

2008 No. 101

SEA FISHERIES

**The Aquaculture and Fisheries (Scotland) Act 2007 (Fixed
Penalty Notices) Order 2008**

<i>Made</i> - - - -	<i>6th March 2008</i>
<i>Laid before the Scottish Parliament</i>	<i>7th March 2008</i>
<i>Coming into force</i> - -	<i>1st April 2008</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 25(2)(b), 26(5), 27(1) and (3), 29(2)(b) and 43(1)(b) of the Aquaculture and Fisheries (Scotland) Act 2007(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2008 and comes into force on 1st April 2008.

(2) In this Order “the Act” means the Aquaculture and Fisheries (Scotland) Act 2007.

Specification of relevant offences

2. A relevant offence for the purposes of section 25(1) of the Act(b) is specified as—

- (a) an offence under or by virtue of an enactment listed in Part 1 of Schedule 1 to this Order; and
- (b) an offence under or by virtue of an enactment listed in Part 2 of Schedule 1 to this Order, proceedings in respect of which may be taken in Scotland by virtue of section 30(2A) of the Fisheries Act 1981(c).

Specification of shorter period for paying fixed penalty notice

3. The period specified for the purposes of section 26(4) of the Act is 7 days in relation to a person to whom a notice(d) is issued who is domiciled or resident outside the United Kingdom.

Scale of fixed penalty

4. The scale of fixed penalties for the purposes of sections 25 to 31 of the Act is as prescribed in Schedule 2.

(a) 2007 asp 12.

(b) Section 25(1) of the Aquaculture and Fisheries (Scotland) Act 2007 (“the Act”) provides that a British sea fishery officer may issue a fixed penalty notice in respect of a relevant offence.

(c) 1981 c.29. Section 30(2A) was inserted by S.I. 1999/1820, Schedule 2, paragraph 68.

(d) “Notice” is defined in section 25(3) of the Act to mean a fixed penalty notice issued under section 25(1) of the Act.

Address at which and method by which fixed penalty is payable

5.—(1) The address specified for the purposes of section 27(3) of the Act is Scottish Government, Banking Section, Financial Management Branch, Mail Point 8, Area 3-A South, Victoria Quay, Edinburgh EH6 6QQ.

(2) The methods of payment specified for the purposes of section 27(3) of the Act are payment by—

- (a) cheque;
- (b) transfer using the Bankers Automated Clearing Service; and
- (c) debit card.

Person to whom and address to which intimation of non payment of fixed penalty to be sent

6. The person and address specified for the purposes of section 29(2)(b) of the Act is Head of Prosecutions and Enforcement Policy, SFPA, Room 527, Pentland House, 47 Robbs's Loan, Edinburgh, EH14 1TY.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew's House,
Edinburgh
6th March 2008

SCHEDULE 1

Article 2

Relevant offences for the purposes of section 25(1) of the Aquaculture and Fisheries (Scotland) Act 2007

PART 1

Enactments under or by virtue of which relevant offences are created

<i>Enactment</i>	<i>Offence provision</i>
Sea Fish (Conservation) Act 1967 (a)	Sections 4(6), 4(7A), 4A(6), 4A(7), 4A(8)
Sea Fish (Shellfish) Act 1967 (b)	Section 17(1)
Fishery Limits Act 1976 (c)	Section 2(5)
Fisheries Act 1981 (d)	Section 30(1)(a)
Inshore Fishing (Scotland) Act 1984 (e)	Section 4
The Foreign Fishing Boats (Stowage of Gear) Order 1970 (f)	Article 3 as read with section 5(4) of the Sea Fisheries Act 1968 (g)
Salmon and Migratory Trout (Prohibition of Fishing) (No. 2) (Scotland) Order 1972 (h)	Article 3 as read with section 5(7) of the Sea Fish (Conservation) Act 1967
Salmon and Migratory Trout (Restrictions on Landing) Order 1972 (i)	Article 3 as read with section 6(5) of the Sea Fish (Conservation) Act 1967

(a) 1967 c.84.

(b) 1967 c.83.

(c) 1976 c.86.

(d) 1981 c.29; section 30(1) was amended by the Aquaculture and Fisheries (Scotland) Act 2007, asp 12, section 33.

(e) 1984 c.26; section 4 was amended by the Inshore Fishing (Scotland) Act 1994 (c.27), section 2.

(f) S.I. 1970/318.

(g) 1968 c.77.

(h) 1973/207; article 3 was amended by S.I. 1983/60, article 2.

(i) 1972/1966; article 3 was amended by S.I. 1983/58, article 2.

Enactment

Offence provision

The Molluscan Shellfish (Control of Deposit) Order 1974 (a)	Article 5 as read with section 14(2) of the Sea Fisheries (Shellfish) Act 1967
Lobsters (Control of Deposit) Order 1981 (b)	Article 6 as read with section 14(2) of the Sea Fisheries (Shellfish) Act 1967
Lobsters (Control of Importation) Order 1981 (c)	Article 5 as read with section 14(2) of the Sea Fisheries (Shellfish) Act 1967
Receiving of Trans-shipped Sea Fish (Licensing) Order 1982 (d)	Article 3 as read with section 4A(3) of the Sea Fish (Conservation) Act 1967
Sea Fishing (Enforcement of Community Licensing Measures) (North of Scotland Box) Order 1984 (e)	Article 3
Undersized Scallops (West Coast) Order 1984 (f)	Article 2 as read with section 1(7) of the Sea Fish (Conservation) Act 1967
Scallops (Irish Sea) (Prohibition of Fishing) Order 1984 (g)	Article 2 as read with section 5(7) of the Sea Fish (Conservation) Act 1967
Inshore Fishing (Salmon and Migratory Trout) (Prohibition of Gill Nets) (Scotland) Order 1986 (h)	Article 3 as read with section 4 of the Inshore Fishing (Scotland) Act 1984

(a) S.I. 1974/1555.
(b) S.I. 1981/994.
(c) S.I. 1981/995.
(d) S.I. 1982/80; article 3 was substituted by S.I. 1983/1139, article 2.
(e) S.I. 1984/291.
(f) S.I. 1984/1522.
(g) S.I. 1984/1523.
(h) S.I. 1986/59.

Enactment

Offence provision

Undersized Velvet Crabs Order 1989**(a)**

Articles 2(1) and 3(1) as read with section 1(7) of the Sea Fish (Conservation) Act 1967 and article 4 as read with section 1(8) of that Act

Sandeels Licensing Order 1989**(b)**

Article 2 as read with section 4(3) of the Sea Fish (Conservation) Act 1967

Undersized Bass Order 1989**(c)**

Article 3 as read with section 1(7) of the Sea Fish (Conservation) Act 1967

Sea Fish (Specified Manx Waters) Licensing Order 1990**(d)**

Article 3 as read with section 4(3) of the Sea Fish (Conservation) Act 1967

Sea Fishing (Specified Western Waters) (Restrictions on Landing) Order 1990**(e)**

Article 3 as read with section 6(5) of the Sea Fish (Conservation) Act 1967

Sea Fish Licensing Order 1992**(f)**

Article 3 as read with section 4(3) of the Sea Fish (Conservation) Act 1967

Fishing Boats (Marking and Documentation) (Enforcement) Order 1993**(g)**

Article 3

(a) S.I. 1989/919.

(b) S.I. 1989/1066.

(c) S.I. 1989/1285.

(d) S.I. 1989/2051.

(e) S.I. 1990/2052.

(f) S.I. 1992/2633; article 3(1)(b) was substituted by S.I. 1990/1820, Schedule II, paragraph 150(3)(b).

(g) S.I. 1993/2015.

Enactment

Offence provision

Inshore Fishing (Monofilament Gill Nets) (Scotland) Order 1996 (a)	Articles 2 and 3(1) as read with section 4(1) and (1A) of the Inshore Fishing (Scotland) Act 1984
Food Protection (Emergency Prohibitions) (Dounreay Nuclear Establishment) Order 1997 (b)	Articles 4, 5 and 6 as read with section 1(6) of the Food and Environment Protection Act 1985 (c)
The Lobsters and Crawfish (Prohibition of Fishing and Landing) (Scotland) Order 1999 (d)	Article 3 as read with section 5(7) of the Sea Fish (Conservation) Act 1967 and Article 4 as read with section 6(5) of that Act
Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000 (e)	Article 3
Sea Fishing (Enforcement of Community Conservation Measures) (Scotland) Order 2000 (f)	Article 3
Undersized Lobsters (Scotland) Order 2000 (g)	Articles 3 and 4 as read with section 1(7) of the Sea Fish (Conservation) Act 1967 and article 5 as read with section 1(8) of that Act
Undersized Spider Crabs (Scotland) Order 2000 (h)	Article 3 as read with section 1(7) of the Sea Fish (Conservation) Act 1967

(a) S.I. 1996/1907.

(b) S.I. 1997/2622.

(c) 1985 c.48.

(d) S.I. 1999/88.

(e) S.S.I. 2000/7, as amended by S.S.I. 2005/552 and S.S.I. 2007/40.

(f) S.S.I. 2000/53, as amended by S.S.I. 2002/81.

(g) S.I. 2000/197.

(h) S.S.I. 2000/198.

Enactment

Offence provision

Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear) (Scotland) Order 2000 (a)	Articles 4, 5 and 5A as read with section 3(5) of the Sea Fish (Conservation) Act 1967
Undersized Edible Crabs (Scotland) Order 2000 (b)	Article 3 as read with section 1(7) of the Sea Fish (Conservation) Act 1967
Prohibition of Fishing with Multiple Trawls (No. 2) (Scotland) Order 2000 (c)	Article 3 as read with section 5(7) of the Sea Fish (Conservation) Act 1967
Sea Fishing (North-East Atlantic Control Measures) Order 2000 (d)	Article 4
Prohibition of Fishing for Scallops (Scotland) Order 2003 (e)	Articles 3, 4 and 5 as read with sections 6 and 7 of the Sea Fish (Conservation) Act 1967
Shrimp Fishing Nets (Scotland) Order 2004 (f)	Article 3 as read with section 3(5) of the Sea Fish (Conservation) Act 1967
Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2004 (g)	Articles 3, 5, 6, 7, 9 and 10 as read with sections 4(1) and 4(1A) of the Inshore Fishing (Scotland) Act 1984
Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Scotland) Order 2004 (h)	Article 9
Sea Fish (Marketing Standards) (Scotland) Regulations 2004 (a)	Articles 3(1), (2), (3), (4) and (5)

(a) S.S.I. 2000/227, as amended by S.S.I. 2001/250 and S.S.I. 2003/167.

(b) S.S.I. 2000/228.

(c) S.S.I. 2000/405, as amended by S.S.I. 2007/13.

(d) S.S.I. 2000/1843.

(e) S.S.I. 2003/371.

(f) S.S.I. 2004/261, as amended by S.S.I. 2008/10.

(g) S.S.I. 2004/276.

(h) S.S.I. 2004/392.

Enactment

Offence provision

Registration of Fish Sellers and Buyers and Designation of Auction Sites (Scotland) Regulations 2005 (b)	Articles 3(7), 4(1), 5(6), 5(7), 6(6), 6(7), 7(7), 7(8), 8(1), 8(2), 9(6), 9(7), 10, 11(1)
Prevention and Monitoring of Cetacean Bycatch (Scotland) Order 2005 (c)	Articles 3(2), 4
Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) (No. 5) Order 2006 (d)	Article 2 as read with sections 4(1) and 4(1A) of the Inshore Fishing (Scotland) Act 1984
Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls) (Scotland) Order 2006 (e)	Article 14
Sea Fishing (Northern Hake Stock) (Scotland) Order 2006 (f)	Articles 3, 4, 5, 6(1), 6(3), 7(1), 7(3), 8
Sea Fishing (Prohibition on the Removal of Shark Fins) (Scotland) Order 2007 (g)	Articles 3(1), (2) and (4)
Inshore Fishing (Prohibited Methods of Fishing) (Loch Creran) Order 2007 (h)	Articles 3, 4 and 5 as read with section 4(1) and 4(1A) of the Inshore Fishing (Scotland) Act 1984
Inshore Fishing (Prohibited Methods of Fishing (Firth of Lorn) (No. 2) Order 2007 (i)	Article 3(1) as read with section 4(1) and 4(1A) of the Inshore Fishing (Scotland) Act 1984
Sea Fishing (Control Procedures for Herring, Mackerel and Horse Mackerel) (Scotland) Order 2008 (j)	Articles 3(5), (6), (7), 4(4), 6(4), 7(4)

(a) S.S.I. 2004/498.

(b) S.S.I. 2005/286, as amended by S.S.I. 2005/438.

(c) S.S.I. 2005/330.

(d) S.S.I. 2006/58.

(e) S.S.I. 2006/284.

(f) S.S.I. 2006/505.

(g) S.S.I. 2007/39.

(h) S.I. 2007/85.

(i) S.I. 2007/40.

(j) S.S.I. 2008/102.

PART 2

Enactments under or by virtue of which relevant offences are created, proceedings in respect of which may be taken in Scotland by virtue of section 30(2A) of the Fisheries Act 1981

<i>Enactment</i>	<i>Offence Provision</i>
Sea Fishing (Enforcement of Community Licensing Measures) (North of Scotland Box) Order 1984(a)	Article 3
Fishing Boats (Marking and Documentation) (Enforcement) Order 1993(b)	Article 3
Sea Fishing (Enforcement of Measures for the Recovery of the Stock of Cod) (Irish Sea) (Wales) Order 2000(c)	Article 3
Sea Fishing (Enforcement of Community Control Measures) (Wales) Order 2000(d)	Articles 3(1), 3(2)
Sea Fishing (Enforcement of Community Conservation Measures) (Wales) Order 2000(e)	Articles 3(1), 3(2)
Sea Fishing (Enforcement of Community Control Measures) Order 2000(f)	Articles 3(1), 3(2)
Sea Fishing (North-East Atlantic Control Measures) Order 2000(g)	Article 4
Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2004(h)	Articles 5, 6, 7, 8(1), 8(2), 8(4), 9(1), 9(2), 11, 12, 13, 14(1), 14(2)
Incidental Catches of Cetaceans in Fisheries (England) Order 2005(i)	Article 4
Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls) (England) Order 2006(j)	Article 4
Sea Fishing (Northern Hake Stock) (Wales) Order 2006(k)	Articles 3, 4(1), 4(3), 4(4), 5(1), 6, 7, 8
Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2006(l)	Articles 5, 6, 7, 8(1), 8(2), 8(4), 9(1), 9(2), 11, 12, 13, 14(1), 14(2)

(a) S.I. 1984/291.

(b) S.I. 1993/2015.

(c) S.I. 2000/976.

(d) S.I. 2000/51, as amended by S.I. 2005/393 and 2005/2624.

(e) S.I. 2000/2230 (W.148).

(f) S.I. 2000/51, as amended by S.I. 2005/393 and 2005/2624.

(g) S.I. 2000/1843.

(h) S.I. 2004/3226.

(i) S.I. 2005/17.

(j) S.I. 2006/1549.

(k) S.I. 2006/1796 (W.191).

(l) S.I. 2006/2798 (W.237).

SCHEDULE 2

Article 4

Scale of fixed penalties

Penalty level	Amount
1	£250
2	£500
3	£1000
4	£2000

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for fixed penalty notices which are provided for in sections 25 to 31 of the Aquaculture and Fisheries (Scotland) Act 2007 (“the 2007 Act”).

Article 2 of the Order specifies relevant offences. In terms of section 25(1) of the 2007 Act, if a British sea–fishery officer has reasonable grounds for suspecting that a person has committed a relevant offence then the officer may issue a fixed penalty notice. Relevant offences are listed in Schedule 1 to the Order. They include, in Part 2 of Schedule 1, offences under orders made under section 30(2) of the Fisheries Act 1981. In terms of section 30(2A) of that Act, proceedings for an offence under any order made under section 30(2) may be taken in any place in the United Kingdom.

Article 3 of the Order prescribes a shorter period for paying a fixed penalty notice where the person to whom the notice is issued is domiciled or resident outside the United Kingdom. In such cases the period for paying is 7 days.

Article 4 and Schedule 2 prescribe the scale of fixed penalties from £250 up to a maximum of £2000.

Article 5 specifies the address at which and the methods by which payment of the fixed penalty is to be made.

Before the expiry of the period for paying the fixed penalty, a person to whom a notice has been issued may intimate that they intend not to pay. Article 6 specifies where such an intimation should be sent.

A Regulatory Impact Assessment in relation to this Order has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Marine Directorate, Pentland House, Robb’s Loan, Edinburgh EH14 1TY.

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£3.00

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under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland