SCOTTISH STATUTORY INSTRUMENTS

2005 No. 311

SEA FISHERIES

The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2005

Made - - - -	*7th June 2005*
Laid before the Scottish Parliament - - - -	*8th June 2005*
Coming into force - -	*1st July 2005*

The Scottish Ministers, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(**1**) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2005 and shall come into force on 1st July 2005.

(2) Subject to paragraph (3), this Order extends to Scotland and the Scottish zone only.

(3) Insofar as it extends beyond Scotland and the Scottish zone, it does so only as a matter of Scots law.

Interpretation

2.—(1) In this Order–

"authorised officer" means a person authorised by the Scottish Ministers for the purpose of article 4(1);

"Community fishing boat" means a fishing boat flying the flag of and registered in a Member State of the European Community;

"Community quota measure" means a provision of the Council Regulation specified in column 1 of Schedule 1 as read with any qualifying words relating to the provision in that column and, in the case of Article 10 and Annex II of the Council Regulation, with article 3 of this Order;

(**1**) 1981 c. 29; relevant modifications are contained in the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748), article 5 and the Scotland Act 1998 (Modification of Functions) Order 1999 (S.I. 1999/1756), articles 3, 5 and 6. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46). See section 30(3) of the 1981 Act for definitions of "enforceable Community restriction", "enforceable Community obligation" and "the Ministers". Section 30 has effect in relation to Scotland as modified by section 30(5) inserted by the Scotland Act (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68(5)(b).

"Community third country fishing measure" means a provision of the Council Regulation specified in column 1 of Schedule 3;

"the Council Regulation" means Council Regulation (EC) No. 27/2005 of 22nd December 2004(**2**) fixing for 2005 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required;

"Council Regulation 1434/98" means Council Regulation (EC) No. 1434/98 of 29th June 1998 specifying conditions under which herring may be landed for industrial purposes other than direct human consumption(**3**);

"fishery product" includes fish;

"ICES" followed by a roman numeral with or without a letter shall be construed as a reference to whichever of the statistical sub-areas and divisions of the International Council for the Exploration of the Sea(**4**) identified therein by that roman numeral or that roman numeral and letter as the case may be;

"pelagic weighing system" means any system used to weigh herring, mackerel or horse mackerel for the purposes of paragraph 9 of Annex III of the Council Regulation;

"Regulation 2847/93" means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy(**5**) as amended by Council Regulation (EC) No. 2870/95(**6**), Council Decision (EC) No. 95/524(**7**), Council Regulation (EC) No. 2489/96(**8**), Council Regulation (EC) No. 686/97(**9**), Commission Regulation (EC) No. 1489/97(**10**), Council Regulation (EC) No. 2205/97(**11**), Council Regulation (EC) No. 2635/97(**12**) and Council Regulation (EC) No. 2846/98(**13**), Council Regulation (EC) No. 806/2003(**14**) and Council Regulation (EC) No. 1954/2003(**15**);

"relevant offence" means an offence under–

(a) articles 4(5) to (7) or 5(2) or 5(4) or 6(1) to (3); or

(b) any provision extending to any other part of the United Kingdom made for the purposes of implementing a Community quota measure, a specified Community provision or a Community third country fishing measure, being a provision in respect of which, by virtue of section 30(2A) of the Fisheries Act 1981(**16**), proceedings may be commenced in any place in the United Kingdom;

"Scotland" has the same meaning as in section 126(1) of the Scotland Act 1998(**17**);

"Scottish fishing boat" means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995(**18**) and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging;

(**2**) O.J. No. L 12, 14.1.05, p.1.
(**3**) O.J. No. L 191, 7.7.98, p.10.
(**4**) Cmnd. 2586.
(**5**) O.J. No. L 261, 20.10.93, p.1.
(**6**) O.J. No. L 301, 14.12.95, p.1.
(**7**) O.J. No. L 301, 14.12.95, p.35.
(**8**) O.J. No. L 338, 28.12.96, p.12.
(**9**) O.J. No. L 102, 19.4.97, p.1.
(**10**) O.J. No. L 202, 30.7.97, p.18.
(**11**) O.J. No. L 304, 7.11.97, p.l.
(**12**) O.J. No. L 356, 31.12. 97, p.14.
(**13**) O.J. No. L 358, 31.12. 98, p.5.
(**14**) O.J. No. L 122, 16.5.03, p.1.
(**15**) O.J. No. L 289, 7.11.03, p.1.
(**16**) 1981 c. 29; section 30(2A) was inserted by S.I. 1999/1820.
(**17**) 1998 c. 46.
(**18**) 1995 c. 21.

"Scottish zone" has the same meaning as in section 126(1) of the Scotland Act 1998(**19**);

"specified Community provision" means a provision of the Council Regulation specified in Column 1 of Schedule 2 as read with any qualifying words relating to the provision in that column;

"third country fishing boat" means a fishing boat flying the flag of and registered in a State other than a Member State of the European Community.

(2) In this Order, any reference to a logbook, declaration or document includes, in addition to a logbook, declaration or document in writing–

(a) any map, plan, graph or drawing;

(b) any photograph;

(c) any data, however reproduced, communicated via a satellite-based vessel monitoring system established under Article 3.1 of Regulation 2847/93;

(d) any disk, tape, sound track or other device on which sounds or other data (not being visual aids) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(e) any film (including microfilm), negative, tape, disk or other device on which one or more visual images are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom.

(3) In this Order, any reference–

(a) to a numbered article is a reference to the article so numbered in this Order;

(b) to a numbered paragraph is a reference to the paragraph so numbered in the article in which it appears in this Order;

(c) to a numbered Schedule is a reference to the Schedule to this Order so numbered; and

(d) to a numbered Article or Annex is a reference to the Article or Annex so numbered in the Council Regulation.

(4) Column 2 of Schedule 1 (which provides in relation to each Community quota measure an indication of the subject matter of the measure) shall not be read as limiting the scope of any Community quota measure and shall be disregarded in relation to any question arising as to the construction of this Order.

(5) Column 2 of Schedule 2 (which provides in relation to each specified Community provision an indication of the subject matter of the provision) shall not be read as limiting the scope of any specified Community provision and shall be disregarded in relation to any question arising as to the construction of this Order.

(6) Column 2 of Schedule 3 (which provides in relation to each Community third country fishing measure an indication of the subject matter of the measure) shall not be read as limiting the scope of any Community third country fishing measure and shall be disregarded in relation to any question arising as to the construction of this Order.

Landing of unsorted catches

3.—(1) For the purpose of the prohibition set out in paragraph 1 of Annex II to the Council Regulation, the harbours in Scotland at which a fishing boat may land unsorted catches are, subject to paragraph (5), those harbours mentioned in paragraph (2).

(2) The harbours referred to in paragraph (1) are Peterhead, Fraserburgh, Ullapool, Aberdeen and Lerwick.

(**19**) The sea within British fishery limits (that is, the limits set by or under section 1 of the Fishery Limits Act 1976 (c. 86)) which is adjacent to Scotland is determined by the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).

(3) The master of a fishing boat with unsorted catches on board may, before landing, apply to a British sea fishery officer at any harbour in Scotland, other than a harbour mentioned in paragraph (2), for a decision as to the suitability of the harbour for landing of the catch.

(4) On receipt of an application under paragraph (3), the British sea-fishery officer shall decide whether the sampling systems at the harbour are adequate for the purposes of monitoring effectively the landing of the catch having regard to the overall size and characteristics of the catch and shall notify the decision of that officer to the master.

(5) Where a British sea-fishery officer notifies the master in accordance with paragraph (4) that the systems at a harbour are adequate for the purposes mentioned in that paragraph, the harbours in Scotland at which the catch may be landed shall include that harbour in addition to those mentioned in paragraph (2).

Approval of pelagic weighing systems

4.—(1) The Scottish Ministers may from time to time require authorised officers to–

(a) conduct any tests necessary to calibrate any pelagic weighing system;

(b) provide them with advice on the sealing of any pelagic weighing system which shall include advice on whether the system can be fixed or adjusted in a way which would cause the pelagic weighing system to provide an inaccurate weight reading and, if so, how the system may be fixed or adjusted; and

(c) provide them with a report relating to the suitability of any pelagic weighing system.

(2) The Scottish Ministers may approve for fisheries control purposes a pelagic weighing system in respect of which a report referred to in paragraph 1(c) has been provided.

(3) The Scottish Ministers may decline to approve a pelagic weighing system where they have reasonable grounds for suspecting that the system may be fixed or adjusted in a way which would cause the pelagic weighing system to provide an inaccurate weight reading.

(4) The Scottish Ministers may–

(a) determine conditions to which an approval given under paragraph (2) may be subject; and

(b) at any time amend such conditions.

(5) Where there is a contravention of, or a failure to comply with, a condition of an approval determined under paragraph (4) the owner of the pelagic weighing system, the operator of the pelagic weighing system and the owner of the premises in which the pelagic weighing system is located shall each be guilty of an offence.

(6) Where any person interferes with a pelagic weighing system approved under paragraph (2) causing the pelagic weighing system to provide an inaccurate weight reading that person shall be guilty of an offence.

(7) Any person who fails without reasonable excuse to comply with the request of an authorised officer exercising functions under paragraph (1) shall be guilty of an offence.

Weighing procedures for herring, mackerel and horse mackerel

5.—(1) Where a fishing boat lands in excess of 10 tonnes of herring, mackerel or horse mackerel or a combination thereof within Scotland, the buyer, the agent of the buyer or the holder, of the fish, shall weigh the fish landed prior to the fish being processed, held in cold storage, transported from the port of landing or resold using a pelagic weighing system which–

(a) has been approved for fisheries control purposes by the Scottish Ministers under article 4(2); or

(b) has been passed as fit for trade use in accordance with regulation 15 of the Weighing Equipment (Beltweighers) Regulations 2001(**20**).

(2) Where a buyer, agent of a buyer or a holder fails to comply with paragraph (1) that person is guilty of an offence.

(3) The person weighing the fish shall keep for a period of three years a logbook indicating–

(a) the weight of each landing; and

(b) the running total of the weight landed.

(4) Where there is a failure to comply with paragraph (3) the person who weighed the fish is guilty of an offence.

Offences

6.—(1) Where there is, in respect of–

(a) any Scottish fishing boat wherever it may be; or

(b) any Community fishing boat within the Scottish zone,

a contravention of, or failure to comply with, any Community quota measure, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(2) Where there is in respect of–

(a) a Scottish fishing boat wherever it may be; or

(b) any Community fishing boat or third country fishing boat within the Scottish Zone,

a contravention of, or failure to comply with any specified Community provision, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(3) Where there is, in respect of any third country fishing boat within the Scottish zone, a contravention of, or failure to comply with, any Community third country fishing measure, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(4) Nothing in this Order shall be taken to constitute an offence to land, from a Scottish fishing boat, an unsorted catch at a harbour outwith Scotland where sampling programmes mentioned in paragraph 2 of Annex II to the Council Regulation are in place.

Penalties

7.—(1) A person guilty of an offence under article 4(5) to (7), or 5(2), or 5(4), or under any equivalent provision extending to any other part of the United Kingdom, proceedings in respect of which were brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981, shall be liable –

(a) on summary conviction, to a fine not exceeding £50,000; and

(b) on conviction on indictment, to a fine.

(2) A person guilty of an offence under article 6(1) to (3), or under any equivalent provision extending to any other part of the United Kingdom, proceedings in respect of which were brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981, shall be liable–

(a) on summary conviction, to a fine not exceeding the amount specified in column 3 of the Schedule to this Order in relation to the Community quota measure, specified Community provision or Community third country fishing measure, the contravention of, or failure to comply with, which founded the offence; and

(b) on conviction on indictment, to a fine.

(**20**) S.I. 2001/1208.