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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 151**

**The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Order 2008**

**PART III**

**RESTRICTION ON DAYS AT SEA**

**COD**

**Determination of number of days**

7. The Scottish Ministers may authorize a relevant fishing boat to be present within the cod recovery zone for such number of days as they may determine in accordance with Article 8 of Annex IIa.

**Determination of management periods and division of days between management periods**

8.—(1) Management periods, as referred to in paragraph 9.1 of Annex IIa, and the number of days during a management period, as referred to in paragraph 9.2 of Annex IIa, in relation to a relevant fishing boat will be determined by the Scottish Ministers.

(2) A person in charge of a relevant fishing boat may notify the Scottish Ministers indicating the preference of that person as to the length of the management period for that boat.

(3) In determining the management period for that boat the Scottish Ministers must have regard to any preference as to the length of the management period indicated in a notification under paragraph (2).

**Absence from port**

9.—(1) A person in charge of a relevant fishing boat which—

(a) is absent from port and within the cod recovery zone in excess of the number of days permitted to it under this Part of this Order in contravention of paragraph 9.3 of Annex IIa; or

(b) without having a management period, enters the cod recovery zone carrying on board any regulated gear,

is guilty of an offence.

(2) Paragraph (1)(a) does not apply to—

(a) a person in charge of a relevant fishing boat in respect of which paragraph 21 of Annex IIa applies, provided that the person complies with the requirements of that paragraph; or

- (b) a person in charge of a relevant fishing boat which is permitted by paragraph 22 of Annex IIa to transit the cod recovery zone provided that the person complies with the requirements of that paragraph.
- (3) Paragraph (1)(b) does not apply to a person in charge of a relevant fishing boat which is permitted by paragraph 22 of Annex IIa to transit the cod recovery zone provided that the person complies with the requirements of that paragraph.
- (4) In addition to the determined number of days, for each management period, there is added to, or substituted for as the case may be, the determined number of days, such further number of days (if any) as may be allocated to the boat by the Scottish Ministers.
- (5) Where unused days have been transferred from a relevant fishing boat (“the donor”) to another relevant fishing boat (“the recipient”) the following applies, subject to any adjustment required by paragraph 15.1 of Annex IIa—
- (a) the donor must have deducted from its allocation of days such number of days as have been transferred to the recipient;
  - (b) the recipient must have added to its allocation of days such number of days as have been transferred by the donor.
- (6) Where unused days have been transferred from a relevant fishing boat (“the donor”) to a foreign fishing boat (“the recipient”), subject to any adjustment required by paragraph 16 of Annex IIa, the donor must have deducted from its allocation of days such number of days as have been transferred to the recipient.
- (7) Where unused days have been transferred from a foreign fishing boat (“the donor”) to a relevant fishing boat (“the recipient”), subject to any adjustment required by paragraph 16 of Annex IIa the recipient must have added to its allocation of days such number of days as have been transferred by the donor.
- (8) Where in the course of an absence from port during any management period within the cod recovery zone regulated gear is affixed to two or more fishing boats there will be deducted from the determined number of days for each such boat that is a relevant fishing boat in relation to that gear and that period a number of days equal to the number when it was absent from port.
- (9) Where during any management period a relevant fishing boat is absent from port operating with regulated gear within the same grouping of fishing gear and present within the sole recovery zone there will be deducted from the determined number of days for that boat in relation to that period a number of days equal to the number when it was absent from port and present within that area.
- (10) Subject to article 10, where during any management period a relevant fishing boat has—
- (a) been absent from port carrying fishing gear in excess of the determined number of days or the days permitted to it by this article; or
  - (b) purported to transfer days in accordance with article 12 in excess of its unused days,
- the Scottish Ministers may deduct a number equal to the number of days in that excess.
- (11) In any proceedings for an offence under paragraph (1)(a) of this article, it is 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 that person under article 12 and that person did not know and had no reasonable cause to suspect that the donor was not entitled to transfer the days.
- (12) In this article “determined number of days” means the number of days during a management period as determined by the Scottish Ministers in accordance with article 8(1) and adjusted as necessary in terms of paragraphs 18.2 to 18.4 of Annex IIa.

### **Procedure as to decisions to deduct days**

- 10.**—(1) In making a decision to deduct days under article 9(10), the Scottish Ministers—
- (a) must specify to which management period the days deducted will relate; and
  - (b) may deduct days in respect of one or more than one management period, as they consider fit.
- (2) The Scottish Ministers, before making a decision to deduct days under article 9(10), must—
- (a) give the affected person a written notification of that intention (including a note of the management period or periods to which that deduction is proposed to apply) and an explanation of the reasons for considering the deduction of days (and the basis for proposing the deduction from a particular period or periods);
  - (b) afford that person an opportunity of making representations in that regard within such time and in such form as they think fit and, in order to effectively give such opportunity, may appoint a person (“the reporter”) to report to them as to the relevant factual circumstances; and
  - (c) consider any such representations (including the report prepared by the reporter) in making their decision in the case.
- (3) In this article “affected person” means the owner, master or charterer of the boat in respect of which a decision to deduct days under article 9(10) is made or is proposed to be made.

### **Use of regulated gear**

- 11.**—(1) A person in charge of a relevant fishing boat which fishes in contravention of the notification requirement in paragraph 17 of Annex IIa is guilty of an offence.
- (2) A person in charge of a relevant fishing boat which carries or uses, whilst present in the cod recovery zone, regulated gear other than the regulated gear notified under a requirement in paragraphs 17 to 19 of Annex IIa is guilty of an offence.
- (3) The competent authority for the purpose of paragraph 18.5(b) and 18.6 of Annex IIa is the Scottish Ministers.
- (4) Subject to the derogation in paragraph 20.2 of Annex IIa, a relevant fishing boat or a foreign fishing boat within the Scottish zone which is present in the cod recovery zone carrying on board regulated gear falling within one of the groupings of fishing gears specified in paragraph 4 of Annex IIa must not simultaneously carry on board regulated gear falling within any of the other groupings of fishing gear specified in paragraph 4 of Annex IIa.
- (5) A person in charge of a relevant fishing boat or a foreign fishing boat which contravenes the prohibition in paragraph (4) is guilty of an offence.

### **Transfer of days from one boat to another**

- 12.**—(1) Transfer of unused days within the same management period from one relevant fishing boat (“the donor”) to another (“the recipient”) for the purposes of paragraph 15 of Annex IIa where either the donor or the recipient is, or both are, a relevant fishing boat, is permitted subject to the conditions specified in paragraphs 15.1 to 15.4 of Annex IIa, to the extent specified in a notification of transfer sent to the Scottish Ministers and consented to by the Scottish Ministers.
- (2) Transfer of unused days within the same management period between a relevant fishing boat and a foreign fishing boat for the purposes of paragraph 16 of Annex IIa is permitted subject to the conditions specified in paragraph 16 of Annex IIa, to the extent specified in a notification of transfer sent to the Scottish Ministers and consented to by the Scottish Ministers.

(3) A person who knowingly or recklessly makes a statement in a notification under paragraph (1) or (2) which is false in a material particular is guilty of an offence.

(4) For the purposes of this article “the same management period” means any two management periods provided that the transfer takes place during the concurrence of the management periods.

### **Designated Ports**

**13.** For landings in the United Kingdom the ports, and where applicable the landing locations within them, designated for the purposes of Article 12(2) of Regulation 423/2004 are the ports specified in Schedule 3.

### **Offences in relation to fishing gears**

**14.—**(1) A person in charge of a relevant fishing boat or a foreign fishing boat in respect of which paragraph 18 or 19 of Annex IIa applies is guilty of an offence if that person fails to comply with the obligations imposed by either of those paragraphs.

(2) Where, in respect of the obligations referred to in paragraph (1) there is an obligation to supply information, the information should be supplied to the Scottish Ministers.