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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 317**

**SEA FISHERIES**

**The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Order 2009**

*Made* - - - - *17th September 2009*  
*Laid before the Scottish Parliament* - - - - *18th September 2009*  
*Coming into force* - - *10th October 2009*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(1) and all other powers enabling them to do so.

**PART I**  
**GENERAL**

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Order 2009 and comes into force on 10th October 2009.

(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, inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68(5)(b).

(4) Nothing in paragraph (2) is to be treated as prejudicing the effect of section 30(2A)(2) 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—

“British fishing boat” means a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(3) or is wholly owned by persons qualified to own British ships for the purposes of that part of that Act;

“cod recovery zone” means the geographical areas defined in paragraph 3 of Annex IIa;

“Community fishing boat” means a fishing boat flying the flag of and registered in a Member State of the European Community;

“Community quota measure” means a provision of the Council Regulation specified in column 1 of Schedule 1 as read with any qualifying words relating to the provision in that column, and in the case of Article 10 of the Council Regulation, with article 3 of this Order;

“Community third country fishing measure” means a provision of the Council Regulation specified in column 1 of Schedule 2;

“day” has the same meaning as in paragraph 5 of Annex IIa;

“equivalent provision” means any provision in any other order made under section 30(2) of the Fisheries Act 1981 for the purposes of implementing a Community quota measure, a Community third country fishing measure, Annex IIa or Regulation 1342/2008, extending to any part of the United Kingdom which has equivalent effect to a 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;

“fishery product” includes fish;

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

“ICES” followed by a roman numeral with or without a letter is to be construed as a reference to whichever of the statistical sub-areas and divisions of the International Council for the Exploration of the Sea(4) is identified therein by that roman numeral or that roman numeral and letter as the case may be;

“licensed” means licensed under section 4 of the Sea Fish (Conservation) Act 1967(5), but does not include a British fishing boat which has an overall length of less than 10 metres;

“person in charge” means the owner, master or charterer or the agent of the owner, master or charterer;

“regulated gear” means any gear within a grouping of fishing gears specified in paragraph 4 of Annex IIa in relation to cod;

“Regulation 2807/83” means Commission Regulation (EEC) 2807/83 of 22nd September 1983 laying down detailed rules for recording information on Member States’ catches of fish(6);

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(2) Section 30(2A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68(5)(a).

(3) 1995 c.21.

(4) Cmnd. 2586.

(5) 1967 c.84 (“the 1967 Act”); section 4 was substituted by the Fishery Limits Act 1976 (c.86), section 3 and amended by the Fisheries Act 1981 (c.29), section 20 and the Sea Fish (Conservation) Act 1992 (c.60), section 1. It has effect in relation to Scotland as modified by section 22A of the 1967 Act, as inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43(13).

(6) O.J. No. L 276, 10.10.83, p.1 as corrected by a Corrigendum published in O.J. No. L 353, 15.12.83, p.21 and as amended by Act of Accession of Spain and Portugal, O.J. No. L 302, 15.11.85, p.23; Commission Regulation (EEC) No. 473/89, O.J. No. L 53,

“Regulation 2847/93” means Council Regulation (EEC) No. 2847/93 of 12th October 1993 establishing a control system applicable to the common fisheries policy(7);

“Regulation 1006/2008” means Council Regulation (EC) No. 1006/2008 of 29th September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, amending Regulations (EEC) No. 2847/93 and (EC) No. 1627/94 and repealing Regulation (EC) No. 3317/94(8);

“Regulation 1342/2008” means Council Regulation (EC) No. 1342/2008 of 18th December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks and repealing Regulation (EC) No. 423/2004(9);

“relevant fishing boat” means—

- (a) in relation to article 3—
  - (i) a licensed Scottish fishing boat; and
  - (ii) any other fishing boat which is within the Scottish zone;
- (b) in relation to articles 4, 5 and 6—
  - (i) a Scottish fishing boat wherever it may be; and
  - (ii) any other fishing boat which is within the Scottish zone;
- (c) in relation to articles 8 and 9 a licensed Scottish fishing boat; and
- (d) in relation to articles 10 and 11—
  - (i) a licensed Scottish fishing boat wherever it may be; and
  - (ii) any other licensed fishing boat which is within the Scottish zone other than a foreign fishing boat;

“relevant offence” means an offence under this Order or under any equivalent provision except an offence under article 18;

“Scotland” and “the Scottish zone” have the same meanings assigned to those terms by section 126(1) of the Scotland Act 1998(10);

“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;

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25.2.89, p.34; Act of Accession of Austria, Sweden and Finland, O.J. No. C241, 29.8.94, p.21 (adapted by Council Decision 95/1/EC, Euratom, ECSC, O.J. No. L 1, 1.1.95, p.1); Commission Regulation (EEC) No. 2945/95, O.J. No. L 308, 21.12.95, p.18; Commission Regulation (EC) No. 395/98, O.J. No. L 50, 20.2.98, p.17; Commission Regulation (EC) No. 1488/98, O.J. No. L 196, 14.7.98, p.3; Commission Regulation (EC) No. 2737/1999, O.J. No. L 328, 22.12.99, p.54 (corrected by two Corrigenda, published in O.J. No. L 12, 18.1.00, p.36 and O.J. No. L 29, 4.2.00, p.38); Commission Regulation (EC) No. 1965/2001, O.J. No. L 268, 9.10.01, p.23 and Commission Regulation (EC) No. 1804/2005, O.J. No. L 290, 4.11.05, p.10.

(7) O.J. No. L 261, 20.10.93, p.1 as amended by Council Regulation (EC) No. 2870/95, O.J. No. L 301, 14.12.95, p.1; Council Decision 95/528/EC, O.J. No. L 301, 14.12.95, p.35 (corrected by a Corrigendum published in O.J. No. L 302, 15.12.95, p.45); Council Regulation (EC) No. 2489/96, O.J. No. L 338, 28.12.96, p.12; Council Regulation (EC) No. 686/97, O.J. No. L 102, 19.4.97, p.1; Council Regulation (EC) No. 2205/97, O.J. No. L 304, 7.11.97, p.1; Council Regulation (EC) No. 2635/97, O.J. No. L 356, 31.12.97, p.14; Council Regulation (EC) No. 2846/98, O.J. No. L 358, 31.12.98, p.5 (corrected by a Corrigendum published in O.J. No. L 105, 22.4.99, p.32); Council Regulation (EC) No. 806/2003, O.J. No. L 122, 16.5.03, p.1; Council Regulation (EC) No. 1954/2003, O.J. No. L 289, 7.11.03, p.1; Council Regulation (EC) No. 768/2005, O.J. No. L 128, 21.5.05, p.1; Council Regulation (EC) No. 1967/2006, O.J. No. L 409, 30.12.06, p.11 (corrected by a Corrigendum published in O.J. No. L 36, 8.2.07, p.6); Council Regulation (EC) No. 1098/2007, O.J. No. L 248, 22.9.07, p.1; Council Regulation (EC) No. 1006/2008, O.J. No. L 286, 29.10.08, p.33 and as read with Article 20 of, and modified by Articles 28 and 29 of, Council Regulation (EC) No. 1342/2008, O.J. No. L 348, 24.12.08, p.20.

(8) O.J. No. L 286, 29.10.08, p.33.

(9) O.J. No. L 348, 24.12.08, p.20.

(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 is determined by the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).

“special fishing permit” means a permit issued by the Scottish Ministers, which specifies the number of days or hours for which a vessel may be present within the cod recovery zone, whilst carrying specified regulated gear, in accordance with paragraph 8 of Annex IIa;

“the Council Regulation” means Council Regulation (EC) No. 43/2009 of 16th January 2009 fixing for 2009 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<sup>(11)</sup>; and

“third country fishing boat” means a fishing boat flying the flag of and registered in a state other than a Member State.

(2) In this Order “logbook” has the same meaning as in Article 6 of Regulation 2847/93 as read with Regulation 2807/83 and for the purposes of this Order, any reference to a logbook, declaration or document includes, in addition to a logbook, declaration or document in writing—

- (a) map, plan, graph or drawing;
- (b) photograph;
- (c) data, however reproduced, communicated via a satellite-based vessel monitoring system established under Article 3.1 of Regulation 2847/93;
- (d) 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) film (including microfilm), negative, tape, disk or other device on which one or more visual images are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom.

(3) In this Order, any reference to a—

- (a) numbered article is a reference to the article so numbered in this Order;
- (b) numbered paragraph is, except where specified as a numbered paragraph of an Annex of the Council Regulation, a reference to the paragraph so numbered in the article in which it appears in this Order;
- (c) numbered Schedule is a reference to the Schedule to this Order so numbered; and
- (d) numbered Article or Annex (or paragraph thereof) is, except where otherwise indicated, a reference to the Article or Annex (or paragraph thereof) so numbered in the Council Regulation.

(4) Column 2 in each of Schedules 1 and 2 (which provides in relation to each Community quota measure and each Community third country fishing measure an indication of the subject matter of the measure) is not to be read as limiting the scope of any Community quota measure or Community third country fishing measure and is to be disregarded in relation to any question arising as to the construction of this Order.

(5) Any information provided to any authority for the purposes of any provisions of this Order is to be treated as also provided for the purposes of any equivalent provision.

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<sup>(11)</sup> O.J. No. L 22, 26.1.09, p.1 as amended by Council Regulation (EC) No. 302/2009, O.J. No. L 96, 15.4.09, p.1; Commission Regulation (EC) No. 517/2009, O.J. No. L 155, 18.6.09, p.9 and Commission Regulation (EC) No. 593/2009, O.J. No. L 178, 9.7.09, p.12.

## PART II

### ENFORCEMENT OF COMMUNITY QUOTA AND THIRD COUNTRY FISHING MEASURES

#### **Landing of unsorted catches**

- 3.—(1) This article applies for the purposes of Article 10.
- (2) No catch that includes any unsorted fish may be landed at a harbour unless—
- (a) the master of the fishing boat from which the catch is to be landed applies before landing to a British sea#fishery officer at the harbour for a decision as to the suitability of the harbour for landing the catch; and
  - (b) having regard to the overall size and characteristics of the catch, the British sea#fishery officer—
    - (i) decides that the sampling systems at the harbour are adequate for the purposes of monitoring effectively the landing of the catch; and
    - (ii) notifies the master of that decision.
- (3) A person in charge of a relevant fishing boat is guilty of an offence if a catch that includes unsorted fish is landed from the fishing boat at a harbour before the master is notified of the decision of a British sea#fishery officer at the harbour in question under paragraph (2)(b)(ii).

#### **By catch quota – skates and rays**

4. A person in charge of a relevant fishing boat is guilty of an offence if—
- (a)
    - (i) the relevant fishing boat has an overall length of more than 15 metres; and
    - (ii) skates and rays (Rajidae) comprise more than 25% by live weight of the catch retained on board in contravention of Annex IA;
  - (b) catches of any of the following species are not reported separately in contravention of Annex IA:—
    - (i) cuckoo ray (*Leucoraja naevus*);
    - (ii) thornback ray (*Raja clavata*);
    - (iii) blonde ray (*Raja brachyura*);
    - (iv) spotted ray (*Raja montagui*);
    - (v) starry ray (*Amblyraja radiata*);
    - (vi) smalleyed ray (*Raja microocellata*);
    - (vii) sandy ray (*Leucoraja circularis*); and
    - (viii) shagreen ray (*Leucoraja fullonica*); or
  - (c) any of the following species are retained on board and are not promptly released unharmed to the extent practicable in contravention of Annex IA:—
    - (i) common skate (*Dipturus batis*);
    - (ii) Norwegian skate (*Raja (Dipturus) nidarosiensis*);
    - (iii) white skate (*Rostroraja alba*); and
    - (iv) undulate ray (*Raja undulata*).

**By catch quota – sharks and redfish**

5. A person in charge of a relevant fishing boat is guilty of an offence if—
- (a) sharks comprise more than 5% by live weight of the catch retained on board in contravention of paragraph 9.11 of Annex III;
  - (b) any angel sharks are retained on board and are not promptly released unharmed to the extent practicable in contravention of paragraph 19 of Annex III; or
  - (c) redfish comprise more than 1% by live weight of the catch retained on board in contravention of paragraph 24(e) of Annex III.

**Maximum landing size – spurdog/dogfish and porbeagle**

6. A person in charge of a relevant fishing boat is guilty of an offence if the following maximum landing sizes are not adhered to in contravention of Annex IA:—
- (a) in respect of spurdog/dogfish (*Squalus acanthias*), 100 centimetres (total length); or
  - (b) in respect of porbeagle (*Lamna nasus*), 210 centimetres (fork length).

**Offences**

- 7.—(1) Where there is, in respect of any—
- (a) Scottish fishing boat wherever it may be; or
  - (b) Community fishing boat within the Scottish zone,

a contravention of, or failure to comply with, any Community quota measure, the person in charge of the fishing boat is guilty of an offence.

(2) Where there is, in respect of any third country fishing boat within the Scottish zone, a contravention of, or failure to comply with, the Community quota measures specified in entry 6.(a) to (l) in Schedule 1 or with any Community third country fishing measure, the person in charge of the fishing boat is guilty of an offence.

(3) Nothing in this Order shall be taken to constitute an offence to land, from a Scottish fishing boat, an unsorted catch at a harbour outwith Scotland where sampling programmes mentioned in Article 10.3 are in place.

## PART III

### RESTRICTION ON DAYS AT SEA

**Absence from port**

- 8.—(1) A person in charge of a relevant fishing boat which—
- (a) is absent from port and within the cod recovery zone in excess of the number of days or hours allocated to it by a special fishing permit; or
  - (b) enters the cod recovery zone carrying on board any specified regulated gear without having a special fishing permit,

is guilty of an offence.

- (2) Paragraph (1)(a) does not apply to—

- (a) a person in charge of a relevant fishing boat which is permitted by paragraph 11.1 of Annex IIa to transit the cod recovery zone provided that the person complies with the requirements of that paragraph; or
- (b) a person in charge of a relevant fishing boat in respect of which paragraph 11.2 of Annex IIa applies, provided that the person complies with the requirements of that paragraph.

(3) Paragraph (1)(b) does not apply to a person in charge of a relevant fishing boat which is permitted by paragraph 11.1 of Annex IIa to transit the cod recovery zone provided that the person complies with the requirements of that paragraph.

(4) In any proceedings for an offence under paragraph (1)(a), it is a defence for a person to show that the number of days or hours of absence from port carrying any type of fishing gear comprising the offence was no greater than the number of days or hours of absence carrying that gear purportedly, but not validly, transferred to the fishing boat used by that person from another relevant fishing boat (“the donor”) and that person did not know, and had no reasonable cause to suspect, that the donor was not entitled to transfer the days or hours.

### **Use of regulated gear**

9.—(1) A person in charge of a relevant fishing boat which fishes in contravention of the notification requirement in paragraph 10.1 of Annex IIa is guilty of an offence.

(2) A person in charge of a relevant fishing boat which carries, whilst present in the cod recovery zone, regulated gear other than the regulated gear notified under a requirement in paragraph 10 of Annex IIa is guilty of an offence.

(3) The competent authority to which prior notification must be made, or from which prior authorisation must be sought, for the purposes of paragraph 10 of Annex IIa, is the Scottish Ministers.

(4) Subject to the derogation in paragraph 10.2 of Annex IIa, a relevant fishing boat or a foreign fishing boat within the Scottish zone which is present in the cod recovery zone carrying on board regulated gear falling within one of the groupings of fishing gears specified in paragraph 4 of Annex IIa must not simultaneously carry on board regulated gear falling within any of the other groupings of fishing gear specified in that paragraph.

(5) A person in charge of a relevant fishing boat or a foreign fishing boat which contravenes the prohibition in paragraph (4) is guilty of an offence.

## **PART IV**

### **LOGBOOKS AND DESIGNATED PORTS**

#### **Maintenance of logbook**

10.—(1) An entry must 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 virtue of that Article (as read with Regulation 2807/83) were the boat so fishing, and such an entry must state the type of fishing gear carried.

(2) Such an entry must 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 11, 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 must 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**

**11.**—(1) The relevant part (the white top copy) of the logbook must 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.

(3) In this article “designated port” means a port specified in Schedule 3.

## **PART V**

### **ENFORCEMENT**

### **Penalties**

**12.**—(1) A person guilty of an offence under article 3(3), 4, 5, 6, 8, or 9(1), (2) or (5), or under any equivalent provision is liable—

- (a) on summary conviction, to a fine not exceeding £50,000; and
- (b) on conviction on indictment, to a fine.

(2) A person guilty of an offence under article 7(1) or (2), or under any equivalent provision is liable—

- (a) on summary conviction, to a fine not exceeding the amount specified in column 3 of Schedule 1 or 2 in relation to the Community quota measure or Community third country fishing measure, the contravention of which, or failure to comply with, founded the offence; and
- (b) on conviction on indictment, to a fine.

(3) The court by or before which a person is convicted of an offence under article 7(1) or (2), 8, 9(1), (2) or (5) or under an equivalent provision may order the forfeiture of—

- (i) any fish in respect of which the offence was committed; and
- (ii) 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.

(4) Any person found guilty of an offence under article 7(1) or (2), 8, 9(1), (2) or (5), or under an equivalent provision, subject to the following provisions of this article, is liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.

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

(6) Subject to paragraph (5), any fine to which a person is liable under paragraph (4) is 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<sup>(12)</sup>, where a court has imposed a fine on any person in respect of an offence under this Order, 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 3 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 3 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 must 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 an offence under this Order a transfer of fine order under section 222 of the Criminal Procedure (Scotland) Act 1995, section 90 of the Magistrates' Courts Act 1980<sup>(13)</sup> or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(14)</sup> specifies a court of summary jurisdiction in Scotland, this article applies 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 purposes of enforcing article 7(1), or any equivalent provision made for the purposes of implementing a Community quota measure, a British sea#fishery officer may exercise, in relation to any—

- (a) Scottish fishing boat wherever it may be; or
- (b) Community fishing boat within the Scottish zone,

the powers conferred by paragraphs (5), (6) and (7).

(2) For the purposes of enforcing article 7(2), or any equivalent provision made for the purposes of implementing a Community quota measure specified in that article or a Community third country

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<sup>(12)</sup> 1995 c.46.

<sup>(13)</sup> 1980 c.43.

<sup>(14)</sup> S.I. 1981/1675.

fishing measure, a British sea#fishery officer may exercise the powers conferred by paragraphs (5), (6) and (7) in relation to any third country fishing boat within the Scottish zone.

(3) For the purposes of enforcing articles 8 and 9, a British Sea Fishery Officer may exercise the powers conferred by paragraphs (5), (6) and (7) in relation to a licensed Scottish fishing boat wherever it may be.

(4) For the purposes of enforcing article 3, 4, 5, 6, 10 or 11 or any equivalent provision, a British sea fishery officer may exercise the powers conferred by paragraphs (5), (6) and (7) in relation to—

- (a) a Scottish fishing boat wherever it may be; or
- (b) any other fishing boat which is within the Scottish zone.

(5) A British sea#fishery officer may go on board the boat, with or without persons assigned to assist 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.

(6) A British sea#fishery 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 purposes of enforcement referred to in paragraphs (1), (2), (3) and (4) and, in particular, may—

- (a) search for fishery products or fishing gear on the boat and may examine any such products 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 that officer to be necessary for facilitating the examination;
- (b) require any person on board the boat to produce any document relating to the boat, to any fishing 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, 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) inspect, take copies of and retain in the possession of that officer while any search, examination or inspection provided for under this article is being carried out, any such document produced to that officer or found on board;
- (e) 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
- (f) where the boat is one in relation to which that officer has reason to suspect that a relevant offence has been committed, seize and detain any such document produced to that 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) permits 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.

(7) Where it appears to a British sea#fishery officer that a relevant offence has at any time been committed the officer may—

- (a) require the master of the boat in relation to which the offence took place to take, or the officer may take, the boat and its crew to the port which appears to the officer 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 the officer must serve notice in writing on the master 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**

- 15.—(1) For the purpose of enforcing a relevant offence a 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 the officer such other persons as appear to the 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, transshipment, sale or disposal of any fishery product;
  - (g) for the purpose of ascertaining whether a relevant offence has been committed, 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 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 the 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 purposes of enabling the document to be used as evidence in proceedings for the offence.

(2) The provisions of paragraph (1) 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, 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 the sheriff by information on oath is—
- (a) satisfied 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) 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
    - (iii) that the premises are unoccupied or the occupier is temporarily absent and it might defeat the object of the entry to await return of the occupier,

the sheriff may by signed warrant, valid for a period of no more than 1 month, authorise a British sea#fishery officer to enter the premises, if need be by using 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 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.

(3) For the purposes of paragraph 9.8 of Annex III, the Scottish Ministers are the competent authorities.

### **Protection of officers**

**17.** A British sea#fishery officer, or a person assisting such an officer by virtue of article 14(5) or 15(1)(b) or (3), is not liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred by article 14, 15 or 16 if the court is satisfied that—

- (a) the act was done in good faith;
- (b) there were reasonable grounds for doing it; and
- (c) 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 article 14 or 15;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with such requirement; or
- (c) obstructs any such officer in the exercise of the powers conferred by article 14, 15 or 16,

is guilty of an offence.

(2) Any 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.

### **Offences by bodies corporate**

**19.**—(1) Where an offence under this Order is committed—

- (a) by a body corporate, and it is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of any—

- (i) director, manager, secretary or similar officer of the body corporate; or
- (ii) person purporting to act in any such capacity;
- (b) by a Scottish partnership, and it is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of any—
  - (i) partner; or
  - (ii) person purporting to act in that capacity; or
- (c) by an unincorporated association (other than a Scottish partnership), and it is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of any—
  - (i) officer of the association or any member of its governing body; or
  - (ii) person purporting to act in any such capacity,

that person (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) For the purposes of this Order, “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

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

**20.**—(1) Any—

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

of Regulation 2847/93(15) is, in any proceedings for a relevant offence, to be received in evidence without being produced or sworn to by any witness and is, unless the contrary is shown, conclusive evidence as to the matters stated therein.

(2) For the purposes of paragraph (1), “required information” means 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-based vessel monitoring system established under Article 3.1 of Regulation 2847/93.

(3) Any logbook, declaration, report or other document kept on board or held in pursuance of Article 30 of the Council Regulation is, in any proceedings for an offence under article 7(1) or (2), or under any equivalent provision made for the purposes of implementing a Community quota measure or a Community third country fishing measure, proceedings in respect of which were brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981(16), to be received in evidence without

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

(16) 1981 c.29; section 30(2A) was inserted by S.I. 1999/1820.

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being produced or sworn to by any witness and is, unless the contrary is shown, conclusive evidence as to the matters stated therein.

**Revocation**

**21.** Articles 2 to 33 of the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Order 2008(17) are revoked.

St Andrew's House,Edinburgh  
17th September 2009

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

## SCHEDULE 1

Articles 2(1) and (4), 7(1) and (2) and 12(2)

## COMMUNITY QUOTA MEASURES (MAXIMUM FINES ON SUMMARY CONVICTION)

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provision of the Council Regulation</i>	<i>Subject matter</i>	<i>Maximum fine on summary conviction</i>
1. Article 6	Prohibition on fishing for, retaining on board, transshipping or landing basking shark ( <i>Cetorhinus maximus</i> ) and white shark ( <i>Carcharodon carcharias</i> ).	£50,000
2. Article 9.1	Restriction on retaining on board or landing catches from stocks for which total allowable catches or quotas are established and have been exhausted.	£50,000
3. Article 9.2	Circumstances required for fish to be retained on board and landed where a Member State has no quota or quota is exhausted.	The statutory maximum
4. Article 10.2	Prohibition on landing catches which are unsorted and contain herring when catch limitations of a Member State are exhausted in ICES zones IIIa, IV and VIId and EC waters of ICES zone IIa.	£50,000
5. Article 11	Prohibition on fishing by Community vessels in certain Norwegian waters.	£50,000
6. Articles 13 and 19 as read with—		
(a) paragraph 1 of Annex III	Prohibition on the landing or retention on board of	The statutory maximum

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provision of the Council Regulation</i>	<i>Subject matter</i>	<i>Maximum fine on summary conviction</i>
	herring caught in EC waters of ICES zone IIa in the periods of 1st January to 28th February and 16th May to 31st November.	
(b) paragraph 2 of Annex III and Appendix 1 to that Annex	Requirements as to mesh sizes, target species and catch percentages in the Skagerrak and Kattegat.	The statutory maximum
(c) paragraph 4 of Annex III	Prohibition on landing or retaining on board sandeels caught in certain waters within ICES zone IV.	£50,000
(d) paragraph 5 of Annex III	Prohibition on fishing (except with longlines) in the Rockall Haddock Box in ICES zone VI.	£50,000
(e) paragraph 6.1 of Annex III, as read with paragraphs 6.3 and 6.4 of that Annex	Prohibition on fishing activity in certain waters off the West of Scotland within ICES zone VIa until 31st December 2009.	£50,000
(f) paragraph 9.3 of Annex III as read with paragraph 9.4 of that Annex	Prohibition on the use of gillnets, entangling nets and trammel nets in certain waters where the charted depth is greater than 200 metres.	£50,000
(g) paragraph 9.5 of Annex III	Requirement that only one type of gear described in paragraph 9.4(a) and (b) of Annex III are carried aboard a vessel at any one time.	£50,000
(h) paragraph 9.6 of Annex III	Requirement to hold a special fixed net fishing permit when deploying gillnets or entangling nets in certain waters where	£50,000

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provision of the Council Regulation</i>	<i>Subject matter</i>	<i>Maximum fine on summary conviction</i>
	charted depth is greater than 200 metres.	
(i) paragraph 9.7 and 9.9 of Annex III	Requirements to record information in a logbook if fixed net permit is held.	£50,000
(j) paragraph 15 of Annex III	Prohibition on bottom trawling and fishing with static gear in certain waters and conditions on pelagic vessels fishing in certain waters.	£50,000
(k) paragraph 16 of Annex III	Required minimum size for short-necked clam ( <i>Ruditapes philippinarum</i> ).	£50,000
(l) paragraph 20 of Annex III	Prohibitions relating to octopus ( <i>Octopus vulgaris</i> ) weighing under 450 grammes (gutted) caught in certain waters.	The statutory maximum

## SCHEDULE 2

Articles 2(1) and (4), 7(2) and 12(2)

COMMUNITY THIRD COUNTRY FISHING MEASURES  
(MAXIMUM FINES ON SUMMARY CONVICTION)

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provision of the Council Regulation</i>	<i>Subject matter</i>	<i>Maximum fine on summary conviction</i>
1. Article 15	Prohibition on fishing for, retaining on board, transshipping or landing basking shark ( <i>Cetorhinus maximus</i> ) and white shark ( <i>Carcharodon carcharias</i> ).	£50,000

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provision of the Council Regulation</i>	<i>Subject matter</i>	<i>Maximum fine on summary conviction</i>
2. Article 16	Requirement in relation to vessels flying the flag of Norway or registered in the Faroe Islands to fish within the geographical zone set out in Article 16(1).	£50,000
3. Article 17	Requirements regarding stowing of nets when transiting through Community waters.	£50,000
4. Article 18	Requirement to fish within the quota limits contained in Annex I.	£50,000
5. Article 22.2 as read with Article 22.1 and Article 18 of Regulation 1006/2008	Requirement on vessels (other than vessels registered in the Faroe Islands or Norway) to keep on board the fishing authorisation which is required by fishing vessels other than vessels of less than 200GT flying the flag of Norway.	£50,000
6. Article 26.1	Requirement to keep a logbook in compliance with Part I of Annex V.	£50,000
7. Article 26.2, as read with Article 26.3 and Article 23 of Regulation 1006/2008	Requirement (except for vessels flying the flag of Norway fishing in ICES Division IIIa) to transmit information in compliance with Annex VI.	The statutory maximum
8. Paragraph 7(a) of Annex VI	Requirement as regards vessels with catch on board to obtain authorisation before commencing fishing for blue whiting.	£50,000

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provision of the Council Regulation</i>	<i>Subject matter</i>	<i>Maximum fine on summary conviction</i>
9. Paragraph 7(c) of Annex VI	Requirements as regards vessels fishing for blue whiting leaving Community waters.	£50,000

## SCHEDULE 3

Article 11(3)

## DESIGNATED PORTS

<i>Port</i>	<i>Location within port (where applicable)</i>
<b>ENGLAND AND WALES</b>	
North Shields	
Whitby	Fish quay
Scarborough	West Pier
Humber side (Hull and Grimsby)	Hull – North side of Albert Dock & William Wright Dock Grimsby – Fish Dock, Market Quay
Lowestoft	Waveney Dock
Shoreham	Within the confines of the harbour
Plymouth	Sutton Harbour, New Fish Market
Brixham	
Newlyn	
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
<b>SCOTLAND</b>	
Eyemouth	
Pittenweem	
Aberdeen	Palmerston Quay & Commercial Quay
Peterhead	Peterhead Harbour excluding Peterhead Bay Harbour
Fraserburgh	
Buckie	

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<i>Port</i>	<i>Location within port (where applicable)</i>
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	
Cullivoe	
<b>NORTHERN IRELAND</b>	
Ardglass	
Portavogie	
Kilkeel	
Bangor	

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### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, which forms part of the law of Scotland only, makes provision for the enforcement of Council Regulation (EC) No. 43/2009 (“the Council Regulation”).

Part I makes provision for interpretation of the Order.

Part II makes provision for the enforcement of certain enforceable Community restrictions and other obligations relating to sea fishing by Community vessels and third country vessels set out in the Council Regulation. The Council Regulation fixes total allowable catches and the quotas of Member States for 2009 in respect of certain fish stocks and lays down certain conditions under which they may be fished. It also authorises fishing by third country vessels of Norway and the Faroe Islands for specified fish stocks in Community waters in 2009, subject to requirements regarding fishing

quotas and authorised zones, methods of fishing, fishing authorisations and associated conditions, the keeping of logbooks, the transmission of information and similar matters.

Part II of the Order—

- (a) makes provision for the purposes of Article 10 of the Council Regulation (requirement for adequate sampling programme when landing unsorted catches) (article 3);
- (b) makes it an offence to contravene the provision in Annex IA to the Council Regulation in relation to the quantity of skates and rays retained on board (article 4);
- (c) makes it an offence to contravene paragraphs 9.11 and 24(e) of Annex III to the Council Regulation which limit the by-catch of sharks and redfish to a maximum of 5% and 1% respectively of the total catch retained on board (article 5);
- (d) makes it an offence to contravene the provisions in Annex IA to the Council Regulation which impose a maximum landing size for spurdog/dogfish and porbeagle (article 6); and
- (e) creates offences in respect of contraventions of the provisions of the Council Regulation referred to in column 1 (and briefly described in column 2) of Schedules 1 (Community quota measures) and 2 (Community third country fishing measures) to the Order (article 7).

Part III of the Order provides for the enforcement in Scotland of the provisions of Annex IIa to the Council Regulation. It creates offences associated with the number of days that certain fishing boats can spend and the use of gear permitted within, the cod recovery zone in accordance with Annex IIa of the Council Regulation (articles 8 and 9).

Part IV of the Order provides for the maintenance and submission of logbooks at ports designated in the Order (articles 10 and 11 and Schedule 3).

Part V of the Order provides for penalties (article 12) and for the recovery of fines imposed in respect of an offence under the Order (article 13).

For the purposes of enforcing the provisions of the Order or any equivalent provision (as defined in the Order) Part IV of 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 16).

Provision is made for the protection of British sea-fishery officers in the exercise of their powers under the Order (article 17) and for an offence of obstructing such officers (article 18).

Provision is made in relation to offences committed by a body corporate, a partnership or an unincorporated association (article 19) and in relation to the admissibility in evidence of logbooks and other documents (article 20).

The Order revokes articles 2 to 33 of the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Order 2008 (article 21).

A Regulatory Impact Assessment in the relation to this Order has been prepared and placed in SPICE. Copies can be obtained from Marine Scotland, Robb's Loan, Edinburgh, EH14 1TY.