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STATUTORY INSTRUMENTS

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**2007 No. 927**

**The Sea Fishing (Restriction on Days at Sea) Order 2007**

**PART 3**

Enforcement etc

**Interpretation of Part 3**

**16.** In this Part—

- (a) “British sea-fishery officer” has the meaning given in section 7 of the Sea Fisheries Act 1968(1);
- (b) “relevant offence” means an offence under article 6, 10, 11, 13, 14 or 15 or under any equivalent provision.

**Penalties and defence**

**17.—**(1) A person found guilty of a relevant offence, is liable—

- (a) on summary conviction, to a fine not exceeding £50,000;
- (b) on conviction on indictment, to a fine.

(2) The court by or before which a person is convicted of any relevant offence may also order—

- (a) forfeiture of any —
  - (i) fish caught at any time in the period during which the offence was committed; and
  - (ii) fishing gear used in the course of, or in activities leading to, the commission of the offence; or
- (b) a fine not exceeding the value of the fish caught at any time in the period during which the offence was committed.

(3) In any proceedings for an offence under article 11, it is a defence for a person to show that the number of days absent from port carrying regulated gear in excess of its allocation of days is no greater than the number of days purportedly but not validly transferred to that person’s fishing boat’s allocation of days under article 12 and that he did not know and had no reasonable cause to suspect that the owner of the donor, within the meaning given in article 12(2), was not entitled to transfer the days.

**Recovery of fines**

**18.** Where a magistrates’ court imposes a fine on a person convicted under this Order or any equivalent provision, the court may—

- (a) issue a warrant of distress against—

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(1) 1968 c.77; section 7 is amended by sections 26(1) and 46(2) of, and Schedule 5, Part II of, the Fisheries Act 1981 (c. 29). There are other amendments but none is relevant.

- (i) the boat involved in the commission of the offence;
  - (ii) its gear and catch; and
  - (iii) any property of the person convicted,
- for the purpose of levying the amount of the fine; and
- (b) order that the boat and its gear and catch be detained until—
- (i) the expiry of a period not exceeding three months from the date of the conviction;
  - (ii) the fine is paid; or
  - (iii) the amount of the fine is levied in pursuance of any such warrant,
- whichever occurs first.

(2) Subsection 1 of section 77 (postponement of issue of warrant) and section 78 (defect in distress warrant and irregularity in its execution) of the Magistrates' Courts Act 1980(2) apply to a warrant of distress issued under this article as they apply to a warrant of distress issued under Part III of that Act.

(3) Where in relation to a fine in respect of any offence under this Order or any equivalent provision, an order under article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(3) or section 222 of the Criminal Procedure (Scotland) Act 1995(4) (both of which deal with transfer of fines from one jurisdiction to another) specifies a petty sessions area in England, this article applies as if the fine were imposed by a court within that petty sessions area.

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

**19.**—(1) For the purpose of enforcing this Order, or any equivalent provision, or to operate or facilitate the operation of any monitoring deriving from point 25 of the Sole Annex, any British sea-fishery officer may exercise the powers conferred by this article.

(2) He may go on board the boat, with or without persons assigned to assist him in his duties, and may require the boat to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, the boat.

(3) He may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to him to be necessary for the purposes mentioned in paragraph (1) 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 him 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 that person's custody or possession;
- (c) for the purpose of ascertaining whether an offence under this Order 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 him to be necessary for facilitating the search;
- (d) may inspect and take copies of any such document produced to him or found on board and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away; and

(2) 1980 c.43; section 78 was amended by the Courts Act 2003 (c.39), section 109(1) and Schedule 8 paragraph 219(a).

(3) S.I. 1981/1675 (NI 26).

(4) 1995 c.46.

- (e) where the boat is one in relation to which he has reason to suspect that an offence under this Order or any equivalent provision has been committed, may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings for any offence under this Order or any equivalent provision.

(4) Where it appears to a British sea-fishery officer that an offence under article 6, 11, 14 or 15, or under any equivalent provision, has at any time been committed in respect of a fishing boat, he may—

- (a) require the master of the boat to take, or himself take, the boat and crew to the port which appears to him 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 the boat he must serve on the master a notice in writing stating that the boat is (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**

**20.**—(1) For the purpose of enforcing this Order or any equivalent provision, or to operate or facilitate the operation of any monitoring deriving from point 25 of the Sole Annex, any British sea-fishery officer may—

- (a) enter and inspect at any reasonable time any premises used for carrying on any business in connection with the operation of fishing boats or activities connected therewith or ancillary thereto or with the treatment, storage or sale of fish or fisheries products;
- (b) take with him such other persons as appear to him to be necessary and any equipment or materials;
- (c) examine any fish or fisheries products on the premises and require persons on the premises to do anything which appears to him to be necessary for facilitating the examination;
- (d) carry out at the 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 or fisheries products from the premises for such a period as may be reasonably necessary for the purposes of establishing whether an offence under this Order or any equivalent provision has at any time been committed;
- (f) require any person on the premises to produce any documents which are in his custody or possession relating to the catching, landing, transportation, trans-shipment, sale or disposal of any fish or fisheries products or to the entry to, or exit from, any port or harbour by any fishing boat;
- (g) for the purpose of ascertaining whether any person on the premises has committed an offence under this Order or any equivalent provision, search the premises for any such document and require any person on the premises to do anything which appears to him to be necessary for facilitating the search;
- (h) inspect and take copies of any such document produced to him or found on the premises;
- (i) require any appropriate or responsible person to render any such document on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away; and
- (j) if he has a reason to suspect that an offence under this Order or any equivalent provision has been committed, seize and detain any such document produced to him or found on the

premises for the purpose of enabling the document to be used as evidence in proceedings for any offence under this Order or any equivalent provision.

(2) The provisions of paragraph (1) also apply in relation to any land used in connection with any of the activities described in paragraph (1)(a), or in respect of any vehicle which a British sea-fishery officer has reasonable cause to believe is being used to transport fish or fisheries products, as they apply in relation to premises and, in the case of a vehicle, 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.

### **Warrants to enter premises**

**21.**—(1) If a justice of the peace on sworn information in writing is satisfied that the circumstances in paragraph (2) apply, he may issue a warrant authorising a British sea-fishery officer to enter any premises, if necessary using reasonable force, and to take with him such persons as appear to be necessary.

(2) The circumstances are that—

- (a) there are reasonable grounds to believe that any documents or other items which a British sea-fishery officer has power under article 20 to inspect are on the premises;
- (b) the inspection of such documents or other items is likely to disclose evidence of the commission of an offence under this Order or any equivalent provision; and
- (c) either—
  - (i) entry to the premises has been or is likely to be refused and notice of intention to apply for a warrant has been given to the occupier,
  - (ii) an application for entry, or the giving of notice, would defeat the object of the entry,
  - (iii) the premises are unoccupied, or
  - (iv) the occupier is temporarily absent and it might defeat the object of the entry to await his return.

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

**22.** A British sea-fishery officer may seize—

- (a) any fish, including any receptacle containing those fish, caught at the time of an offence which he suspects has been committed under this Order, other than an offence under article 10, 13 or 15, or an equivalent provision; and
- (b) any fishing gear which he has reasonable grounds to suspect has been used in the course of the commission of any such suspected offence.

### **Protection of officers**

**23.**—(1) An officer is not liable in any civil or criminal proceedings for anything done or omitted to be done in the purported exercise of the powers conferred by article 19, 20 or 22 if the court is satisfied that—

- (a) the officer acted in good faith;
  - (b) there were reasonable grounds for so acting; and
  - (c) he acted with reasonable skill and care.
- (2) In this article, “officer” means—
- (a) a British sea-fishery officer; or
  - (b) a person assisting him by virtue of article 19(2) or 20(1)(b) or authorisation under article 21.

### **Obstruction of officers**

- 24.**—(1) A person is guilty of an offence if—
- (a) he fails without reasonable excuse to comply with any requirement imposed by an officer under the powers conferred by article 19 or 20;
  - (b) without reasonable excuse, he prevents, or attempts to prevent, any other person from complying with any such requirement;
  - (c) he assaults an officer while exercising any of the powers conferred by article 19, 20, or 22; or
  - (d) he intentionally obstructs an officer in the exercise of any of those powers.
- (2) A person guilty of an offence under paragraph (1) is liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

### **Offences by corporate bodies**

- 25.**—(1) If a relevant offence committed by a body corporate is shown—
- (a) to have been committed with the consent or connivance of an officer; or
  - (b) to be attributable to any neglect on his part,
- the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.
- (3) In this article “officer” in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

### **Admissibility of documents in evidence**

- 26.**—(1) In any proceedings in respect of an offence under this Order or any equivalent provision, any—
- (a) logbook kept under Article 6, 17.2 or 28c;
  - (b) declaration submitted under Article 8.1, 17.2 or 28f;
  - (c) effort report communicated under Article 19b;
  - (d) sales note submitted under Article 9;
  - (e) document drawn up under Article 13; or
  - (f) document containing required information received by a fisheries monitoring centre established under Article 3.7,
- of Council Regulation 2847/93 is evidence of the matters stated in the logbook, declaration, effort report, sales note or document, as the case may be.
- (2) For the purpose of paragraph (1), “required information” means the following information as communicated via a satellite-based boat monitoring system established under Article 3.1 of Regulation 2847/93—
- (a) the identification of the fishing boat;

- (b) the most recent geographical position of the fishing boat expressed in degrees and minutes of longitude and latitude; and
- (c) the date and time of the fixing of that position.

**Amendment**

**27.** In the Sea Fishing (Restriction on Days at Sea) (Monitoring, Inspection and Surveillance) Order 2006~~(5)~~, omit—

- (a) article 3; and
- (b) Parts 2, 3 and 4.