
SCOTTISH STATUTORY INSTRUMENTS

2000 No. 53

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

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⁽¹⁾ as corrected by Corrigendum to Annex XII of the Council Regulation⁽²⁾ and amended by Council Regulation (EC) No. 308/1999⁽³⁾ and Council Regulation (EC) No. 1459/99⁽⁴⁾;

“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⁽⁵⁾ as last amended by Council Regulation (EC) No. 2846/98⁽⁶⁾;

“Regulation 894/97” means Council Regulation (EC) No. 894/97 laying down certain technical measures for the conservation of fishery resources⁽⁷⁾ as amended by Council Regulation (EC) No. 1239/98⁽⁸⁾;

“relevant offence” means an offence under—

(a) article 3, or

(1) O.J. No. L125, 27.4.98, p.1.

(2) O.J. No. L318, 27.11.98, p.63.

(3) O.J. No. L038, 12.2.99, p.6.

(4) O.J. No. L168, 3.7.99, p.1.

(5) O.J. No. L261, 20.10.93, p.1.

(6) O.J. No. L358, 31.12.98, p.5.

(7) O.J. No. L132, 23.5.97, p.1.

(8) 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 With the exception of Articles 11, 18, 19 and 20, Regulations 894/97 is repealed by Article 49 of the Council Regulation as from 1st January 2000.

- (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⁽⁹⁾ 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⁽¹⁰⁾.

(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;
- (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.

⁽⁹⁾ 1995 c. 21.

⁽¹⁰⁾ 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).

(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⁽¹¹⁾, 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.

(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⁽¹²⁾, 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—

⁽¹¹⁾ Section 30(2A) was inserted by the Scotland Act (Consequential Modifications) (No. 2) Order 1999, Schedule 2, paragraph 68(5)(a).

⁽¹²⁾ 1995 c. 46.

- (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(13) or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(14) 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.

(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

(13) 1980 c. 43.

(14) S.I. 1981/1675 (N.I.26).

- (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;
- (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 fishery product;
- (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 him to be necessary for facilitating the search;
- (h) inspect and take copies of any such document produced to him or found on the premises;
- (i) require any appropriate or responsible person to render any such documents on a computer system into a visible and legible form and to produce them in a form in which they may be taken away; and
- (j) 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 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 inspection.

(3) If a Sheriff on information on oath—

(a) is satisfied 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) is also satisfied 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;

the Sheriff may by warrant signed by him, and valid for 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

8.—(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,

any 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 a relevant offence has been committed; and

(b) any net or other fishing gear which the officer has reasonable grounds to suspect has been used in the commission of such offence.

Protection of officers

9. A British sea-fishery officer or a person assisting him by virtue of articles 6(2) or 7(1)(b) of this Order shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by articles 6, 7 or 8 if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

Obstruction of officers

10.—(1) 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 British sea-fishery officers by articles 6, 7 or 8;

(b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or

(c) obstructs any such officer in the exercise of any of those powers, shall be guilty of an offence.

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

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

Offences committed by bodies corporate and Scottish partnerships

11.—(1) Where a relevant offence has been committed by a body corporate and the contravention in question is proved to have occurred with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) a director, manager, secretary or other similar officer of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) In paragraph (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Where a relevant offence has been committed by a Scottish partnership and the contravention in question is proved to have occurred with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Admissibility in evidence of logbooks and other documents

12.—(1) 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; and
- (e) document containing required information received by a fisheries monitoring centre established under Article 3.7,

of Regulation 2847/93 may, in any proceedings for a relevant offence, be received in evidence without being produced or sworn to by any witness and shall be sufficient evidence of the matters stated therein.

(2) For the purpose of paragraph (1), “required information” shall mean data relating to—

- (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-tracking device installed on board a fishing boat under Article 3.1 of Regulation 2847/93.

Revocation

13. The Sea Fishing (Enforcement of Community Conservation Measures) Order 1997**(15)** and the Sea Fishing (Enforcement of Community Conservation Measures) (Amendment) Order 1997**(16)** are revoked.

St Andrew's House,
Edinburgh
9th March 2000

JOHN HOME ROBERTSON
Authorised to sign by the Scottish Ministers