
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 90

The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2005

PART II

COD

Determination of management periods

3.—(1) Management periods, as referred to in paragraph 6(b) of Annex IVa, 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) contravenes paragraph 9 of Annex IVa; or
- (b) is absent from port in excess of the number of days permitted to it under the following provisions of this article,

is guilty of an offence.

(2) In addition to the number of days indicated in paragraph 6(a) of Annex IVa, applicable to the boat in accordance with any regulated gear it carries, as adjusted as necessary in terms of the fourth sub paragraph of paragraph 6(a) and the second sub-paragraph of paragraph 7 (“the basic number”), for each calendar month there is added to, or substituted for as the case may be, the number indicated in paragraph 6(a) of Annex IVa, such number of days (if any) as—

- (a) may be allocated to United Kingdom boats under paragraph 6(c) and 6(e) of Annex IVa; and
- (b) may be allocated to boats by the Scottish Ministers under paragraph 6(d) and 6(f) of Annex IVa.

(3) Where days have been transferred from one relevant fishing boat (“the donor”) to another relevant fishing boat (“the recipient”) the following shall apply, subject to any adjustment required by paragraph 10(a) of Annex IVa—

- (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.

(4) Where during any management period 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 but the gear was being carried by any other such boat.

(5) 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.

(6) 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.

(7) In any proceedings for an offence under paragraph (1)(b) 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.

Procedure as to decisions to deduct days

5.—(1) In making a decision to deduct days under article 4(6), 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(6), 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(6) 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 the first sub-paragraph of paragraph 7 of Annex IVa 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 paragraph 7 of Annex IVa is guilty of an offence.

(3) The competent authority for the purpose of the second indent of the third sub-paragraph of paragraph 7 of Annex IVa is the Scottish Ministers.

(4) A relevant fishing boat or a foreign fishing boat 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 IVa shall not simultaneously carry on board regulated gear falling within any of the other groupings of fishing gear specified in paragraph 4 of Annex IVa.

(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 10 of Annex IVa where either the donor or the recipient is, or both are, a relevant fishing boat, is permitted subject to the conditions specified in paragraph 10(a) to (d) of Annex IVa, to the extent specified in a notification of transfer sent to the Scottish Ministers.

(2) A person who knowingly or recklessly makes a statement in a notification under paragraph (1) which is false in a material particular is guilty of an offence.

(3) 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 of cod of 2 tonnes or more 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.