

**2008 No. 484**

**FISHERIES**

**The Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls) Order (Northern Ireland) 2008**

*Made* - - - - - *3rd December 2008*

*Coming into operation* - - - - - *31st December 2008*

The Department of Agriculture and Rural Development makes the following Order in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(a) and now vested in it(b).

**Citation and commencement**

1. This Order may be cited as the Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls) Order (Northern Ireland) 2008 and shall come into operation on 31<sup>st</sup> December 2008.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954(c) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“Northern Ireland fishing boat” means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995(d) and whose entry in the register specifies a port in Northern Ireland as the port to which the vessel is to be treated as belonging;

“Northern Ireland zone” has the same meaning as in section 98(1) of the Northern Ireland Act 1998(e);

“other fishing boat” means a fishing boat other than a Northern Ireland fishing boat;

“the Regulation” means Commission Regulation (EC) No 356/2005(f) laying down detailed rules for the marking and identification of passive fishing gear and beam trawls, as amended by Commission Regulation (EC) No 1805/2005(g);

“relevant offence” means—

(a) an offence under Article 3 of this Order; or

(b) an offence under any provision in any other order made under section 30(2) of the Fisheries Act 1981 for the purposes of implementing the Regulation in relation to any

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(a) 1981 c.29.

(b) S.I.2002/790; see Art 3(2) and schedule 2, paragraph 3(1)

(c) 1954 c. 33 (N.I.)

(d) 1995 c.21.

(e) 1998 c.47.

(f) OJ L56, 02.03.2005, p.8.

(g) OJ L290, 04.11.2005, p.12.

part of the United Kingdom which has equivalent effect to a provision in this Order, proceedings in respect of which may be taken in Northern Ireland by virtue of section 30(2A) of the Fisheries Act 1981(a);

“territorial sea” has the same meaning as in section 1 of the Territorial Sea Act 1987(b).

(3) Expressions in this Order which are not defined in the Order and which appear in the Regulation have the same meaning in this Order as they have in the Regulation.

## **Offences**

### **3. Where—**

- (a) in relation to a Northern Ireland fishing boat wherever it is, except when it is within the territorial sea; or
- (b) in relation to any other fishing boat which is within the Northern Ireland zone, but which is outside the territorial sea,

there is a contravention of, or failure to comply with, any Article of the Regulation which is listed in column 1 of the Schedule, the master, the owner and the charterer (if any) of the fishing boat in relation to which the contravention or failure occurred shall each be guilty of an offence.

## **Penalties**

### **4.—(1) A person guilty of a relevant offence shall be liable—**

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

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

- (a) order the forfeiture of any fish in respect of which the offence was committed, or, on summary conviction only, impose a fine not exceeding the value of any fish in respect of which the offence was committed; and
- (b) order the forfeiture of 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.

## **Recovery of fines**

**5.—(1) Where a fine is imposed by a magistrates’ court on a person convicted of a relevant offence, the court may—**

- (a) order any fishing boat involved in the commission of the offence and its gear and catch to be detained—
  - (i) for a period not exceeding three months from the date of the conviction;
  - (ii) until the fine is paid; or
  - (iii) until a warrant issued under sub-paragraph (b) is executed,whichever occurs first;
- (b) issue a warrant of distress against—
  - (i) the fishing 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.

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(a) Subsection 30(2A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, S.I. 1999/1820.  
(b) 1987 c.49

(2) The court shall not issue a warrant under paragraph (1)(b) without first affording the owner of the fishing boat, its gear or catch liable to be included in the warrant an opportunity to be heard.

(3) Articles 114(2) and 154 of the Magistrates' Courts (Northern Ireland) Order 1981(a) (postponement of issue of certain warrants and objections as to want of form or variance between complaint etc. and evidence adduced) shall apply to a warrant of distress issued under this Article as they apply to a warrant referred to in those Articles of that Order.

(4) Where, in relation to a fine in respect of a relevant offence, an order under Section 90 of the Magistrates' Courts Act 1980(b) or section 222 of the Criminal Procedure (Scotland) Act 1995(c) (both of which deal with transfer of fines from one jurisdiction to another) specifies a petty sessions district in Northern Ireland, this Article shall apply as if the fine were imposed by a court within that petty sessions district.

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

6.—(1) For the purpose of enforcement in relation to a relevant offence, any British sea-fishery officer may exercise the powers conferred by paragraphs (2) to (4).

(2) The officer 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) The officer 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 purpose mentioned in paragraph (1) and, in particular—

- (a) may search for fish or any net or other 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 search and examination;
- (b) may require any person on board the boat to produce any document relating to the boat, to its fishing operations or other operations ancillary thereto or to the persons on board which is in the custody or possession of that person;
- (c) 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
- (e) where the boat is one in relation to which he has reason to suspect that a relevant offence 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 the offence,

but nothing in sub-paragraph (e) shall permit any document required by law to be carried on board the boat to be seized and detained except while the boat is detained in a port.

(4) Subject to paragraph (5), where it appears to a British sea-fishery officer that a relevant offence has at any time been committed in relation to a fishing boat, he may—

- (a) require the master of the boat in relation to which the offence has been committed to take, or may himself take, the boat and its 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.

(5) Where a British sea-fishery officer detains or requires the detention of a boat he shall serve on the master a notice in writing stating that the boat will be or is required to be detained until the

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(a) S.I. 1981/1675 (N.I.26)  
(b) 1980 c. 43  
(c) 1995 c.46.

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 to seize fish and fishing gear**

7. A British sea-fishery officer may seize—

- (a) any fish, (including any receptacle which contains the fish), in respect of which he has reasonable grounds to suspect that a relevant offence has been committed; and
- (b) any fishing gear which he has reasonable grounds to suspect has been used in the commission of a relevant offence.

### **Protection of officers**

8. A British sea-fishery officer or a person assisting him by virtue of Article 6(2) shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by Articles 6 and 7 if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

### **Obstruction of officers**

9.—(1) Any person who—

- (a) fails without reasonable excuse to comply with any requirement imposed by a British sea-fishery officer under the powers conferred on British sea-fishery officers by Articles 6 or 7;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) assaults or intentionally obstructs an officer who is exercising any of the powers conferred on him by Articles 6 or 7, or any person assisting such officer by virtue of Article 6(2),

shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

### **Provisions as to offences**

10.—(1) For the purposes of this Order section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(2) Where any relevant offence or any other offence under this Order committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where any relevant offence or any other offence under this Order committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, he as well as the association shall be guilty of the offence and liable to be proceeded against and punished accordingly.

## Admissibility in evidence of logbooks and other documents

11.—(1) Any—

- (a) logbook kept under Articles 6, 17.2 or 28c;
- (b) declaration submitted under Articles 8.1, 11, 12, 17.2 or 28f;
- (c) effort report completed under Articles 19b and 19c;
- (d) document drawn up under Articles 9 or 13;
- (e) document containing required information received by a fisheries monitoring centre established under Article 3.7,

of Council Regulation (EEC) No 2847/93(a) shall, in any proceedings in Northern Ireland for a relevant offence or any other offence under this Order, be evidence of the matters stated in the logbook, declaration, effort report or, as the case may be, document.

(2) For the purpose of paragraph (1), “required information” means information relating to—

- (a) a fishing boat’s identification;
- (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,

as communicated via a satellite-based vessel monitoring system established under Article 3.1 of Council Regulation (EEC) No 2847/93.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 3<sup>rd</sup> December 2008



*Liam McKibben*

A senior officer of the Department of Agriculture and Rural Development

## SCHEDULE 1

### REQUIREMENTS AS TO DEPLOYMENT, MARKING AND IDENTIFICATION OF PASSIVE FISHING GEAR, BUOYS AND BEAM TRAWLS, CONTRAVENTION OF WHICH CONSTITUTES AN OFFENCE

<i>Article of Regulation</i>	<i>Subject Matter</i>
1. Article 4	Prohibition on use and carrying on board of passive gear, buoys and beam trawls not marked and identifiable in accordance with the provisions of the Regulation.

(a) OJ No. L261, 20.10.93, p.1, as amended by Council Regulation (EC) No 2870/95, Council Decision 95/528/EC of 5 December 1995, Council Regulation (EC) No 2489/96 of 20 December 1996, Council Regulation (EC) No 686/97 of 14 April 1997, Council Regulation (EC) No 2205/97 of 30 October 1997, Council Regulation (EC) No 2635/97 of 18 December 1997, Council Regulation (EC) No 2846/98 of 17 December 1998, Council Regulation (EC) No 806/2003 of 14 April 2003, Council Regulation 1954/2003 of 4 November 2003, and Council Regulation (EC) No 768/2005 of 26 April 2005.

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|--------------------------------------|---|
| 2. Article 5                         | Requirement to display clearly on each assembled beam or the shoes of each such beam carried on board or used for fishing, the external registration letters and numbers of the vessel.   |
| 3. Articles 6, 7 and 8               | Requirement to mark, identify and display on each passive gear carried on board or used for fishing, the external registration letters and numbers of the vessel to which it belongs in accordance with the specifications in the Regulation. |
| 4. Articles 9, 10, 11, 12, 13 and 14 | Requirements as to the specifications, display, rigging, fixing and deployment of cords and marker buoys as specified in Chapter IV of and the Annex to the Regulation.   |

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order provides for the enforcement of Community restrictions and other obligations relating to the marking and identification of passive gear and beam trawls deployed by fishing vessels as set out in Commission Regulation (EC) No. 356/2005, of 2 March 2005, p.8, OJ L56, as amended. In the context of this Order passive gear means longlines, gillnets, entangling nets, trammel nets, drifting gillnets and any associated anchoring, floating or navigational gear.

This Order applies to Northern Ireland fishing boats wherever they are, except within the territorial sea and to all other boats in the Northern Ireland zone, but outside the territorial sea.

This Order comes into operation on 31<sup>st</sup> December 2008.

Article 3 of the Order creates offences in respect of breaches of those articles of the Regulation referred to in column 1 of the Schedule to the Order. Penalties are specified for such offences in Article 4. Provision is made for the recovery of fines in Article 5.

The Order confers powers of enforcement on British sea-fishery officers (Articles 6 and 7). Article 8 makes provision for the protection of British sea fishery officers and their assistants and Article 9 provides for offences and penalties should they be obstructed in the course of their investigations under this Order. Article 10 makes provision in respect of offences by bodies corporate, partnerships and unincorporated associations. Article 11 allows for the admissibility in evidence of records compiled for the purposes of Council Regulation (EEC) No. 2847/93.

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