SCOTTISH STATUTORY INSTRUMENTS

2000 No. 53

SEA FISHERIES

The Sea Fishing (Enforcement of Community Conservation Measures) (Scotland) Order 2000

Made - - - -	*9th March 2000*
Laid before the Scottish Parliament - - - -	*10th March 2000*
Coming into force - -	*31st March 2000*

The Scottish Ministers, in exercise of the powers conferred on them 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 Conservation Measures) (Scotland) Order 2000 and shall come into force on 31st March 2000.

(2) This Order extends to Scotland only.

(3) Nothing in paragraph (2) shall be treated as prejudicing the effect in any other part of the United Kingdom of section 30(2A) of the Fisheries Act 1981 in relation to, or for purposes incidental to, any provision of this Order which creates an offence.

Interpretation

2.—(1) In this Order–

"the Council Regulation" means Council Regulation (EC) No. 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms(**2**) as corrected by Corrigendum to Annex XII of the Council Regulation(**3**)

(**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. 1199/1756), 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. L125, 27.4.98, p.1.

(**3**) O.J. No. L318, 27.11.98, p.63.

and amended by Council Regulation (EC) No. 308/1999(**4**) and Council Regulation (EC) No. 1459/99(**5**);

"Community conservation measure" means a measure provided by Regulation 894/97 or by the Council Regulation specified in column 1 of the Schedule, as read, in the case of a measure provided by the Council Regulation, with any related provision of that Regulation mentioned in the entry in respect of such measure in column 1 of the Schedule;

"fish" includes crustacea, molluscs and parts of fish;

"fishery product" includes fish;

"Regulation 2847/93" means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy(**6**) as last amended by Council Regulation (EC) No. 2846/98(**7**);

"Regulation 894/97" means Council Regulation (EC) No. 894/97 laying down certain technical measures for the conservation of fishery resources(**8**) as amended by Council Regulation (EC) No. 1239/98(**9**);

"relevant offence" means an offence under–

(a) article 3, or

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

"Scottish fishing boat" means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995(**10**) 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(**11**).

(2) Any reference in this Order 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 images) 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 (as aforesaid) of being reproduced therefrom.

(3) Any reference in this Order–

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

(**4**) O.J. No. L038, 12.2.99, p.6.
(**5**) O.J. No. L168, 3.7.99, p.1.
(**6**) O.J. No. L261, 20.10.93, p.1.
(**7**) O.J. No. L358, 31.12.98, p.5.
(**8**) O.J. No. L132, 23.5.97, p.1.
(**9**) O.J. No. L171, 17.6.98, p.1. With the exception of Articles 11, 18, 19 and 20, Regulations 894/97 is repealed by Article 49 of the Council Regulation as from 1st January 2000.
(**10**) 1995 c. 21.
(**11**) 1998 c. 46. 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 as determined by the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).

(b) to the Schedule is a reference to the Schedule to this Order; and

(c) to a numbered Article of the Council Regulation is a reference to the Article so numbered in the Council Regulation as read with any related provision of that Regulation mentioned in the entry relating to that Article in column 1 of the Schedule.

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

Offences

3.—(1) Where there is, in respect of–

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

(b) any other fishing boat within the Scottish Zone; or

(c) any fishery product, premises or vehicle in Scotland,

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

(2) Subject to paragraph (3), any person who lands, transports, stores, sells, displays or offers for sale any fish in contravention of Articles 19.1, 26.1 or 36 of the Council Regulation, shall be guilty of an offence.

(3) Paragraph (2) shall not apply to a person who lands a fish if that person is guilty of an offence under paragraph (1) above as respects the landing of that fish.

Penalties

4.—(1) A person guilty of an offence under article 3(1) or 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(**12**), shall be liable on summary conviction–

(a) to a fine not exceeding the amount specified in column 3 of the Schedule in relation to the Community conservation measure, the contravention of, or failure to comply with, which founded the offence; and

(b) either–

(i) to a fine not exceeding the value of any fish in respect of which the offence was committed, or

(ii) to the forfeiture of any fish in respect of which the offence was committed; and

(c) 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.

(2) A person guilty of an offence under article 3(1) or any equivalent provision referred to in paragraph (1), shall be liable on conviction on indictment–

(a) to a fine;

(b) to the forfeiture of any fish in respect of which the offence was committed; and

(c) 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.

(**12**) Section 30(2A) was inserted by the Scotland Act (Consequential Modifications) (No. 2) Order 1999, Schedule 2, paragraph 68(5)(a).

(3) A person guilty of an offence under article 3(2) or 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 on summary conviction–

(a) to a fine not exceeding the statutory maximum; and

(b) either–

(i) to a fine not exceeding the value of the fish in respect of which the offence was committed, or

(ii) to the forfeiture of the fish in respect of which the offence was committed.

(4) A person guilty of an offence under article 3(2) or any equivalent provision referred to in paragraph (3), shall be liable on conviction on indictment–

(a) to a fine; and

(b) to the forfeiture of the fish in respect of which the offence was committed.

Recovery of fines

5.—(1) Without prejudice to the provisions of section 221 of the Criminal Procedure (Scotland) Act 1995(**13**), where a court has imposed a fine on any person in respect of a relevant offence or an offence under article 10 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 of the conviction or until the fine is paid, the order is renewed for a further such period or a warrant is issued under sub-paragraph (b), 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 (1)(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(**14**) or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(**15**) 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

6.—(1) For the purposes of enforcement of article 3 or any provision extending to any other part of the United Kingdom made for the purposes of implementing a Community conservation measure any British sea-fishery officer may exercise in relation to–

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

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

the powers conferred by paragraphs (2) to (4) of this article.

(**13**) 1995 c. 46.
(**14**) 1980 c. 43.
(**15**) S.I. 1981/1675 (N.I.26).

(2) He may go on board the boat, with or without persons assigned to assist him in his duties, and may require the boat to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, the boat.

(3) He may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to him to be necessary for the purposes of enforcement mentioned in paragraph (1) and, in particular–

(a) may search for fish or fishing gear on the boat and may examine any fish on the boat and the equipment of the boat, including the fishing gear, and require persons on the boat to do anything which appears to him to be necessary for facilitating the examination;

(b) may require any person on board the boat to produce any document relating to the boat, to any fishing operations or other operations ancillary thereto or to the persons on board which is in the custody or possession of that person;

(c) for the purpose of ascertaining whether a relevant offence has been committed may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search;

(d) inspect, take copies of and retain while he completes any search, examination or inspection provided for under this article, any such document produced to him or found on board;

(e) may require the master or any person for the time being in charge of the boat to render all such documents on a computer system into visible and legible form and to produce them in a form in which they may be taken away; and

(f) where the boat is one in relation to which there is reason to suspect that a relevant offence has been committed, may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence,

but nothing in sub-paragraph (f) above shall permit any document required by law to be carried on board the boat to be seized and detained except while the boat is detained in a port.

(4) Where it appears to a British sea-fishery officer that a relevant offence has at any time been committed, he may–

(a) require the master of the boat in relation to which the offence took place to take, or may himself take, the boat and its crew to the port which appears to him to be the nearest convenient port; and

(b) detain or require the master to detain the boat in the port,

and where such an officer detains or requires the detention of a boat he shall serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea-fishery officer.

Powers of British sea-fishery officers on land

7.—(1) For the purpose of enforcing the provisions of article 3 or any provision extending to any other part of the United Kingdom made for the purposes of implementing a Community conservation measure any British sea-fishery officer may–

(a) enter and inspect at any reasonable time any premises used for carrying on any business in connection with the operation of fishing boats or activities connected therewith or ancillary thereto or with the treatment, storage or sale of fishery products;

(b) take with him such other persons as appear to him to be necessary and any equipment or materials;

(c) examine any fishery product on the premises and require persons on the premises to do anything which appears to him to be necessary for facilitating the examination;