STATUTORY RULES OF NORTHERN IRELAND

2004 No. 440

AGRICULTURE

Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) Order (Northern Ireland) 2004

Made - - - -	*14th October 2004*
Coming into operation	*15th November 2004*

The Department of Agriculture and Rural Development in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(**1**) and now vested in it(**2**) hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) Order (Northern Ireland) 2004 and shall come into operation on 15th November 2004.

Interpretation

2.—(1) In this Order –

"the Council Regulation" means Council Regulation (EC) No. 2287/2003 fixing for 2004 the fishing opportunities and associated conditions for fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required(**3**);

"Council Regulation 2847/93" means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy as amended(**4**);

"Northern Ireland fishing boat" means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995(**5**) and whose entry in the register specifies a port in Northern Ireland as the port to which the boat is to be treated as belonging;

(**1**) 1981 c. 29; *see* section 30(3) for the definitions of "enforceable Community restriction" and "enforceable Community obligation"
(**2**) S.I. 2002/790 Article 3(2) and Schedule 2
(**3**) O.J. No. L344, 31.12.2003, p. 1
(**4**) O.J. No. L261, 20.10.93, p.1; the latest amending instrument is Council Regulation (EC) No. 2846/98 (O.J. No. L358, 31.12.1998, p. 5)
(**5**) 1995 c. 21

"Northern Ireland zone" has the same meaning as in the Northern Ireland Act 1998(**6**);

"relevant offence" means an offence under –

(a) Article 4, or

(b) any corresponding provision in any other order extending to any part of the United Kingdom, being a provision in respect of which proceedings may be commenced in Northern Ireland by virtue of section 30(2A) of the Fisheries Act 1981;

"specified Community provision" means a provision of the Council Regulation specified in Column 1 of Schedule 1, 2, or 3 to this Order as read with any qualifying words relating to that provision in that column; and

"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 document includes –

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

(ii) any photograph;

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

(iv) any disk, tape, sound track or other device in 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

(v) any film (including microfilm), negative, tape, disk or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.

(3) In this Order any reference to a Community instrument is a reference to that instrument as amended on the date that this Order is made.

(4) For the purpose of the prohibition contained in point 2 of Annex III to the Council Regulation (which prohibits the landing of herring unsorted from the remainder of the catch at a harbour where adequate sampling programmes are not in place), a harbour in Northern Ireland shall not be regarded as having in place a system which is adequate for sampling a catch that includes unsorted herring unless, before the landing of the catch in question, –

(a) the master of the fishing boat in question has applied to a British sea-fishery officer at the harbour in question for a decision as to the suitability of that harbour for landing the catch on that boat; and

(b) the British sea-fishery officer has decided that the sampling systems at the harbour are adequate, having regard to the overall size and characteristics of the catch, for the purpose of monitoring effectively the landing of that catch, and has so notified the master.

Weighing procedures for herring, mackerel and horse mackerel

3.—(1) For the purposes of point 12.8 of Annex IV to the Council Regulation the controller, in relation to any buyer or holder of fish at a port, shall be a British sea-fishery officer, unless –

(a) the buyer or holder is party to an arrangement made among buyers, holders or both using the port with a person or organisation to act as the controller; and

(b) details of the arrangement and of the buyers, holders or both who are parties to it have been notified to the competent authority,

in which case the controller shall be that person or a British sea-fishery officer.

(**6**) 1998 c. 47 (N.I.)*see* section 98

(2) For the purposes of these Regulations, failure to weigh in the presence of the controller in circumstances where that point applies shall be treated as a contravention of that point.

Offences

4.—(1) Where there is, in relation to –

(a) any relevant Northern Ireland fishing boat wherever it may be, or

(b) any other fishing boat within the Northern Ireland zone,

a contravention of, or failure to comply with, any specified Community provision in Column 1 of Schedule 1 or Column 1 of Schedule 2 to this Order, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(2) Where there is a contravention of, or failure to comply with, any specified Community provision in Column 1 of Schedule 2 to this Order which does not relate to fishing boats, each person responsible for the contravention shall be guilty of an offence.

(3) Where there is, in respect of any third country fishing boat within the Northern Ireland zone to which any specified Community provision in Column 1 of Schedule 3 to this Order applies, a contravention of, or failure to comply with, that specified Community provision, the master, the owner and the charterer (if any) shall each be guilty of an offence.

Penalties

5.—(1) A person found guilty of a relevant offence shall be liable –

(a) on summary conviction to a fine not exceeding the amount specified in Column 3 of the Schedules to this Order in relation to the specified Community provision, the contravention of, or failure to comply with which, founded the offence; and

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

(2) A person found guilty of a relevant offence shall also be liable to the forfeiture of –

(a) 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; and

(b) 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.

Recovery of fines

6.—(1) Where a fine is imposed by a magistrates' court on the master, owner or charterer or a member of the crew of a fishing boat who is convicted by the court of a relevant offence or an offence under Article 11, the court may –

(a) issue a warrant of distress against the boat involved in the commission of the offence and its gear and catch and any property of the person convicted for the purpose of levying the amount of the fine; and

(b) order that boat 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 or the amount of the fine is levied in pursuance of any such warrant, whichever occurs first.

(2) Articles 114(2) and 154 of the Magistrates' Courts (Northern Ireland) Order 1981(**7**) (postponement of issue of certain warrants and objections as to want of form or variance between

(**7**) S.I. 1981/1675 (N.I. 26)

complaints etc and evidence adduced) shall apply to a warrant of distress referred to in those Articles of that Order.

(3) Where in relation to a fine in respect of a relevant offence, a court orders under section 90 of the Magistrates' Courts Act 1980(**8**) or section 222 of the Criminal Procedure (Scotland) Act 1995(**9**) that a fine shall be enforceable in a petty sessions district in Northern Ireland specified in the Court's order, paragraphs (1) and (2) shall apply as if the fine were imposed by a court within that petty sessions district.

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

7.—(1) For the purpose of enforcing the provisions of Article 4(1) or (3), or any corresponding provision in any other order extending to any part of the United Kingdom made for the purposes of implementing a specified Community provision, any British sea-fishery officer may exercise the powers conferred by paragraphs (2) to (4) in relation to –

(a) any relevant Northern Ireland fishing boat wherever it may be; and

(b) any other fishing boat within the Northern Ireland zone.

(2) The officer 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) The officer may require the attendance of the master or other persons on board the boat and may make any examination and inquiry which appears to him to be necessary for the purpose 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 board 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 that person's custody or possession;

(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) may inspect and take copies of any such document produced to him or found on board and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away; and

(e) where the boat is one in relation to which he has 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 (e) 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 in relation to a fishing boat, 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;

(**8**) 1980 c. 43
(**9**) 1995 c. 46

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

8.—(1) For the purpose of enforcing the provisions of Article 4 or any equivalent provision in any other order extending to any part of the United Kingdom made for the purposes of implementing a specified Community provision, 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 fish;

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

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

(d) carry out at such premises such other inspections or tests as may reasonably be necessary;

(e) require any person not to remove or cause to be removed any fish from such premises for such a period as may be reasonably necessary for the purposes of establishing whether a relevant offence has at any time been committed;

(f) require any person on the premises to produce any documents which are in that person's custody or possession relating to the catching, landing, transportation, trans-shipment, sale or disposal of any sea fish;

(g) for the purpose of ascertaining whether any person on the premises has committed a relevant offence, search the premises for any such document and require any person on the premises to do anything which appears to him to be necessary for facilitating the search including rendering all documents on computer systems into a visible and legible form;

(h) inspect and take copies of any such document produced to him or found on the premises and where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away; and

(i) if he has a reason to suspect that a relevant offence has been committed, seize and detain any such document produced to him or found on the premises for the purpose of enabling the document to be used as evidence in proceedings for the offence.

(2) The provisions of paragraph (1) shall also apply in relation to any land used in connection with any of the activities described in paragraph (1) and in respect of any vehicle which a British sea-fishery officer has reasonable cause to believe is being used to transport fisheries products as they apply in relation to premises and, in the case of a vehicle, shall include power to require the vehicle to stop at any time and, if necessary, direct the vehicle to some other place to facilitate the inspection.

(3) If a justice of the peace on sworn information in writing is satisfied –

(a) that there is reasonable ground to believe that any documents or other items which a British sea-fishery officer has power under this Article to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of a relevant offence, and

(b) either –

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant has been given to the occupier, or

(ii) that an application for admission or the giving of such notice would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,