

## 1986 No. 110

## SEA FISHERIES

## COMMUNITY RESTRICTIONS

**The Sea Fishing (Enforcement of Community Measures for Spanish and Portuguese Vessels) Order 1986**

<i>Made</i> - - - - -	16th January 1986
<i>Laid before Parliament</i>	31st January 1986
<i>Coming into Operation</i>	1st February 1986

The Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with sea fishing in Scotland, Wales and Northern Ireland, 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:—

*Title, commencement and interpretation*

1.—(1) This order may be cited as the Sea Fishing (Enforcement of Community Measures for Spanish and Portuguese Vessels) Order 1986 and shall come into operation on 1st February 1986.

(2) In this order, “relevant Community provision” means any provision of a Regulation of the European Communities referred to in column 1 of the Schedule to this order which is specified in column 2 of that Schedule opposite the reference to that Regulation, as read with any qualifying words relating to that provision in that column of that Schedule.

*Offences*

2.—(1) If there is, in respect of any vessel within British fishery limits to which a relevant Community provision applies, a contravention of, or a failure to comply with, that provision, the master, the owner and the charterer (if any) of that vessel shall each be guilty of an offence.

(2) Where an offence under paragraph 1 of this article committed by a body corporate is proved to have been committed with the consent or approval of any director, manager, secretary or other similar officer of the body corporate, he, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

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(a) 1981 c. 29.

*Penalties*

3.—(1) A person guilty of an offence under article 2(1) of this order shall be liable—

- (a) on summary conviction to a fine not exceeding the amount specified in column 4 of the Schedule to this order opposite the appropriate entry in column 2; or
- (b) on conviction on indictment to a fine.

(2) The court by or before which a person is convicted of an offence under paragraph (1) of this article may—

- (a) order the forfeiture of any fish in respect of which the offence was committed or which were caught in the course of the commission of the offence; and
- (b) order the forfeiture of any net or other fishing gear in respect of which the offence was committed, or which was used in the course of the commission of the offence.

(3) A person guilty of an offence under paragraph (1) of this article shall be liable on summary conviction to a fine not exceeding the value of any fish in respect of which an order for forfeiture might be made under paragraph (2)(a) of this article, unless the court by or before which such a person is convicted makes such an order for forfeiture.

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

*Recovery of fines*

4.—(1) Where a fine is imposed by a magistrates' court in England and Wales or Northern Ireland on the master, owner or charterer of a fishing boat who is convicted by the court of an offence under article 2(1) of this order, the court may—

- (a) issue a warrant of distress against the boat and its gear and catch and any property of the person convicted for the purpose of levying the amount of the fine; and
- (b) order the boat to be detained for a period not exceeding three months from the date of the conviction or until the fine is paid or the amount of the fine is levied in pursuance of any such warrant, whichever occurs first.

(2) Where a fine is imposed by a sheriff in Scotland on the master, owner or charterer of a fishing boat who is convicted by the sheriff of an offence under article 2(1) of this order, the sheriff may—

- (a) issue a warrant for the poinding and sale of the boat and its gear and catch and any property of the person convicted; and
- (b) order the boat to be detained for a period not exceeding three months from the date of the conviction or until the fine is paid, whichever occurs first.

(3) Sections 77(1) and 78 of the Magistrates' Courts Act 1980(a) (postponement of issue of, and defects in, warrants of distress) shall apply to a warrant of distress issued under this article in England and Wales as they apply to a warrant of distress issued under Part III of that Act.

(4) Article 114(2) of the Magistrates' Courts (Northern Ireland) Order 1981(b) (postponement of issue of certain warrants) shall apply to a warrant of distress issued under this article in Northern Ireland as it applies to a warrant referred to in that article.

*Powers of British sea-fishery officers in relation to fishing boats*

5.—(1) For the purpose of enforcing article 2(1) of this order, a British sea-fishery officer—

- (a) may go on board any fishing boat which is within British fishery limits;
- (b) may take with him, to assist him in performing his functions, any other person and any equipment or materials;
- (c) may require any such boat to stop and do anything else to enable him to board it;
- (d) may require the attendance of the master of the boat or any other person on board;
- (e) may require any person on board to assist him in the performance of his functions; and
- (f) may make any examination or inquiry which appears to him to be necessary and, without prejudice to the generality of the foregoing, he may in particular—
  - (i) examine any fish on the boat and the equipment of the boat, including the fishing gear;
  - (ii) require the production of any document relating to the boat or to its fishing operations or other operations ancillary to its fishing operations;
  - (iii) search the boat for any such document; and
  - (iv) take copies of any such document.

(2) If a British sea-fishery officer has reasonable grounds to suspect that an offence under article 2(1) of this order has been committed within British fishery limits in respect of a boat that he has power to go on board under paragraph (1)(a) of this article, the officer—

- (a) may require the master to take, or may himself take, the boat and its crew to the port which appears to the officer to be the nearest convenient port; and
- (b) may detain the boat in the port.

(3) If a British sea-fishery officer detains a boat, he shall serve on the master a notice stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by a British sea-fishery officer.

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(a) 1980 c. 43.

(b) S.I. 1981/1675 (NI 26).

*Powers of seizure of British sea-fishery officers*

6.—(1) If a British sea-fishery officer has reasonable grounds to suspect that an offence under article 2(1) of this order has been committed, he may seize any document produced to him or found on board a boat which he has gone on board in the exercise of the power contained in article 5(1)(a) of this order.

(2) Nothing in paragraph (1) of this article shall permit any document required by law to be carried on board a boat to be seized except while the boat is detained in port under article 5(2) of this order.

(3) A British sea-fishery officer may seize—

- (a) any fish in respect of which he has reasonable grounds to suspect that an offence under article 2(1) of this order has been committed or which he has reasonable grounds to suspect were caught in the course of the commission of such an offence; and
- (b) any net or other fishing gear—
  - (i) in respect of which he has reasonable grounds to suspect that an offence under article 2(1) of this order has been committed, or
  - (ii) which he has reasonable grounds to suspect has been used in the course of the commission of such an offence.

*Obstruction of officers*

7. Any person who—

- (a) fails without reasonable excuse to comply with any requirement imposed by a British sea-fishery officer under the powers conferred on British sea-fishery officers by article 5 of this order;
- (b) without reasonable excuse prevents any other person from complying with any such requirement; or
- (c) assaults any such officer who is exercising any of the powers conferred on him by articles 5 and 6 of this order or intentionally obstructs any such officer in the exercise of any of those powers

shall be guilty of an offence and liable—

- (i) on summary conviction to a fine not exceeding £5,000; or
- (ii) on conviction on indictment to a fine.

*Protection of officers*

8. A British sea-fishery officer shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by articles 5 and 6 of this order if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

*Jurisdiction to try offences*

9. Proceedings for an offence under this order may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 15th January 1986.



*Michael Jopling,*  
Minister of Agriculture, Fisheries and Food.

*Gray of Contin,*  
Minister of State for Scotland.

16th January 1986.

*Nicholas Edwards,*  
Secretary of State for Wales.

15th January 1986.

*Tom King,*  
Secretary of State for Northern Ireland.

15th January 1986.

## SCHEDULE

Articles 1(2) and 2

## RELEVANT COMMUNITY PROVISIONS AND PENALTIES

Column 1	Column 2	Column 3	Column 4	
Regulation of the European Communities	Provision	Subject matter	Maximum penalty	
1. Commission Regulation (EEC) No. 3531/85 laying down certain technical and control measures relating to the fishing activities of vessels flying the flag of Spain in the waters of the other Member States except Portugal (OJ No. L336, 14.12.85, p. 20)	Article 4(1), read with Annex I	Fishing without licence on board	£5,000	
	Article 6(1)	Prohibition on keeping other species when fishing for tuna	£5,000	
	Article 6(2)	Prohibition on keeping other species when fishing for Ray's bream	£5,000	
	Article 7, read with Annex II	Compliance with special conditions	£2,000	
	Article 8(a), read with Annex I	Prohibition on use of gill nets	£5,000	
	Article 8(b), read with Annex I	Prohibition on carrying unnecessary gear	£5,000	
	Article 8(d), read with Annex I	Prohibition on carrying gear other than surface longlines when fishing for Ray's bream	£5,000	
	2. Commission Regulation (EEC) No. 3715/85 laying down certain technical and control measures relating to the fishing activities of vessels flying the flag of Portugal in the waters of the other Member States except Spain (OJ L360, 31.12.85, p. 1)	Article 5	Prohibition on keeping other species when fishing for tuna	£5,000
		Article 6, read with the Annex	Compliance with special conditions	£2,000
		Article 7(a)	Prohibition on use of gill nets	£5,000
Article 7(b)		Prohibition on carrying unnecessary gear	£5,000	
Article 7(c)		Limitations on use of longlines	£5,000	

Column 1	Column 2	Column 3	Column 4
Regulation of the European Communities	Provision	Subject matter	Maximum penalty
3. Council Regulation (EEC) No. 3780/85 establishing, for 1986, certain measures for the conservation and management of fishery resources, applicable to vessels flying the flag of Portugal in waters falling under the sovereignty or within the jurisdiction of other Member States apart from Spain and Portugal (OJ L363, 31.12.85, p. 24).	Article 1, read with Annex I in so far as it relates to authorised fishing gear	Restriction on the use of fishing gear other than that authorised	£5,000

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This order provides for the enforcement of three Community Regulations concerned with fishing within Community waters, outside the waters under the sovereignty or jurisdiction of Spain and Portugal, by vessels flying the flag of Spain and vessels flying the flag of Portugal. The Community Regulations, which are referred to in column 1 of the Schedule to the order, form part of the measures made in connection with the accession of Spain and Portugal to the European Communities. The order makes breaches of those articles of the Community Regulations referred to in column 2 of the Schedule (relating to the matters briefly described in column 3) offences for the purposes of United Kingdom law where such breaches occur within British fishery limits. The order provides for the prosecution of offenders, specifies penalties for offences and confers powers of enforcement on British sea-fishery officers.

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