

2006 No. 1549

SEA FISHERIES, ENGLAND

The Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls) (England) Order 2006

<i>Made</i> - - - -	<i>13th June 2006</i>
<i>Laid before Parliament</i>	<i>16th June 2006</i>
<i>Coming into force</i> - -	<i>10th July 2006</i>

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

Citation and commencement

1. This Order may be cited as the Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls) (England) Order 2006 and comes into force on 10th July 2006.

Extent and application

2.—(1) This Order extends to England and Wales.

(2) This Order applies—

- (a) in England;
- (b) in relation to English fishing boats and Welsh fishing boats wherever they are, except when they are within the territorial sea; and
- (c) in relation to other fishing boats within British fishery limits.

(a) 1981 c.29. See section 30(3) for the definitions of “enforceable Community restriction”, “enforceable Community obligation” and “the Ministers”, as modified by Schedule 2, paragraph 68(5) of the Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999 (S.I. 1999/1820).

(b) Article 3(1) of and Schedule 1 to the Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592) provide for the functions exercisable under section 30(2) of the 1981 Act to be exercised by the Ministers, concurrently with Scottish Ministers, in relation to: British fishing boats (other than Scottish ones) within the Scottish zone and Scottish fishing boats within British fishery limits but outside the Scottish zone. By virtue of article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under section 30(2) of the 1981 Act were transferred to the National Assembly in so far as exercisable in relation to Wales (defined in section 155(1) of the Government of Wales Act 1998 (c.38) as including “the sea adjacent to Wales out as far as the seaward boundary of the territorial sea”); in respect of waters beyond Wales these functions remain exercisable by the Ministers. By virtue of article 2(1) of the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812) any remaining functions of the Secretaries of State for Scotland and Wales under section 30(2) of the 1981 Act were transferred to the Minister of Agriculture, Fisheries and Food. The functions of the Minister of Agriculture, Fisheries and Food and one or more named Secretaries of State (however described) acting jointly were transferred to the Secretary of State for Environment, Food and Rural Affairs and one or more Secretaries of State acting jointly by virtue of article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794). The Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790) Schedule 2 paragraph 3, provides that the function in section 30(2) of the 1981 Act is to be exercised concurrently by the Department for Agriculture and Rural Development insofar as it relates to sea fishing within the Northern Ireland zone and to Northern Ireland fishing boats outside that zone.

(3) For the purposes of this article—

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

Interpretation

3.—(1) In this Order—

“the Regulation” means Commission Regulation (EC) No 356/2005^(b) laying down detailed rules for the marking and identification of passive fishing gear and beam trawls;

“relevant offence” means—

- (a) an offence under article 4 of this Order; or
- (b) an offence under any provision in any other Order made for the purposes of implementing the Regulation in relation to any part of the United Kingdom, which has equivalent effect to this Order, proceedings in respect of which may be taken in England by virtue of section 30(2)(A) of the Fisheries Act 1981^(c).

(2) In this Order, the term “British fishery limits”^(d) does not include—

- (a) the Scottish zone;
- (b) the Northern Ireland zone;
- (c) the territorial sea.

(3) In this article—

- (a) “Northern Ireland zone” has the same meaning as in section 98 of the Northern Ireland Act 1998^(e);
- (b) “Scottish zone” has the same meaning as in section 126(1) of the Scotland Act 1998^(f); and
- (c) “territorial sea” has the same meaning as in section 1 of the Territorial Sea Act 1987^(g).

(4) Expressions in this Order which are not defined in the Order and which appear in the Regulation have the same meaning in this Order as they have for the purposes of the Regulation.

Offences

4. Where there is a contravention of, or failure to comply with, any of those Articles of the Regulation which are listed in column 1 of the Schedule, the master, the owner, the charterer (if any) of the boat in relation to which that contravention or failure occurred shall each be guilty of an offence.

Penalties

5.—(1) Any person found guilty of a relevant offence, shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum;
- (b) on conviction, on indictment, to a fine.

(a) 1995 c.21.

(b) OJ L56, 02.03.2005, p.8, as amended by Regulation (EC) No 1805/2005 OJ L290, 04.11.2005, p.12.

(c) Subsection 30(2A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999, SI 1999/1820.

(d) As defined by section 1 of the Fishery Limits Act 1976 (c.86).

(e) 1998 c.47.

(f) 1999 c.46.

(g) 1987 c.49

- (2) The court by or before which a person is convicted of any relevant offence may also—
- (a) order the forfeiture of any fish caught at any time in the period during which the offence was committed; or
 - (b) impose a fine not exceeding the value of the fish caught at any time in the period during which the offence was committed; and
 - (c) order the forfeiture of any fishing gear used in the course of, or in activities leading to, the commission of the offence.

Recovery of fines

6.—(1) Where a fine is imposed by a magistrates' court on a person convicted by the court of a relevant offence the court may—

- (a) issue a warrant of distress against the boat involved in the commission of the offence and its gear and catch and any property of the person convicted for the purpose of levying the amount of the fine; and
- (b) order that boat and its gear and catch to be detained for a period not exceeding three months from the date of the 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^(a) (postponement of issue of, and defects in, warrants of distress) shall apply to a warrant of distress issued under this article in England 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 a relevant offence, an order under Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981^(b) or section 222 of the Criminal Procedure (Scotland) Act 1995^(c) (both of which deal with transfer of fines from one jurisdiction to another) specifies a local justice area in England, this article shall apply as if the fine were imposed by a court within that local justice area.

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

7.—(1) For the purpose of enforcement in relation to a relevant offence, any British sea-fishery officer may exercise the powers conferred by paragraphs (2) to (4) in relation to any boat to which this Order applies.

(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 its fishing operations or other operations ancillary thereto or to the persons on board which is in that person's custody or possession;
- (c) for the purpose of ascertaining whether a relevant offence 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;

^(a) 1980 c.43; section 78 was amended by sections 37 and 46 of the Criminal Justice Act 1982 (c.48).
^(b) S.I. 1981/1675 (NI 26).
^(c) 1995 c.46.

- (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 a relevant offence has been committed, may seize and detain 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) 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 a relevant offence has at any time been committed in relation to a fishing boat, he may—

- (a) require the master of the boat in relation to which the offence took place to take, or may himself take, the boat and its 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 the port.

(5) Where a British sea-fishery officer detains or requires the detention of a boat he shall serve on the master a notice in writing stating that the boat will be 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 to seize fish and fishing gear

8. A British sea-fishery officer may seize—

- (a) any fish, including any receptacle containing those fish, caught at the time of a relevant offence which he suspects has been committed; and
- (b) any fishing gear in respect of which he has reasonable grounds to suspect a relevant offence has been committed.

Protection of officers

9. A British sea-fishery officer or a person assisting him by virtue of article 7(2) shall not be liable in any civil or criminal proceedings for anything done or omitted to be done in the purported exercise of the powers conferred on him by that article 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 officers

10.—(1) Any person shall be guilty of an offence if he—

- (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 7 or 8;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) assaults an officer who is exercising any of the powers conferred on him by articles 7 or 8, or a person assisting him in that regard, or intentionally obstructs any such officer in the exercise of those powers, or any person assisting him in that regard.

(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

11.—(1) If an offence under this Order committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of the body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(3) Where any relevant offence 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.

(4) Where any relevant offence committed by an unincorporated association 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.

(5) “Officer” in relation to a body corporate, means a director, a member of the committee of management, chief executive, manager, secretary, or other similar officer of the body, or a person purporting to act in any such capacity.

Admissibility in evidence of logbooks and other documents

12.—(1) Any—

- (a) logbook kept under Articles 6, 17.2 or 28c;
- (b) declaration submitted under Article 8.1,9, 12, 17.2 or 28f;
- (c) effort report completed under Articles 19b and 19c;
- (d) document drawn up under Article 13;
- (e) document containing required information received by a fisheries monitoring centre established under Article 3.7,

of Council Regulation 2847/93(a) shall, in any proceedings in England for a relevant offence, be evidence of the matters stated in the logbook, declaration, effort report or document, as the case may be.

(2) For the purpose of paragraph (1) above, “required information” means information as communicated via a satellite-based vessel monitoring system established under Article 3.1 of Council Regulation 2847/93 as to—

- (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.

(a) OJ No. L261, 20.10.93, p.1, as amended by Council Regulation (EC) No 2870/95, Council Decision 95/528/EC of 5 December 1995, Council Regulation (EC) No 2489/96 of 20 December 1996, Council Regulation (EC) No 686/97 of 14 April 1997, Council Regulation (EC) No 2205/97 of 30 October 1997, Council Regulation (EC) No 2635/97 of 18 December 1997, Council Regulation (EC) No 2846/98 of 17 December 1998, Council Regulation (EC) No 806/2003 of 14 April 2003 and Council Regulation 1954/2003 of 4 November 2003.

13th June 2006

Ben Bradshaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

13th June 2006

David Cairns
Parliamentary Under Secretary of State
Northern Ireland Office

SCHEDULE

Article 4

REQUIREMENTS AS TO DEPLOYMENT, MARKING AND IDENTIFICATION OF PASSIVE FISHING GEAR, BUOYS AND BEAM TRAWLS, CONTRAVENTION OF WHICH CONSTITUTES AN OFFENCE

<i>Column 1</i>	<i>Column 2</i>
<i>Regulation Provision</i>	<i>Subject Matter</i>
1. Article 4	Prohibition on use of passive gear, buoys, and beam trawls not marked and identifiable in accordance with the provisions of the Regulation.
2. Article 5	Requirement to display clearly, on each assembled beam or the shoes of each such beam carried on board or used for fishing, the external registration letters and numbers of the vessel.
3. Articles 6, 7 and 8	Requirement to mark, identify and display, on each passive gear carried on board or used for fishing, the external registration letters and numbers of the vessel to which it belongs in accordance with the specifications in the Regulation.
4. Articles 9, 10, 11, 12, 13 and 14	Requirements as to the specifications, display, rigging, fixing and deployment of cords and buoys as specified in Chapter IV and the Annex of the Regulation.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the enforcement of Community restrictions and other obligations relating to the marking and identification of passive gear and beam trawls deployed by fishing vessels as set out in Commission Regulation (EC) No. 356/2005, of 2 March 2005, p.8, OJ L56, as amended. In the context of this Order passive gear means longlines, gillnets, entangling nets, trammel nets, drifting gillnets and any associated anchoring, floating or navigational gear.

This Order applies to English and Welsh fishing boats wherever they are, except within the territorial sea, and to all other boats in British fishery limits. British fishery limits are defined as excluding the Scottish zone, the Northern Irish zone and the territorial sea (article 3).

This Order comes into force on 10th July 2006.

Article 4 of the Order creates offences in respect of breaches of those articles of the Regulation referred to in column 1 of the Schedule to the Order. Penalties are specified for such offences in article 5. Provision is made for the recovery of fines in article 6.

The Order confers powers of enforcement on British sea-fishery officers (articles 7 and 8). Article 9 makes provision for the protection of British sea fishery officers and their assistants and article 10 provides for offences and penalties should they be obstructed in the course of their investigations under this Order. Article 11 makes provision in respect of offences by bodies corporate, partnerships and unincorporated associations. Article 12 allows for the admissibility in evidence of records compiled for the purposes of Council Regulation (EC) No. 2847/93.

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 Defra, Fishing Industry Management Division, Area 7E, 3-8 Whitehall Place, London SW1A 2HH.

£3.00

© Crown copyright 2006

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0811 6/2006 160811T 19585