
STATUTORY INSTRUMENTS

2005 No. 393

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

PART 4

ENFORCEMENT

Penalties and defence

23.—(1) A person guilty of an offence under Part 2 or Part 3 of this Order or under any equivalent provision shall be liable—

- (a) on summary conviction to a fine not exceeding £50,000; and
- (b) on conviction on indictment to a fine.

(2) The court by or before which a person is convicted of an offence under article 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20 or 21 of this Order or under any equivalent provision may, subject to paragraph (4), also order forfeiture of:

- (a) any fish in respect of which the offence was committed; and
- (b) except in the case of an offence under article 7 or 17 or any equivalent provision, any fishing gear used in the course of, or in activities leading to, the commission of the offence.

(3) Any person found guilty of an offence under article 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20 or 21 of this Order or under any equivalent provision shall, subject to paragraph (4), also be liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.

(4) A person shall not be liable to a fine under paragraph (3) in respect of such an offence if, under paragraph (2), the court orders the forfeiture of the fish in respect of which that offence was committed; and where a fine is imposed under paragraph (3) in respect of any offence, the court shall not have the power under paragraph (2) to order forfeiture of the fish in respect of the offence was committed.

(5) In any proceedings for an offence under article 4(1)(b) or 14(1)(b), it shall be a defence for a person to show that the number of days absent 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's fishing boat under article 6 or 16 respectively and that he did not know and had no reasonable cause to suspect that the donor was not entitled to transfer the days.

(6) References in this article to fish in respect of which an offence was committed include fish caught at any time in the period during which the offence was committed.

Recovery of fines

24.—(1) Where a fine is imposed by a magistrates' court on a person in charge of a fishing boat who is convicted by the court of an offence under this Order or any equivalent provision, the court may—

- (a) issue a warrant of distress against the boat involved in the commission of the offence and its fishing gear and catch and any property of the person convicted for the purpose of levying the amount of the fine; and
- (b) order the boat and its gear and catch to be detained for a period not exceeding three months from the date of conviction or until the fine is paid or the amount of the fine is levied in pursuance of any such warrant, whichever occurs first.

(2) Sections 77(1) and 78 of the Magistrates Courts Act 1980(1) (postponement of issue of, and defects in, warrants of distress) shall apply to a warrant of distress issued under this article as they apply to a warrant of distress issued under Part III of that Act.

(3) Where, in relation to a fine in respect of an offence under this Order or any equivalent provision, an order under Article 95 of the Magistrate's Courts (Northern Ireland) Order 1981(2) or section 222 of the Criminal Procedure (Scotland) Act 1995(3) (both of which deal with transfer of fines from one jurisdiction to another) specifies a petty sessions area in England, this article shall apply as if the fine were imposed by a court within the petty sessions area.

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

25.—(1) For the purpose of enforcing Part 2 and Part 3 of this Order or any equivalent provisions, or to operate or facilitate the operation of any monitoring deriving from Article 16 of Regulation 423/04 or point 21 of Annex IVc, any British sea-fishery officer may exercise the powers conferred by this article in relation to—

- (a) any relevant British fishing boat wherever it may be; or
- (b) any other fishing boat which is within relevant British fishery limits.

(2) He 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) He 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 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 examination;
- (b) may require any person on board the boat to produce any document relating to the boat, to any fishing operations or other operations ancillary thereto or to the persons on board which is in his custody or possession;
- (c) for the purpose of ascertaining whether an offence under any of those articles or any equivalent provision has been committed, 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 an offence under any of those articles or any equivalent provision has been committed, may seize and detain

(1) 1980 c. 43. Section 78 was amended by the Criminal Justice Act 1982 (c. 48), sections 37 and 46, and section 90 was amended by the Criminal Justice and Public Order Act 1994 (c. 33), section 47(2).

(2) S.I.1981/1675 (NI 26).

(3) 1995 c. 46.

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) above 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) Where it appears to a British sea-fishery officer that an offence under article 3, 4, 5, 8, 11, 12, 13, 14, 15, 18, 21 or 22, or under any equivalent provision, has at any time been committed in respect of a fishing boat, he may—

- (a) require the master of the boat to take, or himself take, the boat and 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 port;

and where such an officer detains or requires the detention of the boat he shall serve on the master a notice in writing stating that the boat is (or is required to be) detained until the 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 on land

26.—(1) For the purpose of enforcing Part 2 and Part 3 of this Order or any equivalent provisions, or to operate or facilitate the operation of any monitoring deriving from Article 16 of Regulation 423/04 or point 21 of Annex IVc, any British sea-fishery officer may—

- (a) enter and inspect at any reasonable time any premises used for carrying on any business in connection with the operation of fishing boats or activities connected therewith or ancillary thereto or with the treatment, storage or sale of fish;
- (b) take with him such other persons as appear to him to be necessary and any equipment or materials;
- (c) examine any fish on the premises and require persons on the premises to do anything which appears to him to be necessary for facilitating the examination;
- (d) carry out at the premises such other inspections or tests as may reasonably be necessary;
- (e) require any person not to remove or cause to be removed any fish from the premises for such a period as may be reasonably necessary for the purposes of establishing whether an offence under any of those articles or any equivalent provision has at any time been committed;
- (f) require any person on the premises to produce any documents which are in his custody or possession relating to the catching, landing, transportation, trans-shipment, sale or disposal of any fish or to the entry to, or exit from, any port or harbour by any fishing boat;
- (g) for the purpose of ascertaining whether any person on the premises has committed an offence under any of those articles or any equivalent provision, search the premises for any such document and require any person on the premises to do anything which appears to him to be necessary for facilitating the search;
- (h) inspect and take copies of any such document produced to him or found on the premises;
- (i) require any appropriate or responsible person to render any such document on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away; and
- (j) if he has a reason to suspect that an offence under any of those articles or any equivalent provision has been committed, seize and detain any such document produced to him or found on the premises for the purpose of enabling the document to be used as evidence in proceedings for the offence.

(2) The provisions of paragraph (1) shall also apply in relation to any land used in connection with any of the activities described in paragraph (1)(a), or in respect of any vehicle which a British sea-

fishery officer has reasonable cause to believe is being used to transport fish or fisheries products, as they apply in relation to premises and, in the case of a vehicle, shall include power to require the vehicle to stop at any time and, if necessary, direct the vehicle to some other place to facilitate the inspection.

- (3) If a justice of the peace on sworn information in writing is satisfied—
- (a) that there is reasonable ground to believe that any documents or other items which a British sea-fishery officer has power under this article to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under any of those articles or any equivalent provision; and
 - (b) either—
 - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant has been given to the occupier; or
 - (ii) that an application for admission or the giving of such notice would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his return;

the justice may by warrant signed by him, and valid for one month, authorise a British sea-fishery officer to enter the premises, if need be by reasonable force, and take with him such persons as appear to him to be necessary.

Powers of British sea-fishery officers to seize fish and fishing gear

- 27.—(1) This article applies—
- (a) in England,
 - (b) to any relevant British fishing boat wherever it may be, and
 - (c) to any other British or any foreign fishing boat which is within relevant British fishery limits.
- (2) Where this article applies, any 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 an offence has been committed; and
 - (b) any fishing gear which he has reasonable grounds to suspect has been used in the course of, or in activities leading to, the commission of an offence,

under article 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 17, 18, 19, 20 or 21 or under any equivalent provision.

Protection of British sea-fishery officers

28. A British sea-fishery officer or a person assisting him by virtue of article 25(2) or 26(1)(b) or authorisation under article 26(3), 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 25 to 27 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 British sea-fishery officers

- 29.—(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 25 and 26;

- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) assaults a person who is exercising any of the powers conferred on him by articles 25 to 27 or intentionally obstructs him in the exercise of any of those powers,

is guilty of an offence.

- (2) A person guilty of an offence under paragraph (1) is 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

30.—(1) Where any offence under Part 2 or Part 3 of this Order or any equivalent provision committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where any offence under Part 2 or Part 3 of this Order or any equivalent provision 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 offence under Part 2 or Part 3 of this Order or any equivalent provision 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

- 31.**—(1) Any—
- (a) logbook kept under Article 6, 17(2) or 28c;
 - (b) declaration submitted under Article 8(1), 17(2) or 28f;
 - (c) effort report completed under Article 19b and 19c;
 - (d) document drawn up under Article 9, 11, 12 or 13; or
 - (e) document containing required information received by a fisheries monitoring centre established under Article 3(7),

of Regulation 2847/93 shall, in any proceedings for an offence under this Order or any equivalent provision, be evidence of the matters stated therein and so shall any additional entry in a logbook made pursuant to this Order or any equivalent provision.

- (2) For the purpose of paragraph (1), “required information” means—
 - (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 Regulation 2847/93.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
