

2003 No. 300

SEA FISHERIES

**The Sea Fishing (Restriction on Days at Sea) (Scotland)
Amendment (No. 2) Order 2003**

Made 5th June 2003

Laid before the Scottish Parliament 6th June 2003

Coming into force 27th June 2003

The Scottish Ministers, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(a) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Sea Fishing (Restriction on Days at Sea) (Scotland) Amendment (No. 2) Order 2003 and shall come into force on 27th June 2003.

Amendment of the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2003

2.—(1) The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2003(b) is amended as follows.

(2) In article 2(1) (interpretation)—

- (a) in the definition of “Annex XVII” at the end insert “as amended by Council Regulation (EC) No. 671/2003 of 10th April 2003(c)”; and
- (b) after the definition of “British fishing boat” insert—
““the Commission Decision” means Commission Decision 2003/185/EC on the allocation of additional days absent from port to Member States in accordance with Annex XVII of Council Regulation (EC) No. 2341/2002(d);”.

(3) In article 3 (absence from port)—

(a) for paragraph (2) substitute—

“(2) In this Order, the person in charge of a relevant British fishing boat is its owner, master or charterer (if any), and the number of days permitted to such a boat for any period identified below is the basic number, that is to say—

- (a) in application of paragraph 11(a) (aggregation of periods) of Annex XVII, for the period beginning on the date of the coming into force of the Sea Fishing (Restriction on Days at Sea) (Scotland) Amendment (No. 2) Order 2003 (“the No. 2 Order”) and ending on 31st July 2003, the greater of—

(a) 1981 c.29; relevant modifications are contained in the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748), article 5 and the Scotland Act 1998 (Modifications of Functions) Order 1999 (S.I. 1999/1756), articles 3, 5 and 6. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). See section 30(3) for a definition of “the Ministers”. Section 30(2) has effect in relation to Scotland as modified by section 30(5). Section 30(5) was inserted by the Scotland Act 1999 (Consequential Modifications) (No. 2) Order (S.I. 1999/1820), Schedule 2, paragraph 68.

(b) S.S.I. 2003/56, amended by S.S.I. 2003/66.

(c) O.J. No. L 97, 15.4.03, p.11.

(d) O.J. No. L 71, 15.3.03, p.28.

- (i) the basic number that would have applied in respect of the period from 1st June 2003 to 31st July 2003 in accordance with this Order had the No. 2 Order not been made; or
- (ii) the basic number that would have applied in respect of the period from 1st June 2003 to 31st July 2003 in accordance with this Order had–
 - (A) the No. 2 Order come into force on 1st June 2003; and
 - (B) sub-paragraph (b) below applied to that period,
 less the number of days on which the boat, conform to this Order, was absent from port in the period beginning on 1st June 2003 and ending on the day before the date of the coming into force of the No. 2 Order;
- (b) in application of paragraph 11(a) (aggregation of periods) of Annex XVII, for each successive period of two calendar months, the first of which starts on 1st August 2003 and the last of which ends on 30th November 2003, whichever is the greater of–
 - (i) double the number indicated in paragraph 6(a) of Annex XVII; or
 - (ii) any other number of days granted in writing in respect of such a boat by the Scottish Ministers in accordance with paragraph 6(e) of Annex XVII, as read with paragraph 5(b), 5(c), 9 and 13 of Annex XVII, and applicable to the boat in accordance with any fishing gear it carries; and
- (c) for December 2003, whichever is the greater of–
 - (i) the number indicated in paragraph 6(a) of Annex XVII; and
 - (ii) any other number of days granted in writing in respect of such a boat by the Scottish Ministers in accordance with paragraph 6(e) of Annex XVII, as read with paragraph 5(b), 5(c), 9 and 13 of Annex XVII, and applicable to the boat in accordance with any fishing gear it carries,
 cumulatively adjusted in accordance with paragraphs (3) to (7) and subject to paragraph (8).”;
- (b) for paragraph (3) substitute –

“(3) In relation to any relevant British fishing boat and in respect of the type of fishing gear it may carry, for each calendar month there is, subject to paragraph 6(e) of Annex XVII, added to the basic number the maximum number of additional days (if any) that the United Kingdom may allocate in accordance with the Commission Decision.”;
- (c) after paragraph (5) add–

“(5A) For the purposes of transfer of days in accordance with paragraphs (4) and (5), the basic number for the period from 1st June 2003 to 31st July 2003 shall be the greater of the numbers ascertained in accordance with–

 - (a) paragraph (2)(a)(i); and
 - (b) paragraph 2(a)(ii).”;
- (d) in paragraph (8) for “4(a)” substitute “4”; and
- (e) for paragraph (9)(a) substitute–

“(9) In–

 - (a) paragraph (7) “relevant period” means–
 - (i) a successive period of two calendar months referred to in paragraph 2(b); or
 - (ii) December 2003; and
 - (b) paragraph (8) “relevant period” means–
 - (i) for the purposes of paragraph 2(a), 1st June 2003 to 31st July 2003;
 - (ii) for the purposes of paragraph 2(b), a successive period of two calendar months referred to in paragraph (2)(b); and
 - (iii) for the purposes of paragraph 2(c), December 2003.”.
- (4) In article 6 (transfer of days from one boat to another)–
 - (a) in article 6(4) after “years” insert “2000,”; and
 - (b) in article 6(5) after “10(b)” insert “and (c)”.

(a) Paragraph (9) was amended by S.S.I. 2003/66.

- (5) In article 6A(3)(a), in the definition of “relevant period” for “3(9)” substitute “3(9)(b)”.
- (6) In article 8 (landing of cod)–
 - (a) for “paragraph 13” in each place that it occurs substitute “paragraph 15”; and
 - (b) for “paragraph 14” in each place that it occurs substitute “paragraph 16”.
- (7) In article 9 (mixing of species) for “paragraph 17” substitute “paragraph 19”.
- (8) In article 10 (transportation of cod) for “paragraph 20” substitute “paragraph 22”.
- (9) In article 14(1) (powers of British sea-fishery officers in relation to fishing boats) for “paragraph 18” substitute “paragraph 20”.
- (10) In article 15 (powers of British sea-fishery officers on land)–
 - (a) in paragraph (1) for “paragraph 18” substitute “paragraph 20”; and
 - (b) in paragraph (1)(h) after “to” insert “that”.

Amendment of the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000

3. Article 2(1) (interpretation) of the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000(b) is amended as follows:–

- (a) in the definition of “Annex XVII” after “required” insert “as amended by Council Regulation (EC) No. 671/2003 of 10th April 2003”; and
- (b) in the definition of “the Council Regulation” for “paragraph 12” substitute “paragraph 14” and for “paragraph 20” substitute “paragraph 22”.

Pentland House,
Edinburgh
5th June 2003

ROSS FINNIE
A member of the Scottish Executive

(a) Article 6A was inserted by S.S.I. 2003/66.
(b) S.S.I. 2000/7, amended by S.S.I. 2003/56.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2003 (“the principal Order”), which provides for the enforcement in Scotland of the provisions of Annex XVII (“the Annex”) to Council Regulation 2341/2002 (O.J. No. L 356, 31.12.02, p.12) fixing for certain fish stocks and groups of fish stocks the fishing opportunities in Community waters for 2003.

The Order contains provisions which amend the principal Order to enforce the amendments made to the Annex by Council Regulation 671/2003 (O.J. No. L 97, 15.4.03, p.11).

The amendments to the principal Order include—

- (a) the amendment of the definition of “Annex XVII” and the insertion of a definition of “the Commission Decision” in the interpretation provision of the principal Order (article 2(2));
- (b) amendment of the provisions relating to absence from port in article 3 of the principal Order to reflect in particular the new provision in Article 6(e) of the Annex, which allows Member States to permit any of its vessels fishing with demersal trawls, seines or similar towed gears of mesh size equal to or greater than 120mm to spend up to 16 days absent from port (article 2(3));
- (c)
 - (i) amendment of article 6(4) (transfer of days) of the principal Order to reflect the fact that a transfer of days to another vessel is only permitted if the donor vessel has a record of fishing with a gear specified in paragraph 4 of the Annex in the area defined in paragraph 2 of the Annex in 2000 as well as 2001 and 2002; and
 - (ii) amendment of article 6(5) to include a reference to new paragraph 10(c) of the Annex to provide that days may not be transferred from gears defined in paragraphs 4(b) to (f) to gears defined in paragraph 4(a) (article 2(4));
- (d) amendment of the definition of “relevant period” in article 6A(3) (article 2(5));
- (e) amendment of articles 8 to 10 and 14 to 15 of the principal Order to reflect the amendment of the Annex and the consequential renumbering of the paragraphs of the Annex (articles 2(6) to (10)); and
- (f) amendment of interpretation provisions in article 2(1) of the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000 to reflect the amendment of the Annex and the consequential renumbering of the paragraphs of the Annex (article 3).

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