
FISHERIES ORDINANCE 2012

This is a consolidated version of this legislation i.e. it incorporates all amendments made since the legislation was enacted as set out in the table below. It has been produced by the SBAA as an aid to transparency and easier access to SBA law. However, it is not the official version of SBA legislation and, although every effort has been made to check the document, its accuracy cannot be guaranteed. The official version of legislation is published in the SBA Gazette.

Legislation incorporated in this Consolidation	Ordinance	Date in Force
Fisheries Ordinance 2012	23/2012	01/10/2012
Fisheries (Amendment) Ordinance 2016	8/2016	01/05/2016
Fisheries (Amendment)(No.2) Ordinance 2016	21/2016	26/10/2016

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F I S H E R I E S O R D I N A N C E 2 0 1 2

An Ordinance to protect fishing resources and marine and inland water environment and for related matters

Be it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

PART 1

Preliminary

Short title

1. This Ordinance may be cited as the Fisheries Ordinance 2012.

Commencement

2. This Ordinance comes into force on 1 October 2012.

Interpretation

- 3.—(1) In this Ordinance, unless the context otherwise requires,—

“animal” includes an immature stage of an animal (such as an egg);

“enforceable EU obligation” means a duty relating to sea fishing from time to time created or arising by or under a Protocol measure and given legal effect by section 3 of the European Union (Protocol Measures) Ordinance 2004(a);

“enforceable EU restriction” means a restriction relating to sea fishing from time to time created or arising by or under a Protocol measure and given legal effect by section 3 of the European Union (Protocol Measures) Ordinance 2004;

“fish”—

- (a) when used as a noun, includes any aquatic animal (including a mollusc or crustacean);
- (b) when used as a verb, includes taking and attempting to take fish (as defined in paragraph (a));

“fisheries legislation” means—

- (a) this Ordinance;
- (b) every instrument made from time to time under this Ordinance; and
- (c) every instrument creating an enforceable EU obligation or an enforceable EU restriction;

“fisheries offence” means an offence under the fisheries legislation;

“fisheries officer” means—

- (a) a customs officer; and
- (b) a police officer;

(a) Ordinance 11/2004, amended by Ordinances 2/2009 and 23/2010

“fishing vessel” means a vessel^(a) equipped for the commercial exploitation of fish including storing, transporting and processing fish and any related activity but does not include a cargo ship;

“inland water” means a river, stream, reservoir or lake (including a salt lake);

“item” includes—

- (a) an animal or plant;
- (b) a substance;
- (c) a document^(b);

“Ministry” means the Fisheries Service, and the Director of the Fisheries Service, of the Ministry of Agriculture, Natural Resources and Environment of the Republic or any other person authorised to issue licences to fish under the Republican law;

“owner”, in relation to a vessel that is chartered, includes the charterer of the vessel;

“Protocol measure” has the meaning given in section 2 of the European Union (Protocol Measures) Ordinance 2004;

“relevant officer”—

- (a) where a power in Part 2 has been exercised by a customs officer, means the Fiscal Officer; and
- (b) where a power in Part 2 has been exercised by a police officer, means the Chief “Republican law” means—
- (c) the Fisheries Law^(c) of the Republic (or any law that replaces that law), as amended from time to time; and
- (d) every instrument, as amended from time to time, made under the law referred to in paragraph (a);

“subject to a fishing ban” must be construed in accordance with subsection (2).

(2) For the purposes of this Ordinance, a person is “subject to a fishing ban” if the Fiscal Officer or the court imposes a fishing ban on the person in accordance with section 37.

Reference to size of organisms and gear

4. In this Ordinance and in every instrument made under it, unless the contrary intention appears, a reference to the size of organisms or of fishing gear is a reference to the size determined in accordance with any relevant Protocol measure.

PART 2

Enforcement

Entry, search and samples

Premises, vehicles and vessels: power to inspect

5.—(1) Where a fisheries officer believes that a fisheries offence may be, or may have been, committed, the officer may—

- (a) enter and inspect premises other than residential premises;
- (b) enter and inspect a vehicle;
- (c) board and inspect a vessel.

(a) “Vessels” is defined in Schedule 1 to the Interpretation Ordinance 2012
(b) “Document” is defined in Schedule 1 to the Interpretation Ordinance 2012
(c) Cap.135, Laws of Cyprus, 1959 ed.

(2) For the purpose of exercising the power conferred by subsection (1)(b), a fisheries officer may stop and detain a vehicle.

(3) If a fisheries officer who stops a vehicle under subsection (2) considers that it would be impracticable to inspect the vehicle in the place where it has stopped, the officer may require the vehicle to be taken to such place as the officer directs to enable the vehicle to be inspected.

(4) For the purpose of exercising the power conferred by subsection (1)(c), a fisheries officer may require a vessel to stop or to do anything else that will facilitate the boarding of that or any other vessel.

(5) A fisheries officer who has boarded a vessel may, for the purposes of disembarking from the vessel, require that or any other vessel to stop or to do anything else that will enable the officer, and any person accompanying the officer, to disembark from the vessel.

(6) If a fisheries officer considers that it would not be reasonably practicable for the officer to board or inspect a vessel without detaining the vessel in a port, the officer may—

- (a) take, or arrange for another person to take, the vessel and its crew to the port that appears to the officer to be the nearest convenient port, or
- (b) require the master^(a) of the vessel to take it and its crew to that port.

(7) When a vessel has been taken to a port in accordance with subsection (6), the fisheries officer may detain it there or require its master to do so.

Premises, vehicles and vessels: power to search, etc

6.—(1) This section applies where a fisheries officer is exercising a power to inspect premises, a vehicle or a vessel conferred by section 5.

(2) The officer may—

- (a) search the premises, vehicle or vessel for an item;
- (b) examine, measure or test an item in or on the premises, vehicle or vessel;
- (c) take a sample from an item in or on the premises, vehicle or vessel.

(3) The reference in this section to an item that is in or on the premises, vehicle or vessel includes a reference to an item that is attached to or otherwise forms part of or the premises, vehicle or vessel or is controlled from the premises, vehicle or vessel.

(4) For the purpose of exercising a power conferred by this section, a fisheries officer may, so far as is reasonably necessary for that purpose, break open any container or other locked thing.

(5) Nothing in this section confers any power to search a person.

Premises, vehicles and vessels: power to require production of documents, etc.

7.—(1) This section applies where a fisheries officer is exercising a power to inspect premises, a vehicle or a vessel conferred by section 5.

(2) The officer may require any person in or on the premises, vehicle or vessel to produce a document or record that is in the person's possession or control.

(3) The reference in this section to the production of a document includes a reference to the production of—

- (a) a hard copy of information recorded otherwise than in hard copy form;
- (b) information in a form from which a hard copy can be readily obtained.

(4) For the purposes of this section—

- (a) information is recorded in hard copy form if it is recorded in a paper copy or similar form capable of being read (and references to a hard copy have a corresponding meaning);

(a) "Master" is defined in Schedule 1 to the Interpretation Ordinance 2012

- (b) information can be read only if it can be read or, to the extent that it consists of images, it can be seen with the naked eye.

Items in possession of persons engaged in fishing: power to search, etc.

8.—(1) Where a fisheries officer believes that a fisheries offence may be, or may have been, committed, the officer may—

- (a) search, examine, measure or test anything that appears to be in the possession or control of a person whom the officer believes to be fishing or intending to fish, or to have been fishing;
- (b) take a sample from an item that appears to be in the person's possession or control.

(2) For the purpose of exercising a power conferred by this section, a fisheries officer may, so far as is reasonably necessary for that purpose, break open any container or other locked thing.

(3) Nothing in this section confers a power to search a person.

Power to inspect objects in sea, etc.

9.—(1) Where a fisheries officer believes that a fisheries offence may be, or may have been, committed, the officer may—

- (a) inspect any object in or adjacent to the sea or an inland water;
- (b) search the object for an item;
- (c) examine, measure or test an item in, on or attached to the object;
- (d) take a sample from an item in, on or attached to the object.

(2) For the purpose of exercising a power conferred by this section, a fisheries officer may, so far as is reasonably necessary for that purpose, break open any container or other locked thing.

Procedure when samples taken

10.—(1) This section applies where a fisheries officer takes a sample of an item under section 6, 8 or 9.

(2) The officer must—

- (a) take 3 samples of the same material or divide the sample into 3 parts;
- (b) mark and seal or secure each sample or part;
- (c) give 1 sample or part to the person from whom it is taken or the person in charge of the premises, vehicle or vessel from which the sample is taken; and
- (d) retain 1 sample or part for comparison against the results of any test.

(3) The officer must pay a reasonable price for the sample to the person from whom the sample is taken or the person in charge of the premises, vehicle or vessel from which the sample is taken.

(4) The officer must, if it is reasonably practicable to do so, serve a notice on all of the following—

- (a) every person who appears to the officer to be the owner, or 1 of the owners, of the item at the time that the sample was taken;
- (b) in the case of a sample taken from a vessel, the master of the vessel at that time;
- (c) in the case of a sample taken from premises, a person who appears to the officer to be an occupier of the premises at that time;
- (d) in any other case, the person (if any) from whom the sample was taken.

(5) The notice must state—

- (a) the action that has been taken;
- (b) the reason for the action;

- (c) the offence that the officer believes has been committed;
- (d) any further action that it is proposed will be taken;
- (e) details of the right to request a review under section 39 (including details of the time for making the request).

(6) In a case where the officer, after taking reasonable steps to do so, is unable to identify any person as owning an item, any reference in this section to a requirement to serve a notice on that person is to be read as a reference to a requirement to take such steps as the officer thinks appropriate to bring the contents of the notice to the attention of persons likely to be interested in it.

Seizure, etc

Power to seize, etc

11.—(1) A fisheries officer may seize and remove—

- (a) any vessel, vehicle, fishing gear or other item that the officer believes has been, or is likely to be, used to commit a fisheries offence;
- (b) any fish that the officer believes have been taken in breach of the fisheries legislation or are otherwise evidence of the commission of a fisheries offence;
- (c) any fish or plants with which fish referred to in paragraph (b) have been mixed;
- (d) any container containing an item referred to in paragraph (a), (b) or (c) if the officer considers that it would facilitate the seizure and removal of the item if it remained in the container for that purpose;
- (e) any document or record that the officer believes is evidence of the commission of a fisheries offence.

(2) An item seized under subsection (1) must be delivered into the custody of the relevant officer.

(3) If, in the opinion of a fisheries officer, it is not for the time being practicable for the officer to seize and remove an item, the officer may require any of the following persons to secure that the item is not removed or otherwise interfered with until such time as the officer may seize and remove it—

- (a) the person from whom the item is being seized; or
- (b) where the officer is exercising a power of inspection conferred by section 5, any person in or on the premises, vehicle or vessel.

(4) The power in subsection (1)(a) to seize and remove a vessel or vehicle includes a power to—

- (a) take, or arrange for another person to take, the vessel or vehicle to a place specified by the officer; or
- (b) require the master of the vessel or person in charge of the vehicle to take it to that place.

(5) When a vessel or vehicle has been taken to a place in accordance with subsection (4), the fisheries officer may detain it there or require the master of the vessel or person in charge of the vehicle to do so.

Power to take copies of documents, etc

12.—(1) A fisheries officer may make or take copies of any document or record—

- (a) for the purposes of determining whether a fisheries offence has been committed; or
- (b) that the officer believes to be evidence of the commission of a fisheries offence.

(2) For the purposes of subsection (1), the officer may take possession of and remove a document or record for such period of time as is reasonable in the circumstances. (3) In this section, “document” includes anything falling within paragraph (a) or (b) of section 7(3).

Procedure when items seized or copies of documents taken

13.—(1) This section applies where a fisheries officer seizes an item under section 11 or takes a copy of a document or record under section 12.

(2) The officer must, if it is reasonably practicable to do so, serve a notice on all of the following—

- (a) every person who appears to the officer to be the owner, or 1 of the owners, of the item or document at the time of its seizure or taking;
- (b) in the case of an item seized or a copy taken from a vessel, the master of the vessel at that time;
- (c) in the case of an item seized or a copy taken from premises, a person who appears to the officer to have been an occupier of the premises at that time;
- (d) in any other case, the person (if any) from whom the item was seized or the copy taken.

(3) The notice must state—

- (a) the action that has been taken;
- (b) the reason for the action;
- (c) the offence that the officer believes has been committed;
- (d) any further action that it is proposed will be taken;
- (e) in the case of an item seized under section 11, details of the right to apply for the release of the item under section 15 (including details of the time for making an application);
- (f) in the case of a copy of a document or record taken under section 12, details of the right to request a review under section 39 (including details of the time for making a request).

(4) In a case where the officer, after taking reasonable steps to do so, is unable to identify any person as owning an item, any reference in this section to a requirement to serve a notice on that person is to be read as a reference to a requirement to take such steps as the officer thinks appropriate to bring the contents of the notice to the attention of persons likely to be interested in it.

Power to retain and release seized items

14.—(1) The relevant officer may retain an item seized under section 11—

- (a) for the purpose of investigating whether a fisheries offence has been committed or while considering whether to take proceedings against a person for such an offence;
- (b) after a decision to take proceedings for a fisheries offence is made; or
- (c) while the relevant officer is considering whether to dispose of the item under section 16.

(2) However, the relevant officer must release the item if—

- (a) the relevant officer is satisfied that the offence in respect of which the item was seized was not committed and that the item is not required for the purposes of investigating another offence; or
- (b) all proceedings taken against a person for an offence in respect of which the item was seized or for another offence relating to the item have concluded without an order for forfeiture under section 36 being made.

(3) Except where subsection (2) applies, the relevant officer may release the item on such conditions (including, in particular, a condition requiring the person to whom the item is released to provide security for the return of the item) as the relevant officer thinks appropriate.

(4) A person to whom an item is released under subsection (3) must return the item to the custody of the relevant officer as soon as reasonably practicable if requested to do so.

(5) If there is a dispute as to ownership of an item, the relevant officer may apply to the court for directions as to the holding and disposal of the property; and the court may give such directions.

Application for release of seized items

15.—(1) The owner of an item seized under section 11, or the person from whom such an item was seized, may apply to the relevant officer for the release of the item.

(2) An application under section (1) must be made in writing within 30 days after the date of seizure and must state the applicant's grounds.

(3) The relevant officer must, within 15 days after receiving the application, inform the applicant in writing of the following—

- (a) whether the relevant officer intends to retain, release or dispose of the item or, where the relevant officer has already disposed of the item in accordance with section 16(3), details of the disposal;
- (b) if the relevant officer intends to release the item subject to conditions, the proposed conditions;
- (c) except where the relevant officer intends to release the item unconditionally, the reasons for the decision; and
- (d) details of the applicant's right to request a review under section 39 (including details of the time for making a request).

Power to dispose of seized items

16.—(1) The relevant officer may destroy, sell or otherwise dispose of an item seized under section 11 if the relevant officer is satisfied that—

- (a) the use of the item for fishing would in any circumstances constitute a fisheries offence;
- (b) the item is fish taken in breach of the fisheries legislation;
- (c) an application under section 15 for the release of the item has not been made;
- (d) the item is fishing gear or fish seized from a person who is subject to a fishing ban.

(2) However, the relevant officer must not destroy, sell or dispose of the item—

- (a) until the time has passed for an application to be made under section 15 for the release of the item;
- (b) if such an application has been made, until the time has passed for requesting a review under section 39 of the decision on the application; or
- (c) if such a review has been requested, until after the review has taken place.

(3) Subsection (2) does not apply in relation to any fish or other item that the relevant officer is satisfied will rot, deteriorate or otherwise perish before the outcome of an application or review referred to in subsection (2); and if such an item is sold—

- (a) where an application under section 15 is made, section 14 applies in relation to the retention and release of the proceeds of sale, less any costs of storage and disposal, as it would have applied to the item;
- (b) where no such application is made, the proceeds of sale form part of the revenues of the Areas.

(4) Except as provided in subsection (3)(a), if an item is sold under subsection (1), the proceeds for sale form part of the revenues of the Areas.

Miscellaneous and ancillary powers

Power to arrest without warrant

17.—(1) Where a fisheries officer believes that a person is committing a fisheries offence, the officer may require the person to cease offending forthwith.

(2) A fisheries officer may arrest a person without warrant if—

- (a) the fisheries officer believes that the person has committed an offence under section 26;

- (b) the person continues to commit a fisheries offence in the presence of the fisheries officer despite being required to cease under subsection (1);
- (c) the person fails, without reasonable excuse, to comply with a requirement made, or a direction given, by a fisheries officer in the exercise of any power conferred by this Ordinance (offence under section 30(1)(a));
- (d) the person prevents any other person from complying with any such requirement or direction (offence under section 30(1)(b));
- (e) the person intentionally obstructs a fisheries officer in the performance of any of the officer's functions (offence under section 30(4)); or
- (f) the fisheries officer believes that any of the details supplied under section 18 is false (offence under section 30(2)).

(3) In subsection (2)(c) and (e), a reference to a fisheries officer includes a reference to a person assisting a fisheries officer under section 23.

(4) If the fisheries officer who arrests a person in accordance with subsection (1) is a customs officer, subsections (5) to (9) apply.

~~(5) The customs officer must cause the arrested person to be delivered to a police station, or into the custody of a police officer for delivery to a police station, as soon as possible. (a)~~

~~(6) The arrested person may be detained by the police as if the arrest by the customs officer had been an arrest by a police officer under section 14(1) of the Criminal Procedure Ordinance (b) (without the need for any second arrest).~~

~~(7) Section 17 of the Criminal Procedure Ordinance (c) applies, in relation to the arrest, with the following modifications—~~

~~(a) subject to paragraph (b), any function conferred by section 17 of the Criminal Procedure Ordinance on the officer in charge of the police station may be performed—~~

- ~~(i) after consulting the officer in charge of the police station, by the relevant customs officer; or~~
- ~~(ii) after consulting the relevant customs officer, by the officer in charge of the police station;~~

~~(b) where the offence appears to be of a serious nature, the function of bringing the arrested person before a court referred to in section 17(1)(a) of the Criminal Procedure Ordinance must be performed by the relevant customs officer (and not by the officer in charge of the police station).~~

~~(8) Section 24 of the Criminal Procedure Ordinance (d) applies, in relation to the arrest, with the modification that the application to the court for the arrested person to be remanded in custody must be made by, or on behalf of, the relevant customs officer (and not by a police officer).~~

~~(9) In this section, "relevant customs officer" means the customs officer who made the arrest or any other customs officer nominated by the Fiscal Officer.~~

~~(10) This section does not limit a fisheries officer's power of arrest apart from this section.~~

~~(5) The arrested person—~~

- ~~(a) may be detained by a customs officer for a period of up to six hours for the purpose of investigating the offence; and~~
- ~~(b) must, unless released, be delivered within that period to a police station or into the custody of a police officer for delivery to a police station.~~

(a) Subsections (5) to (10) repealed and replaced by Ordinance 8/2016 – came into force on 01 May 2016
 (b) Cap. 155, Laws of Cyprus, 1959 ed. Legislation of the former colony of Cyprus has effect in the Areas by virtue of article 5 of the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960. Schedule 2 to the Interpretation Ordinance 2012 provides for the interpretation of such legislation.
 (c) Section 17 of the Criminal Procedure Ordinance is amended by Ordinances 1/66, 17/03, 43/03 and 22/12
 (d) Section 24 of the Criminal Procedure Ordinance is amended by Ordinance 22/12

(6) *The arrested person must be detained or released by the police in accordance with section 23 of the Criminal Procedure Ordinance 2016 (arrest without warrant: disposal of persons arrested)(a) as if the arrest by the customs officer had been an arrest without a warrant by a police officer, without the need for any second arrest; and for the purposes of that Ordinance, the arrest must be treated as having been made at the time the person was arrested under this section (see also subsection (7)(c)).*

(7) *The following provisions of the Criminal Procedure Ordinance 2016 apply in relation to an arrest made by a customs officer, or to a customs officer's power of arrest, under this section—*

- (a) *section 16 (arrest) applies as if any reference to a police officer were a reference to a customs officer;*
- (b) *section 17 (search of arrested person) applies as if any reference in those provisions to a police officer were a reference to a customs officer;*
- (c) *section 23 (arrest without warrant: disposal of persons arrested) applies as if—*
 - (i) *the reference in subsection (1) to a police officer were a reference to a customs officer; and*
 - (ii) *any function conferred on the officer in charge of the police station were conferred—*
 - (aa) *after consulting the officer in charge of the police station, on the relevant customs officer; or*
 - (ab) *after consulting the relevant customs officer, on the officer in charge of the police station;*
- (d) *section 30 (power to remand in police custody, etc) applies as if the reference in subsection (3) to a police officer of the rank of inspector or above were to either—*
 - (i) *the relevant customs officer;*
 - (ii) *a person acting on behalf of the relevant customs officer; or*
 - (iii) *a police officer of the rank of inspector or above.*

(8) *In this section “relevant customs officer” means the officer who made the arrest or any other officer nominated by the Fiscal Officer.*

(9) *This section does not limit any power of arrest apart from the power in this section.*

Power to require name and address

18. Where a fisheries officer believes that a person has committed a fisheries offence, the officer may require the person to provide the person's name and address.

Power to require persons to provide information

19.—(1) A fisheries officer may require the master or owner of a licensed vessel to give details of the activities and catch of the vessel.

(2) A fisheries officer who is exercising a power conferred by this Part in relation to premises, a vehicle or a vessel may require a person—

- (a) to give details of any item in or on the premises, vehicle or vessel;
- (b) to give information about any item lost from the vehicle or vessel.

(3) A statement made by a person in response to a requirement made under this section may not be used against the person in criminal proceedings in which the person is charged with an offence other than an offence under section 30(3).

(a) Ordinance 9/2016

Power to require persons to afford assistance, etc

20.—(1) A fisheries officer who is exercising a power conferred by this Part in relation to premises, a vehicle or a vessel may require any person in or on, or the owner of, the premises, vehicle or vessel to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of that power.

(2) A fisheries officer who is exercising a power conferred by this Part in relation to a person whom the officer believes to be fishing or intending to fish may require the person to afford such facilities and assistance with respect to matters under the person's control as the officer considers would facilitate the exercise in relation to the person of that power.

Power to record evidence of offences

21. A fisheries officer may use any device for the purpose of taking a visual image that the officer believes is evidence of the commission of a fisheries offence.

Power to require attendance of certain persons

22.—(1) This section applies where a fisheries officer has boarded a vessel or entered premises under section 5.

(2) For the purposes of carrying out the officer's functions under this Part, the officer may require the attendance of—

- (a) the person who is for the time being in charge of the vessel;
- (b) any other person who is on board the vessel;
- (c) the owner or occupier of the premises;
- (d) any person who is on the premises

Power to bring persons to assist, etc

23.—(1) To assist with enforcing the fisheries legislation, a fisheries officer may bring—

- (a) any other person (including an official of the Republic);
- (b) any equipment or materials.

(2) A person who is brought by a fisheries officer to provide assistance may exercise any powers in this Part that the officer may exercise, but only under the supervision or direction of the officer.

Power to use reasonable force

24.—(1) A fisheries officer may use reasonable force, if necessary, in the exercise of any power conferred by this Ordinance.

(2) A person assisting a fisheries officer under section 23 may use reasonable force, if necessary, in the exercise of any power conferred by this Ordinance.

Supplementary

Duty to provide evidence of authority

25. Before exercising a power under this Part, a fisheries officer must, if requested to do so, produce evidence that the officer is a fisheries officer.

PART 3
Offences, etc
Offences

Use of explosives, etc. to take fish prohibited

26.—(1) A person must not use a relevant item to take, stupefy or kill, or to attempt to take, stupefy or kill, fish in the sea or an inland water.

(2) A person must not have in the person's possession a relevant item with intent to take, stupefy or kill fish in the sea or an inland water.

(3) A person must not sell, offer to sell, knowingly have in the person's possession or knowingly transport fish taken using a relevant item.

(4) A person who contravenes this section commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding €8,542 or to both.

(5) In this section, "relevant items" means—

- (a) a toxic, soporific or corrosive substance;
- (b) an electric shock generator;
- (c) an explosive.

Offence to contravene enforceable EU obligation or enforceable EU restriction

27.—(1) A person commits an offence if the person—

- (a) fails to comply with an enforceable EU obligation; or
- (b) fishes in contravention of an enforceable EU restriction.

(2) The master and owner of a vessel each commit an offence if the vessel—

- (a) fails to comply with an enforceable EU obligation; or
- (b) fishes in contravention of an enforceable EU restriction.

(3) A person who is convicted of an offence under this section is liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding €8,542 or to both.

Vessels must not carry items whose use for fishing is prohibited

28.—(1) A person commits an offence if, without reasonable excuse or without the permission of the Fiscal Officer, the person carries on board a vessel an item whose use for fishing (from the vessel or at all) would in any circumstances constitute a fisheries offence.

(2) A person commits an offence if, without reasonable excuse or without the permission of the Fiscal Officer, the person carries on board a vessel an item whose use for fishing at that time would constitute a fisheries offence.

(3) A person who is convicted of an offence under this section is liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding €8,542 or to both.

Transport, etc of fish taken in breach of fisheries legislation prohibited

29.—(1) A person commits an offence if the person knowingly or recklessly transports, unloads, stores, processes or sells fish taken in breach of the fisheries legislation (including, in particular, fish that do not comply with a requirement as to minimum size).

(2) A person who is convicted of an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding €8,542 or to both.

Offences in relation to fisheries officers

30.—(1) A person commits an offence if—

- (a) the person fails, without reasonable excuse, to comply with a requirement made, or a direction given, by a fisheries officer in the exercise of any power conferred by this Ordinance; or
- (b) the person prevents any other person from complying with any such requirement or direction.

(2) A person who provides details in pursuance of a requirement made by a fisheries officer under section 18 commits an offence if any of the details is false.

(3) A person who provides information in pursuance of a requirement made by a fisheries officer under section 19 commits an offence if the information is false in a material particular and the person knows that it is or is reckless as to whether it is.

(4) A person who intentionally obstructs a fisheries officer in the performance of any of the officer's functions commits an offence.

(5) A person who moves, alters or interferes in any way with anything seized under section 11 without the authority of a fisheries officer commits an offence.

(6) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding €5,125 or to both.

(7) In this section, a reference to a fisheries officer includes a reference to a person assisting a fisheries officer under section 23.

Persons subject to fishing ban must not fish

31.—(1) A person who is subject to a fishing ban must not fish in the sea (whether or not the person fishes in circumstances in which a licence is required).

(2) A person who is subject to a fishing ban must not fish in an inland water.

(3) A person who is subject to a fishing ban must not be on a vessel that is engaged in fishing.

(4) A person who contravenes this section commits an offence and is liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding €8,542 or to both.

(5) This section overrides any contrary provision in the fisheries legislation.

Building, etc fishing vessel without permission of Fiscal Officer prohibited

32.—(1) A person must not, without the permission of the Fiscal Officer,—

- (a) build a fishing vessel;
- (b) import a fishing vessel into the Areas except from the Republic; or
- (c) convert a vessel into a fishing vessel.

(2) A person who contravenes this section commits an offence and is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding €8,542 or to both.

Offences: supplementary

Fisheries offences: officers of companies, etc

33.—(1) If a fisheries offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body or a person purporting to act in such a capacity—

- (a) that person (as well as the body corporate) commits the offence;
- (b) proceedings may be brought against that person whether or not proceedings are also brought against the body corporate.

(2) If a fisheries offence is committed by a partnership and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a partner or a person purporting to act in such a capacity—

- (a) that person (as well as the partnership) commits the offence;
- (b) proceedings may be brought against that person whether or not proceedings are also brought against the partnership.

(3) In subsection (1), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body.

Fisheries offences: masters and owners of vessels

34. If a fisheries offence is committed by a person (P) who is on board a vessel and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, the master or owner of the vessel—

- (a) the master or owner or both (as well as P) commit the offence;
- (b) proceedings may be brought against the master or owner or both, whether or not proceedings are also brought against P.

Offences: powers of Fiscal Office, Chief Constable and court

Fiscal Officer or Chief Constable may compound offences

35.—(1) The Fiscal Officer or Chief Constable may compound a fisheries offence on such terms as the Fiscal Officer or, as the case may be, Chief Constable thinks appropriate.

(2) The terms may, in particular, require a person to do 1 or more of the following—

- (a) pay a sum of money not exceeding the maximum fine for the offence;
- (b) surrender 1 or more items referred to in section 11(1) to the Fiscal Officer or, as the case may be, the Chief Constable.

(3) The Fiscal Officer or Chief Constable may sell, destroy or otherwise dispose of an item surrendered under subsection (2)(b); and, to avoid doubt, the Property (Provisions for Return and Compensation) Ordinance 2004(a) does not apply to such an item.

Court may order property to be forfeited

36.—(1) This section applies if a person is convicted of a fisheries offence.

(2) The court may order any or all of the following to be forfeited—

- (a) any vehicle, vessel, gear, device or material used, or intended to be used, by the person in breach of the fisheries legislation;
- (b) any fish taken by the person in breach of the fisheries legislation;
- (c) the proceeds of sale of fish referred to in paragraph (b) or of an item disposed of in accordance with section 16(3).

(3) The court may order the person to pay any costs reasonably incurred by any other person in storing, selling, destroying or otherwise disposing of property relating to the offence (whether or not that property is forfeited). (4) The court may exercise the powers in this section in addition to, or instead of, imposing any other penalty for the offence.

(a) Ordinance 36/2004

Fiscal Officer or court may impose fishing bans

37.—(1) If the Fiscal Officer is satisfied that a person has committed a fisheries offence, the Fiscal Officer may impose a fishing ban on the person for such period as the Fiscal Officer thinks appropriate, not exceeding 12 months.

(2) Subsection (1) does not apply where—

- (a) the person has been convicted of the offence; and
- (b) the court did not, on convicting the person, impose a fishing ban under subsection (4).

(3) The Fiscal Officer must take reasonable steps to notify in writing a person in respect of whom a fishing ban is imposed.

(4) If the court convicts a person of a fisheries offence, the court may (in addition to, or instead of, any other penalty) impose a fishing ban on the person for such period as the court thinks appropriate, not exceeding 2 years.

(5) The Fiscal Officer must maintain a list of persons subject to a fishing ban.

(6) The Fiscal Officer may send a copy of the list to the Ministry and may publicize the list in any other way that the Fiscal Officer thinks appropriate.

PART 4

Miscellaneous

Chief Officer may prohibit use, etc of vessels by order (a)

Chief Officer may, by order, prohibit use etc. of vessels or other activities

~~**38.—**(1) The Chief Officer may, by order made as a public instrument, prohibit for a period specified in the order the use or passage of any or all vessels or a class or classes of vessel in the whole or part of the territorial waters. (b)~~

38.—(1) *The Chief Officer may, by order made as a public instrument, prohibit for a period specified in the order—*

- (a) the use or passage of any vessel or class or classes of vessel,*
- (b) the presence of any person or class of persons, or*
- (c) the carrying out of any activity,*

in the whole or in part of the territorial waters.

(2) The power in subsection (1) may be exercised—

- (a) on grounds of national security;
- (b) on grounds of public safety;
- (c) for the purpose of protecting fishing resources, the aquatic environment or aquatic animals;
- (d) if the Chief Officer otherwise considers that it is in the public interest to do so.

(3) The master or owner of a vessel that contravenes an order made under subsection (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding €8,542 or to both.

(4) *Subject to subsection (5), a person who, without reasonable excuse and otherwise than in a way that is an offence under subsection (3), causes a requirement imposed by an order made*

(a) Title repealed and replaced by Ordinance 21/2016 – came into force on 26 October 2016

(b) Subsection (1) repealed and replaced by Ordinance 21/2016 – came into force on 26 October 2016

under subsection (1) to be breached, is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding €8,542 or to both. (a)

(5) In proceedings against any person for an offence under subsection (4), it shall be a defence for that person to show that the person took all reasonable steps and exercised all due diligence to avoid committing the offence.

(6) In this section, “activity” includes the following—

- (a) the use of any vessel, apparatus, equipment and goods;*
- (b) the carrying on of any trade or profession;*
- (c) any recreational activity.*

Review by Chief Officer

39.—(1) A person who is dissatisfied with a decision referred to in subsection (2) may, within 30 days after being notified of the decision, request the Chief Officer to review the decision.

(2) The decisions are—

- (a) a decision of a fisheries officer to take a sample of an item under section 6, 8 or 9;
- (b) a decision of a fisheries officer to take a copy of a document or record under section 12;
- (c) a decision of the relevant officer under section 15(3) to retain, dispose of or release subject to conditions an item seized under section 11;
- (d) a decision of the Fiscal Officer to refuse permission under section 28(1) or (2);
- (e) a decision of the Fiscal Officer to refuse permission under section 32(1);
- (f) a decision of the Fiscal Officer to impose a fishing ban under section 37(1).

(3) The request must be in writing and must set out the grounds on which the applicant believes the decision should be reviewed.

(4) On a review, the Chief Officer may—

- (a) confirm, vary or set aside the decision; and
- (b) where the Chief Officer varies or sets aside a decision referred to in subsection (2)(c), award compensation for any loss or damage suffered.

(5) Compensation under subsection (4)(b)—

- (a) may not be awarded unless the conditions referred to in section 5(2)(a) to (c) of the Property (Provisions for Return and Compensation) Ordinance 2004 are satisfied; and
- (b) must be calculated in accordance with section 5(3) of that Ordinance.

(6) A decision in respect of which a review is requested remains valid pending the outcome of the review.

Regulations

40.—(1) The Administrator may make regulations by public instrument for the purposes of this Ordinance.

(2) Without prejudice to subsection (1), regulations under this section may be made for all or any of the following purposes—

- (a) regulating or prohibiting fishing (including the organisation of fishing competitions or the provision of fishing in the course of a business) and the possession, processing, landing, transport, storage or disposal (by sale or otherwise) of fish including, in particular, by reference to species, area, time or period, size, weight or number;
- (b) regulating or prohibiting the use of any fishing method (including fishing from a vessel) or the possession or use of any substance used for fishing, fishing gear of any kind or size

(a) Subsections (4), (5) and (6) inserted by Ordinance 21/2006 – came into force on 26 October 2016

or any other device used for, or related to, fishing including, in particular, by reference to species, area, time or period;

- (c) regulating the methods and devices to be used for determining the size or weight of any fish or fishing gear;
- (d) providing for the issue by the Fiscal Officer of 1 or more categories of licence or permit (including a licence or permit to fish with a vessel) and providing for the issue, suspension or cancellation of such licences and permits, for the imposition of conditions on them, for fees to be charged in respect of their issue and for a limit on the number that may be issued;
- (e) recognising, for the purposes of this Ordinance, licences or permits to fish in the sea (including licences to fish with a vessel) issued under the Republican law (including providing that, when such licences are suspended or cancelled in accordance with the Republican law, they cease to be so recognised) and providing for a certified statement from the Ministry to be conclusive evidence in relation to such licences;
- (f) providing that anything that regulations under this section prohibit or regulate be subject to the possession of a licence or permit issued or recognised in accordance with regulations made under paragraphs (d) and (e);
- (g) providing that the Fiscal Officer may by permit vary any restriction or prohibition in relation to catch limits imposed by regulations under this section and providing for a fee to be charged in respect of such a permit;
- (h) requiring licences to be carried when fishing;
- (i) providing for identification marks and signals to be displayed by fishing or licensed vessels;
- (j) providing for the establishment of a system of monitoring fishing or licensed vessels or the recognition of any such system provided for in the Republican law and for the installation and maintenance of equipment to monitor fishing and the payment of any associated fees;
- (k) providing for the inspection and control (including sanitary control) of fishing or licensed vessels and their equipment and for the manner, time and place in which the inspection and control may be carried out and for the fees payable;
- (l) providing for the Fiscal Officer to prohibit the departure to sea of fishing vessels;
- (m) providing for any matter relating to the protection and conservation of the marine and inland water environment including any species of aquatic life;
- (n) providing for any matter (including a prohibition on fishing and the exclusion of vessels) relating to the use of the marine and inland water environment for leisure or other purposes;
- (o) providing for the better implementation of any enforceable EU obligation or enforceable EU restriction;
- (p) providing for rights of appeal or review against decisions made under the regulations;
- (q) creating a criminal offence in respect of the breach of regulations under this section with a penalty of imprisonment for a term not exceeding 3 years or a fine not exceeding €1,258 or both such penalties, including the imposition of different fines in respect of a first and subsequent offences.

(3) Regulations under this section that regulate or prohibit the taking of fish by reference to number or weight may provide that fish taken must, for the purposes of the regulations, be treated as taken within the territorial waters of the Areas.

(4) Regulations under this section may make different provision for holders of different types of licence or permits.

(5) Regulations under this section may provide that an offence is committed not only by a person who breaches a regulation but also, in a case where the person is on a vessel, by 1 or more of the following—

- (a) the master of the vessel;
- (b) the owner of the vessel;
- (c) the holder of any licence issued in respect of the vessel.

(6) Regulations under this section that regulate the provision of fishing in the course of a business may exempt a person from any requirement to obtain a business licence under section 21 of the Control (Entry, Settlement and Commercial Enterprises) Ordinance 1960(a).

Criminal Procedure Ordinance amended

- 41.**—(1) The Criminal Procedure Ordinance is amended in accordance with this section.
- (2) Section 17 is amended by adding the following subsection—
- “(6) This section is modified by section 17 of the Fisheries Ordinance 2012 in relation to an arrest by a customs officer.”
- (3) Section 24 is amended by adding the following subsection—
- “(3) “This section is modified by section 17 of the Fisheries Ordinance 2012 in relation to an arrest by a customs officer.”

Repeals and revocations

- 42.**—(1) The following Ordinances are repealed—
- (a) the Fisheries (Consolidation) Ordinance 2005(b);
 - (b) the Fisheries (Consolidation) (Amendment) Ordinance 2005(c).
- (2) The following public instruments are revoked—
- (a) Public Instrument No. 15 of 1982 (notice under section 3(2) of the Recognition of Republican Licences Ordinance 1969(d));
 - (b) the Fisheries Regulations 2005(e);
 - (c) Public Instrument No. 20 of 2006 (decision under regulation 8(1) of the Fisheries Regulations 2005).

(a) Ordinance 5/1960
(b) Ordinance 3/2005
(c) Ordinance 27/2005
(d) Ordinance 1/1969
(e) Public Instrument 96/2005