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STATUTORY INSTRUMENTS

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**2008 No. 984**

**SEA FISHERIES, ENGLAND AND WALES**

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

<i>Made</i>	- - - -	<i>3rd April 2008</i>
<i>Laid before Parliament</i>		<i>7th April 2008</i>
<i>Coming into force</i>	- -	<i>28th April 2008</i>

The Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(1), and now vested in them(2), make the following Order.

**Citation and commencement**

1. This Order may be cited as the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 and comes into force on 28th April 2008.

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- (1) 1981 c. 29 (“the 1981 Act”). See section 30(3) for the definitions of “enforceable Community restriction”, “enforceable Community obligation” and “the Ministers”, as modified by article 4 of, and paragraph 68(5) of Schedule 2 to, the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820).
- (2) The function of the Ministers under section 30(2) of the 1981 Act in relation to Wales was transferred to the National Assembly for Wales and then transferred from that body to the Welsh Ministers: see article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). Despite its transfer, that function remains exercisable by the Ministers in relation to Wales for the purpose of implementing Community obligations and connected purposes: see section 58 of, and paragraph 5 of Schedule 3 to, the Government of Wales Act 2006, as read with paragraph 26(1) of Schedule 11.
- The function under section 30(2) exercisable in relation to British fishing boats (other than Scottish ones) within the Scottish zone and Scottish fishing boats outside that zone but within British fishery limits remains exercisable by the Ministers despite being transferred to the Scottish Ministers under section 53(1) of the Scotland Act 1998 (c. 46): see article 3(1) of, and Schedule 1 to, the Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592).
- The function under section 30(2) exercisable in relation to the Northern Ireland zone and Northern Ireland fishing boats outside that zone remains exercisable by the Ministers despite being transferred to the Department of Agriculture and Rural Development in Northern Ireland under article 3(2) of, and paragraph 3 of Schedule 2 to, the Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790): see paragraph 3(2) of Schedule 2 to that Order.
- Any remaining functions of the Secretaries of State for Scotland and Wales under section 30(2) the 1981 Act in relation to England have been transferred to the Minister of Agriculture, Fisheries and Food: see article 2(1) of the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812). The function of that Minister and the Secretary of State concerned with sea fishing in Northern Ireland acting jointly under section 30(2) has been transferred to the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland acting jointly: see article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).

**Extent and application**

- 2.—(1) This Order extends to England and Wales.
- (2) This Order applies—
- (a) in England and Wales;
  - (b) in relation to English fishing boats and Welsh fishing boats wherever they are; and
  - (c) in relation to other fishing boats within British fishery limits except where they are in—
    - (i) the Scottish zone (as defined in section 126(1) of the Scotland Act 1998<sup>(3)</sup>);
    - (ii) the Northern Ireland zone (as defined in section 98 of the Northern Ireland Act 1998<sup>(4)</sup>); or
    - (iii) the territorial sea adjacent to the Isle of Man, Jersey<sup>(5)</sup> or Guernsey.

**Interpretation**

- 3.—(1) In this Order—
- “authorised officer” means a person—
- (a) who by virtue of section 7 of the Sea Fisheries Act 1968<sup>(6)</sup> is a British sea-fishery officer, or
  - (b) who has been appointed a fishery officer under section 10 of the Sea Fisheries Regulation Act 1966<sup>(7)</sup>;
- “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—
- (a) section 30(1)(a) of the Fisheries Act 1981<sup>(8)</sup> (offences relating to enforceable Community restrictions relating to sea fishing);
  - (b) 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);
  - (c) the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005<sup>(9)</sup>;
  - (d) the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006<sup>(10)</sup>; or
  - (e) the Registration of Fish Sellers and Buyers and Designation of Auction Sites (Scotland) Regulations 2005<sup>(11)</sup>;

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(3) 1998 c. 46.

(4) 1998 c. 47.

(5) See section 1(5) of the Territorial Sea Act 1987 (c. 49) (as extended to Jersey by S.I. 1997/278, as amended by S.I. 2002/250, and to the Isle of Man by S.I. 1991/1722).

(6) 1968 c. 77.

(7) 1966 c. 38.

(8) 1981 c. 29.

(9) S.I. 2005/1605.

(10) S.I. 2006/1495 (W.145).

(11) S.S.I. 2005/286, as amended by S.S.I. 2005/438. Proceedings for an offence under S.S.I. 2005/286 may be taken, and for all incidental purposes the offence may be treated as having been committed, in England or Wales by virtue of regulation 1(3) of that instrument.

“Wales” has the same meaning as in section 158(1) of the Government of Wales Act 2006<sup>(12)</sup>.

(2) In this Order, a fishing boat is—

(a) an English one if it is—

(i) registered, with its specified port being in England, or

(ii) owned wholly by persons qualified to own British ships for the purposes of Part II of the Merchant Shipping Act 1995<sup>(13)</sup>, other than a Northern Ireland, Scottish or Welsh fishing boat within the meaning of this paragraph,

(b) a Northern Ireland one if it is registered, with its specified port being in Northern Ireland,

(c) a Scottish one if it is registered, with its specified port being in Scotland,

(d) a Welsh one if it is registered, with its specified port being in Wales,

and in this paragraph “registered” means registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and “specified port” means the port specified in the entry in that register as the one to which the boat is to be treated as belonging.

#### **Issue of penalty notice for penalty offence**

4.—(1) An authorised 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 £4000.

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

#### **Restriction on proceedings for penalty offence**

5.—(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 10, and

(b) does not apply if the penalty notice is withdrawn in accordance with article 9.

#### **Payment of penalty**

6.—(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) It may not be made in cash.

#### **Payment of one penalty treated as payment of connected penalties**

7.—(1) Where a person (“A”) pays the penalty in accordance with article 6, an authorised officer must give a notice (a “notice of deemed payment”) to all other persons who have been issued with a connected penalty notice.

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<sup>(12)</sup> 2006 c. 32.

<sup>(13)</sup> 1995 c. 21.

(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**

**8.—**(1) In any proceedings a certificate purporting to be signed by or on behalf of the Secretary of State 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.

(2) In relation to Wales, that certificate may purport to be signed by or on behalf of the Welsh Ministers instead.

#### **Withdrawal of penalty notices**

**9.—**(1) A penalty notice may be withdrawn by an authorised 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) If 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**

**10.—**(1) This article applies in relation to a penalty notice issued to the master, owner or charterer of a fishing boat other than an English, Northern Ireland, Scottish or Welsh fishing boat.

(2) Where a person in receipt of a penalty notice has paid the penalty, that person may give written notice requesting that proceedings be brought for the penalty offence to which the penalty notice relates.

(3) Such 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 is to 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 is to 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 an authorised 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.

27th March 2008

3rd April 2008

*Jonathan Shaw*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs  
*Shaun Woodward*  
Secretary of State for Northern Ireland  
Northern Ireland Office

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## EXPLANATORY NOTE

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

This Order creates a scheme for the issuing and payment of penalty notices for certain fisheries offences.

It provides that an authorised person who has reason to believe that a person has committed a penalty offence (defined in article 3) may issue a penalty notice not exceeding £4000 (article 4). Article 5 provides that 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. If a person does not pay the penalty within this time, these restrictions cease to apply.

Articles 6 and 7 deal with the method and effect of paying a penalty, including provision that, where penalty notices have been issued to different persons for the same offence arising out of the same set of circumstances, payment by one person is treated as being payment by another, in the absence of objection from that other.

A master, owner or charterer of a fishing boat that is from outside the United Kingdom and who has paid a penalty may request to be tried for the offence (article 10), in which case 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 must be applied towards paying any fine imposed.

A Regulatory Impact Assessment in relation to this Order has been prepared and placed in the library of each House of Parliament. Copies can be obtained from the Department for Environment, Food and Rural Affairs, Fishing Industry Management Division, Nobel House, 17 Smith Square, London SW1P 3JR.