

2011 No. 758

SEA FISHERIES, ENGLAND

The Sea Fishing (Penalty Notices) (England) Order 2011

Made - - - - *10th March 2011*

Laid before Parliament *15th March 2011*

Coming into force - - *6th April 2011*

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) and (2ZA) of the Fisheries Act 1981(a) now vested in them(b) and the Secretary of State in exercise of powers conferred by sections 294 and 316(1)(b) of the Marine and Coastal Access Act 2009(c), make the following Order.

Title, commencement and application

1.—(1) This Order may be cited as the Sea Fishing (Penalty Notices) (England) Order 2011 and comes into force on 6th April 2011.

(2) This Order applies—

- (a) in relation to England;
- (b) in relation to English or Welsh fishing boats wherever they may be except where they are in Wales or the Welsh zone; and
- (c) in relation to other fishing boats within British fishery limits except where they are in—
 - (i) the Northern Ireland zone;
 - (ii) the Scottish zone;

(a) 1981 c. 29; section 30(2ZA) was inserted by section 293(3) of the Marine and Coastal Access Act 2009 (c.23).

(b) The function of the Ministers under section 30(2) of the Fisheries Act 1981 in relation to Wales was transferred to the National Assembly for Wales and then transferred from that body to 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). Insofar as that function was exercisable in relation to the Welsh zone, it has been transferred to Welsh Ministers by article 4(1)(e) of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760). 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) of the Fisheries Act 1981 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).

(c) 2009 c. 23.

- (iii) Wales or the Welsh zone; or
- (iv) the territorial sea adjacent to the Isle of Man, Jersey or Guernsey.

Interpretation

2.—(1) In this Order—

“authorised officer” means—

- (a) a marine enforcement officer within the meaning of section 235(1)(a) of the Marine and Coastal Access Act 2009; or
- (b) an inshore fisheries and conservation officer within the meaning of section 165(1) of the Marine and Coastal Access Act 2009;

“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) listed in the Schedule.

(2) The expressions “Northern Ireland zone”, “Scottish zone” and “Welsh zone” have the meaning they bear in section 322(1) of the Marine and Coastal Access Act 2009.

Issue of penalty notice

3.—(1) Where an authorised officer has reason to believe that a person has committed a penalty offence, the authorised officer may issue that person with a penalty notice for an amount not exceeding £10,000.

(2) In determining the penalty, an authorised officer must have regard to any guidance given by the MMO on matters to be taken into account when making such a determination.

(3) 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.

Content of penalty notice

4. A penalty notice issued under article 3 must—

- (a) give particulars of the penalty offence;
- (b) state the amount of the penalty;
- (c) state the period during which, by virtue of article 5, proceedings will not be taken for the offence;
- (d) state the person to whom, and the address at which, the penalty may be paid; and
- (e) state that payment must not be in cash.

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.

(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 the penalty notice issued to, and paid by, A 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, 5 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. 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.

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 such 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 a 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.

Transitional provision

11.—(1) This article applies where—

- (a) a person has been issued with a penalty notice under the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008(a); and
- (b) the penalty has not been paid in accordance with article 6, nor has the penalty notice been withdrawn under article 9, of that Order.

(2) The penalty notice is deemed to have been issued under this Order.

Revocation

12. The Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 is revoked, except in so far as it applies in Wales or to the Welsh zone.

10th March 2011

Richard Benyon
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

10th March 2011

Hugo Swire
Minister of State for Northern Ireland
Northern Ireland Office

(a) S.I. 2008/984.

Offences relating to sea fishing

1. An offence under section 26(3) of the Sea Fisheries Act 1868(a) (registered fishing boats and foreign fishing boats within British waters to have official papers).
2. In the Sea Fisheries (Shellfish) Act 1967(b), an offence under—
 - (a) section 3 (effect of grant of right of regulating a fishery);
 - (b) section 7 (protection of fisheries);
 - (c) section 14 (supplementary provisions as to orders under ss 12 and 13);
 - (d) section 16 (oysters not to be sold between certain dates);
 - (e) section 17 (taking and sale of certain crabs and lobsters prohibited).
3. In the Sea Fish (Conservation) Act 1967(c), an offence under—
 - (a) section 1 (size limits, etc for fish);
 - (b) section 2 (size limits for use in course of any business);
 - (c) section 3 (regulation of nets and other fishing gear);
 - (d) section 4 (licensing of fishing boats);
 - (e) section 4A (licensing of vessels receiving trans-shipped fish);
 - (f) section 5 (power to restrict fishing for sea fish);
 - (g) section 6 (prohibition on landing of sea fish caught in certain areas);
 - (h) section 8 (regulation of landing of foreign-caught sea fish).
4. An offence under section 5 of the Sea Fisheries Act 1968(d) (regulation of conduct of fishing operations).
5. An offence under section 2 of the Fishery Limits Act 1976(e) (access to British fisheries).
6. An offence under section 30 of the Fisheries Act 1981(enforcement of Community rules).
7. An offence under section 1 of the British Fishing Boats Act 1983(f) (restrictions on fishing etc by British boats).
8. An offence under section 163 of the Marine and Coastal Access Act 2009 (offences).

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- (a) 1868 c.45; section 26 was substituted by the Merchant Shipping Act 1995 (c. 21), section 314(2) and Schedule 13, paragraph 2.
 - (b) 1967 c. 83; sections 3, 7 and 17 were amended by the Marine and Coastal Access Act 2009, sections 204, 210, 212 and 213.
 - (c) 1967 c. 84; section 1 was substituted by section 19 of the Fisheries Act 1981 (c. 29) and further amended by section 314(2) of, and paragraph 38 of Schedule 13 to, the Merchant Shipping Act 1995, section 194 of, and paragraph 1 of Schedule 15 to, the Marine and Coastal Access Act 2009 and paragraph 43 of Schedule 2 to S.I. 1999/1820. Section 3 was amended by section 195 of, and paragraph 7 of Schedule 14 and paragraph 2 of Schedule 15 to, the Marine and Coastal Access Act 2009 and paragraph 43 of Schedule 2 to S.I. 1999/1820. Section 4 was amended by section 20 of the Fisheries Act 1981, section 1 of the Sea Fish (Conservation) Act 1992 (c.60), sections 4, 196 and 197 of the Marine and Coastal Access Act 2009 and paragraph 1 of Schedule 2 to S.I. 1999/1820. Section 4A was inserted by section 21 of the Fisheries Act 1981 and further amended by section 3 of the Sea Fish (Conservation) Act 1992 and paragraph 43 of Schedule 2 to S.I. 1999/1820. Section 5 was substituted by section 22 of the Fisheries Act 1981 and further amended by section 198 of, and paragraph 3 of Schedule 15 to, the Marine and Coastal Access Act 2009 and paragraph 43 of Schedule 2 to S.I. 1999/1820. Section 6 was amended by section 23 of the Fisheries Act 1981 and paragraph 43 of Schedule 2 to S.I. 1999/1820. Section 8 was amended by paragraph 43 of Schedule 2 to S.I. 1999/1820.
 - (d) 1968 c. 77; section 5 was amended by section 4 of, and paragraph 3 of Schedule 1 and paragraph 17 of Schedule 15 to, the Fishery Limits Act 1976, section 17 of and Schedule 4 to the Criminal Justice Act 1999 (c.53) and paragraph 48 of Schedule 2 to S.I. 1999/1820.
 - (e) 1976 c.86; section 2 was amended by Schedule 5 to the Fisheries Act 1981 and paragraph 57 of Schedule 2 to S.I. 1990/1820.
 - (f) 1983 c.8; section 1 was amended by paragraph 70 of Schedule 2 to S.I. 1999/1820.

9. An offence under regulation 6 of the Sea Fishing (Days in Port) Regulations 1992(a).

10. An offence under regulations 3 to 11 of the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005(b).

11. An offence under article 9 of the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009(c).

12. In this Schedule, reference to a section includes subordinate legislation made under that section.

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 offences relating to sea fishing. It revokes the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 except in so far as it applies to Wales or to Welsh fishing boats and replaces it with a scheme that applies to offences created under domestic legislation as well as those arising as a result of a breach of an enforceable community restriction or other obligation.

It provides for the issuing of a penalty notice (article 3), the content of such a notice (article 4), and the effect and method of paying a penalty (articles 5 and 6). It also makes provision for penalty notices to be issued to different persons for the same offence arising out of the same set of circumstances whereby payment by one person is treated as being payment by another, in the absence of objection from the other (article 7). Provision is also made for the withdrawal of a penalty notice (article 9).

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.

An impact assessment has been prepared and placed in the library of each House of Parliament. It is available on the Defra website at www.defra.gov.uk or from the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR.

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(a) S.I. 1992/130, amended by S.I. 1992/670; there are other amending instruments but none is relevant.
(b) S.I. 2005/1605, to which there are amendments not relevant to this Order.
(c) S.I. 2009/3391.

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The Sea Fishing (Penalty Notices) (England) Order 2011

£5.75