SCOTTISH STATUTORY INSTRUMENTS

2004 No. 44

SEA FISHERIES

The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2004

Made - - - -	*31st January 2004*
Laid before the Scottish Parliament - - - -	*4th February 2004*
Coming into force - -	*1st February 2004*

The Scottish Ministers, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(**1**) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2004 and shall come into force on 1st February 2004.

(2) Subject to paragraph (3), this Order shall extend to Scotland and the Scottish Zone, and insofar as it extends beyond Scotland and the Scottish Zone, it does so only as a matter of Scots law.

(3) Nothing in paragraph (2) shall be treated as prejudicing the effect of section 30(2A)(**2**) of the Fisheries Act 1981 in the rest of the United Kingdom in relation to, or for purposes incidental to, any provision which creates an offence.

Interpretation

2.—(1) In this Order–

"Annex V" means Annex V to Council Regulation 2287/2003 of 19th December 2003 fixing for 2004 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required(**3**);

(**1**) 1981 c. 29; relevant modifications are contained in the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748), article 5 and the Scotland Act 1998 (Modifications of Functions) Order 1999 (S.I. 1999/1756) articles 3, 5 and 6. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46). See section 30(3) for a definition of "the Ministers". Section 30(2) has effect in relation to Scotland as modified by section 30(5). Section 30(5) was inserted by the Scotland Act 1999 (Consequential Modifications) (No. 2) Order (S.I. 1999/1820), Schedule 2, paragraph 68.

(**2**) Section 30(2A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68.

(**3**) O.J. No. L 344, 31.12.03, p.1.

"British fishing boat" means a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(**4**) or is owned wholly by persons qualified to own British ships for the purposes of that part of that Act;

"cod recovery zone" means the geographical area defined in paragraph 2 of Annex V;

"day" has the same meaning as in paragraph 3(b) of Annex V;

"equivalent provision" means any provision in any other order made under section 30(2) of the Fisheries Act 1981 for the purposes of implementing Annex V, extending to any part of the United Kingdom which has equivalent effect to a specified provision in this Order, proceedings in respect of which, by virtue of section 30(2A) of the Fisheries Act 1981, may be commenced in any place in the United Kingdom;

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

"fishing boat" includes any vessel to which Annex V applies;

"foreign fishing boat" means a fishing boat which is not a British fishing boat but to which Annex V applies;

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

"person in charge" in relation to a relevant fishing boat, means the owner, master or charterer or the agent of the owner, master or charterer;

"regulated gear" means any gear within the groupings of fishing gears specified in paragraph 4 of Annex V;

"Regulation 2807/83" means Commission Regulation (EEC) 2807/1983 which lays down detailed rules for recording information on Member States' catches of fish(**5**);

"Regulation 2847/93" means Council Regulation (EEC) 2847/1993 which establishes a control system applicable to the common fisheries policy(**6**);

"relevant fishing boat" means–

(a) except in relation to articles 3 and 7–

  (i) a Scottish fishing boat wherever it may be; and

  (ii) any other fishing boat which is within the Scottish zone other than a foreign fishing boat;

(b) in relation to article 3, a Scottish fishing boat;

(c) in relation to article 7–

  (i) a Scottish fishing boat; and

  (ii) an English, Welsh or Northern Ireland fishing boat where a Scottish fishing boat is the donor and it is the recipient or it is the donor and a Scottish fishing boat is the recipient,

  licensed under section 4 of the Sea Fish (Conservation) Act 1967(**7**), but does not include a British fishing boat which has an overall length of less than 10 metres;

(**4**) 1995 c. 21.
(**5**) O.J. No. L 276, 10.10.83, p.1.
(**6**) O.J. No. L 261, 20.10.93, p.1.
(**7**) 1967 c. 84. Section 4 was amended by the Fishery Limits Act 1976 (c. 86), section 3, the Fisheries Act 1981 (c. 29), section 20 and the Sea Fish (Conservation) Act 1992 (c. 60), section 1 and has effect in relation to Scotland as modified by section 22A inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43(13).

"relevant offence" means an offence under this Order or under any equivalent provision;

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

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

"unused day" means any period of 24 consecutive hours in the cod recovery zone to which a relevant fishing boat carrying regulated gear is entitled in any management period determined under article 3;

"Welsh fishing boat" means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Wales as the port to which the vessel is treated as belonging.

(2) In this Order, "logbook" has the same meaning as in Article 6 of Regulation 2847/93 as read with Regulation 2807/83, and for the purposes of any provision of this Order, other than article 13, any reference to a document, logbook or declaration includes, in addition to a document, logbook or declaration in writing–

(a) any map, plan, graph or drawing;

(b) any photograph;

(c) any data, howsoever reproduced, communicated via a satellite–based vessel monitoring system established under Article 3.1 of Regulation 2847/93;

(d) any disk, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(e) any film (including microfilm), negative, tape, disk or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.

(3) Any information provided to any authority for the purposes of any provision of this Order shall be treated as also provided for the purposes of any equivalent provision.

Determination of management periods

3.—(1) Management periods, as referred to in paragraph 6(b) of Annex V, in relation to a relevant fishing boat shall be determined by the Scottish Ministers.

(2) A person in charge of a relevant fishing boat may notify the Scottish Ministers indicating the preference of that person as to the length of the management period for that boat.

(3) In determining the management period for that boat the Scottish Ministers shall have regard to any preference as to the length of the management period indicated in a notification under paragraph (2).

Absence from port

4.—(1) A person in charge of a relevant fishing boat which–

(a) contravenes paragraph 9 of Annex V; or

(b) is absent from port in excess of the number of days permitted to it under the following provisions of this article,

is guilty of an offence.

(**8**) 1998 c. 46. The sea within British fishing limits (that is, the limits set by or under section 1 of the Fishery Limits Act 1976 (c. 86) which is adjacent to Scotland is determined by the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).

(2) In addition to the number of days indicated in paragraph 6(a) of Annex V, applicable to the boat in accordance with any regulated gear it carries, as adjusted as necessary in terms of the second sub paragraph of paragraph 7, for each calendar month there is added to, or substituted for as the case may be, the number indicated in paragraph 6(a) of Annex V, such number of days (if any) as–

(a) may be allocated to United Kingdom vessels under paragraph 6(c) of Annex V; and

(b) may be allocated to vessels by the Scottish Ministers under paragraph 6(d), (e) and (f) of Annex V.

(3) Where days have been transferred from one relevant fishing boat ("the donor") to another relevant fishing boat ("the recipient") the following shall apply, subject to any adjustment required by paragraph 10(a) of Annex V–

(a) the donor shall have deducted from its allocation of days such number of days as have been transferred to the recipient;

(b) the recipient shall have added to its allocation of days such number of days as have been transferred by the donor.

(4) Where during any management period fishing gear is affixed to two or more fishing boats there shall be deducted from the basic number for each such boat that is a relevant fishing boat in relation to that gear and that period a number of days equal to the number when it was absent from port but the gear was being carried by any other such boat.

(5) Subject to article 5, where during any management period a relevant fishing boat has–

(a) been absent from port carrying fishing gear in excess of the days permitted to it by this article; or

(b) purported to transfer days in accordance with article 7 in excess of its unused days,

the Scottish Ministers may deduct a number equal to the number of days in that excess.

(6) In any proceedings for an offence under paragraph (1)(b) of this article, it shall be a defence for a person to show that the number of days of absence from port carrying any type of fishing gear comprising the offence was no greater than the number of days of absence carrying that gear purportedly but not validly transferred to that person under article 7 and that person did not know and had no reasonable cause to suspect that the donor was not entitled to transfer the days.

Procedure as to decisions to deduct days

5.—(1) In making a decision to deduct days under article 4(5), the Scottish Ministers–

(a) shall specify which management period the days deducted will relate to;

(b) may deduct days in respect of one or more than one management period, as they consider fit.

(2) The Scottish Ministers, before making a decision to deduct days under article 4(5), shall–

(a) give the affected person a written notification of that intention (including a note of the management period or periods to which that deduction is proposed to apply) and an explanation of the reasons for considering the deduction of days (and the basis for proposing the deduction from a particular period or periods);

(b) afford that person an opportunity of making representations in that regard within such time and in such form as they think fit and, in order to effectively give such opportunity, may appoint a person ("the reporter") to report to them as to the relevant factual circumstances; and

(c) consider any such representations (including the report prepared by the reporter) in making their decision in the case.

(3) In this article–

"affected person" means the owner, master or charterer of the boat in respect of which a decision to deduct days under article 4(5) is made or is proposed to be made.

Use of regulated gear

6.—(1) A person in charge of a relevant fishing boat which fishes in contravention of the notification requirement in the first sub paragraph of paragraph 7 of Annex V is guilty of an offence.

(2) A person in charge of a relevant fishing boat which carries or uses, whilst present in the cod recovery zone, regulated gear other than the regulated gear notified under the requirement in paragraph 7 of Annex V is guilty of an offence.

(3) The competent authority for the purpose of the second indent of the third sub-paragraph of paragraph 7 of Annex V is the Scottish Ministers.

(4) A relevant fishing boat which is present in the cod recovery zone shall only carry on board gear falling within one of the groupings of fishing gears specified in paragraph 4 of Annex V.

(5) A person in charge of a relevant fishing boat which contravenes the prohibition in paragraph (4) is guilty of an offence.

Transfer of days from one boat to another

7.—(1) Transfer of unused days within the same management period from one relevant fishing boat ("the donor") to another ("the recipient") for the purposes of paragraph 10 of Annex V where either the donor or the recipient is, or both are, a relevant fishing boat, is permitted subject to the conditions specified in paragraph 10(a) to (d) of Annex V, to the extent specified in a notification of transfer sent to the Scottish Ministers.

(2) A person who knowingly or recklessly makes a statement in a notification under paragraph (1) which is false in a material particular is guilty of an offence.

(3) For the purposes of this article "the same management period" means any two management periods provided that the transfer takes place during the concurrence of the management periods.

Amendment of the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000

8. The Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000(**9**) is amended as follows:–

(a) in article 2(1)–

(i) for "Annex XVII" and the related definition substitute–

""Annex V" means Annex V to Council Regulation 2287/2003 of 19th December 2003 fixing for 2004 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required;";

(ii) at the end of the definition of "the Council Regulation" there is added "and as applied by paragraph 13 and modified by paragraph 18, 21 and 22 of Annex V"; and

(b) in the Schedule, in column 3 of each entry opposite items 2(l), (m), (n) and (o), after the words "15 metres" wherever they appear there is inserted "(or to the extent applicable in consequence of paragraph 13 of Annex XVII, equal to or greater than 10 metres)".

(**9**) S.S.I. 2000/7.