SCOTTISH STATUTORY INSTRUMENTS

# 2004 No. 209

# SEA FISHERIES

## The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2004

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| *Made - - - -* | *5th May 2004* |
| *Laid before the Scottish Parliament - - - -* | *6th May 2004* |
| *Coming into force - -* | *27th May 2004* |

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 2004 and shall come into force on 27th May 2004.

(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–

"the Council Regulation" means Council Regulation (EC) No. 2287/2003 of 19th December 2003(**2**) fixing for 2004 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;

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

(**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).

(**2**) O.J. No. L 344, 31.12.03, p.1.

"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 paragraph 2 of Annex III of the Council Regulation, with article 3 of this Order;

"Community third country fishing measure" means a provision of the Council Regulation specified in column 1 of Schedule 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(**3**) identified therein by that roman numeral or that roman numeral and letter as the case may be;

"Regulation 2847/93" means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy(**4**) as amended by Council Regulation (EC) 2870/95(**5**), Council Decision (EC) 95/524(**6**), Council Regulation (EC) 2489/96(**7**), Council Regulation (EC) 686/97(**8**), Commission Regulation (EC) 1489/97(**9**), Council Regulation (EC) 2205/97(**10**), Council Regulation (EC) 2635/97(**11**) and Council Regulation (EC) 2846/98(**12**);

"relevant offence" means an offence under–

(a) articles 4(2) or 5(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(**13**), 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(**14**);

"Scottish fishing boat" means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995(**15**) and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging;

"Scottish zone" has the same meaning as in section 126(1) of the Scotland Act 1998(**16**);

"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–

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

(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 herring**

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

(2) The harbours referred to in paragraph (1) are Aberdeen and Lerwick.

(3) The master of a fishing boat with a catch of fish containing unsorted herring 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).

### Weighing procedures for herring, mackerel and horse mackerel

**4.**—(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 in the presence of a British sea-fishery officer prior to the fish being processed, held in cold storage, transported from the port of landing or resold unless the following requirements are met–

(a) the buyer or holder is party to an arrangement made among buyers, holders or both using the ports with a person or organisation to act as the controller for the purposes of sub-paragraph 8 of paragraph 12 of Annex IV to the Council Regulation; and

(b) details of the arrangement and the buyers, holders or both who are party to it, have been notified to the Scottish Ministers.

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

### Offences

**5.**—(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, a catch containing unsorted herring at a harbour outwith Scotland where sampling programmes mentioned in paragraph 2 of Annex III to the Council Regulation are in place.

### Penalties

**6.**—(1) A person guilty of an offence under article 4(2), 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 5(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 appropriate 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.

(3) A person guilty of an offence under articles 4(2) or 5(1) to (3) shall also be liable to the forfeiture of any fish in respect of which the offence was committed, or, on summary conviction only, to a fine not exceeding the value of any fish in respect of which the offence was committed.

(4) A person guilty of an offence under articles 5(1) to (3) shall also be liable to the forfeiture of any net or other fishing gear in respect of which the offence was committed, or which was used in committing the offence, or which was used for catching any fish in respect of which the offence was committed.

**Recovery of fines**

**7.**—(1) Without prejudice to the provisions of section 221 of the Criminal Procedure (Scotland) Act 1995(**17**), where a court has imposed a fine on any person in respect of a relevant offence or an offence under article 12, that court may for the purposes of recovering the fine–

(a) order any boat involved in the commission of the offence and its gear and catch to be detained for a period not exceeding three months from the date–

(i) of the conviction or until the fine is paid;

(ii) the order is renewed for a further period (not exceeding three months); or

(iii) on which a warrant is issued under sub paragraph (b) below,

whichever first occurs; or

(b) subject to paragraph (2), at any time after the imposition of the fine, issue a warrant for the arrestment and sale of any such boat, its gear and catch.

(2) The court shall not issue a warrant under paragraph (l)(b) without first affording the owner of the boat, gear or catch liable to be included in the warrant an opportunity to be heard on the issue of such warrant.

(3) A warrant issued under paragraph (1)(b), whatever the amount of the fine imposed, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff in a summary cause.

(4) Where in relation to a fine in respect of a relevant offence a transfer of fine order under section 222 of the Criminal Procedure (Scotland) Act 1995, section 90 of the Magistrates' Courts Act 1980(**18**) or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(**19**) specifies a court of summary jurisdiction in Scotland, this article shall apply as if the fine were a fine imposed by that court.

**Powers of British sea-fishery officers in relation to fishing boats**

**8.**—(1) For the purposes of enforcement of article 4(2) or 5(1) or (2), or any provision extending to any other part of the United Kingdom made for the purposes of implementing a Community quota measure or a specified Community provision, a British sea-fishery officer may exercise, in relation to–

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

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

the powers conferred by paragraphs (3) to (5).

(2) For the purposes of enforcement of article 4(2) or 5(2) or (3), or any provision extending to any other part of the United Kingdom made for the purposes of implementing a specified Community

(**17**) 1995 c. 46.
(**18**) 1980 c. 43.
(**19**) S.I. 1981/1675.