

2004 No. 38

SEA FISHERIES, ENGLAND AND WALES

**The Sea Fishing (Restriction on Days at Sea) (No. 2)
(Amendment) Order 2004**

Made - - - - - 12th January 2004

Laid before Parliament 13th January 2004

Coming into force - - - 13th January 2004

The Secretary of State for Environment, Food and Rural Affairs and the Secretaries of State respectively concerned with sea fishing in Scotland, Wales and 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:

Citation and commencement

1. This Order may be cited as the Sea Fishing (Restriction on Days at Sea) (No. 2) (Amendment) Order 2004 and shall come into force on 13th January 2004.

Amendment of the Sea Fishing (Restriction on Days at Sea) (No. 2) Order 2003

2.—(1) The Sea Fishing (Restriction on Days at Sea) (No. 2) Order 2003(c) shall be amended in accordance with this article.

(2) At the end of the definition of “Annex XVII” in article 2(1) there shall be added the words “and as extended by Article 12(1) of Council Regulation (EC) No. 2287/2003(d)”.

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- (a) 1981 c. 29. See section 30(3) for the definition of “the Ministers”, as modified by Schedule 2, paragraph 68(5) of the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820).
- (b) Article 3(1) of, and Schedule 1 to, the Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592) provide for the functions exercisable under section 30(2) of the 1981 Act to be exercised by the Ministers, concurrently with the Scottish Ministers, in relation to: British fishing boats (other than Scottish ones) within the Scottish zone; and Scottish fishing boats within British fishery limits but outside the Scottish zone. By virtue of article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under section 30(2) of the 1981 Act were transferred to the National Assembly in so far as exercisable in relation to Wales (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”); in respect of waters beyond Wales these functions remain exercisable by the Ministers. The Government of Wales Act 1998, Schedule 3, paragraph 5 provides that any power of a Minister of the Crown transferred to the Assembly by virtue of S.I. 1999/672 should continue to be exercisable by the Minister who, but for that transfer, would have continued to hold that power for the purpose of implementing any Community obligation. By virtue of article 2(1) of the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812), any remaining functions of the Secretaries of State for Scotland and Wales under section 30(2) of the 1981 Act were transferred to the Minister of Agriculture, Fisheries and Food. Article 3 provides that this shall not apply to any function exercisable by those Secretaries of State in relation to any function which is exercisable by them by paragraph 5 of Schedule 3 to the Government of Wales Act 1998. 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 article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794). The Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790) Schedule 2, paragraph 3 provides that the function in section 30(2) of the 1981 Act is to be exercisable concurrently by the Department for Agriculture and Rural Development insofar as it relates to sea fishing within the Northern Ireland zone and to Northern Ireland fishing boats outside that zone.
- (c) S.I. 2003/1535.
- (d) OJ No. L344, 31.12.2003, p. 1.

(3) After the definition of “foreign fishing boat” in article 2(1) there shall be inserted the following definition:

““the late January period” means the period starting with the date the Sea Fishing (Restriction on Days at Sea) (No. 2) (Amendment) Order 2004 comes into force and ending with 31st January 2004 and “the early January period” means the period starting with 1st January 2004 and ending immediately before the coming into force of the Sea Fishing (Restriction on Days at Sea) (No. 2) (Amendment) Order 2004;”.

(4) Article 3(1) shall be amended by the insertion after “paragraph 1 (duration of controls) of Annex XVII” of “or during the late January period”.

(5) Article 3(2)(a) shall be amended by the insertion before the first appearance of “December 2003” of “each of” and after the first appearance of “December 2003” of “and the late January period”, and by the insertion in paragraph (ii) after “December 2003” of “(or, as the case may be, the late January period)”.

(6) Article 3(3)(a) shall be amended by the deletion of “and” at the end of the sub-paragraph.

(7) Article 3(3)(b) shall be amended by the insertion of “, and” at the end of the sub-paragraph.

(8) After article 3(3)(b) the following sub-paragraph shall be inserted:

“(c) subtracted from the basic number for the late January period, such number of days (if any) as it has been absent from port carrying that gear in the early January period”.

(9) After article 4(1) the following paragraph shall be inserted:

“(2) A person shall not be guilty of an offence under article 3(1) in respect of an activity relating to a boat in the late January period if the activity would not have been treated as an offence had December 2003 and January 2004 together been treated as a whole period equivalent to one of the two month periods specified in article 3(2)(b)”.

Consequential amendment

3. Insofar as it extends to England and Wales, the Sea Fishing (Enforcement of Community Control Measures) Order 2000(a) shall be amended by the addition, at the end of the definition of “Annex XVII” in article 2(1), of the words, “and as extended by Article 12(1) of Council Regulation (EC) No. 2287/2003”.

6th January 2004 *Ben Bradshaw*
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

7th January 2004 *Alistair Darling*
Secretary of State for Scotland

6th January 2004 *Peter Hain*
Secretary of State for Wales

12th January 2004 *Paul Murphy*
Secretary of State for Northern Ireland

(a) S.I. 2000/51, amended by S.I. 2003/559 and 2003/1535.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Sea Fishing (Restriction on Days at Sea) (No. 2) Order 2003 which provides for the enforcement in England and Wales of the provisions of Annex XVII (“the Annex”) to Council Regulation (EC) No. 2341/2002 (OJ No. L356, 31.12.2002, p. 12) fixing for certain fish stocks and groups of fish stocks the fishing opportunities in Community waters for 2003 as amended by Council Regulation (EC) No. 671/2003 (OJ No. L97, 15.4.2003, p. 11) and amplified by Commission Decision 2003/185/EC (OJ No. L71, 15.3.2003, p. 28).

The amendment supplements Article 12(1) of Council Regulation (EC) No. 2287/2003 by adding the month of January 2004 to the period in which fishing is restricted, subject to the qualification that an activity will not be an offence if it would not have been had December 2003 and January 2004 counted as a single two month period. A consequential amendment is also made to the Sea Fishing (Enforcement of Community Control Measures) Order 2000 in relation to England and Wales.

A Regulatory Impact Assessment has been completed and copies can be obtained from Defra, Fisheries Division IA, Room 303, 10 Whitehall Place, London SW1A 2HH.

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(Amendment) Order 2004**

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