

2006 No. 1327

SEA FISHERIES, ENGLAND

**The Sea Fishing (Restriction on Days at Sea) (Monitoring,
Inspection and Surveillance) Order 2006**

<i>Made</i>	- - - -	<i>11th May 2006</i>
<i>Laid before Parliament</i>		<i>15th May 2006</i>
<i>Coming into force</i>	- -	<i>1st June 2006</i>

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The Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981**(a)**, and now vested in them**(b)**, make the following Order:

(a) 1981 c.29. See section 30(3) for the definition of “the Ministers”, as modified by Schedule 2, paragraph 68(5) of S.I. 1999/1820.

(b) References to sections in this footnote are to sections of the Fisheries Act 1981 (c. 29.) unless otherwise stated. Scotland: section 30(5) was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), article 4 and Schedule 2, Part I, paragraph 68(1), 5(b) (made under section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, the Scotland Act 1998 (c. 46)). Section 30(5) provides that the definition of “the Ministers” in section 30(3) is amended so that, insofar as section 30(2) has effect in relation to Scotland, “the Ministers” means “the Scottish Ministers.” The Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592), article 3(1) and Schedule 1, provide for the function exercisable under section 30(2) to be exercised by the Ministers concurrently with the Scottish Ministers in relation to, firstly, British fishing boats (other than Scottish ones) within the Scottish zone, and, secondly, Scottish fishing boats within British fishery limits but outside the Scottish zone. Wales: by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2(a) and Schedule 1, the function exercisable under section 30(2) was transferred to the National Assembly insofar as exercisable in relation to Wales. “Wales” is defined in section 155(1) of the Government of Wales Act 1998 (c.38) as including “the sea adjacent to Wales out as far as the seaward boundary of the territorial sea”. Northern Ireland: by virtue of the Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790), article 3(2) Schedule 2, paragraph (3) (made, in this respect, under section 86(3)(b) of the Northern Ireland Act 1998 (c. 47)) the function conferred by section 30(2) within the Northern Ireland zone and outside that zone in relation to Northern Ireland fishing boats is transferred to the Department of Agriculture and Rural Development (of Northern Ireland). By virtue of the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812), article 2(1), the remaining functions of the Secretaries of State for Scotland and Wales under section 30(2) relevant to this Order were transferred to the Minister of Agriculture, Fisheries and Food. The functions of the Minister of Agriculture, Fisheries and Food and one or more named Secretaries of State (however described) acting jointly were transferred to the Secretary of State for Environment, Food and Rural Affairs and the one or more Secretaries of State acting jointly by virtue of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794), article 2(5).

PART 1

Preliminary

Citation and commencement

1.—(1) This Order may be cited as the Sea Fishing (Restriction on Days at Sea) (Monitoring, Inspection and Surveillance) Order 2006.

(2) This Order comes into force on 1st June 2006.

Extent and application

2.—(1) This Order extends to England and Wales only.

(2) This Order applies—

- (a) in England;
- (b) in relation to English and Welsh fishing boats wherever they are except where they are in the sea adjacent to Wales out as far as the seaward boundary of the territorial sea^(a); and
- (c) in relation to other fishing boats within British fishery limits except where they are in—
 - (i) the Scottish zone;
 - (ii) the Northern Ireland zone; or
 - (iii) the sea adjacent to Wales out as far as the seaward boundary of the territorial sea.

(3) In this article—

- (a) “British fishery limits” means the limits set by or under section 1 of the Fishery Limits Act 1976^(b);
- (b) “Northern Ireland zone” has the same meaning as in section 98 of the Northern Ireland Act 1998^(c);
- (c) “Scottish zone” has the same meaning as in section 126(1) of the Scotland Act 1998^(d);

Interpretation

3.—(1) In this Order—

“2006 regulated period” means the period commencing with the coming into force of this Order and ending with 31st January 2007 and any references to things done during the 2006 regulated period cover things done at any time within it;

“allocation of days” has the meaning given in article 7;

“Cod Annex” and “Sole Annex” mean respectively Annex IIA and Annex IIC to Council Regulation (EC) No 51/2006 fixing for 2006 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^(e);

“Cod Recovery Zone” means the geographical area set out in point 2 of the Cod Annex and reference to an area within the Cod Recovery Zone is a reference to one of the areas listed in that point;

“equivalent provision” means any provision, in any other Order made for the purposes of implementing the Cod Annex or the Sole Annex, in relation to any part of the United

(a) As referred to in the Government of Wales Act 1998.
(b) 1976 c.76. See also S.I. 1997/1750 and S.I. 1999/1741.
(c) 1998 c.47.
(d) 1999 c.46.
(e) OJ No L 51 20.1.06.

Kingdom, which has equivalent effect to a provision in this Order, proceedings in respect of which may be taken in England by virtue of section 30(2A) of the Fisheries Act 1981(a);

“the first third 2006” means the period 1st February 2006 to 31st May 2006;

“logbook” means the same as in Article 6 of Regulation 2847/93 read with Regulation 2807/83;

“management period” means a period established under article 4 or deemed to be established under article 5(1), in respect of which an allocation of days applies;

“notified gear” means the regulated gear group or groups notified to the Secretary of State under article 4(1);

“person in charge”, in relation to any fishing boat, means the owner, the master or the charterer, if any, of the fishing boat or the agent of any of them;

“regulated gear” means fishing gear referred to in point 4 of the Cod Annex or point 3 of the Sole Annex, and references to gear groups are references to gear groups listed in those points;

“Regulation 2807/83” means Commission Regulation (EEC) No 2807/83 laying down detailed rules for recording information on Member States’ catches of fish(b);

“Regulation 2847/93” means Council Regulation (EC) No 2847/93 establishing a control system applicable to the Common Fisheries Policy(c);

“Secretary of State” means the Secretary of State for Environment, Food and Rural Affairs;

“Sole Recovery Zone” means the area referred to in point 1 of the Sole Annex.

(2) In this Order—

(a) “fishing boat” means any vessel to which the Cod Annex or the Sole Annex applies;

(b) “English fishing boat” means a fishing boat—

(i) registered under the Merchant Shipping Act 1995(d) as to be treated as belonging to an English port; or

(ii) which is owned wholly by persons qualified to own British ships for the purposes of Part II of that Act;

(c) “Welsh fishing boat” means a fishing boat registered under the Merchant Shipping Act 1995 as to be treated as belonging to a Welsh port.

(3) Expressions in this Order which are not defined in this Order and which appear in the Cod Annex or the Sole Annex have the same meaning in this Order as they have in those Annexes.

(4) Any information notified for the purpose of any provision of this Order shall be treated as notified for the purposes of any equivalent provision.

(a) Section 30(2A) was inserted by Scotland Act 1998 (Consequential Modifications)(No.2) Order 1999, S.I. 1999/1820.

(b) OJ No L 276, 10.10.83, p.1, as amended by Commission Regulation (EEC) No 473/89 of 24 February 1989, Commission Regulation (EEC) No 2945/95 of 20 December 1995, Commission Regulation (EC) No 395/98 of 19 February 1998, Commission Regulation (EC) No 1488/98 of 13 July 1998, Commission Regulation (EC) No 2737/1999 of 21 December 1999 and Commission Regulation (EC) No 1965/2001 of 8 October 2001.

(c) OJ No L 261, 20.10.93, p1, as amended by Council Regulation (EC) No 2870/95, Council Decision 95/528/EC of 5 December 1995, Council Regulation (EC) No 2489/96 of 20 December 1996, Council Regulation (EC) No 686/97 of 14 April 1997, Council Regulation (EC) No 2205/97 of 30 October 1997, Council Regulation (EC) No 2635/97 of 18 December 1997, Council Regulation (EC) No 2846/98 of 17 December 1998 and Council Regulation (EC) No 806/2003 of 14 April 2003.

(d) 1995 c.21.

PART 2

Days at Sea

Establishment of management periods for English boats

4.—(1) To establish a management period a person in charge of an English fishing boat shall provide notification of the following to the Secretary of State—

- (a) a period of a number of consecutive calendar months; and
- (b) the regulated gear group or groups that will be used during that period,

and the management period is established on that notification in respect of that period and that gear, except where point 6.2 of the Cod Annex, or point 5.2 of the Sole Annex applies, in which case the management period is established only on receipt of confirmation in writing from the Secretary of State.

(2) The obligation to provide notification in paragraph (1) constitutes an obligation to serve the required information on the Secretary of State by post.

Deeming provisions in respect of certain management periods notified in the first third 2006

5.—(1) Where a person in charge of an English fishing boat has, during the first third 2006, notified to the Secretary of State in writing a management period within the meaning of point 9 of the Cod Annex or point 8 of the Sole Annex, which includes any period before this Order comes into force and continues beyond that date—

- (a) that notification shall be deemed effective for the purposes of article 4(1);
- (b) a management period shall be deemed to be established in accordance with this Order; and
- (c) the requirement in article 10(2) shall not apply.

(2) Any management period deemed established under paragraph (1) shall be treated as beginning on the date that this Order comes into force and ending on the date notified, and the allocation of days shall be calculated and adjusted accordingly.

Offences in relation to management periods

6.—(1) A person in charge of an English or Welsh fishing boat is guilty of an offence if, at any time during the 2006 regulated period, the boat is absent from port in the Cod Recovery Zone, Sole Recovery Zone or a combination of both zones, carrying regulated gear unless a management period—

- (a) established in accordance with article 4;
- (b) deemed to be established under article 5; or
- (c) established under an equivalent provision,

exists in respect of that boat and that regulated gear at that time.

(2) Paragraph (1) does not apply to—

- (a) a person in charge of an English fishing boat in respect of which point 20 of the Cod Annex or point 15 of the Sole Annex applies provided that he complies with the restrictions in those points;
- (b) a person in charge of an English fishing boat which is permitted by point 16 of the Cod Annex or point 21 of the Sole Annex to transit the Cod Recovery Zone or the Sole Recovery Zone, provided that he complies with the obligations in those points; or
- (c) a person in charge of a Welsh fishing boat where no equivalent provision has been enacted in respect of Welsh fishing boats.

(3) Where, in respect of the restrictions or obligations referred to in paragraph (2)(a) and (b), there is an obligation to supply information, the Secretary of State is the person to whom the information is to be supplied.

Allocation of days for fishing in the Cod Recovery Zone and Sole Recovery Zone

7.—(1) In this article—

- (a) “allocation of days” means the number of days during which an English fishing boat is permitted to be out of port in the Cod Recovery Zone, Sole Recovery Zone or a combination of both zones, carrying on board notified gear, during a management period established in accordance with this Order;
- (b) “applicable row” means the row in the table in which a reference to the notified gear appears in the first column where the second column of the row is empty;
- (c) “the table” means Table 1 of the Cod Annex; and
- (d) wherever a calculation results in a total containing a fraction, the figure shall be rounded down to the nearest whole number.

(2) The allocation of days for an English fishing boat shall be calculated in accordance with this article subject to adjustment in accordance with articles 9, 10 or 12.

(3) If the boat is absent from port but is present in only one of the Cod Recovery Zone areas during a management period, the allocation of days is as follows—

- (a) if there is one notified gear group, the figure in the column of the applicable row of the table relating to the relevant area divided by twelve and multiplied by the number of calendar months in the management period;
- (b) if there are multiple notified gear groups, the total of the allocations that would apply in respect of each group calculated in accordance with sub-paragraph (a), divided by the number of notified gear groups.

(4) If the boat is present in more than one of the areas in the Cod Recovery Zone but not in the Sole Recovery Zone during the management period, the allocation of days is the highest of the allocations for each area calculated in accordance with paragraph (3).

(5) If the boat is present in both the Cod Recovery Zone and the Sole Recovery Zone or in the Sole Recovery Zone only during the management period, the allocation of days is eighteen multiplied by the number of calendar months in the management period.

Allocation of days – pair trawling

8. Where on any day during a management period any regulated gear is at any time affixed to a fishing boat which is absent from port and present in the Cod Recovery Zone (whether or not it is carried by that fishing boat) at the same time as being affixed to another fishing boat, that day shall be counted as a day in which each boat is present in the zone for the purposes of this Order.

Adjustment of the allocation of days

9.—(1) The Secretary of State may adjust the allocation of days that applies in respect of an English fishing boat by adding further days —

- (a) in accordance with point 7 or 8 of the Cod Annex or point 6 or 7 of the Sole Annex; or
- (b) where days have been allocated to the United Kingdom in accordance with point 10 or 11 of the Cod Annex or point 9 or 10 of the Sole Annex.

(2) Where, in respect of previous management periods established in respect of an English fishing boat, the number of days in any allocation of days calculated in accordance with article 7 would have resulted in fractions of days had paragraph (1)(d) of that article not required the rounding down of fractions, the Secretary of State may add any whole days amounting from the sum of any such fractions.

(3) Where an English fishing boat is absent from port carrying notified gear in the Cod Recovery Zone or Sole Recovery Zone or a combination of both zones in excess of its allocation of days, the Secretary of State shall deduct from any subsequent allocation of days, the number of days during which the boat was so absent from port in excess of the relevant allocation.

(4) Where a person in charge of an English fishing boat contravenes article 6(1), the Secretary of State shall deduct from any subsequent allocation of days the number of days during which the boat was absent from port carrying regulated gear without having established a management period in respect of that period and that gear.

(5) Any adjustment made under this article takes effect when it is served by post on a person in charge of the fishing boat by the Secretary of State.

Fishing in the first third 2006, notification requirement and adjustment of allocation of days

10.—(1) This article applies where, in the first third 2006, an English fishing boat was—

- (a) absent from port and present in the Cod Recovery Zone, Sole Recovery Zone or a combination of both zones; and
- (b) carrying regulated gear,

for more than the number of days that would have been allocated in respect of the boat had this Order been in force in respect of that period and had a person in charge notified a four month management period in respect of the first third 2006.

(2) A person in charge of the boat shall notify to the Secretary of State, within 28 days of the date that this Order comes into force, the number of days during which the boat was absent from port and present in the Cod Recovery Zone, Sole Recovery Zone or combination of both zones carrying regulated gear during the first third 2006.

(3) The Secretary of State shall adjust the allocation of days that applies in respect of the boat to reflect those additional days present in the zones during the first third 2006.

(4) The person in charge of the boat is guilty of an offence if there is a failure to comply with paragraph (2).

(5) The obligation to notify information in paragraph (2) constitutes an obligation to serve the required information on the Secretary of State by post.

Offences in relation to allocation of days and other restrictions on presence in the Cod Recovery Zone and Sole Recovery Zone

11.—(1) In this article “day” means a continuous period of twenty four hours beginning from the moment a boat enters either the Cod Recovery Zone or the Sole Recovery Zone.

(2) Any subsequent re-entry into the Cod Recovery Zone or Sole Recovery Zone during that period shall not trigger a new day.

(3) Where the boat is present in either the Cod Recovery Zone or the Sole Recovery Zone at the end of a day, the next day shall begin at the moment the previous day expires and so on for any contiguous twenty-four hour periods.

(4) Any time spent within the Cod Recovery Zone, Sole Recovery Zone or a combination of both zones during a day is to be counted as a whole day for the purpose of calculating the number of days spent absent from port and present in the Cod Recovery Zone, Sole Recovery Zone or a combination of both zones.

(5) A person in charge of an English or Welsh fishing boat is guilty of an offence if the boat is absent from port carrying regulated gear in the Cod Recovery Zone, Sole Recovery Zone or a combination of both zones for more days than—

- (a) its allocation of days under this Order; or
- (b) the number of days that it is permitted to be out of port carrying on board regulated gear during a management period under an equivalent provision.

(6) Notwithstanding an allocation of days under article 7(3) or an equivalent provision, a person in charge of an English or Welsh fishing boat is guilty of an offence if there are multiple notified gear groups and, a gear group is deployed from the boat during more days than the number of days that would apply in respect of that gear group alone for that management period, calculated respectively either in accordance with article 7(3)(a) or an equivalent provision.

(7) Notwithstanding the allocation of days under article 7(4) or an equivalent provision, a person in charge of an English or Welsh fishing boat that is present in more than one of the areas in the Cod Recovery Zone during a management period established in accordance with this Order or an equivalent provision, is guilty of an offence if—

- (i) the boat is absent from port in any one of the areas in the Cod Recovery Zone during more days than the number of days that would apply in respect of presence in that area alone for that management period, calculated in accordance with article 7(3) or an equivalent provision; or
- (ii) there are multiple notified gear groups and a gear group is deployed from the boat during more days than the number of days that would apply in respect of that gear group alone for that management period, calculated in accordance with article 7(3)(a) or an equivalent provision.

(8) Notwithstanding the allocation of days under article 7(5) or an equivalent provision, a person in charge of an English or Welsh fishing boat that is present in both the Cod Recovery Zone and the Sole Recovery Zone during a management period established in accordance with this Order or an equivalent provision, is guilty of an offence if—

- (i) the boat is absent from port in any one of the areas in the Cod Recovery Zone during more days than the number of days that would apply in respect of presence in that area alone, for that management period, calculated in accordance with article 7(4) or an equivalent provision; or
- (ii) there are multiple notified gear groups and a gear group is deployed from the boat during more days than the number of days that would apply in respect of that gear group alone, for that management period, calculated in accordance with article 7(3)(a), or an equivalent provision.

Transfer of days

12.—(1) In this article—

- (a) “the 1993 Regulations” means the Merchant Shipping (Registration of Ships) Regulations 1993(a);
- (b) “British fishing boat” means—
 - (i) an English fishing boat; or
 - (ii) a fishing boat registered under the Merchant Shipping Act 1995 as to be treated as belonging to a Scottish, Northern Irish or Welsh port;
- (c) “foreign fishing boat” means a fishing boat covered by the Sole Annex or the Cod Annex which is not a British fishing boat.

(2) Unused days within an allocation of days established in accordance with this Order may be transferred from an allocation relating to one English fishing boat (“the donor”) to an allocation relating to another British fishing boat (“the recipient”) in the circumstances permitted by, and subject to the conditions in point 14 of the Cod Annex and point 12 of the Sole Annex.

(3) A transfer under paragraph (2) is only effective if a written notification of transfer containing the following particulars, signed by the donor’s owner, is sent to the Secretary of State before the end of the management period in relation to which the transfer is to take effect—

- (a) in relation to the donor and recipient—

(a) S.I 1993/3138.

- (i) the registered name within the meaning of regulation 30 of the 1993 Regulations; and
- (ii) the port number and official number within the meaning of regulation 31 of the 1993 Regulations;
- (b) the calendar months in the management period and the notified gear to which the transfer relates;
- (c) the number of days transferred to each recipient;
- (d) a declaration to the effect that the donor is entitled to make the transfer; and
- (e) the date of signature.

(4) On written application from a person in charge of an English fishing boat, the Secretary of State may transfer unused days that apply in respect of that boat to a foreign fishing boat subject to the conditions in point 15 of the Cod Annex or point 13 of the Sole Annex and any such transfer takes effect when notice of it is served by post on the person in charge of the fishing boat by the Secretary of State.

Offence in relation to transfers of days

13. A person is guilty of an offence if he makes a false declaration in a notification made in respect of a transfer pursuant to article 12.

Offences in relation to fishing gears

14.—(1) A person in charge of a fishing boat in respect of which point 17 or 18 of the Cod Annex applies, is guilty of an offence if he fails to comply with the obligations imposed by either of those points.

(2) Where, in respect of the obligations referred to in paragraph (1), there is an obligation to supply information, the Secretary of State is the person to whom the information is to be supplied.

Maintenance of logbooks requirements and related offence

15.—(1) A person in charge of a fishing boat is guilty of an offence if he fails to comply with the requirements in this article.

(2) Where a fishing boat is absent from port carrying regulated gear in the Cod Recovery Zone, Sole Recovery Zone or both zones on any day where the logbook requirements in article 6 of Regulation 2847/93 read with Regulation 2807/83 do not apply, a logbook entry stating the gear carried shall be made as though that article did apply.

(3) The logbook entry referred to in paragraph (2)—

- (a) shall be made—
 - (i) before midnight in respect of each day;
 - (ii) at the time of arrival in port;
 - (iii) at the time of any inspection at sea; and
 - (iv) at the time that an effort report is made as required by Article 19e.3 of Regulation 2847/93; and
- (b) shall be handed over and dispatched as if landing were made at the time of the fishing boat's arrival in port.

(4) In this article, “day” has the meaning given in article 11.

PART 3

Monitoring, Inspection and Surveillance in respect of fishing in the Sole Recovery Zone

Transshipment or landing relating to third countries

16.—(1) A person in charge of an English or Welsh fishing boat in respect of which point 21 of the Sole Annex applies, is guilty of an offence if he fails to provide the information required by that point during the 2006 regulated period.

(2) In respect of the obligation to provide information in paragraph (1), in relation to an English or Welsh fishing boat, the Secretary of State is the person to whom the information is to be supplied.

Mixing of species

17. A person in charge of a fishing boat in respect of which point 23 of the Sole Annex applies, is guilty of an offence if he fails to comply with the obligations imposed by that point.

Weighing sole

18. A person in charge of a fishing boat in respect of which point 24 of the Sole Annex applies, is guilty of an offence if he fails to comply with the obligations imposed by that point.

Transport of sole

19. A person is guilty of an offence if, being the owner or hirer of a vehicle, he uses it to transport sole in contravention of point 25 of the Sole Annex.

Recording information on catches of sole

20. A person in charge of a fishing boat is guilty of an offence if the 8% margin of tolerance referred to in point 22 of the Sole Annex applies and is exceeded during the 2006 regulated period.

PART 4

Enforcement

Interpretation of Part 4

21. In this Part—

- (a) “British sea-fishery officer” has the meaning given in section 7 of the Sea Fisheries Act 1968(a);
- (b) “relevant offence” means an offence under any of articles 6, 10, 11 and 13 to 20 of this Order or any equivalent provision.

Penalties and defence

22.—(1) A person found guilty of a relevant offence, is liable—

- (a) on summary conviction, to a fine not exceeding £50 000;
- (b) on conviction on indictment, to a fine.

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

(a) 1968 c.77.

- (a) forfeiture of any —
 - (i) fish caught at any time in the period during which the offence was committed; and
 - (ii) fishing gear used in the course of, or in activities leading to, the commission of the offence; or
- (b) a fine not exceeding the value of the fish caught at any time in the period during which the offence was committed.

(3) In any proceedings for an offence under article 11, it shall be a defence for a person to show that the number of days absent from port carrying regulated gear in excess of its allocation of days is no greater than the number of days purportedly but not validly transferred to that person's fishing boat's allocation of days under article 12 and that he did not know and had no reasonable cause to suspect that the donor was not entitled to transfer the days.

Recovery of fines

23. Where a magistrates' court imposes a fine on a person convicted under this Order or any equivalent provision, the court may—

- (a) issue a warrant of distress against—
 - (i) the 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; and
- (b) order that the boat and its gear and catch be detained until—
 - (i) the expiry of a period not exceeding three months from the date of the conviction;
 - (ii) the fine is paid; or
 - (iii) the amount of the fine is levied in pursuance of any such warrant,
 whichever occurs first.

(2) Subsection 1 of section 77 (postponement of issue of warrant) and section 78 (defect in distress warrant and irregularity in its execution) of the Magistrates' Courts Act 1980(a) apply to a warrant of distress issued under this article as they apply to a warrant of distress issued under Part III of that Act.

(3) Where in relation to a fine in respect of any offence under this Order or any equivalent provision, an order under article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(b) or section 222 of the Criminal Procedure (Scotland) Act 1995(c) (both of which deal with transfer of fines from one jurisdiction to another) specifies a petty sessions area in England, this article shall apply as if the fine were imposed by a court within that petty sessions area.

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

24.—(1) For the purpose of enforcing this Order, or any equivalent provision, or to operate or facilitate the operation of any monitoring deriving from point 26 of the Sole Annex, any British sea-fishery officer may exercise the powers conferred by this article.

(2) He 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) He 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 purposes mentioned in paragraph (1) and, in particular—

(a) 1980 c.43; section 78 was amended by the Courts Act 2003 (c.39), section 109(1) and Schedule 8 paragraph 219(a).
 (b) S.I. 1981/1675 (NI 26).
 (c) 1995 c.46.

- (a) may search for fish or 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 examination;
- (b) may require any person on board the boat to produce any document relating to the boat, to any fishing operations or other operations ancillary thereto or to the persons on board which is in that person's custody or possession;
- (c) for the purpose of ascertaining whether an offence under this Order or any equivalent provision has been committed, 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
- (e) where the boat is one in relation to which he has reason to suspect that an offence under this Order or any equivalent provision 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.

(4) Where it appears to a British sea-fishery officer that any offence under any of articles 6, 11, 14, 15, 17 and 20 of this Order or any equivalent provision, has at any time been committed in respect of a fishing boat, he may—

- (a) require the master of the boat to take, or himself take, the boat and 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,

and where such an officer detains or requires the detention of the boat he shall serve on the master a notice in writing stating that the boat is (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 on land

25.—(1) For the purpose of this Order or any equivalent provision, or to operate or facilitate the operation of any monitoring deriving from point 26 of the Sole Annex any British sea-fishery officer may—

- (a) enter and inspect at any reasonable time any premises used for carrying on any business in connection with the operation of fishing boats or activities connected therewith or ancillary thereto or with the treatment, storage or sale of fish;
- (b) take with him such other persons as appear to him to be necessary and any equipment or materials;
- (c) examine any fish on the premises and require persons on the premises to do anything which appears to him to be necessary for facilitating the examination;
- (d) carry out at the premises such other inspections or tests as may reasonably be necessary;
- (e) require any person not to remove or cause to be removed any fish from the premises for such a period as may be reasonably necessary for the purposes of establishing whether an offence under this Order or any equivalent provision has at any time been committed;
- (f) require any person on the premises to produce any documents which are in his custody or possession relating to the catching, landing, transportation, trans-shipment, sale or disposal of any fish or to the entry to, or exit from, any port or harbour by any fishing boat;
- (g) for the purpose of ascertaining whether any person on the premises has committed an offence under this Order or any equivalent provision, search the premises for any such document and require any person on the premises to do anything which appears to him to be necessary for facilitating the search;

- (h) inspect and take copies of any such document produced to him or found on the premises;
- (i) require any appropriate or responsible person to render any such document on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away; and
- (j) if he has a reason to suspect that an offence under any of those articles or any equivalent provision has been committed, seize and detain any such document produced to him or found on the premises for the purpose of enabling the document to be used as evidence in proceedings for the suspected offence.

(2) The provisions of paragraph (1) shall also apply in relation to any land used in connection with any of the activities described in paragraph (1)(a), or in respect of any vehicle which a British sea-fishery officer has reasonable cause to believe is being used to transport fish or fisheries products, as they apply in relation to premises and, in the case of a vehicle, shall include power to require the vehicle to stop at any time and, if necessary, direct the vehicle to some other place to facilitate the inspection.

Warrants to enter premises

26.—(1) If a justice of the peace on sworn information in writing is satisfied that the circumstances in paragraph (2) apply, he may issue a warrant authorising a British sea-fishery officer to enter any premises, if necessary using reasonable force, and to take with him such persons as appear to be necessary.

(2) The circumstances are that—

- (a) there are reasonable grounds to believe that any documents or other items which a British sea-fishery officer has power under article 25 to inspect are on the premises;
- (b) the inspection of such documents or other items is likely to disclose evidence of the commission of an offence under this Order or any equivalent provision; and
- (c) either—
 - (i) entry to the premises has been or is likely to be refused and notice of intention to apply for a warrant has been given to the occupier;
 - (ii) an application for entry, or the giving of notice, would defeat the object of the entry;
 - (iii) the premises are unoccupied; or
 - (iv) the occupier is temporarily absent and it might defeat the object of the entry to await his return.

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

27. A British sea-fishery officer may seize—

- (a) any fish, including any receptacle containing those fish, caught at the time of an offence which he suspects has been committed under this Order, other than an offence under article 13 or 15, or an equivalent provision; and
- (b) any fishing gear which he has reasonable grounds to suspect has been used in the course of the commission of any such suspected offence.

Protection of officers

28.—(1) An officer is not liable in any civil or criminal proceedings for anything done or omitted to be done in the purported exercise of the powers conferred by article 24, 25 or 27 if the court is satisfied that—

- (a) the officer acted in good faith;
- (b) there were reasonable grounds for so acting; and
- (c) he acted with reasonable skill and care.

(2) In this article and in article 30, “officer” means—

- (a) a British sea-fishery officer; or
- (b) a person assisting him by virtue of article 24(2) or 25(1)(b) or authorisation under article 26.

Obstruction of officers

29.—(1) A person is guilty of an offence if—

- (a) he fails without reasonable excuse to comply with any requirement imposed by an officer under the powers conferred by article 24 or 25;
- (b) without reasonable excuse, he prevents, or attempts to prevent, any other person from complying with any such requirement;
- (c) assaults an officer while exercising any of the powers conferred by article 24, 25 or 27; or
- (d) intentionally obstructs an officer in the exercise of any of those powers.

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

- (a) on summary conviction to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

Offences by corporate bodies

30.—(1) If a relevant offence committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(3) In this article “officer” in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

Admissibility of documents in evidence

31.—(1) Any—

- (a) logbook kept under Article 6, 17.2 or 28c;
- (b) declaration submitted under Article 8.1, 17(2) or 28f;
- (c) effort report communicated under Article 19b;
- (d) sales note submitted under Article 9;
- (e) document drawn up under Article 13; or
- (f) document containing required information received by a fisheries monitoring centre established under Article 3.7,

of Council Regulation 2847/93 shall, in any proceedings in respect of an offence under this Order or any equivalent provision, be evidence of the matters stated in the logbook, declaration, effort report, sales note or document, as the case may be.

(2) For the purpose of paragraph (1), “required information” means the following information as communicated via a satellite-based boat monitoring system established under Article 3 (1) of Regulation 2847/93—

- (a) the identification of the fishing boat;
- (b) the most recent geographical position of the fishing boat expressed in degrees and minutes of longitude and latitude; and

- (c) the date and time of the fixing of that position.

PART 5

Supplementary

Consequential amendments

- 32.—**(1) The Sea Fishing (Restriction on Days at Sea) Order 2005(a) is amended as follows.
- (2) Omit articles 3 to 6 and 12 to 22.
- (3) In article 23(2) for “article 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20 or 21 of this Order” substitute “any of articles 7 to 11 of this Order”.
- (4) In article 23(3) for “article 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20 or 21 of this Order” substitute “any of articles 7 to 11 of this Order”.
- (5) Omit article 23(5).
- (6) In article 25(1) omit “and Part 3”.
- (7) In article 25(4) for “article 3, 4, 5, 8, 11, 12, 13, 14, 15, 18, 21 or 22” substitute “article 8 or 11 of this Order”.
- (8) In article 26(1) omit “and Part 3”.
- (9) In article 27(2) for “article 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 17, 18, 19, 20 or 21” substitute “any of articles 7 to 11 of this Order”.

10th May 2006

Ben Bradshaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

11th May 2006

David Cairns
Parliamentary Under Secretary of State
Northern Ireland Office

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the administration and enforcement of the provisions of Annex IIA and IIC (“the Annexes”) to Council Regulation (EC) No 51/2006 (OJ No L16, 20.1.06, p1) fixing for 2006 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 (“the Regulation”).

The Order contains provisions which create a management system for days at sea based on monthly entitlements and linked to management periods. Article 4 deals with the establishment of management periods. Article 6 contains offences in relation to management periods. Article 7 provides for the calculation of allocation of days for fishing in the Cod Recovery and Sole Recovery Zones which are defined in article 3 as covering the geographical areas covered by the Annexes. Article 8 provides for the calculation of the allocation of days when a fishing boat is involved in pair trawling. Articles 9 and 10 provide for the adjustment of allocations of days by the Secretary of State. Article 11 contains offences in relation to allocations of days and other restrictions on presence in the Cod Recovery and Sole Recovery Zones. Article 12 provides for transfers of days and article 13 contains an offence of giving false information in a notification made for the purpose of a transfer.

(a) S. I. 2005/393.

Article 14 creates offences in relation to restrictions in both Annexes on the carriage and operation of fishing gears and the combined use of regulated and unregulated gears. Article 15 contains provisions on, and an offence relating to, the maintenance of log-books.

Articles 16 to 20 provide for offences in relation to further controls in Annex II on fishing in the Sole Recovery Zone.

Part 4 of the Order makes provision for enforcement. Article 22 deals with penalties and article 23 provides for the recovery of fines imposed, or treated as imposed, by a magistrates' court.

Articles 24, 25 and 27 confer various powers on British sea-fishery officers including the power to enter premises, to go on board fishing boats and to stop and search vehicles transporting fish.

Article 32 makes consequential amendments to the Sea Fishing (Restriction on Days at Sea) Order 2005 (S.I 2005/393).

A Regulatory Impact Assessment in relation to the Annexes and this Order has been prepared and placed in the library of each House of Parliament. Copies can be obtained from Defra, Sea Fisheries Conservation Division, Area 6A, 3 Whitehall Place, London SW1A 2HH.

£3.00

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