

FISHING SHELTERS ORDINANCE 2011

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FISHING SHELTERS ORDINANCE 2011

An Ordinance to provide for the regulation, management and operation of fishing shelters and for related matters.

G. E. STACEY
ADMINISTRATOR

24th November 2011.

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

1. Short title and commencement

- (1) This Ordinance may be cited as the Fishing Shelters Ordinance 2011.
- (2) This Ordinance comes into force on 3 December 2011.

2. Interpretation

In this Ordinance—

“customs officer” means the Fiscal Officer or an officer of customs and excise appointed or commissioned by the Fiscal Officer as defined in section 2(1) of the Customs Ordinance 2005(a);

“fishing shelter” means any place declared as a fishing shelter under section 3 intended for use by fishing vessels;

“fishing vessel” means any vessel which engages for profit in taking, collecting, uprooting or extracting maritime species or products from the sea or for any related purposes;

“vessel” has the meaning given to it by section 2 of the Fisheries (Consolidation) Ordinance 2005(b).

3. Declaration of fishing shelter

The Administrator may, by order published in the Gazette, declare any place in the Areas to be a fishing shelter.

4. Power to make regulations

- (1) The Administrator may make regulations for the better carrying out of the purposes of this Ordinance.
- (2) Without prejudice to the generality of subsection (1), regulations made under that subsection may provide for—
 - (a) the control and operation of fishing shelters;
 - (b) the regulation and control of services which are provided or of actions taking place inside fishing shelters including the conduct, entry, exit, movement or stay of vessels, vehicles, persons, animals or any kind of object or instrument within the fishing shelter;
 - (c) the fees payable for permits, for use of fishing shelters, their installations and the facilities and services provided in fishing shelters and the means of recovering such fees.
- (3) A person commits an offence and is liable to imprisonment for 6 months, a fine of €3,417 or both such penalties if that person contravenes regulations made under this section.

5. Permit to use fishing shelter

- (1) Subject to subsection (3), a vessel must not use a fishing shelter or the facilities in a fishing shelter without a written permit issued by the Chief Officer.
- (2) A permit for the use of a fishing shelter may be issued by the Chief Officer for such a period and subject to such conditions as the Chief Officer considers appropriate.
- (3) A vessel may use a fishing shelter or the facilities in a fishing shelter without a permit—
 - (a) for a purpose connected with the safety of any person, for so long as it is necessary to ensure the safety of that person;
 - (b) in order to shelter from bad weather; or
 - (c) as a result of any defect to the vessel for a maximum period of 48 hours.
- (4) A person who contravenes subsection (1) commits an offence and is liable to imprisonment for 12 months, a fine of €6,834 or both such penalties.
- (5) The function conferred on the Chief Officer under subsection (1) is a general delegated function for the purposes of the Delegation of Functions to the Republic Ordinance 2007(c).

6. Power to board vessels

- (1) Without prejudice to any other Ordinance, a police officer or a customs officer acting in the course of duty may, at any reasonable time, board a vessel in a fishing shelter, may inspect that vessel and may remain on board that vessel until any passengers have disembarked or any cargo has been discharged.
- (2) A person must not obstruct a police officer or a customs officer exercising the powers in subsection (1).
- (3) A person who contravenes subsection (2) commits an offence and is liable to imprisonment for 6 months, a fine of €3,417 or both such penalties.

7. Fixed penalties

- (1) The Administrator may by regulations made under this section specify any description of offence contrary to this Ordinance as being an offence in respect of which the Fiscal Officer, a customs officer or any officer authorised by the Fiscal Officer for the purposes of this section (an “authorised officer”), may give a person believed to have committed an offence of that description, the option of paying a fixed penalty under this section instead of being prosecuted for the offence in question.
- (2) An option given to any person under subsection (1) is to be given by a notice (“a fixed penalty notice”) which is to—
 - (a) describe the offence alleged to have been committed by the person;

- (b) state when the offence was alleged to have been committed;
 - (c) state the amount of the fixed penalty which is payable in respect of the alleged offence; and
 - (d) served on the person believed to have committed the offence.
- (3) If it is not possible to serve a fixed penalty notice on the person believed to have committed an offence that notice may instead be served by fixing it to the main mast or other conspicuous place on a vessel in relation to which the offence may have been committed.
 - (4) If a person who has been given a fixed penalty notice does not, within 48 hours of being given such notice, discontinue in accordance with the directions of the person giving the notice, the act (whether of commission or of omission) which gave rise to the notice being given, then for each day thereafter that the person continues or repeats such act the person is to be treated as committing a further offence and may be dealt with in relation to any such further offence in like manner as the person could be dealt with in relation to the original offence.
 - (5) Any amount paid pursuant to a fixed penalty notice is to be dealt with in the same way as any amount paid by way of a fine imposed on a conviction for an offence such as is described in the fixed penalty notice concerned.
 - (6) If the Fiscal Officer, a customs officer or an authorised person receives payment of any amount pursuant to a fixed penalty notice, the Fiscal Officer is to issue a receipt to the person making the payment giving the following particulars—
 - (a) the name of the person who is alleged to have committed the offence to which the fixed penalty notice relates;
 - (b) a brief description of the offence described in the fixed penalty notice in question;
 - (c) the place where, and the time when, the offence to which the fixed penalty notice relates was committed; and
 - (d) the amount of the fixed penalty.
 - (7) If the amount shown on a fixed penalty notice given under this section is paid within 14 days starting from the date of the giving of the notice, no criminal prosecution is to be brought against the person to whom the fixed penalty notice was given in respect of the offence described in the fixed penalty notice.
 - (8) A prosecution must not be commenced or continued against any person in respect of any offence to which a receipt such as is described in subsection (6) above relates, and the production of such a receipt to a Court is conclusive evidence as to the matters mentioned therein.
 - (9) The payment by any person of a fixed penalty under a fixed penalty notice given under this section is not a conviction, but if the person to whom the fixed penalty notice was addressed is subsequently convicted of an offence similar to the one described in the fixed penalty notice, the convicting Court may take account of that payment when determining the appropriate penalty for the offence before it.

8. Prosecutions

A prosecution for any offence under this Ordinance or under regulations made under it may not be instituted except by or with the consent of the Attorney General and Legal Adviser.

9. Repeals

The Fishing Shelters Ordinance 1993(d) and the Fishing Shelters (Amendment) Ordinance 2006(e) are repealed.

Notes

- (a) Ordinance 16/05.
- (b) Ordinance 3/05.
- (c) Ordinance 17/07.
- (d) Ordinance 19/93.
- (e) Ordinance 11/06.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

1. This explanatory note relates to the Fishing Shelters Ordinance 2011 (the “Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.
2. The Ordinance repeals and replaces the Fishing Shelters Ordinance 1993.
3. Section 3 of the Ordinance gives the Administrator the power to declare a place to be a fishing shelter. The effect of such a declaration is that under section 5 a person needs a permit to use the fishing shelter. However, section 5(3) provides that a vessel without a permit may use a fishing shelter in an emergency.
4. Section 4 of the Ordinance gives the Administrator the power to make regulations in relation to fishing shelters. The power to make regulations includes a power to make regulations for fees for the use of fishing shelters, for controlling access to fishing shelters and for controlling the operation of fishing shelters.
5. Declarations and regulations made under the Fishing Shelters Ordinance 1993 continue to have effect until revoked or replaced as a result of the operation of section 11 of the Interpretation Ordinance (Cap 1).
6. Section 6 of the Ordinance empowers a police officer or a customs officer to board a vessel in a fishing shelter. Section 7 permits fixed penalties to be imposed for breaches of regulations made under the Ordinance.

(SBA/AG/2/AM/279)