

This Scottish Statutory Instrument has been made in consequence of a defect in S.S.I. 2008/102 and is being issued free to all known recipients of that instrument.

SCOTTISH STATUTORY INSTRUMENTS

2008 No. 156

SEA FISHERIES

**The Sea Fishing (Control Procedures for Herring, Mackerel
and Horse Mackerel) (Scotland) Amendment Order 2008**

<i>Made</i>	- - - -	<i>16th April 2008</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>17th April 2008</i>
<i>Coming into force</i>	- -	<i>9th May 2008</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(1) and paragraph 1A of Schedule 2 to the European Communities Act 1972(2).

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(3) and it appears to the Scottish Ministers that it is expedient for any reference to Commission Regulation (EC) No. 1542/2007(4) to be construed as a reference to that Regulation as amended from time to time.

Citation, commencement and extent

1.—(1) This Order may be cited as the Sea Fishing (Control Procedures for Herring, Mackerel and Horse Mackerel) (Scotland) Amendment Order 2008 and comes into force on 9th May 2008.

(2) Subject to paragraph (3), this Order extends to Scotland and the Scottish zone only.

(3) Insofar as it extends beyond Scotland and the Scottish zone, it does so only as a matter of Scots law.

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- (1) 1981 c. 29 (“the 1981 Act”); relevant modifications are contained in the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I.1999/1748), article 5 and the Scotland Act 1998 (Modification of Functions) Order 1999 (S.I. 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) of the 1981 Act for definitions of “enforceable Community restriction”, “enforceable Community obligation” and “the Ministers”. Section 30 of the 1981 Act has effect in relation to Scotland as modified by section 30(5) of that Act which was inserted by the Scotland Act (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68(5)(b).
- (2) 1972 c. 68; paragraph 1A of Schedule 2 was inserted by the [Legislative and Regulatory Reform Act \(c.51\)](#), section 28.
- (3) section 2(2) was amended by the Scotland Act 1998, Schedule 8, paragraph 15(3) which was amended by section 27(4) of the [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#). Section 2(2) was also amended by section 27(1)(a) of the [Legislative and Regulatory Reform Act 2006 Act](#).
- (4) O.J. No. L 337, 21.12.2007, p.56.

Amendment of the Sea Fishing (Control Procedures for Herring, Mackerel and Horse Mackerel) (Scotland) Order 2008

2. The Sea Fishing (Control Procedures for Herring, Mackerel and Horse Mackerel) (Scotland) Order 2008(5) is amended as follows—

(a) for article 7 (offences) substitute—

“Offences

7.—(1) This article applies to any—

- (a) Scottish fishing boat wherever it may be; and
- (b) Community fishing boat or third country fishing boat within the Scottish zone.

(2) Where there is in respect of any boat mentioned in paragraph (1) a contravention of, or failure to comply with—

- (a) specified Community provisions 1(a) to (f) and (j), the master, owner and charterer (if any) shall each be guilty of an offence;
- (b) specified Community provision 1(g), the buyer of the fish shall be guilty of an offence;
- (c) specified Community provisions 1(h), (i), (k) (in relation to Articles 9.3 and 11.2) and (ia), the operator of the weighing facilities shall be guilty of an offence;
- (d) specified Community provision 1(k) (in relation to Article 7.3(b)), the receiver of the fish shall be guilty of an offence; and
- (e) specified Community provision 1(l), the processor, receiver and buyer of the fish shall each be guilty of an offence.”; and

(b) at the end of entry 1(i) in the Schedule insert—

- (i) in Column 1, “(ia) Article 9.4”;
- (ii) in Column 2, “Requirements to fit counter that records the cumulative total of the weight, to record readings of the counter and all use of the system in the weighing logbook required under Article 9.3.”; and
- (iii) in Column 3, “£50,000”.

St Andrew’s House,
Edinburgh
16th April 2008

RICHARD LOCHHEAD
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Sea Fishing (Control Procedures for Herring, Mackerel and Horse Mackerel) (Scotland) Order 2008 (“the principal Order”) which implemented Commission Regulation (EC) No. 1542/2007 (O.J. No. L 337, 21.12.2007, p.56 (“the Commission Regulation”).

Article 7 of the principal Order made it an offence for the master, owner and charterer (if any) of the boat from which fish is landed to breach provisions of the Commission Regulation listed in the Schedule to the principal Order.

Of the Articles of the Commission Regulation listed in that Schedule, Article 6.2 places obligations on the buyer of the fish; Articles 8, 9.3 and 9.4 and Article 12 (in relation to Articles 9.3 and 11.2) place obligations on the operator of the weighing facilities; Article 12 (in relation to Article 7.3(b)) places obligations on the receiver of the fish; and Article 13 places obligations on the processor, receiver and buyer of the fish.

This Order amends the principal Order to provide that it is an offence for such persons to contravene or fail to comply with the obligations placed on them (article 2(a)).

The Order also amends the Schedule to the Order to make it an offence for the operator of privately operated weighing facilities to fail to comply with the requirements of Article 9.4 of the Commission Regulation which requires the fitting of a counter to record the cumulative total of weight and the recording of information in the weighing logbook required by Article 9.3 of the Regulation (article 2(b)).