regulation is guilty of an offence.

Commencement Information

I3 Reg. 3 in force at 20.6.2005, see **reg. 1(2)(a)**

PROSPECTIVE

Sale of fish

4.—(1) Any person who–

(a) sells first sale fish by any form of competitive bidding in a designated auction site; and

(b) is not a registered fish seller,

is guilty of an offence.

(2) Where first sale fish is sold from a fishing vessel to a buyer who is not a registered fish buyer the master, owner or charterer (if any) of the fishing vessel is guilty of an offence.

Commencement Information

I4 Reg. 4 in force at 1.9.2005, see **reg. 1(2)(b)**

PROSPECTIVE

Maintenance of records by registered seller

5.—(1) Subject to paragraph (2), a registered fish seller shall maintain records of each sale of first sale fish made by that seller at the place in the United Kingdom notified to the Scottish Ministers for that purpose in the registered fish seller's application for registration.

(2) Where a registered fish seller does not operate that seller's business from the United Kingdom or where a registered fish seller is not established in the United Kingdom, a registered fish seller shall–

(a) send records of every sale of first sale fish made by the seller to the Scottish Ministers by 31st December in each year; and

(b) produce those records to the Scottish Ministers within 28 days of a request from a British sea fisheries officer under paragraph (5) to produce those records.

(3) The records referred to in this regulation shall include all of the following information in relation to each sale–

(a) date and location of the sale;

(b) quantities of each species sold;

(c) price paid for each species sold;

(d) name and PLN number of the vessel which landed the fish;

(e) name and address of the buyer; and

(f) reference number of the contract of sale or invoice.

(4) A registered fish seller shall keep the records of each sale as required by this regulation until the end of the second calendar year following that sale.

(5) Subject to paragraph (2)(b), a registered fish seller shall, upon the request of a British sea fishery officer, produce the records referred to in this regulation.

(6) A registered fish seller who fails to keep the records required by this regulation or to produce the records in accordance with paragraph (5) is guilty of an offence.

(7) Any person who knowingly or recklessly maintains or produces records which are false in a material particular is guilty of an offence.

Commencement Information

I5 Reg. 5 in force at 1.9.2005, see **reg. 1(2)(b)**

Designation of auction sites

6.—(1) Any person may apply to the Scottish Ministers to have a site designated as a designated auction site.

(2) Such an application shall be made in writing, shall be made in such form and manner and shall contain such information and undertakings and shall be delivered to such address as the Scottish Ministers may specify in a notice or from time to time require.

(3) The Scottish Ministers, having considered the relevant application and any information provided may–

(a) designate a site as a designated auction site;

(b) determine conditions to which the designation of the site shall be subject; and

(c) require the applicant to provide such undertakings as the Scottish Ministers consider appropriate to the application.

(4) The Scottish Ministers shall in writing–

(a) notify applicants of the results of their applications; and

(b) notify applicants whose applications for designation of sites have been approved of any conditions they have determined or undertakings required under paragraph (3).

(5) The Scottish Ministers shall publish the fact that a site has been designated as a designated auction site in such manner as they see fit.

(6) Where there is a failure to comply with any–

(a) condition to which the designation of a particular site is subject; or

(b) undertaking provided,

the person who applied to have the site designated as a designated auction site is guilty of an offence.

(7) Any person who knowingly or recklessly makes a statement which is false in a material particular in an application under this regulation is guilty of an offence.

Commencement Information

I6 Reg. 6 in force at 20.6.2005, see **reg. 1(2)(a)**

Registration of fish buyers

7.—(1) For the purposes of Article 22(2)(b) of the CFP Regulation, a registered fish buyer shall be regarded as registered with the authorities.

(2) Any person may apply to the Scottish Ministers to be registered as a fish buyer.

(3) Such an application shall be made in writing, shall be made in such form and manner, shall include such information and undertakings and shall be delivered to such address as the Scottish Ministers may specify in a notice or may from time to time require.

(4) On receipt of such an application the Scottish Ministers may–

(a) register the applicant;

(b) determine conditions to which the registration shall be subject; and

(c) require the applicant to provide such undertakings as the Scottish Ministers consider appropriate to the application.

(5) The Scottish Ministers shall in writing–

(a) notify applicants of the results of their applications;

(b) notify applicants whose applications for registration have been approved of any conditions which they have determined or undertakings required under paragraph (4); and

(c) notify applicants whose applications for registration have been approved of the registration number allocated to them for the purposes of these Regulations.

(6) The Scottish Ministers shall publish the fact that a person is a registered fish buyer in such manner as they see fit.

(7) Any registered fish buyer who fails to comply with any–

(a) condition to which the registration of that buyer is subject; or

(b) undertaking provided,