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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 320**

**The Sea Fishing (EU Control Measures) (Scotland) Order 2015**

**PART 4**

**SUPPLEMENTARY PROVISIONS AND PENALTIES**

**Offences by bodies corporate etc.**

**18.**—(1) Where—

- (a) a relevant offence has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant individual; or
  - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association, commits the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
  - (i) a director, manager, secretary or other similar officer of the body;
  - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner;
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

**Admissibility in evidence of logbooks and other documents**

**19.**—(1) Any—

- (a) fishing logbook kept under Article 14, or sent under Article 15, of the Control Regulation;
- (b) transhipment declaration submitted under Article 21, or sent under Article 22, of the Control Regulation;
- (c) landing declaration submitted under Article 23, or sent under Article 24, of the Control Regulation;
- (d) sales note submitted under Article 62, or sent under Article 63, of the Control Regulation;
- (e) take-over declaration submitted under Article 66, or sent under Article 67, of the Control Regulation;
- (f) transport document drawn up under Article 68 of Control Regulation; or
- (g) document containing required information received by a fisheries monitoring centre established under Article 9(7) of the Control Regulation;

is, in any proceedings for a relevant offence, to be received in evidence without being produced or sworn to by any witness and is, unless the contrary is shown, conclusive evidence as to the matters stated therein.

- (2) For the purpose of paragraph (1)(g), “required information” means data relating to—
- (a) a fishing boat's identification;
  - (b) a fishing boat's course and speed;
  - (c) the most recent geographical position of the fishing boat expressed in degrees and minutes of longitude and latitude; and
  - (d) the date and time of the fixing of that position,

as communicated via a satellite-based vessel monitoring system established under Article 9 of the Control Regulation.

#### **Admissibility in evidence of the weight of fish**

**20.** In any proceedings in Scotland where the weight of fish is a material consideration, any record of weighing kept for the purpose of complying with any provision of the Control Regulation or the Implementing Regulation is to be received in evidence without being produced or sworn to by any witness and is, unless the contrary is shown, conclusive evidence of the matters stated therein.

#### **Weighing of fisheries products: landing of certain pelagic species in specified ports**

**21.—**(1) Pursuant to Article 79(2) of the Implementing Regulation, any fishing boat that lands a controlled catch in Scotland must do so in a port specified in a list which must be maintained, and may be updated from time to time, by the Scottish Ministers <sup>M1</sup>.

(2) The person in charge of the boat commits an offence if there is a failure to comply with paragraph (1).

- (3) In this article—
- (a) “controlled catch” means any catch (or combination of catches) which falls within the scope of Article 78 of the Implementing Regulation; and
  - (b) “person in charge” means each of the following persons—
    - (i) the master;
    - (ii) the owner;
    - (iii) the charterer (if any).

#### **Marginal Citations**

**M1** The list of designated ports is published on the Scottish Government's (Marine and Fisheries) website and can be accessed via the following web-link: <http://www.scotland.gov.uk/Topics/marine/Compliance/DLP>.

#### **Penalties**

- 22.—**(1) Subject to paragraph (2), a person guilty of a relevant offence is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.
- (2) A person guilty of an offence under article 21(2) is liable—
- (a) on summary conviction, to a fine not exceeding £50,000; or

- (b) on conviction on indictment, to a fine.
- (3) The court which convicts a person of an offence under article 21(2) may order the forfeiture of—
  - (a) any fish in respect of which the offence was committed; and
  - (b) any net or other fishing gear in respect of which the offence was committed, or which was used in committing the offence, or which was used for catching any fish in respect of which the offence was committed.
- (4) Subject to the following provisions of this article, any person found guilty of an offence under article 21(2) is liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.
- (5) A person is not liable to a fine under paragraph (4) if, under paragraph (3), the court orders the forfeiture of the fish in respect of which that offence was committed.
- (6) The court may not order the forfeiture of any fish under paragraph (3), if a fine is imposed under paragraph (4).
- (7) Subject to paragraphs (5) and (6), any fine to which a person is liable under paragraph (4) is in addition to any other penalty (whether pecuniary or otherwise) to which that person is liable in respect of that offence under this article or under an equivalent provision.
- (8) In addition to the penalties in paragraph (1), a court may also—
  - (a) in the case of an offence under article 4(2), 8(7) or (8) or 9(6) or (7), order that the registration of the person convicted is revoked, and that person be disqualified from applying for registration under article 8 for a specified or unlimited period;
  - (b) in the case of an offence under article 5, 6(7) or (8) or 7(6) or (7), order that the registration of the person convicted is revoked, and that person be disqualified from applying for registration under article 6 for a specified or unlimited period;
  - (c) in the case of an offence under article 10(6) or (7), order that the registration of the site or centre as an auction be revoked, and order that the person convicted be disqualified from applying to have a site or centre registered under article 10 for a specified or unlimited period.

### **Recovery of fines**

**23.**—(1) Without prejudice to section 221 of the Criminal Procedure (Scotland) Act 1995 <sup>M2</sup>, where a court has imposed a fine on any person in respect of an offence under this Order, that court may for the purpose of recovering the fine—

- (a) order any boat involved in the commission of the offence and its gear and catch to be detained for a period not exceeding 3 months from the date—
    - (i) of the conviction or until the fine is paid;
    - (ii) the order is renewed for a further period (not exceeding 3 months); or
    - (iii) on which a warrant is issued under sub-paragraph (b),whichever first occurs; or
  - (b) subject to paragraph (2), at any time after the imposition of the fine, issue a warrant for the arrestment and sale of any boat involved in the commission of the offence, its gear and catch.
- (2) The court must not issue a warrant under paragraph (1)(b) without first affording the owner of the boat, gear or catch liable to be included in the warrant an opportunity to be heard on the issue of such warrant.

(3) A warrant issued under paragraph (1)(b), whatever the amount of the fine imposed, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff in a summary cause.

(4) Where in relation to a fine in respect of an offence under this Order a transfer of fine order under section 222 of the Criminal Procedure (Scotland) Act 1995 <sup>M3</sup>, section 90 of the Magistrates' Courts Act 1980 <sup>M4</sup> or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981 <sup>M5</sup> specifies a court of summary jurisdiction in Scotland, this article applies as if the fine were a fine imposed by that court.

#### **Marginal Citations**

- M2** 1995 c.46; section 221 was amended by paragraph 23 of schedule 5 to the [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#).
- M3** Section 222 was amended by paragraph 20(3) of schedule 1 to the [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#).
- M4** 1980 c.43; section 90 was amended by section 47(2) of the [Criminal Justice and Public Order Act 1994 \(c.33\)](#) and by S.I. 2006/1737 and S.I. 2013/630.
- M5** S.I. 1981/1675 (N.I. 26).

**Changes to legislation:**

There are currently no known outstanding effects for the The Sea Fishing (EU Control Measures) (Scotland) Order 2015, PART 4.