STATUTORY RULES OF NORTHERN IRELAND

2008 No. 484

FISHERIES

The Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls) Order (Northern Ireland) 2008

Made - - - -	*3rd December 2008*
Coming into operation	*31st December 2008*

The Department of Agriculture and Rural Development makes the following Order in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(**1**) and now vested in it(**2**).

Citation and commencement

1. This Order may be cited as the Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls) Order (Northern Ireland) 2008 and shall come into operation on 31st December 2008.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**3**) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

"Northern Ireland fishing boat" means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995(**4**) 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;

"Northern Ireland zone" has the same meaning as in section 98(1) of the Northern Ireland Act 1998(**5**);

"other fishing boat" means a fishing boat other than a Northern Ireland fishing boat;

(**1**) 1981 c.29.
(**2**) S.I.2002/790; see Art 3(2) and schedule 2, paragraph 3(1)
(**3**) 1954 c. 33 (N.I.)
(**4**) 1995 c.21.
(**5**) 1998 c.47.

"the Regulation" means Commission Regulation (EC) No 356/2005(**6**) laying down detailed rules for the marking and identification of passive fishing gear and beam trawls, as amended by Commission Regulation (EC) No 1805/2005(**7**);

"relevant offence" means—

(a) an offence under Article 3 of this Order; or

(b) an offence under any provision in any other order made under section 30(2) of the Fisheries Act 1981 for the purposes of implementing the Regulation in relation to any part of the United Kingdom 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(**8**);

"territorial sea" has the same meaning as in section 1 of the Territorial Sea Act 1987(**9**).

(3) Expressions in this Order which are not defined in the Order and which appear in the Regulation have the same meaning in this Order as they have in the Regulation.

Offences

3. Where—

(a) in relation to a Northern Ireland fishing boat wherever it is, except when it is within the territorial sea; or

(b) in relation to any other fishing boat which is within the Northern Ireland zone, but which is outside the territorial sea,

there is a contravention of, or failure to comply with, any Article of the Regulation which is listed in column 1 of the Schedule, the master, the owner and the charterer (if any) of the fishing boat in relation to which the contravention or failure occurred shall each be guilty of an offence.

Penalties

4.—(1) A person guilty of a relevant offence shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(2) The court by or before which a person is convicted of a relevant offence may also—

(a) order the forfeiture of any fish in respect of which the offence was committed, or, on summary conviction only, impose a fine not exceeding the value of any fish in respect of which the offence was committed; and

(b) order the forfeiture of any net or other fishing gear in respect of which the offence was committed, or which was used in committing the offence, or which was used for catching any fish in respect of which the offence was committed.

Recovery of fines

5.—(1) Where a fine is imposed by a magistrates' court on a person convicted of a relevant offence, the court may—

(a) order any fishing boat involved in the commission of the offence and its gear and catch to be detained—

(**6**) OJ L56, 02.03.2005, p.8.
(**7**) OJ L290, 04.11.2005, p.12.
(**8**) Subsection 30(2A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, S.I. 1999/1820.
(**9**) 1987 c.49

(i) for a period not exceeding three months from the date of the conviction;

(ii) until the fine is paid; or

(iii) until a warrant issued under sub-paragraph (b) is executed,

whichever occurs first;

(b) issue a warrant of distress against—

(i) the fishing boat involved in the commission of the offence;

(ii) its gear and catch; and

(iii) any property of the person convicted,

for the purpose of levying the amount of the fine.

(2) The court shall not issue a warrant under paragraph (1)(b) without first affording the owner of the fishing boat, its gear or catch liable to be included in the warrant an opportunity to be heard.

(3) Articles 114(2) and 154 of the Magistrates' Courts (Northern Ireland) Order 1981(**10**) (postponement of issue of certain warrants and objections as to want of form or variance between complaint etc. and evidence adduced) shall apply to a warrant of distress issued under this Article as they apply to a warrant referred to in those Articles of that Order.

(4) Where, in relation to a fine in respect of a relevant offence, an order under Section 90 of the Magistrates' Courts Act 1980(**11**) or section 222 of the Criminal Procedure (Scotland) Act 1995(**12**) (both of which deal with transfer of fines from one jurisdiction to another) specifies a petty sessions district in Northern Ireland, this Article shall apply as if the fine were imposed by a court within that petty sessions district**.**

Powers of British sea-fishery officers in relation to fishing boats

6.—(1) For the purpose of enforcement in relation to a relevant offence, any British sea-fishery officer may exercise the powers conferred by paragraphs (2) to (4).

(2) The officer may go on board the boat, with or without persons assigned to assist him in his duties, and may require the boat to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, the boat.

(3) The officer may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to him to be necessary for the purpose mentioned in paragraph (1) and, in particular—

(a) may search for fish or any net or other fishing gear on the boat and may examine any fish on the boat and the equipment of the boat, including the fishing gear, and require persons on board the boat to do anything which appears to him to be necessary for facilitating the search and examination;

(b) may require any person on board the boat to produce any document relating to the boat, to its fishing operations or other operations ancillary thereto or to the persons on board which is in the custody or possession of that person;

(c) may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search;

(d) may inspect and take copies of any such document produced to him or found on board and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away; and

(**10**) S.I. 1981/1675 (N.I.26)
(**11**) 1980 c. 43
(**12**) 1995 c.46.

(e) where the boat is one in relation to which he has reason to suspect that a relevant offence has been committed, may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence,

but nothing in sub-paragraph (e) shall permit any document required by law to be carried on board the boat to be seized and detained except while the boat is detained in a port.

(4) Subject to paragraph (5), where it appears to a British sea-fishery officer that a relevant offence has at any time been committed in relation to a fishing boat, he may—

(a) require the master of the boat in relation to which the offence has been committed to take, or may himself take, the boat and its crew to the port which appears to him to be the nearest convenient port; and

(b) detain or require the master to detain the boat in the port.

(5) Where a British sea-fishery officer detains or requires the detention of a boat he shall serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea-fishery officer.

Powers of British sea-fishery officers to seize fish and fishing gear

7. A British sea-fishery officer may seize—

(a) any fish, (including any receptacle which contains the fish), in respect of which he has reasonable grounds to suspect that a relevant offence has been committed; and

(b) any fishing gear which he has reasonable grounds to suspect has been used in the commission of a relevant offence.

Protection of officers

8. A British sea-fishery officer or a person assisting him by virtue of Article 6(2) shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by Articles 6 and 7 if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

Obstruction of officers

9.—(1) Any person who—

(a) fails without reasonable excuse to comply with any requirement imposed by a British sea-fishery officer under the powers conferred on British sea-fishery officers by Articles 6 or 7;

(b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or

(c) assaults or intentionally obstructs an officer who is exercising any of the powers conferred on him by Articles 6 or 7, or any person assisting such officer by virtue of Article 6(2),

shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine.