

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2006 No. 341**

**The Sea Fishing (Restriction on  
Days at Sea) (Scotland) Order 2006**

**PART II**

**COD**

**Determination of management periods and number of days**

**3.**—(1) Management periods, as referred to in paragraph 9.1 of Annex IIa, and the number of days referred to in paragraph 9.2 of Annex IIa, in relation to a relevant fishing boat shall 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 shall have regard to any preference as to the length of the management period indicated in a notification under paragraph (2).

**Absence from port**

**4.**—(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 the following provisions of this article, 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 20 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 21 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 21 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, applicable to the boat in accordance with any regulated gear it carries, as adjusted as necessary in terms of paragraph 17.2 of Annex IIa (“the basic number”), 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 shall apply, subject to any adjustment required by paragraph 14.1 of Annex IIa–

- (a) the donor shall have deducted from its allocation of days such number of days as have been transferred to the recipient;
- (b) the recipient shall 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 15 of Annex IIa, the donor shall 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 15 of Annex IIa the recipient shall 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 shall be deducted from the basic number 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 shall be deducted from the basic number 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 5, where during any management period a relevant fishing boat has–

- (a) been absent from port carrying fishing gear in excess of the days permitted to it by this article; or
- (b) purported to transfer days in accordance with article 7 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 shall be 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 7 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 determined by the Scottish Ministers in accordance with article 3(1).

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

5.—(1) In making a decision to deduct days under article 4(10), the Scottish Ministers–

- (a) shall specify which management period the days deducted will relate to; 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 4(10), shall–

- (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 4(10) is made or is proposed to be made.

### **Use of regulated gear**

6.—(1) A person in charge of a relevant fishing boat which fishes in contravention of the notification requirement in paragraph 16 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 16 to 18 of Annex IIa is guilty of an offence.

(3) The competent authority for the purpose of paragraph 17.3(b) and 17.4 of Annex IIa is the Scottish Ministers.

(4) Subject to the derogation in paragraph 19.2 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 shall 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**

7.—(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 14 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 14.1, 14.2, 14.3, 14.4 and 14.5 of Annex IIa, to the extent specified in a notification of transfer sent to 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 15 of Annex IIa is permitted subject to the conditions specified in paragraph 15 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.

### **Mixing of species**

8. A person in charge of a relevant fishing boat or a foreign fishing boat within the Scottish zone which retains species in contravention of Article 14 of Regulation 423/2004 (separate storage of cod) is guilty of an offence.

### **Transportation of cod**

9. Where any quantities of cod are transported in contravention of Article 15(2) of Regulation 423/2004 (transportation of cod to be accompanied by a copy of the relevant part of the logbook), the owner or hirer of, and the person responsible for, the vehicle used to transport the cod is guilty of an offence.

### **Landing of cod where prior notification is required**

10.—(1) The competent authority for the purposes of Article 11 of Regulation 423/2004 (advance notice of entry into port or landing location) is the Scottish Ministers.

(2) Where there is in respect of a relevant fishing boat or a foreign fishing boat entering a port or landing location in Scotland, a failure to comply with Article 11(1), or with a requirement given under Article 11(2), of Regulation 423/2004 the master, the representative of the master, the owner and the charterer (if any) are guilty of an offence.

(3) Where there is in respect of a relevant fishing boat a failure to comply with Article 11(3) of Regulation 423/2004 the master, the representative of the master, the owner and the charterer (if any) are guilty of an offence.

### **Landing of cod at a designated port**

11.—(1) A person in charge of a relevant fishing boat which lands cod or a foreign fishing boat which lands cod within Scotland in contravention of Article 12(1) of Regulation 423/2004 as read with paragraph (3) of this article is guilty of an offence.

(2) If cod is first landed in a designated port within the United Kingdom an appropriate sample of at least 20% of all landings including 2 tonnes or more of cod shall be weighed in the presence of a British sea-fishery officer prior to being offered for first sale, unless the following requirements are met—

- (a) the boat is party to an arrangement made among vessels using the ports with a person or organisation to act as its controller for the purposes of Article 15 of Regulation 423/2004; and
- (b) details of the arrangement, and the vessels which are party to it, have been notified to the Scottish Ministers.

(3) A person in charge of a relevant fishing boat or a foreign fishing boat who fails to comply with a requirement to weigh cod imposed in respect of that boat by a British sea-fishery officer or a person or organisation acting as a controller for the purpose of Article 15 of Regulation 423/2004 is guilty of an offence.

(4) 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 the Schedule to this Order.

### **Recording information on catches of fish**

12. A person in charge of a relevant fishing boat or a foreign fishing boat in respect of which the 8% margin of tolerance referred to in Article 13 of Regulation 423/2004 is exceeded, is guilty of an offence.

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

13.—(1) A person in charge of a relevant fishing boat or a foreign fishing boat in respect of which paragraph 17 or 18 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.