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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 90**

**The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2005**

**PART IV**

**PROVISIONS APPLICABLE TO COD AND SOLE**

**Maintenance of logbook**

**23.**—(1) An entry shall be made in a logbook of a relevant fishing boat which is absent from port carrying any regulated gear but not fishing as specified in Article 6 of Regulation 2847/93, in respect of each particular which would be required to be entered by that Article (as read with Regulation 2807/83) were the boat so fishing, and such an entry shall state the type of fishing gear carried.

(2) Such an entry shall be made—

- (a) daily, but not later than midnight at the end of each day;
- (b) at the time of arrival in port;
- (c) at the time of any inspection at sea; and

(d) at the time that an effort report is made as required by Article 19e.3 of Regulation 2847/93, and the requirements of the Regulations specified in paragraph (1) for handing over and dispatch of logbook entries, as modified by article 24, shall apply to the entries required by this article as they apply to other entries.

(3) Where a relevant fishing boat is absent from port and paragraph (1) requires a logbook entry to be made in respect of that absence the logbook entries shall be handed over and dispatched as if landing were made at the time of the arrival of the boat in port.

(4) Where there is, in respect of a relevant fishing boat, a failure to make an entry required by this article the person in charge of that fishing boat is guilty of an offence.

**Submission of logbook at designated port**

**24.**—(1) The relevant part (the white top copy) of the logbook shall be—

- (a) given to a British sea-fishery officer; or
- (b) deposited in the box provided for that purpose,

by the person in charge of a relevant fishing boat prior to any landing in a designated port.

(2) A person in charge of a relevant fishing boat who fails to comply with paragraph (1) is guilty of an offence.

## **Amendment of the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000**

**25.** The Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000(1) is amended as follows:–

(a) in article 2(1)–

(i) for the definition of “Annex V” substitute–

““Annex IVc” means Annex IVc to Council Regulation 27/2005 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;”;

(ii) after “Regulation 1449/98” insert–

“Regulation 423/2004” means Council Regulation 423/2004 establishing measures for the recovery of cod stocks;”;

(iii) for the definition of “the Council Regulation” substitute–

““the Council Regulation” means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy(2) as amended by Council Regulation (EC) No. 270/95(3), Council Decision (EC) No. 95/528(4), Council Regulation (EC) No. 2489/96(5), Council Regulation (EC) No. 686/97(6), Council Regulation (EC) No. 2205/97(7), Council Regulation (EC) No. 2635/97(8) and Council Regulation (EC) No. 2846/98(9) and as applied by Article 9 of and modified by Articles 15 and 16 of Regulation 423/2004 and as applied by paragraph 13 of Annex IVc and modified by paragraphs 20 and 21 of Annex IVc.”;

(b) in the Schedule, in column 3 of each entry opposite items 2(l), (m), (n) and (o), for “paragraph 13 of Annex XVII” substitute “Article 9 of Regulation 423/2004 and paragraph 13 of Annex IVc”.

## **Penalties**

**26.**—(1) A person guilty of an offence under this Order, or under any equivalent provision shall be liable–

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

(b) on conviction on indictment to a fine.

(2) The court by or before which a person is convicted of an offence under article 4, 6, 8 to 12, 14, 16 and 18 to 22, or under an equivalent provision may order the forfeiture of–

(a) any fish in respect of which the offence was committed; and

(b) any net or other fishing gear used in committing the offence.

(3) Any person found guilty of an offence under articles 4, 6, 8 to 12, 14, 16 and 18 to 22 or under any equivalent provision shall, subject to the following provisions of this article, be liable on

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(1) [S.S.I. 2000/7](#).

(2) O.J. No. L 261, 20.10.43, p.1.

(3) O.J. No. L 301, 14.12.95, p.1.

(4) O.J. No. L 301, 14.12.95, p.35.

(5) O.J. No. L 338, 28.12.96, p.12.

(6) O.J. No. L 102, 19.4.97, p.1

(7) O.J. No. L 304, 7.11.97, p.1

(8) O.J. No. L 356, 31.12.97, p.14.

(9) O.J. No. L 358, 31.12.98, p.5.

summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.

(4) A person shall not be liable to a fine under paragraph (3) in respect of such an offence if, under paragraph (2), the court orders the forfeiture of the fish in respect of which that offence was committed; and where a fine is imposed under paragraph (3) in respect of any offence, the court shall not have power under paragraph (2) to order the forfeiture of the fish in respect of which the offence was committed.

(5) Subject to paragraph (4), any fine to which a person is liable under paragraph (3) shall be in addition to any other penalty (whether pecuniary or otherwise) to which that person is liable in respect of that offence under this article or under any other enactment.

### **Recovery of fines**

27.—(1) Without prejudice to the provisions of section 221 of the Criminal Procedure (Scotland) Act 1995<sup>(10)</sup>, where a court has imposed a fine on any person in respect of a relevant offence, 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),

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<sup>(11)</sup> or Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(12)</sup> 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**

28.—(1) For the purpose of enforcing articles 4, 6 to 12, 14, and 16 to 24 of this Order or any equivalent provisions, any British sea-fishery officer may exercise the powers conferred by this article in relation to—

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

(b) any other fishing boat which is within the Scottish Zone.

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<sup>(10)</sup> 1995 c. 46.

<sup>(11)</sup> 1980 c. 43.

<sup>(12)</sup> S.I.1981/1675.

(2) The officer may go on board the boat, with or without persons assigned to assist the officer in the duties of that officer 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 and other persons on board the boat and may make any examination and inquiry which appears to that officer to be necessary for the purpose mentioned in paragraph (1) of this article 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 the officer 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 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 that officer to be necessary for facilitating the search;
- (d) may inspect and take copies of any such document produced to that officer or found on board;
- (e) without prejudice to sub-paragraphs (c) and (d), may require the master and any person for the time being in charge of the boat to render all such documents on a computer system into a visible and legible form, including requiring any such document to be produced in a form in which it may be taken away; and
- (f) where the boat is one in relation to which the officer has reason to suspect that a relevant offence has been committed, may seize and detain any such document produced to the officer 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) 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 an offence under this Order or any equivalent provision has at any time been committed, that officer—

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

**29.**—(1) For the purpose of enforcing articles 4, 6 to 12, 14 and 16 to 24 of this Order or any equivalent provisions, 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 that officer such other persons as appear to that officer 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 that officer 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 fishery product 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 the custody or possession of that person relating to the catching, landing, transportation, trans-shipment, sale or disposal of any fish or to the entry to, or exit from, any port or harbour by any fishing vessel;
- (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 may require any person on the premises to do anything which appears to that officer to be necessary for facilitating the search;
- (h) inspect and take copies of any such document produced to officer or found on the premises;
- (i) require any appropriate or responsible person to render any such document on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away; and
- (j) if that officer has reason to suspect that a relevant offence has been committed, seize and detain any such document produced 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), or in respect of any vehicle which a British sea-fishery officer has reasonable cause to believe is being used to transport fishery 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 sheriff by information on oath is satisfied—

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

the sheriff may by signed warrant, valid for a period of no more than one month, authorise a British sea-fishery officer to enter the premises, if need be by reasonable force, accompanied by such persons as appear to the officer to be necessary.

### **Powers of British sea-fishery officers to seize fish and fishing gear**

**30.**—(1) Any British sea-fishery officer may seize—

- (a) in Scotland or in the Scottish zone; or
- (b) on a Scottish fishing boat wherever it may be,

fishery product (including any receptacle which contains such product) and any net or other fishing gear to which this article applies.

- (2) This article applies to—
- (a) any fishery product (including any receptacle which contains such product) in respect of which the officer has reasonable grounds to suspect that an offence under article 4, 6, 8 to 12, 14, 16, or 18 to 22 has been committed; and
  - (b) any net or other fishing gear which the officer has reasonable grounds to suspect has been used in the course of the commission of such an offence.

### **Protection of officers**

**31.** A British sea-fishery officer or a person assisting such an officer by virtue of articles 28(2) or 29(1)(b) or an authorisation under article 29(3) of this Order shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred by articles 28 and 29 of this Order if the court is satisfied—

- (a) that the act was done in good faith;
- (b) that there were reasonable grounds for doing it; and
- (c) that it was done with reasonable skill and care.

### **Obstruction of officers**

**32.** Any person who—

- (a) fails without reasonable excuse to comply with any requirement imposed by a British sea-fishery officer under the powers conferred on such officers by articles 28 to 30 of this Order;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) intentionally obstructs any such officer in the exercise of any of those powers,

is guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to a fine.

### **Provisions as to offences**

**33.** Where any offence under this Order committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, (or in the case of a partnership, a partner or a person who was purporting to act as such) that person as well as the body corporate or the partnership, as the case may be, shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(1) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (1) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(2) Where any offence under this Order committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body,

that person as well as the association shall be guilty of the offence and liable to be proceeded against and punished accordingly.

#### **Admissibility in evidence of logbooks and other documents**

**34.** Any—

- (a) logbook kept under Articles 6, 17.2 or 28c;
- (b) declaration submitted under Articles 8.1, 11, 12, 17.2 or 28f;
- (c) effort report completed under Articles 19b and 19c;
- (d) document drawn up under Articles 9 or 13;
- (e) document containing required information received by a fisheries monitoring centre established under Article 3.7,

of Regulation 2847/93 shall, in any proceedings in Scotland for an offence under this Order or any equivalent provision, be received in evidence without being produced or sworn to by any witness and shall, unless the contrary is shown, be conclusive evidence as to the matters stated therein.

(2) For the purpose of paragraph (1), “required information” means—

- (a) a fishing boat’s identification;
- (b) the most recent geographical position of the fishing boat expressed in degrees and minutes of longitude and latitude; and
- (c) the date and time of the fixing of that position,

as communicated via a satellite-based vessel monitoring system established under Article 3.1 of Regulation 2847/93.

#### **Revocation**

**35.** The following Orders are hereby revoked—

- (a) the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2004(13); and
- (b) the Sea Fishing (Restriction on Days at Sea) (Scotland) Amendment Order 2004(14);

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(13) S.S.I. 2004/44.

(14) S.S.I. 2004/81.