

2011 No. 70

SEA FISHERIES

**The Sea Fishing (Licences and Notices) (Scotland)
Regulations 2011**

Made - - - - *9th February 2011*
Laid before the Scottish Parliament *11th February 2011*
Coming into force - - *1st April 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 4B of the Sea Fish (Conservation) Act 1967(a) and all other powers enabling them to do so.

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Sea Fishing (Licences and Notices) (Scotland) Regulations 2011 and come into force on 1st April 2011.

(2) These Regulations extend to Scotland and the Scottish zone only and, insofar as they extend beyond Scotland and the Scottish zone, they do so only as a matter of Scots law.

(3) These Regulations apply to Scottish fishing boats wherever they may be.

Interpretation

2. In these Regulations—

“electronic communication” includes facsimile transmission and any method of transferring data by computer;

“licence” means a licence granted by the Scottish Ministers under either section 4 (licensing of fishing boats) or section 4A (licensing of vessels receiving trans-shipped fish) of the Sea Fish (Conservation) Act 1967(b) and includes a licence which contains a notice;

(a) 1967 c.84 (“the 1967 Act”). Section 4B was inserted by section 4 of the Sea Fish (Conservation) Act 1992 (c.60). Section 22(2)(a) of the 1967 Act, which contains a definition of “the Ministers” for the purposes of section 4B was amended by the Fisheries Act 1981 (c.29), sections 19(2)(d) and 45(b). The definition was modified in relation to Scotland by section 22A(12)(b) of the 1967 Act, as inserted by S.I. 1999/1820, Schedule 2, paragraph 43(13). The functions of the Secretary of State, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) Section 4 was substituted by the Fishery Limits Act 1976 (c.86), section 3 and amended by the Fisheries Act 1981 (c.29) (“the 1981 Act”), section 20; the Sea Fish (Conservation) Act 1992 (c.60) (“the 1992 Act”), section 1; the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43; and the Aquaculture and Fisheries (Scotland) Act 2007 (asp 12), Schedule 1, paragraph 3(a). At the date of making these Regulations, section 4 is to be modified by the Marine (Scotland) Act 2010 (asp 5), section 158(1), which applies the modification introduced by section 197 of the Marine and Coastal Access Act 2009 (c.23) – see the Marine (Scotland) Act 2010 (Commencement No. 2 and Transitional Provisions) Order 2011 (S.S.I. 2011/58) (c.8), article 2 which is to come into force on 24th February 2011. Those modifications are not relevant to these Regulations. Section 4A was inserted by the 1981 Act, section 21 and amended by the 1992 Act, section 3; S.I. 1999/1820, Schedule 2, paragraph 43; and by the Marine and Coastal Access Act 2009 (c.23), section 6(9) as read with section 323.

“newspaper” means such newspaper circulating within, or within any part of, Scotland which the Scottish Ministers think appropriate;

“nominee” means either—

(a) an individual resident in Scotland; or

(b) a body incorporated in a member State and having a place of business in Scotland, appointed by the master, owner or charterer of a Scottish fishing boat to receive, on any such person’s behalf, licences and notices communicated in accordance with these Regulations;

“notice” means any notice of variation, suspension or revocation of a licence, whether that licence was granted before or after the coming into force of these Regulations;

“Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995(a) and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging, and in respect of which the Scottish Ministers may grant or have granted a licence; and

“sea fishing licence” means a licence granted by the Scottish Ministers under section 4 of the Sea Fish (Conservation) Act 1967.

Communication of licences and notices

3.—(1) A licence is to be granted by the Scottish Ministers to the master, owner or charterer of a Scottish fishing boat by communicating it to that master, owner or charterer or a nominee (as the case may be)—

(a) by delivering it personally to the master, owner, charterer or nominee;

(b) by sending it to the master, owner, charterer or nominee by post at the address or place of business of any such person;

(c) by leaving it at the address or place of business of the master, owner or charterer, or in the hands of any person there; or

(d) by transmitting it to the master, owner or charterer by electronic communication.

(2) A notice is to be effected by—

(a) communicating it to a nominee, in a manner specified in paragraph (1)(a) or (b);

(b) communicating it to the master, owner or charterer of the Scottish fishing boat—

(i) by delivering it personally to the master, owner or charterer; or

(ii) by transmitting it to the master, owner or charterer by electronic communication; or

(c) publishing it—

(i) in a newspaper; or

(ii) on a website(b), the address of which is indicated on the sea fishing licence to which the notice relates.

(3) Where a notice effected by publication in accordance with paragraph (2)(c) is a notice to which paragraph (5) applies, it must either—

(a) provide that it applies to all sea fishing licences; or

(b) specify those sea fishing licences to which it relates by reference to species, area or method or any combination thereof,

but it will not require to specify the name or port letters and number, or the name of any master, owner or charterer or nominee (as the case may be), of any Scottish fishing boat.

(a) 1995 c.21.

(b) As of the date of making of these Regulations, the address of the website for the purposes of regulation 3(2)(c)(ii) is <http://www.scotland.gsi.gov.uk/Topics/marine/Sea-Fisheries/17681/licencevariations>. Any alteration to that address will be notified to the sea fishing licence holder or any nominee, as the case may be.

(4) Where a notice effected by publication in accordance with paragraph (2)(c) is not a notice to which paragraph (5) applies, it must specify the sea fishing licences to which it relates by reference to the name or port letters and number of any Scottish fishing boat in respect of which those licences were granted.

(5) This paragraph applies to a notice which varies, suspends or revokes—

- (a) all sea fishing licences; or
- (b) all sea fishing licences authorising fishing—
 - (i) for one or more specified description of sea fish;
 - (ii) in one or more specified areas;
 - (iii) by a specified method or methods; or
 - (iv) by reference to a combination of two or more of the matters referred to in heads (i) to (iii).

Delivery of licences and giving of notices

4.—(1) A licence or a notice communicated personally is to be treated as delivered or given immediately it is communicated.

(2) Subject to paragraph (5), a licence or a notice communicated by post is to be treated as delivered or given 48 hours after the end of the day on which it was posted.

(3) A licence or a notice communicated by leaving it at a nominee's address or place of business or in the hands of a person there, or by transmission by electronic communication, is to be treated as delivered or given 24 hours after the time of leaving or transmitting.

(4) A notice effected by publication in accordance with regulation 3(2)(c) is—

- (a) where it is published in a newspaper, to be treated as given at the end of the day on which it is published;
- (b) where it is published on a website, to be treated as given immediately it is published.

(5) Where a licence or a notice—

- (a) is communicated by post; and
- (b) is to be treated as delivered or given, in accordance with this regulation—
 - (i) on a Sunday;
 - (ii) on a bank holiday within the meaning of the Banking and Financial Dealings Act 1971(a); or
 - (iii) on a local holiday,

the licence or notice is to be treated as delivered or given at the end of the next day following which is not a bank holiday or a local holiday.

Time at which licences and notices to have effect

5. Subject to regulation 6—

- (a) a licence communicated in accordance with regulation 3(1), and a notice communicated in accordance with regulation 3(2)(b), has effect at the time it is treated as delivered or given in accordance with regulation 4;
- (b) a notice communicated in accordance with regulation 3(2)(a) has effect 24 hours after the time it is treated as given in accordance with regulation 4;
- (c) a notice communicated in accordance with regulation 3(2)(c)(i) has effect 48 hours after the time it is treated as given in accordance with regulation 4; and

(a) 1971 c.80, as relevantly amended by the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2), section 1.

- (d) a notice which is effected by publication in accordance with regulation 3(2)(c)(ii) has effect 24 hours after midnight on the day upon which the notice is treated as given under regulation 4(4)(b).

Special provision for certain licences and notices

6.—(1) A licence or a notice communicated by more than one of the methods specified in regulation 3 has effect at the earliest of the times corresponding to each such method specified in regulation 5.

(2) A licence or a notice, which purports on its face to have effect at a time later than that at which it is treated as having effect in accordance with regulation 5, has effect at the time shown on its face.

Revocation of the Sea Fishing (Licences and Notices) (Scotland) Regulations 1994

7. The Sea Fishing (Licences and Notices) Regulations 1994(a) are revoked.

Transitional provision

8. Notwithstanding the revocation of the Sea Fishing (Licences and Notices) Regulations 1994 under regulation 7, any licence granted or notice effected under those Regulations continues to have effect for the purposes of any investigation or legal proceedings relating to any acts or omissions which occurred before 1st April 2011 and which constitute an offence under the Sea Fish (Conservation) Act 1967(b).

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew's House,
Edinburgh
9th February 2011

(a) S.I. 1994/2813.
(b) 1967 c.84.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in accordance with section 4B of the Sea Fish (Conservation) Act 1967 (c.84) (“the 1967 Act”) for the manner in which a sea fishing licence under section 4 of that Act or a licence to receive trans-shipped fish under section 4A of that Act may be granted and in which a notice of variation, revocation or suspension of any such licence may be effected in accordance with section 4(9) or 4A(10), respectively, of the 1967 Act. The Regulations extend to Scotland and the Scottish zone and apply to Scottish fishing boats wherever they may be (regulation 1(3)).

Regulation 3(1) provides for the granting of a licence by the Scottish Ministers to the master, owner or charterer of a Scottish fishing boat by communicating it, by a method specified, to that person or to a person nominated by the master, owner or charterer to receive it (“a nominee”). Regulation 3(2) provides for the effecting of a notice by communicating it to a nominee or to the master, owner or charterer of the Scottish fishing boat. Regulation 3(3) to (5) provides for the effecting of notices of variation, suspension or revocation of all sea fishing licences or all sea fishing licences of a particular type granted by the Scottish Ministers by publishing a notice in a newspaper or on the Scottish Government website (<http://www.scotland.gsi.gov.uk/Topics/marine/Sea-Fisheries/17681/licencevariations>).

Regulation 4 specifies the time at which a licence or notice communicated in accordance with regulation 3 will be treated as having been delivered or given, according to the method of communication adopted.

Regulation 5 specifies the time at which a licence or notice treated as delivered or given in accordance with regulation 4 will have effect, according to the method of communication adopted.

Regulation 6 makes provision for the time at which a licence or a notice will take effect where—

- (a) more than one method of communicating it is employed; and
- (b) the licence or notice states that it will take effect later than provided for under regulation 5.

Regulation 7 revokes the Sea Fishing (Licences and Notices) Regulations 1994 (S.I. 1994/2813) insofar as they extend to Scotland, and regulation 8 contains a transitional provision in consequence of that revocation.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from Marine Scotland, Victoria Quay, Leith, Edinburgh EH6 6QQ.

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