SCOTTISH STATUTORY INSTRUMENTS

2003 No. 56

SEA FISHERIES

The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2003

Made - - - -	*31st January 2003*
Laid before the Scottish Parliament - - - -	*4th February 2003*
Coming into force - -	*1st February 2003*

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 2003 and shall come into force on 1st February 2003.

(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) 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 XVII" means Annex XVII to Council Regulation 2341/2002 of 20th December 2002 fixing for 2003 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(**2**);

(**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**) O.J. No. L 356, 31.12.02, p.12.

"British fishing boat" means a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(**3**) or is owned wholly by persons qualified to own British ships for the purposes of that part of that Act;

"day" has the same meaning as in paragraph 3 of Annex XVII;

"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 XVII, 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 boat 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 XVII applies;

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

"relevant British fishing boat" means–

(a) except in relation to article 6, a Scottish fishing boat;

(b) in relation to article 6–

(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(**4**), but does not include a British fishing boat which has an overall length of less than 10 metres;

"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(**5**);

"unused days" at any time within a period identified in article 3(2), means the number of days in that period calculated in accordance with article 3, in which a fishing boat is permitted to be absent from port in any of the areas specified in paragraph 2 of Annex XVII while carrying any type of gear specified in paragraph 4 of Annex XVII, minus the number of days in that period in which it has been so absent while carrying that type of gear;

"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.

(**3**) 1995 c. 21.
(**4**) 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).
(**5**) 1998 c. 46.

(2) In this Order, "logbook" has the same meaning as in paragraph 18 of Annex XVII but, for the purposes of any provision of this Order, other than article 6 and 11, 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 Council Regulation 2847/93 establishing a control system applicable to the Common Fisheries Policy(**6**), as last amended by Council Regulation (EC) No. 2846/98 of 17th December 1998(**7**);

(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.

Absence from port

3.—(1) Subject to article 4, a person in charge of a relevant British fishing boat which, during any part of the period specified in paragraph 1 (duration of controls) of Annex XVII, either–

(a) is used in contravention of paragraph 7 (single type of gear), 8 (use of gear in different areas) or 9 (use of gears in given periods) of Annex XVII; or

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

is guilty of an offence.

(2) In this Order, the person in charge of a relevant British fishing boat is its owner, master or charterer (if any), and the number of days permitted to such a boat for any period identified below is the basic number, that is to say–

(a) for December 2003, the number indicated in paragraph 6(a) as read with paragraph 9 of Annex XVII and applicable to the boat in accordance with any fishing gear it carries and the area in which it is; and

(b) in application of paragraph 11(a) (aggregation of periods) of Annex XVII, for each successive period of two calendar months the first of which starts on 1st February 2003 and the last of which ends on 30th November 2003,

subject to paragraph (8), double the number ascertained in accordance with paragraph 6 as read with paragraph 9 of Annex XVII and applicable to the vessel in accordance with any fishing gear it carries,

cumulatively adjusted in accordance with the paragraphs (3) to (7).

(3) In relation to any relevant British fishing boat and in respect of the type of fishing gear it may carry, for each calendar month there is added to the basic number, such number of days (if any) as may be allocated to the United Kingdom under paragraph 6(b) and (c) of Annex XVII for the purpose of being such an addition.

(4) Where a number of days is transferred from one period to the next in accordance with article 5, that number is–

(**6**) O.J. No. L 261, 20.10.93, p.1.
(**7**) O.J. No. L 358, 31.12.98, p, 5.

(a) deducted from the basic number for the initial period; and

(b) added to the basic number for the next period.

(5) Where a number of days is transferred in the same period from a donor to a recipient in accordance with article 6, that number is–

(a) deducted from the basic number for the donor for that period; and

(b) added to the basic number for the recipient for that period.

(6) Where during any 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 British 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.

(7) Where during any period a relevant British 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 6 in excess of the number that pursuant to article 6(4)(b) it was entitled to transfer,

the Scottish Ministers may deduct from its basic number for the next period a number equal to the number of days in that excess.

(8) Notwithstanding paragraph (2), the number of days in the relevant period, in respect of the gear specified at paragraph 4(a) of Annex XVII, shall (for the purposes of articles 5 and 6) expressly not exceed the number of days determined in accordance with paragraph 6 of Annex XVII.

(9) In paragraph (8), "the relevant period" means–

(a) for the purposes of paragraph (3)(2)(a), December 2003; and

(b) for the purposes of paragraph (3)(2)(b), a successive period of two calendar months referred to in paragraph (3)(2)(b).

(10) In any proceedings for an offence under paragraph 3(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 6 and that person did not know and had no reasonable cause to suspect that the donor was not entitled to transfer the days.

Exception in relation to absence from ports etc.

4. A person shall not be guilty of an offence under article 3(1) in respect of an activity relating to a boat in a period specified in article 3(2)(b) if–

(a) the identification of the activity as an offence depends on the application of paragraph 9 of Annex XVII to the period;

(b) the boat has not been the subject of any adjustment in respect of the period under articles 3(4) and (5); and

(c) the activity would not have comprised an offence if, instead of paragraph 11(a) of the Annex being applied to the period–

(i) the period had been divided into two separate periods of one calendar month; and

(ii) the number applied to December 2003 by virtue of article 3(2)(a) had applied to each such period.

Transfer of days from one period to another

5.—(1) Transfer of days by any relevant British fishing boat from one period to the next for the purposes of paragraph 10(a) of Annex XVII is permitted to the extent specified in paragraph (2).

(2) The number of days transferred in relation to the boat from one period to the next is the maximum number of unused days which may be permitted to be so transferred under paragraph 10(a) of Annex XVII, rounded down to the nearest whole number.

Transfer of days from one boat to another

6.—(1) Transfer of unused days within the same period from one relevant British fishing boat ("the donor") to another ("the recipient") for the purposes of paragraph 10(b) of Annex XVII where either the donor or the recipient is, or both are, a relevant British fishing boat, is permitted, subject to paragraphs (3) to (5), to the extent specified in a notification of transfer sent under paragraph (2) of this article or under any equivalent provision.

(2) Where the donor is a relevant British fishing boat, a notification of transfer must–

(a) be made in such form as may be determined by the Scottish Ministers;

(b) contain all the particulars required by that form; and

(c) be sent to the Scottish Ministers before the end of the period in question.

(3) A transfer is not permitted, except on cause shown to the satisfaction of the Scottish Ministers, if–

(a) within the same period, the donor has already purported to transfer any number of days to a recipient;

(b) the donor has been decommissioned within the meaning of article 7 of Council Regulation 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector(**8**) as last amended by Council Regulation (EC) No 2369/2002 of 20th December 2002(**9**); or

(c) it relates to the gear defined in paragraph 4(a) of Annex XVII and the donor has not, within the same period, fished with that gear in any of the areas defined in paragraph 2 of Annex XVII.

(4) If, before 1st February 2003, a logbook has not been submitted in respect of the donor containing an entry showing that it was fishing in any of the areas specified in paragraph 2 of Annex XVII with a type of fishing gear specified in paragraph 4 of Annex XVII at any time during the years 2001 or 2002, then a transfer is not permitted.

(5) The number of days transferred in a specified period is whichever is the fewer of–

(a) the number of days specified for that transfer in the notification; or

(b) the maximum number of unused days which may be permitted to be so transferred under paragraph 10(b) of Annex XVII as read with this Order.

(6) A person who makes a false statement in a notification under paragraph (2) of this article is guilty of an offence.

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

7. The Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000(**10**) is amended as follows:–

(**8**) O.J. No. L 337, 30.12.99, p. 10.
(**9**) O.J. No. L 358, 31.12.02, p. 49.
(**10**) S.S.I. 2000/7.