

2008 No. 492

FISHERIES

**The Sea Fishing (Enforcement of Community Measures)
(Penalty Notices) Order (Northern Ireland) 2008**

Made - - - - *10th December 2008*

Coming into operation - *5th January 2009*

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

Citation and commencement

1. This Order may be cited as the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order (Northern Ireland) 2008 and shall come into operation on 5th January 2009.

Interpretation

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

(2) In this Order—

“British sea fishery officer” means any person who by virtue of section 7 of the Sea Fisheries Act 1968(d) is a British sea fishery officer;

“the Department” means the Department of Agriculture and Rural Development;

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

“Northern Ireland fishing boat” means—

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

(b) a fishing boat, other than—

(i) a Scottish fishing boat,

(ii) a Welsh fishing boat, or

(iii) an English fishing boat,

(a) 1981 c.29.

(b) Sea Fisheries Order (Northern Ireland) 2002 (S.I. 2002/790 Article 3(2)) and Schedule 2.

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

(d) 1968 c.77.

(e) 1995 c.21.

which is owned wholly by persons qualified to own British ships for the purposes of Part II of that Act;

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

“penalty” means the amount specified in a penalty notice;

“penalty notice” means a notice offering the opportunity, by payment of a specified amount in accordance with this Order, to discharge any liability to be convicted of the penalty offence to which the notice relates;

“penalty offence” means an offence (other than one involving assault, obstruction, or failure to comply with a requirement imposed by a person) under—

- (c) section 30(1)(a) of the Fisheries Act 1981 (offences relating to enforceable Community restrictions relating to sea fishing);
- (d) an order made under section 30(2) of that Act (provisions for the enforcement of any enforceable Community restriction or other obligation relating to sea fishing);
- (e) the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations (Northern Ireland) 2005^(b);
- (f) the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2005^(c);
- (g) the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2006^(d); or
- (h) the Registration of Fish Sellers and Buyers and Designation of Auction Sites (Scotland) Regulations 2005^(e);

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

“Welsh fishing boat” means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Wales as the port to which the vessel is to be treated as belonging.

Issue of a penalty notice for a penalty offence

3.—(1) A British sea fishery officer may exercise the powers conferred by paragraph (2) in relation to—

- (a) a Northern Ireland fishing boat, wherever it may be,
- (b) an English fishing boat within the Northern Ireland zone,
- (c) a Scottish fishing boat within the Northern Ireland zone,
- (d) a Welsh fishing boat within the Northern Ireland zone, or
- (e) any other fishing boat within the Northern Ireland zone.

(2) A British sea fishery officer who has reason to believe that a person has committed a penalty offence may issue that person with a penalty notice for an amount not exceeding £2000.

(3) A penalty notice is issued at the time it is sent by post or delivered by hand to the person to whom it relates.

(a) 1998 c.47.
(b) S.R.2005/419.
(c) S.I.2005/1605.
(d) S.I.2006/1495.
(e) S.S.I.2005/286, as amended by S.S.I.2005/438.

Restriction on proceedings for penalty offence

- 4.—(1) Where a person is issued with a penalty notice—
- (a) no proceedings may be brought against that person for the penalty offence to which that notice relates before the end of the period of 28 days beginning with the date on which the notice was issued; and
 - (b) that person may not be convicted of the offence if the penalty is paid before the end of that period.
- (2) Paragraph (1)—
- (a) is subject to Article 9; and
 - (b) does not apply if the penalty notice is withdrawn in accordance with Article 8.

Payment of penalty

- 5.—(1) Payment of a penalty must be made to the person specified in the penalty notice by sending it by post or by such method as may be specified in the notice.
- (2) Payment may not be made in cash.

Payment of one penalty treated as payment of connected penalties

6.—(1) Where a person (“A”) pays the penalty in accordance with Article 5, a British sea fishery officer must give a notice (a “notice of deemed payment”) to all other persons who have been issued with a connected penalty notice.

(2) A penalty notice is a “connected penalty notice” if the penalty offence to which that notice relates is the same as, and arises out of the same set of circumstances as, the penalty offence to which a penalty notice issued to another person relates.

- (3) A notice of deemed payment must—
- (a) be sent by post or delivered by hand;
 - (b) indicate that A has paid the penalty for A’s connected penalty notice;
 - (c) indicate that the penalty notice issued to the recipient of the notice of deemed payment will be treated as having been paid unless that person gives written notice indicating that it should not be so treated (a “notice of objection”); and
 - (d) state the name and address of the person to whom any notice of objection must be given.

(4) A notice of objection must be sent by post or delivered by hand to the person stated in paragraph (3)(d) within—

- (a) 28 days beginning with the date on which the penalty notice was issued, or
- (b) if later, five days beginning with the date on which the notice of deemed payment was given.

(5) If no notice of objection is given in accordance with this Article, the penalty notice issued to a person who has been given a notice of deemed payment is to be treated as having been paid.

Certificate of payment or non-payment of penalty notice

7. In any proceedings a certificate purporting to be signed by or on behalf of the Department, stating that payment in respect of a penalty notice was or was not received on or before a date specified in the certificate is evidence of the facts stated.

Withdrawal of penalty notices

8.—(1) A penalty notice may be withdrawn by a British sea fishery officer who has reason to believe that it ought not to have been issued (whether to the person named in the penalty notice or otherwise).

- (2) A penalty notice may be withdrawn before or after payment of the penalty.
- (3) Where a penalty notice is withdrawn any penalty paid must be repaid.

Commencement of proceedings after payment of penalty in relation to fishing boats from outside the United Kingdom

9.—(1) This Article applies in relation to a penalty notice issued to the master, the owner or the charterer of a fishing boat other than—

- (a) an English fishing boat;
- (b) a Northern Ireland fishing boat;
- (c) a Scottish fishing boat; or
- (d) a Welsh fishing boat.

(2) Where a person in receipt of a penalty notice to which this Article applies has paid the penalty in accordance with Article 5, that person may give written notice in accordance with paragraph (3) requesting that proceedings be brought for the penalty offence to which the penalty notice relates.

(3) A notice must—

- (a) indicate that the person giving the notice wishes proceedings to be brought for the penalty offence to which the penalty notice relates; and
- (b) be given no later than the end of the period of 28 days beginning with the date on which the penalty notice was issued.

(4) Where a person has given such notice, proceedings may be brought against that person.

(5) Where the proceedings are discontinued or the person is acquitted of the offence, the penalty notice shall be treated as never having been issued and any penalty paid must be repaid.

(6) Where the person is convicted of the offence, the penalty notice shall be treated as never having been issued and paragraph (7) or (8) applies, as appropriate.

(7) If a fine is imposed on the person in respect of the penalty offence a British sea fishery officer must—

- (a) apply so much of the penalty as does not exceed the amount of the fine in or towards payment of the fine; and
- (b) repay any amount of the penalty in excess of the amount of the fine.

(8) If no fine is imposed on the person in respect of the penalty offence any penalty paid must be repaid.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 10th December 2008



Liam McKibben
A senior officer of the
Department of Agriculture and Rural Development

EXPLANATORY NOTE

(This note is not part of the Order)

This Order creates a scheme of penalty notices for certain fisheries offences.

A British Sea Fishery Officer who has reason to believe that a person has committed a penalty offence (Article 3) has the power to issue a penalty notice. Where a penalty notice has been issued,

a person has 28 days in which to pay it, during which time proceedings cannot be brought. A person who pays the penalty within this time limit cannot be convicted of the offence to which the penalty notice relates (Article 4). If a person does not pay the penalty within this time, these restrictions cease to apply.

Articles 5 and 6 deal with the method and effect of paying a penalty, including provision that, where more than one notice has been issued in relation to the same offence arising out of the same set of circumstances, payment by one person counts as payment by the other, in the absence of objection by that other.

A certificate signed by or on behalf of the Department shall be taken as evidence of whether or not a payment has been received (Article 7).

Article 8 permits a penalty notice to be withdrawn if it ought not to have been issued. Any penalty paid must be repaid.

Article 9 permits masters, owners and charterers of fishing boats that are from outside the United Kingdom and who have paid a penalty to request to be tried for the offence. The penalty notice will be treated as never having been issued and the penalty will be repaid in the event of acquittal or discontinuance of the related court proceedings. In the event of conviction, the penalty notice will also be treated as never having been issued, but the penalty may be applied towards paying any fine imposed. Any surplus will be returned.

A Regulatory Impact Assessment in relation to this Order has been prepared and placed in the library of the Assembly, and on the Departmental website.

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