

2005 No. 286

SEA FISHERIES

**The Registration of Fish Sellers and Buyers and Designation of
Auction Sites (Scotland) Regulations 2005**

Made - - - - - *26th May 2005*

Laid before the Scottish Parliament *26th May 2005*

Coming into force in accordance with regulation 1(2)

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Registration of Fish Sellers and Buyers and Designation of Auction Sites (Scotland) Regulations 2005.

(2) These Regulations shall come into force in accordance with this paragraph—

(a) regulations 1 to 3, 6, 7, 9 and 12 to 18 shall come into force on 20th June 2005; and

(b) regulations 4, 5, 8, 10 and 11 shall come into force on 1st September 2005.

(3) Subject to paragraph (4), these Regulations extend to Scotland and the Scottish zone and insofar as they extend beyond Scotland and the Scottish zone, they do so only as a matter of Scots law.

(4) Proceedings for an offence under these Regulations may be taken, and for all incidental purposes the offence may be treated as having been committed, in any place in the United Kingdom.

Interpretation

2.—(1) In these Regulations—

“Article 9” means Article 9 of Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the Common Fisheries Policy^(b) as last amended by Council Regulation (EC) No. 806/2003^(c) and any reference to a paragraph of Article 9 shall be interpreted accordingly;

“the CFP Regulation” means Council Regulation 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy^(d);

^(a) 1972 c.68; section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The functions of the Minister of the Crown, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

^(b) O.J. No. L 261, 20.10.93, p.1.

^(c) O.J. No. L 122, 16.5.03, p.1.

^(d) O.J. No. L 358, 31.12.02, p.59.

“designated auction site” means a site where fish are marketed which has been designated by the Scottish Ministers under regulation 6(3);

“equivalent provision” means any provision in any other regulations made under section 2(2) of the European Communities Act 1972 for the purposes of implementing Article 9 or Article 22 of the CFP Regulation, extending to any part of the United Kingdom, which has equivalent effect to a specified provision in these Regulations;

“first sale fish” means fish which are being sold for the first time but does not include farmed fish;

“fish” means fishery products to which Article 9 or Article 22 of the CFP Regulation applies and which are landed from a fishing vessel;

“licensed fishing vessel” means a fishing vessel in respect of which a licence has been issued under section 4 of the Sea Fish (Conservation) Act 1967(a) or under similar provisions by another Member State or by another country;

“PLN number” means a vessel’s port letters and number within the meaning of regulation 31 of the Merchant Shipping (Registration of Ships) Regulations 1993(b);

“registered fish buyer” means a person who is registered by the Scottish Ministers in accordance with regulation 7;

“registered fish seller” means a person who is registered by the Scottish Ministers in accordance with regulation 3.

“Scottish fishing boat” means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995(c) and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging; and

“the Scottish zone” has the same meaning as in section 126(1) of the Scotland Act 1998(d).

(2) In these Regulations, any reference to a registered fish buyer or registered fish seller shall include an agent who buys or sells fish on behalf of the buyer or seller, and any similar expressions shall be interpreted accordingly.

Registration of fish sellers

3.—(1) A registered fish seller is authorised for the purposes of Article 9(1), insofar as that seller sells first sale fish by way of competitive bidding at a designated auction site.

(2) Any person may apply to the Scottish Ministers to be registered as a fish seller.

(3) Such an application shall be in writing, shall be made in such form and manner, shall include such information and undertakings and shall be delivered to such address as the Scottish Ministers may specify in a notice or from time to time require.

(4) On receipt of such an application the Scottish Ministers may—

- (a) register the applicant;
- (b) determine conditions to which the registration shall be subject; and
- (c) require the applicant to provide such undertakings as the Scottish Ministers consider appropriate to the application.

(5) The Scottish Ministers shall in writing—

- (a) notify applicants of the result of their applications;
- (b) notify applicants whose applications for registration have been approved of any conditions which they have determined or undertakings required under paragraph (4); and
- (c) notify applicants whose applications for registration have been approved of the registration number allocated to them for the purposes of these Regulations.

(a) 1967 c.84.

(b) S.I. 1993/3138; the relevant amending instrument is 1999/3206.

(c) 1995 c.12.

(d) 1998 c.46.

(6) The Scottish Ministers shall publish the fact that a person is a registered fish seller in such manner as they see fit.

(7) Any registered fish seller who fails to comply with any—

- (a) condition to which the registration of that seller is subject; or
- (b) undertaking provided,

is guilty of an offence.

(8) Any person who knowingly or recklessly makes a statement which is false in a material particular in an application under this regulation is guilty of an offence.

Sale of fish

4.—(1) Any person who—

- (a) sells first sale fish by any form of competitive bidding in a designated auction site; and
- (b) is not a registered fish seller,

is guilty of an offence.

(2) Where first sale fish is sold from a fishing vessel to a buyer who is not a registered fish buyer the master, owner or charterer (if any) of the fishing vessel is guilty of an offence.

Maintenance of records by registered seller

5.—(1) Subject to paragraph (2), a registered fish seller shall maintain records of each sale of first sale fish made by that seller at the place in the United Kingdom notified to the Scottish Ministers for that purpose in the registered fish seller's application for registration.

(2) Where a registered fish seller does not operate that seller's business from the United Kingdom or where a registered fish seller is not established in the United Kingdom, a registered fish seller shall—

- (a) send records of every sale of first sale fish made by the seller to the Scottish Ministers by 31st December in each year; and
- (b) produce those records to the Scottish Ministers within 28 days of a request from a British sea-fisheries officer under paragraph (5) to produce those records.

(3) The records referred to in this regulation shall include all of the following information in relation to each sale—

- (a) date and location of the sale;
- (b) quantities of each species sold;
- (c) price paid for each species sold;
- (d) name and PLN number of the vessel which landed the fish;
- (e) name and address of the buyer; and
- (f) reference number of the contract of sale or invoice.

(4) A registered fish seller shall keep the records of each sale as required by this regulation until the end of the second calendar year following that sale.

(5) Subject to paragraph (2)(b), a registered fish seller shall, upon the request of a British sea-fishery officer, produce the records referred to in this regulation.

(6) A registered fish seller who fails to keep the records required by this regulation or to produce the records in accordance with paragraph (5) is guilty of an offence.

(7) Any person who knowingly or recklessly maintains or produces records which are false in a material particular is guilty of an offence.

Designation of auction sites

6.—(1) Any person may apply to the Scottish Ministers to have a site designated as a designated auction site.

(2) Such an application shall be made in writing, shall be made in such form and manner and shall contain such information and undertakings and shall be delivered to such address as the Scottish Ministers may specify in a notice or from time to time require.

(3) The Scottish Ministers, having considered the relevant application and any information provided may—

- (a) designate a site as a designated auction site;
- (b) determine conditions to which the designation of the site shall be subject; and
- (c) require the applicant to provide such undertakings as the Scottish Ministers consider appropriate to the application.

(4) The Scottish Ministers shall in writing—

- (a) notify applicants of the results of their applications; and
- (b) notify applicants whose applications for designation of sites have been approved of any conditions they have determined or undertakings required under paragraph (3).

(5) The Scottish Ministers shall publish the fact that a site has been designated as a designated auction site in such manner as they see fit.

(6) Where there is a failure to comply with any—

- (a) condition to which the designation of a particular site is subject; or
- (b) undertaking provided,

the person who applied to have the site designated as a designated auction site is guilty of an offence.

(7) Any person who knowingly or recklessly makes a statement which is false in a material particular in an application under this regulation is guilty of an offence.

Registration of fish buyers

7.—(1) For the purposes of Article 22(2)(b) of the CFP Regulation, a registered fish buyer shall be regarded as registered with the authorities.

(2) Any person may apply to the Scottish Ministers to be registered as a fish buyer.

(3) Such an application shall be made in writing, shall be made in such form and manner, shall include such information and undertakings and shall be delivered to such address as the Scottish Ministers may specify in a notice or may from time to time require.

(4) On receipt of such an application the Scottish Ministers may—

- (a) register the applicant;
- (b) determine conditions to which the registration shall be subject; and
- (c) require the applicant to provide such undertakings as the Scottish Ministers consider appropriate to the application.

(5) The Scottish Ministers shall in writing—

- (a) notify applicants of the results of their applications;
- (b) notify applicants whose applications for registration have been approved of any conditions which they have determined or undertakings required under paragraph (4); and
- (c) notify applicants whose applications for registration have been approved of the registration number allocated to them for the purposes of these Regulations.

(6) The Scottish Ministers shall publish the fact that a person is a registered fish buyer in such manner as they see fit.

- (7) Any registered fish buyer who fails to comply with any—
- (a) condition to which the registration of that buyer is subject; or
 - (b) undertaking provided,
- is guilty of an offence.

(8) Any person who knowingly or recklessly makes a statement which that person knows to be false in a material particular in an application under this regulation is guilty of an offence.

Purchase of fish by an unregistered buyer

8.—(1) Any person who buys first sale fish in contravention of Article 22(2)(b) of the CFP Regulation, as read with the final sub-paragraph of Article 22(2), is guilty of an offence.

- (2) Any person who—
- (a) but for the final sub-paragraph of Article 22(2) would be guilty of an offence under paragraph (1); and
 - (b) on the day in question, bought more than 50 kilogrammes of fish,
- is guilty of an offence.

Maintenance of records by registered buyer

9.—(1) Subject to paragraph (2), a registered fish buyer shall maintain records of every purchase of first sale fish made by that buyer at the place in the United Kingdom notified to the Scottish Ministers for that purpose in the registered fish buyer's application for registration.

(2) Where a registered fish buyer does not operate that buyer's business from the United Kingdom or where a registered fish buyer is not established in the United Kingdom a registered fish buyer shall—

- (a) send records of every purchase of first sale fish made by the buyer to the Scottish Ministers by 31st December in each year; and
- (b) produce those records to the Scottish Ministers within 28 days of a request from a British sea-fishery officer under paragraph (5) to produce those records.

(3) The records referred to in this regulation shall include all of the following information in relation to each individual purchase—

- (a) date and location of the purchase;
- (b) quantity of each species purchased;
- (c) price paid for each species purchased;
- (d) name and PLN number of the vessel which landed the fish;
- (e) name, address and registration number of the seller; and
- (f) reference number of the invoice or contract of sale.

(4) A registered fish buyer shall keep the records of each purchase as required by this regulation until the end of the second calendar year following that purchase.

(5) Subject to paragraph (2)(b), a registered fish buyer shall, upon the request of a British sea-fishery officer, produce the records referred to in this regulation.

(6) A registered fish buyer who fails to keep the records required by this regulation or to produce the records in accordance with paragraph (5) is guilty of an offence.

(7) Any person who knowingly or recklessly maintains or produces records which are false in a material particular is guilty of an offence.

Sale of fish landed from a licensed fishing vessel

10. Any person who markets first sale fish which was landed by a fishing vessel in the United Kingdom other than by a licensed fishing vessel is guilty of an offence.

Prohibition on purchase of fish not landed by a licensed fishing vessel

11.—(1) No person shall buy first sale fish from a fishing vessel unless that fish has been landed by a licensed fishing vessel.

(2) In any proceedings for an offence under paragraph (1), it shall be a defence for a person to show that—

- (a) that person did not know; and
- (b) it was reasonable for that person not to suspect,

that the fish had not been landed by a licensed fishing vessel.

Penalties

12.—(1) A person convicted of an offence under these Regulations shall be liable—

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

(2) In addition to the penalties in paragraph (1), a court may also—

- (a) in the case of an offence under regulation 3(7) or (8), 4(1) or (2), or 5(6) or (7), order that the registration of the person convicted is revoked and that person be disqualified from applying for registration under regulation 3 or be disqualified from applying for registration under regulation 3 for a specified period;
- (b) in the case of an offence under regulation 6(6) or (7), order that the designation of the site be revoked and order that the person convicted be disqualified from applying to have a site designated under regulation 6 or be disqualified from applying to have a site designated under regulation 6 for a specified period;
- (c) in the case of an offence under regulation 7(7) or (8), 9(6) or (7), or 11(1), order that the registration of the person convicted is revoked and that person be disqualified from applying for registration under regulation 7 or be disqualified from applying for registration under regulation 7 for a specified period.

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

13.—(1) For the purpose of enforcing these Regulations or any equivalent provision, any British sea-fishery officer may exercise the powers conferred by this regulation in relation to—

- (a) any Scottish fishing boat wherever it may be; or
- (b) any other fishing boat which is within the Scottish zone.

(2) The officer may go on board the boat, with or without persons assigned to assist the officer in the duties of that officer, and for that purpose 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 the officer to be necessary for the purpose mentioned in paragraph (1) of this regulation and, in particular—

- (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 the officer 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 the custody or possession of that person;
- (c) for the purpose of ascertaining whether an offence under these Regulations 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 the officer to be necessary for facilitating the search;

- (d) may inspect and take copies of any such document produced to the officer or found on board;
- (e) without prejudice to sub-paragraphs (c) and (d), may require the master and any person for the time being in charge of the boat to render all such documents on a computer system into a visible and legible form, including requiring any such document to be produced in a form in which it may be taken away; and
- (f) where the boat is one in relation to which the officer has reason to suspect that an offence under these Regulations or any equivalent provision has been committed, may seize and detain any such document produced to the officer 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 (f) above 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) Where it appears to a British sea-fishery officer that an offence under these Regulations or any equivalent provision has at any time been committed, the officer may—

- (a) require the master of the boat in relation to which the offence took place to take, or the officer may take, the boat and its crew to the port which appears to the officer 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 a boat the officer 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 on land

14.—(1) For the purpose of enforcing these Regulations or any equivalent provision, any British sea-fishery officer may—

- (a) enter and inspect at any reasonable time any premises other than domestic premises not being used in connection with these Regulations or any equivalent provisions;
- (b) take with the officer such other persons as appear to the officer 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 the officer to be necessary for facilitating the examination;
- (d) carry out at such 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 such premises for such a period as may be reasonably necessary for the purposes of establishing whether an offence under these Regulations or any equivalent provisions has at any time been committed;
- (f) require any person on the premises to produce any documents which are in the custody or possession of that person 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 vessel;
- (g) for the purpose of ascertaining whether an offence under these Regulations or any equivalent provisions has been committed, search the premises for any such document and require any person on the premises to do anything which appears to the officer to be necessary for facilitating the search;
- (h) inspect and take copies of any such document produced to the officer or found on the premises;
- (i) require any appropriate or responsible person on the premises not to remove any such document produced to the officer or found on the premises;
- (j) require any appropriate or responsible person to render any such document on a computer system or other device in which data is recorded in electronic form into a visible and

legible form, including requiring it to be produced in a form in which it may be taken away; and

- (k) if the officer has a reason to suspect that an offence under these Regulations or any equivalent provisions has been committed, seize and detain any such document produced to the officer or found on the premises for the purpose of enabling the document to be used as evidence in proceedings for the 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), or in respect of any vehicle which a British sea-fishery officer has reasonable cause to believe is being used to transport 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.

(3) If a sheriff on information on oath is satisfied—

- (a) that there is reasonable ground to believe that any documents or other items which a British sea-fishery officer has power under this regulation to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under these Regulations or any equivalent provisions; and

(b) is also satisfied either—

- (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant has been given to the occupier; or
- (ii) that an application for admission or the giving of such notice would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await return of the occupier,

the sheriff may by warrant signed by the sheriff, and valid for one month, authorise a British sea-fishery officer to enter the premises, if need be by reasonable force, and take with the officer such persons as appear to the officer to be necessary.

(4) If a sheriff on information on oath is satisfied that—

- (a) there is reasonable ground to believe that any computers, or other devices which may be used to record data electronically, are on the premises and that their inspection is likely to disclose evidence of the commission of an offence under these Regulations or any equivalent provisions; and

(b) is also satisfied either—

- (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant has been given to the occupier; or
- (ii) that an application for admission or the giving of such notice would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await return of the occupier,

the sheriff may by warrant signed by the sheriff, and valid for one month, authorise a British sea-fishery officer to enter the premises, if need be by reasonable force, and take with the officer such persons as appear to the officer to be necessary, and to search for and seize any computers or other devices in which data may be recorded in electronic form, including any related equipment, and to undertake forensic examination of any such computer or other device including the copying of data and files held on any such computers or devices.

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

15.—(1) This article applies—

- (a) to any Scottish fishing boat wherever it may be, and
- (b) to any other fishing boat which is within the Scottish zone.

(2) Where this article applies, any British sea-fishery officer may seize any fish (including any receptacle which contains the fish) in respect of which the officer has reasonable grounds to

suspect that an offence under these Regulations or under any equivalent provision, has been committed.

Protection of officers

16. A British sea-fishery officer or a person assisting that officer by virtue of regulation 13(2) or 14(1)(b), or authorised under regulation 14(3) or (4), of these Regulations shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on that officer by regulations 13 and 14 of these Regulations 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

17.—(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 regulations 13 and 14 of these Regulations;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) assaults, or intentionally obstructs, any officer who is exercising any of the powers conferred by regulations 13 to 15 of these Regulations, any person assisting such an officer by virtue of regulation 13(2) or 14(1)(b), or any person authorised under regulation 14(3) or (4),

is guilty of an offence.

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

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

Provisions as to offences and proceedings

18.—(1) Where an offence under these Regulations, or under any equivalent provision, committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) a director, manager, secretary or other similar officer of the body corporate; or
- (b) a person purporting to act in any such capacity,

that person as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In paragraph (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Where an offence under these Regulations, or under any equivalent provision, committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner, as well as the partnership shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(4) When an offence under these Regulations, or under any equivalent provision, committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association, that officer, as well as the association, shall be guilty of the offence and liable to be proceeded against and punished accordingly.

ROSS FINNIE

A member of the Scottish Executive

Pentland House,
Edinburgh
26th May 2005

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the implementation and enforcement of Article 9 of Council Regulation (EEC) 2847/93 (O.J. No. L 261, 20.10.93, p.1) and Article 22 of Council Regulation 2371/2002 (O.J. No. L 358, 31.12.02, p.59).

The Regulations make provision for the registration of fish sellers (regulation 3). The Regulations provide that it is an offence for any person to sell first sale fish through a designated auction site if that person is not registered as a fish seller. It is an offence for first sale fish to be sold from a fishing vessel to an unregistered fish buyer (article 4). A registered fish seller is required to maintain records and it is an offence to fail to keep records or to produce them to a British sea-fishery officer at the request of that officer or to keep records which are false in a material particular (regulation 5).

The Regulations make provision for the designation of auction sites (regulation 6).

The Regulations make provision for the registration of fish buyers (regulation 7) and make provision for offences in relation to the purchase of fish by unregistered buyers (regulation 8). The Regulations require registered fish buyers to maintain records of the purchase of first sale fish and make provision for offences in relation to record keeping (regulation 9). The Regulations make provision for offences relating to the sale and purchase of first sale fish (regulation 10 and 11) and provide for penalties for all offences under the Regulations (regulation 12). The Regulations confer powers on British sea-fishery officers for the purposes of enforcing the Regulations or any equivalent provisions (regulation 13, 14 and 15). Provision is made for the protection of British sea-fishery officers in the exercise of their powers under the Regulations (regulation 16) and for an offence of obstructing such officers (regulation 17).

Provision is made in relation to offences and proceedings (regulation 18).

A Regulatory Impact Assessment in relation to these Regulations has been prepared and placed in the Scottish Parliament Information Centre. Copies of it can be obtained from the Scottish Executive Environment and Rural Affairs Department, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY.

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