

2003 No. 56

SEA FISHERIES

**The Sea Fishing (Restriction on Days at Sea) (Scotland)
Order 2003**

Made 31st January 2003

Coming into force 1st February 2003

Laid before the Scottish Parliament 4th February 2003

The Scottish Ministers, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(a) 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 (Restriction on Days at Sea) (Scotland) Order 2003 and shall come into force on 1st February 2003.

(2) Subject to paragraph (3), this Order shall extend to Scotland and the Scottish Zone, and insofar as it extends beyond Scotland and the Scottish Zone, it does so only as a matter of Scots law.

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

Interpretation

2.—(1) In this Order—

“Annex XVII” means Annex XVII to Council Regulation 2341/2002 of 20th December 2002 fixing for 2003 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(b);

“British fishing boat” means a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(c) or is owned wholly by persons qualified to own British ships for the purposes of that part of that Act;

“day” has the same meaning as in paragraph 3 of Annex XVII;

“equivalent provision” means any provision in any other order made under section 30(2) of the Fisheries Act 1981 for the purposes of implementing Annex XVII, extending to any part of the United Kingdom which has equivalent effect to a specified provision in this Order, proceedings in respect of which, by virtue of section 30(2A) of the Fisheries Act 1981 may be commenced in any place in the United Kingdom;

(a) 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 (Modifications 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) for a definition of “the Ministers”. Section 30(2) has effect in relation to Scotland as modified by section 30(5). Section 30(5) was inserted by the Scotland Act 1999 (Consequential Modifications) (No. 2) Order (S.I. 1999/1820), Schedule 2, paragraph 68.

(b) O.J. No. L 356, 31.12.02, p.12.

(c) 1995 c.21.

“English fishing boat” means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in England as the port to which the vessel is to be treated as belonging;

“fishing boat” includes any vessel to which Annex XVII applies;

“foreign fishing boat” means a fishing boat which is not a British fishing boat but to which Annex XVII applies;

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

“relevant British fishing boat” means–

- (a) except in relation to article 6, a Scottish fishing boat;
- (b) in relation to article 6–
 - (i) a Scottish fishing boat; and
 - (ii) an English, Welsh or Northern Ireland fishing boat where a Scottish fishing boat is the donor and it is the recipient or it is the donor and a Scottish fishing boat is the recipient,

licensed under section 4 of the Sea Fish (Conservation) Act 1967(a), but does not include a British fishing boat which has an overall length of less than 10 metres;

“relevant offence” means an offence under this Order or under any equivalent provision;

“Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 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(b);

“unused days” at any time within a period identified in article 3(2), means the number of days in that period calculated in accordance with article 3, in which a fishing boat is permitted to be absent from port in any of the areas specified in paragraph 2 of Annex XVII while carrying any type of gear specified in paragraph 4 of Annex XVII, minus the number of days in that period in which it has been so absent while carrying that type of gear;

“Welsh fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Wales as the port to which the vessel is treated as belonging.

(2) In this Order, “logbook” has the same meaning as in paragraph 18 of Annex XVII but, for the purposes of any provision of this Order, other than article 6 and 11, any reference to a document, logbook or declaration includes, in addition to a document, logbook or declaration in writing–

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any data, howsoever reproduced, communicated via a satellite-based vessel monitoring system established under Article 3.1 of Council Regulation 2847/93 establishing a control system applicable to the Common Fisheries Policy(c), as last amended by Council Regulation (EC) No. 2846/98 of 17th December 1998(d);
- (d) 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
- (e) 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) Any information provided to any authority for the purposes of any provision of this Order shall be treated as also provided for the purposes of any equivalent provision.

(a) 1967 c. 84. Section 4 was amended by the Fishery Limits Act 1976 (c.86), section 3, the Fisheries Act 1981 (c.29), section 20 and the Sea Fish (Conservation) Act 1992 (c.60), section 1 and has effect in relation to Scotland as modified by section 22A inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43(13).

(b) 1998 c.46.

(c) O.J. No. L 261, 20.10.93, p.1.

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

Absence from port

3.—(1) Subject to article 4, a person in charge of a relevant British fishing boat which, during any part of the period specified in paragraph 1 (duration of controls) of Annex XVII, either—

- (a) is used in contravention of paragraph 7 (single type of gear), 8 (use of gear in different areas) or 9 (use of gears in given periods) of Annex XVII; or
- (b) is absent from port in excess of the number of days permitted to it by the following provisions of this article,

is guilty of an offence.

(2) In this Order, the person in charge of a relevant British fishing boat is its owner, master or charterer (if any), and the number of days permitted to such a boat for any period identified below is the basic number, that is to say—

- (a) for December 2003, the number indicated in paragraph 6(a) as read with paragraph 9 of Annex XVII and applicable to the boat in accordance with any fishing gear it carries and the area in which it is; and
- (b) in application of paragraph 11(a) (aggregation of periods) of Annex XVII, for each successive period of two calendar months the first of which starts on 1st February 2003 and the last of which ends on 30th November 2003, subject to paragraph (8), double the number ascertained in accordance with paragraph 6 as read with paragraph 9 of Annex XVII and applicable to the vessel in accordance with any fishing gear it carries,

cumulatively adjusted in accordance with the paragraphs (3) to (7).

(3) In relation to any relevant British fishing boat and in respect of the type of fishing gear it may carry, for each calendar month there is added to the basic number, such number of days (if any) as may be allocated to the United Kingdom under paragraph 6(b) and (c) of Annex XVII for the purpose of being such an addition.

(4) Where a number of days is transferred from one period to the next in accordance with article 5, that number is—

- (a) deducted from the basic number for the initial period; and
- (b) added to the basic number for the next period.

(5) Where a number of days is transferred in the same period from a donor to a recipient in accordance with article 6, that number is—

- (a) deducted from the basic number for the donor for that period; and
- (b) added to the basic number for the recipient for that period.

(6) Where during any period fishing gear is affixed to two or more fishing boats there shall be deducted from the basic number for each such boat that is a relevant British fishing boat in relation to that gear and that period a number of days equal to the number when it was absent from port but the gear was being carried by any other such boat.

(7) Where during any period a relevant British fishing boat has—

- (a) been absent from port carrying fishing gear in excess of the days permitted to it by this article; or
- (b) purported to transfer days in accordance with article 6 in excess of the number that pursuant to article 6(4)(b) it was entitled to transfer,

the Scottish Ministers may deduct from its basic number for the next period a number equal to the number of days in that excess.

(8) Notwithstanding paragraph (2), the number of days in the relevant period, in respect of the gear specified at paragraph 4(a) of Annex XVII, shall (for the purposes of articles 5 and 6) expressly not exceed the number of days determined in accordance with paragraph 6 of Annex XVII.

(9) In paragraph (8), “the relevant period” means—

- (a) for the purposes of paragraph (3)(2)(a), December 2003; and
- (b) for the purposes of paragraph (3)(2)(b), a successive period of two calendar months referred to in paragraph (3)(2)(b).

(10) In any proceedings for an offence under paragraph 3(1)(b) of this article, it shall be a defence for a person to show that the number of days of absence from port carrying any type of fishing gear comprising the offence was no greater than the number of days of absence carrying that gear purportedly but not validly transferred to that person under article 6 and that person did not know and had no reasonable cause to suspect that the donor was not entitled to transfer the days.

Exception in relation to absence from ports etc.

4. A person shall not be guilty of an offence under article 3(1) in respect of an activity relating to a boat in a period specified in article 3(2)(b) if—

- (a) the identification of the activity as an offence depends on the application of paragraph 9 of Annex XVII to the period;
- (b) the boat has not been the subject of any adjustment in respect of the period under articles 3(4) and (5); and
- (c) the activity would not have comprised an offence if, instead of paragraph 11(a) of the Annex being applied to the period—
 - (i) the period had been divided into two separate periods of one calendar month; and
 - (ii) the number applied to December 2003 by virtue of article 3(2)(a) had applied to each such period.

Transfer of days from one period to another

5.—(1) Transfer of days by any relevant British fishing boat from one period to the next for the purposes of paragraph 10(a) of Annex XVII is permitted to the extent specified in paragraph (2).

(2) The number of days transferred in relation to the boat from one period to the next is the maximum number of unused days which may be permitted to be so transferred under paragraph 10(a) of Annex XVII, rounded down to the nearest whole number.

Transfer of days from one boat to another

6.—(1) Transfer of unused days within the same period from one relevant British fishing boat (“the donor”) to another (“the recipient”) for the purposes of paragraph 10(b) of Annex XVII where either the donor or the recipient is, or both are, a relevant British fishing boat, is permitted, subject to paragraphs (3) to (5), to the extent specified in a notification of transfer sent under paragraph (2) of this article or under any equivalent provision.

(2) Where the donor is a relevant British fishing boat, a notification of transfer must—

- (a) be made in such form as may be determined by the Scottish Ministers;
- (b) contain all the particulars required by that form; and
- (c) be sent to the Scottish Ministers before the end of the period in question.

(3) A transfer is not permitted, except on cause shown to the satisfaction of the Scottish Ministers, if—

- (a) within the same period, the donor has already purported to transfer any number of days to a recipient;
- (b) the donor has been decommissioned within the meaning of article 7 of Council Regulation 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector^(a) as last amended by Council Regulation (EC) No 2369/2002 of 20th December 2002^(b); or
- (c) it relates to the gear defined in paragraph 4(a) of Annex XVII and the donor has not, within the same period, fished with that gear in any of the areas defined in paragraph 2 of Annex XVII.

(4) If, before 1st February 2003, a logbook has not been submitted in respect of the donor containing an entry showing that it was fishing in any of the areas specified in paragraph 2 of Annex XVII with a type of fishing gear specified in paragraph 4 of Annex XVII at any time during the years 2001 or 2002, then a transfer is not permitted.

(a) O.J. No. L 337, 30.12.99, p. 10.

(b) O.J. No. L 358, 31.12.02, p. 49.

- (5) The number of days transferred in a specified period is whichever is the fewer of—
- (a) the number of days specified for that transfer in the notification; or
 - (b) the maximum number of unused days which may be permitted to be so transferred under paragraph 10(b) of Annex XVII as read with this Order.
- (6) A person who makes a false statement in a notification under paragraph (2) of this article is guilty of an offence.

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

7. The Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000(a) is amended as follows:—

- (a) in article 2(1)—
 - (i) there is inserted, before the definition of “Community control measure”, as follows:—

“Annex XVII” means Annex XVII to Council Regulation 2341/2002 of 20th December 2002 fixing for 2003 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) at the end of the definition of “the Council Regulation” there is added “and as applied by paragraph 12 and qualified by paragraph 20 of Annex XVII”; and
- (b) in the Schedule, in column 3 of each entry opposite items 2(l), (m), (n) and (o), after the words “15 metres” wherever they appear there is inserted “(or to the extent applicable in consequence of paragraph 12 of Annex XVII, equal to or greater than 10 metres)”.

Landing of Cod

8.—(1) The competent authority for the purposes of paragraph 13 of Annex XVII (advance notice of landing of cod in excess of 1 tonne) is the authority responsible for the control of sea fisheries in the country in which the landing is to take place.

(2) The ports designated for the purposes of paragraph 14 of Annex XVII (landing of cod in excess of 2 tonnes) are the ports specified in the Schedule to this Order.

(3) Where there is, in respect of a relevant British fishing boat or a foreign fishing boat landing in Scotland, a failure to comply with, or with a requirement given under, paragraph 13 of Annex XVII the master, the representative of the master, the owner and the charterer (if any) are guilty of an offence.

(4) A person in charge of a relevant British fishing boat or a foreign fishing boat which lands cod in contravention of paragraph 14 of Annex XVII, as read with paragraph (2) of this article, is guilty of an offence.

Mixing of species

9. A person in charge of a relevant British fishing boat or a foreign fishing boat within the Scottish Zone which retains species in contravention of paragraph 17 of Annex XVII (retention on board of cod) is guilty of an offence.

Transportation of cod

10. Where any quantities of cod are transported in contravention of paragraph 20 of Annex XVII (transportation of cod to be accompanied by a landing declaration), the owner and hirer of, and the person responsible for, the vehicle used to transport the cod is guilty of an offence.

Maintenance of logbook

- 11.—**(1) An entry shall be made in the logbook of a relevant British fishing boat which is—
- (a) absent from port carrying any of the gear specified in paragraph 4 of Annex XVII; and
 - (b) in any of the areas specified in paragraph 2 of Annex XVII,
- in respect of every such absence.
- (2) Such an entry shall be made—
- (a) daily, by not later than midnight at the end of each day;
 - (b) at the time of arrival in port; and
 - (c) at the time of any inspection at sea.
- (3) Where there is, in respect of a relevant British 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.

Penalties

- 12.—**(1) A person guilty of an offence under article 3(1), 6(6), 8 or 9 of this Order, or under any equivalent provision shall be liable—
- (a) on summary conviction to a fine not exceeding £50,000;
 - (b) on conviction on indictment to a fine.
- (2) The court by or before which a person is convicted of an offence under articles 8 or 9 may order the forfeiture of—
- (a) any fish in respect of which the offence was committed; and
 - (b) in respect of an offence under article 3(1), 8, or 9 any net or other fishing gear used in committing the offence.
- (3) Any person found guilty of an offence under article 3(1), 8 or 9 or under any equivalent provision shall, subject to the following provisions of this article, be liable on 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

- 13.—**(1) Without prejudice to the provisions of section 221 of the Criminal Procedure (Scotland) Act 1995^(a), where a court has imposed a fine on any person in respect of a relevant offence or an offence under article 11, 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.

(a) 1995 c.46.

(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(a) or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(b) 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

14.—(1) For the purpose of enforcing articles 3 to 9 and 11 of this Order or any equivalent provisions or to facilitate the cross-checking provided for in paragraph 18 of Annex XVII, 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.

(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 article 3(1), 8, 9 or 11 of 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.

(a) 1980 c.43.

(b) S.I. 1981/1675.

Powers of British sea-fishery officers on land

15.—(1) For the purpose of enforcing articles 3 to 10 of this Order or any equivalent provisions or to facilitate the cross-checking provided for in paragraph 18 of Annex XVII, 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

- 16.—**(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 an offence under article 3(1), 8 or 9 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

- 17.** A British sea-fishery officer or a person assisting such an officer by virtue of articles 14(2) or 15(1)(b) or an authorisation under article 15(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 14 and 15 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

- 18.—**(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 such officers by articles 14 to 16 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

- 19.—**(1) Where any offence under articles 3(1), 6(6), 8, 9, 10 or 11 of 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.
- (2) 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.
- (3) Where any offence under article 3(1), 6(6), 8, 9, 10 or 11 of 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

20.—(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;
- (e) document containing required information received by a fisheries monitoring centre established under Article 3.7,

of Council Regulation (EC) No. 2847/93 of 12th October 1993 (establishing a control system applicable to the Common Fisheries Policy, as last amended by Council Regulation (EC) No. 2846/98 of 17th December 1998) 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 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 Council Regulation (EC) No. 2847/93.

Pentland House,
Edinburgh
31st January 2003

ROSS FINNIE
A member of the Scottish Executive

SCHEDULE

LIST OF PORTS (AND WHERE APPLICABLE LOCATIONS WITHIN THE PORT) AT WHICH MORE THAN 2 TONNES OF COD TAKEN FROM THE WATERS COVERED BY THE NORTH SEA AND WEST OF SCOTLAND COD RECOVERY ZONES MUST BE LANDED

ENGLAND AND WALES	
Port	Location within port (where applicable)
North Shields	
Hartlepool	Fish quay in Victoria Dock
Whitby	Fish quay
Scarborough	West Pier
Humberside (Hull and Grimsby)	Hull – North side of Albert Dock & William Wright Dock Grimsby – Fish Dock, Market Quay
Lowestoft	Waveney Dock
Ramsgate	Harbour
Shoreham	Within the confines of the harbour
Plymouth	Sutton Harbour, New Fish Market
Brixham	
Newlyn	
Padstow	
Milford Haven	
Holyhead	Fish Dock
Whitehaven	North Harbour on the Old North Wall Quay next to the Ice Plant and on the North Wall Quay next to the Fish Handling Facility building
Fleetwood	Wyre Fish Dock
SCOTLAND	
Eyemouth	
Pittenweem	
Aberdeen	Palmerston Quay & Commercial Quay
Peterhead	Peterhead Harbour excluding Peterhead Bay Harbour
Fraserburgh	
Buckie	
Lerwick	All piers, quays and docks within harbour limits excluding those in Dales Voe
Scalloway	
Kirkwall	
Scrabster	
Kinlochbervie	All quays lying to the North of the ice factory quay.
Lochinver	
Ullapool	
Stornoway	
Portree	
Mallaig	
Oban	
Campbeltown	
Troon	
NORTHERN IRELAND	
Ardglass	
Portavogie	
Kilkeel	
Bangor	

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the enforcement in Scotland of the provisions of Annex XVII (“the Annex”) to Council Regulation 2341/2002 (O.J. No. L 356, 31.12.02, p.12) (“the Council Regulation”) fixing for certain fish stocks and groups of fish stocks the fishing opportunities in Community waters for 2003.

The Order contains provisions relating to the calculation of the number of days on which a vessel may be absent from port for the purposes of the Annex (article 3(2) to (7)) and makes clear, in particular in relation to the types of gear at paragraph 4(a) of the Annex, that the number of fishing days available cannot exceed the total calculated under paragraph 6 of the Annex (article 3(8)). It also contains provisions relating to absence from port in specified circumstances (article 4) and the transfer of days from one period to another (article 5) and from one vessel to another (article 6).

By virtue of article 8(2), the ports named in the Schedule are designated, for the purposes of paragraph 14 of the Annex.

The Order creates offences in respect of contraventions, by a person in charge of a relevant British fishing boat (as defined in the Order), of the provisions of paragraphs 6 (absence from port in excess of number of permitted days), 7 (single type of gear), 8 (use of gear in different areas) and 9 (use of gears in different periods) of the Annex (article 3(1)).

The Order also creates offences in respect of contraventions by certain persons of other provisions of the Annex (articles 8, 9, 10 and 11) and in respect of the making of a false statement by any person in a notification under article 6(2) (article 6(6)) and extends the application of the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000 (S.S.I. 2000/7) in pursuance of the Annex (article 7).

The Order provides for the recovery of fines imposed in respect of a relevant offence as defined in the Order (article 13).

For the purposes of enforcing provisions of the Annex the Order confers on British sea-fishery officers the powers to enter premises, to go on board fishing boats, to stop and search vehicles transporting fish, to examine fish, to require the production of documents, to search for and seize documents, to take a boat to the nearest convenient port and to seize fish and fishing gear (articles 14 to 17).

A Regulatory Impact Assessment in the relation to the Annex has been prepared and placed in SPICE. Copies can be obtained from the Scottish Executive Environment and Rural Affairs Department, Robb’s Loan, Edinburgh, EH14 1TY.

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