Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order (Northern Ireland) 2018. 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*

STATUTORY RULES OF NORTHERN IRELAND

2018 No. 106

SEA FISHERIES

The Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order (Northern Ireland) 2018

Made - - - -	*3rd May 2018*
Coming into operation-	*1st June 2018*

The Department of Agriculture, Environment and Rural Affairs is a Northern Ireland department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to the common agricultural policy of the European Union.

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Department that it is expedient for the references to the following EU Regulations to be construed as references to those Regulations as amended from time to time—

(a) Council Regulation (EC) No 1005/2008(**3**) establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing;

(b) Commission Regulation (EC) No 1010/2009(**4**) laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008; and

(c) Council Regulation (EC) No 1224/2009(**5**) establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

The Department of Agriculture, Environment and Rural Affairs makes the following Order in exercise of powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(**6**) and section 30(2) of the Fisheries Act 1981(**7**) and now vested in it(**8**).

(**1**) S.I. 2000/2812.

(**2**) 1972 c.68.Section 2(2) was amended by section 27(1)(a) of the legislative and Regulatory Reform Act 2006 (c.51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7)

(**3**) O.J. No. L 286, 29.10.2008, p.1, as last amended by Commission Regulation (EU) No. 202/2011 (O.J. No. L57, 2.3.2011 p.10).

(**4**) O.J. No. L 280, 27.10.2009, p.5, as last amended by Commission Implementing Regulation (EU) No. 865/2013 (O.J. No. L 241, 10.9.2013, p.1).

(**5**) O.J. No. L 343, 22.12.2009, p.1, as last amended by Regulation (EU) 2015/812 of the European Parliament and of the Council (O.J. No. L133, 29.5.2015, p.1).

(**6**) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and, so far as relevant, amended by section 3(3) of, and Part1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).

(**7**) 1981 c.29. Section 30(2) was amended, in relation to Northern Ireland, by section 1(1) and (3) of the Fisheries Act (Northern Ireland) 2016 (c.27(N.I))

(**8**) By virtue of article 3(2) of, and paragraph 3(1) of Schedule 2 to, the Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790) the function of the Ministers (see definition in section 30(3)) conferred by section 30(2) (of making provision by order for the enforcement of any enforceable EU restriction or other obligation relating to sea fishing within the Northern Ireland zone and outside that zone in relation to Northern Ireland fishing boats) was transferred to the Department of Agriculture and Rural Development. The Department of Agriculture and Rural Development was re-named the Department of Agriculture, Environment and Rural Affairs by section 1(2) of the Departments Act (Northern Ireland) 2016 c.5 (N.I.).

Citation, commencement and application

1.—(1) This Order may be cited as the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order (Northern Ireland) 2018 and comes into operation on 1 June 2018.

(2) This Order applies—

(a) in Northern Ireland and the Northern Ireland zone;

(b) in relation to Northern Ireland fishing boats, wherever they are;

(c) in relation to other fishing vessels within the Northern Ireland zone.

Commencement Information

I1 Art. 1 in operation at 1.6.2018, see **art. 1(1)**

Interpretation

2.—(1) Subject to article 17(1), the Interpretation Act (Northern Ireland) 1954(**9**) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

"authorised officer" means a person authorised in writing by the Department or a district council for the purposes of this Order;

"British sea-fishery officer" has the same meaning as in section 7 of the Sea Fisheries Act 1968(**10**);

"the Commission Regulation" means Commission Regulation (EC) No 1010/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008;

"the Commissioners" mean the Commissioners for Her Majesty's Revenue and Customs;

"the competent authority" has the meaning given in article 3;

"controlled consignment" means a consignment prohibited from movement under article 4;

"the Control Regulation" means Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy;

"the Council Regulation" means Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing;

"the Department" means the Department of Agriculture, Environment and Rural Affairs;

"equivalent provision" means any provision in any other order extending to any part of the United Kingdom and made for the purposes of implementing the Council Regulation or the Commission Regulation, which has equivalent effect to a provision in this Order, proceedings in respect of which may be taken in Northern Ireland by virtue of section 30(2A) of the Fisheries Act 1981(**11**));

"Northern Ireland" and "the Northern Ireland zone" have the same meanings as in the Northern Ireland Act 1998(**12**).

(**9**) 1954 c. 33 (NI)

(**10**) 1968 c. 77; section 7 is relevantly amended by the Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 48(3); the Fisheries Act 1981 (1981 c. 29), section 46; the Marine and Coastal Access Act 2009 (2009 c.23), section 239 and Schedule 22, Part 6; and the Wales Act 2017 (2017 c.4) Schedule 4, paragraph 2.

(**11**) 1981 c.29. section 30(2A) was inserted by S.I. 1999/1820, article 4 and Schedule 2, paragraph 68(5)(a)

(**12**) 1998 c.47. See section 98(1)

"Northern Ireland fishing boat" means a fishing vessel which is registered in the register maintained under Section 8 of the Merchant Shipping Act 1995 (**13**), 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; and

"third country fishing vessel" means a fishing vessel which is not a Union fishing vessel.

(3) Terms used in this Order that are also used in the Council Regulation have the meaning they bear in that Regulation.

(4) In this Order any reference to the Council Regulation, the Control Regulation, or the Commission Regulation is a reference to that Regulation as amended from time to time.

(5) Any written notice which an authorised officer is required to give to a person under this Order may be given by electronic means only if–

(a) the person has indicated to the authorised officer that notices under the Order may be given by electronic means and the person has provided an email address for that purpose;

(b) that indication has not been withdrawn; and

(c) the notice is sent to that address.

Commencement Information

I2 Art. 2 in operation at 1.6.2018, see **art. 1(1)**

Competent authority

3.—(1) The Department is the competent authority for the purposes of the Council Regulation and the Commission Regulation.

(2) Where fishery products are imported into Northern Ireland by container ship, air, road or rail, the district council is also the competent authority in its district for the purposes of the provisions referred to in paragraph (3).

(3) The provisions are—

(a) Article 12(2) of the Council Regulation (catch certificates accompanying fishery products);

(b) Article 14(1) and (2) of the Council Regulation (receipt of catch certificates, documentation, and statements describing consignments where fishery products have been processed in a third country or have come via a third country);

(c) Article 16(1) and (2) of the Council Regulation (checking catch certificates and receiving information from approved economic operators);

(d) Article 17(2) of the Council Regulation and Article 20 of the Commission Regulation (verifications); and

(e) Article 18(1) to (3) of the Council Regulation (refusal of importation).

Commencement Information

I3 Art. 3 in operation at 1.6.2018, see **art. 1(1)**

(**13**) 1995 c.21

Control on movement

4.—(1) An authorised officer may prohibit the movement of a consignment of fishery products from the place of import while a verification takes place pursuant to Article 17 of the Council Regulation or Article 20 of the Commission Regulation.

(2) An authorised officer who has prohibited the movement of a consignment under paragraph (1) shall, as soon as possible after the prohibition, give written notice to the importer or the person who appears to the officer to be in charge of the consignment.

(3) The notice shall—

(a) describe the consignment;

(b) state that it may not be moved without the prior written consent of an authorised officer under article 5;

(c) specify the relevant provision of the Council Regulation or the Commission Regulation in respect of which the authorised officer has reason to believe that there has been a failure to comply; and

(d) specify what steps, if any, must be taken to demonstrate compliance with that provision, and within what time such steps must be taken.

(4) If the person to whom the authorised officer has given a notice under this article does not appear to the officer to be the importer or an agent, contractor or employee of the importer, the authorised officer shall take reasonable steps to bring the contents of the notice to the attention of such a person as soon as practicable following the giving of the notice.

(5) Where the authorised officer is satisfied that—

(a) a verification pursuant to Article 17 of the Council Regulation or Article 20 of the Commission Regulation has been completed;

(b) the steps specified in the notice under paragraph (3)(d) have been taken within the time specified; and

the authorised officer shall withdraw the notice issued under this article and remove the prohibition on movement.

Commencement Information

I4 Art. 4 in operation at 1.6.2018, see **art. 1(1)**

Consent to movement

5.—(1) An authorised officer may give written consent to the movement of a controlled consignment.

(2) Before giving such consent, an authorised officer may require the importer to give a written undertaking to the effect that the consignment will—

(a) be moved to a place specified by an authorised officer; and

(b) not be moved from that place without the prior written consent of an authorised officer.

(3) Any consent given under this article shall—

(a) specify the controlled consignment to which it relates;

(b) specify the place to which the controlled consignment is to be moved; and

(c) state that the consignment continues to be controlled.

(4) Where such consent has been given and the consignment has been moved to the place specified under paragraph (3)(b), the prohibition on movement under article 4 applies to it at such place as it applied at the place of import.

Commencement Information
I5 Art. 5 in operation at 1.6.2018, see **art. 1(1)**

Refusal of importation

6.—(1) The Department shall refuse importation or permission to use transhipment facilities where a declaration has not been submitted in accordance with Article 8 of the Council Regulation and Article 3 of, and Annex IIIA or as the case may be, Annex IIIB to, the Commission Regulation.

(2) For the purposes of Article 18(3) of the Council Regulation, an authorised officer may seize any fishery products, including any receptacle which contains the fishery products.

(3) Any fishery products which are seized under paragraph (2) may be sold, disposed of or destroyed by the competent authority in any manner it thinks fit if—

(a) it has given written notice to the importer of its intention to sell, dispose of or destroy the fishery products; and

(b) either no appeal is made under paragraph (4) within the period specified in that paragraph or, where an appeal has been made—

(i) the appeal has been withdrawn; or

(ii) the court dismisses the appeal.

(4) Where the competent authority has refused importation pursuant to Article 18(1) or (2) of the Council Regulation or paragraph (1) above, the importer may appeal to a court of summary jurisdiction within 28 days of the refusal.

(5) The procedure on an appeal under paragraph (4) is by way of notice, and Part VII of the Magistrates' Courts (Northern Ireland) Order 1981(**14**) applies to the proceedings.

Commencement Information
I6 Art. 6 in operation at 1.6.2018, see **art. 1(1)**

Fees relating to third country imports

7. A district council may charge an importer of a consignment a fee in respect of any expenses reasonably incurred by it in carrying out its functions under articles 3(2) or 4 in respect of any consignment.

Commencement Information
I7 Art. 7 in operation at 1.6.2018, see **art. 1(1)**

(**14**) S.I. 1981/1675 (N.I. 26).