STATUTORY RULES OF NORTHERN IRELAND

2003 No. 59

AGRICULTURE

The Sea Fishing (Restriction on Days at Sea) Order (Northern Ireland) 2003

Made - - - -	*7th February 2003*
Coming into operation	*8th February 2003*

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

Title, commencement, extent and application

1.—(1) This Order may be cited as the Sea Fishing (Restriction on Days at Sea) Order 2003 and shall come into operation on 8th February 2003.

(2) Subject to paragraph (3), this Order shall not form part of the law of England, Scotland or Wales.

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

(4) This Order does not apply to any fishing boat which is less than 10 metres in overall length within the meaning of paragraph 1 of Annex XVII.

Interpretation

2.—(1) In this Order –

"Annex XVII" means Annex XVII to Council Regulation (EC) No. 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(**4**);

(**1**) 1981 c. 29.
(**2**) *See*Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002 No. 790) Article 3(2) and Schedule 2
(**3**) Inserted by S.I. 1999/1820 Article 4 Sch 2 Part 1 para 68(5)(a); S.I. 1998/3178, Art. 3
(**4**) O.J. No. L356, 31.12.2002, 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(**5**) or is owned wholly by persons qualified to own British ships for the purposes of that part of that Act;

"Regulation 2807/83" means Commission Regulation (EEC) No. 2807/83 of 22nd September 1983 laying down detailed rules for recording information on Member States' catches of fish(**6**) as last amended by Commission Regulation (EC) No. 1965/2001 of 8th October 2001(**7**);

"Regulation 2847/93" means Council Regulation (EEC) No 2847/93 of 12th October 1993 establishing a control system applicable to the Common Fisheries Policy(**8**) as last amended by Council Regulation (EC) No. 2846/98 of 17th December 1998(**9**);

"equivalent provision" means any provision in any other order made 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 for an offence in respect of which may be taken in any place in the United Kingdom by virtue of section 30(2A) of the Fisheries Act 1981;

"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 zone" has the same meaning as in the Northern Ireland Act 1998(**10**);

"relevant British fishing boat" means a British fishing boat which is neither an English nor a Scottish fishing boat nor a Welsh fishing boat;

"Scottish 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 Scotland as the port to which the vessel is to be treated as belonging?CQ?;

"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 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 Wales as the port to which the vessel is to be treated as belonging.

(2) In this Order –

(a) "logbook" means the same as in Article 6 of Regulation 2847/93 as amplified by Regulation 2807/83, and, for the purposes of any provision of this Order other than Articles 6 and 11, any reference to a document or logbook includes any –

(i) map, plan, graph or drawing;

(ii) photograph;

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

(**5**) 1995 c. 21
(**6**) O.J. No. L276, 10.10.1983, p. 1
(**7**) O.J. No. L268, 9.10.2001, p. 23
(**8**) O.J. No. L261, 20.10.1993, p. 1
(**9**) O.J. No. L358, 31.12.1998, p. 5
(**10**) 1998 c. 47

(iv) 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; and

(v) 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; and

(b) for the purposes of establishing absence from port, absence outside the areas specified in paragraph 2 of Annex XVII shall not be taken into account.

(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.

Absences from port etc

3.—(1) Subject to regulation 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) contravenes –

(i) the relevant prohibition in paragraph 6(a) (absences from port), or

(ii) 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 the remainder of paragraph 6(a) as read with paragraph 9 of Annex XVII which is applicable to the boat in accordance with any fishing gear it carries while absent from port, and

(b) in application of paragraph 11(a) (aggregation of periods) of Annex XVII, for –

(i) the period beginning when this Order comes into force and ending on 31st March 2003, and

(ii) each successive period of two months the first of which starts on 1st April 2003 and the last of which ends on 30th November 2003,

double the number indicated in the remainder of paragraph 6(a) as read with paragraph 9 of Annex XVII which is applicable to the boat in accordance with any fishing gear it carries while absent from port,

cumulatively adjusted in accordance with the following provisions of this Article.

(3) In relation to any relevant British fishing boat and in respect of any type of fishing gear it may carry, there is –

(a) added to the basic number for any period such number of days (if any) as may be allocated to the United Kingdom under paragraph 6(b) to (d) of Annex XVII for the purpose of being such an addition, and

(b) subtracted from the basic number for the period specified in paragraph (2)(b)(i) of this Article such number of days (if any) as it has been absent from port carrying that gear in the period starting on 1st February 2003 and ending immediately before the coming into force of this Order.

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

(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 purported to transfer days relating to fishing gear in accordance with Article 6 in excess of its unused days, there shall be deducted from its basic number relating to that gear for the next period a number equal to the number of days in that excess.

(8) Where during any period a relevant British fishing boat has been absent from port carrying fishing gear in excess of the days permitted to it by this Article, there shall be deducted from its basic number relating to that gear for the next period a number equal to the number of days in that excess unless, in consequence of the operation of Article 4, the absence in question would not be an offence.

(9) 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 him under Article 6 and –

(a) he did not know, and

(b) it was reasonable for him not to suspect,

that the donor was not entitled to transfer them.

(10) In this Article, the relevant prohibition in paragraph 6(a) of Annex XVII is the prohibition on absence from port carrying the gear defined in paragraph 4(b) of Annex XVII in the area defined in paragraph 2(a) of Annex XVII, and the remainder of paragraph 6(a) of Annex XVII is paragraph 6(a) save as covered by the relevant prohibition.

Exception in relation to absences from ports etc.

4.—(1) 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 Article 3(4) or (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 month periods, and

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

Transfer of days from one period to another

5.—(1) Transfer of unused 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 and shall have effect, to the extent specified in paragraph (2).

(2) The number of days transferred in relation to the boat for any type of fishing gear from one period to the next is the maximum number of unused days which may be permitted to be so transferred for that gear 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 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) of this Article, 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, which must be made in the form set out in Schedule 1 and contain all the particulars required by that form, must be signed by the donor's owner (or, as the case may be, each part owner) and sent to the Department of Agriculture and Rural Development before the end of the period in question.

(3) A transfer is not permitted 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 withdrawn or is required to be withdrawn from operation within the sea fish industry of the European Community in consequence of measures taken pursuant to Article 7(3) of Council Regulation (EC) No. 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector(**11**) as last amended by Council Regulation (EC) No. 2369/2002 of 20th December 2002(**12**) (or pursuant to that Article of that Regulation in its original or a previously amended form); or

(c) the donor has not, within the same period, fished with the type of fishing gear to which the purported transfer relates in any of the areas defined in paragraph 2 of Annex XVII under authority of, and in accordance with, a licence issued under section 4 of the Sea Fish (Conservation) Act 1967(**13**).

(4) If, before this Order comes into force, the donor has not submitted a logbook 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 year 2001 or 2002, then a transfer is not permitted.

(5) The number of days transferred for any type of fishing gear in a specified period is whichever is the smaller of:

(a) the number of days specified for that transfer in relation to that type of fishing gear in the notification; and

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

(**11**) O.J. No. L337, 30.12.99, p. 10
(**12**) O.J. No. L358, 31.12.02, p. 49
(**13**) 1967 c. 84. Section 4 was amended by section 3 of the Fishery Limits Act 1976 (c. 86), section 20 of the Fisheries Act 1981 (c. 29), section 1 of the Sea Fish (Conservation) Act 1992 (c. 60) and article 4 of, and Schedule 2 to, the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820)