SCOTTISH STATUTORY INSTRUMENTS

2000 No. 26

SEA FISHERIES

The Sea Fishing (Enforcement of Measures for the Recovery of the Stock of Irish Sea Cod) (Scotland) Order 2000

Made - - - -	*15th February 2000*
Laid before the Scottish Parliament - - - -	*16th February 2000*
Coming into force - -	*16 February 2000*

The Scottish Ministers, in exercise of the powers conferred on them by section 30(2) of the Fisheries Act 1981(**1**) 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 (Enforcement of Measures for the Recovery of the Stock of Irish Sea Cod) (Scotland) Order 2000 and shall come into force on 16th February 2000.

(2) This Order extends to Scotland only.

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

Interpretation

2.—(1) In this Order–

"the Commission Regulation" means Commission Regulation (EC) No. 304/2000 establishing measures for the recovery of the stock of cod in the Irish Sea (ICES Division VIIa)(**3**);

(**1**) 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) of the 1981 Act for definitions of "enforceable Community restriction", "enforceable Community obligation" and "the Ministers". Section 30 has effect in relation to Scotland as modified by section 30(5) inserted by the Scotland Act (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68(5)(b).

(**2**) Section 30(2A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820).

(**3**) O.J. No. L35, 10.02.2000, p.10.

"the Community measure for the recovery of the stock of cod in the Irish Sea" means the prohibition contained in Article 1.1 of the Commission Regulation, as read with Articles 1.2, 1.3 and 2 of that Regulation;

"fishery product" includes fish;

"fishing boat" includes a receiving vessel and a third country vessel, within the meaning of Regulation 2847/93;

"Regulation 2847/93" means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy(**4**);

"relevant offence" means an offence under:

(a) article 3 of this Order; or

(b) any provision extending to any other part of the United Kingdom made for the purposes of implementing the Community measure for the recovery of the stock of cod in the Irish Sea, being a provision in respect of which, by virtue of section 30(2A) of the Fisheries Act 1981, proceedings may be commenced in any place in the United Kingdom;

"Scottish fishing boat" means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 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 the section 126(1) of the Scotland Act 1998(**5**).

(2) In this Order 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 Regulation 2847/93;

(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 reference in this Order–

(a) a numbered article is a reference to the article so numbered in this Order;

(b) a Community instrument is a reference to that instrument and any amendment of such instrument in force on the date this Order is made.

Offences

3. Where there is, in respect of –

(a) any Scottish fishing boat wherever it may be; or

(b) any other fishing boat within the Scottish zone,

a contravention of, or failure to comply with, the Community measure for the recovery of the stock of cod in the Irish Sea, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(**4**) O.J. No. L261, 20.10.93, p.1, as last amended by Council Regulation (EC) No. 2846/98 (O.J. No. L358, 31.12.98, p.5).

(**5**) 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 or determined by the Scottish Adjacent Waters Boundaries Order 1999.

Penalties

4.—(1) A person guilty of an offence under article 3, or under any equivalent provision extending to any other part of the United Kingdom proceedings in respect of which were brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981, shall be liable on summary conviction–

(a) to a fine not exceeding the statutory maximum; and

(b) either–

(i) to a fine not exceeding the value of any fish in respect of which the offence was committed; or

(ii) to the forfeiture of any fish in respect of which the offence was committed; and

(c) to the forfeiture of any net or other fishing gear in respect of which the offence was committed, or which was used in committing the offence, or which was used for catching any fish in respect of which the offence was committed.

(2) A person found guilty of an offence under article 3, or any equivalent provision referred to in paragraph (1), shall be liable on conviction on indictment–

(a) to a fine;

(b) to the forfeiture of any fish in respect of which the offence was committed; and

(c) to the forfeiture of any net or other fishing gear in respect of which the offence was committed, or which was used in committing the offence, or which was used for catching any fish in respect of which the offence was committed.

Recovery of fines

5.—(1) Without prejudice to the provisions of section 221 of the Criminal Procedure (Scotland) Act 1995(**6**), where a court has imposed a fine on any person in respect of a relevant offence or an offence under article 10 that court may for the purposes of recovering the fine–

(a) order any boat involved in the commission of the offence and its gear and catch to be detained for a period not exceeding three months from the date of the conviction or until the fine is paid, the order is renewed for a further such period or a warrant is issued under sub paragraph (b), whichever first occurs; or

(b) subject to paragraph (2), at any time after the imposition of the fine issue a warrant for the arrestment and sale of any such boat, its gear and catch.

(2) The court shall not issue a warrant under paragraph (1)(b) without first affording the owner of the boat, gear or catch liable to be included in the warrant an opportunity to be heard on the issue of such warrant.

(3) A warrant issued under paragraph (1)(b), whatever the amount of the fine imposed, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff in a summary cause.

(4) Where in relation to a fine in respect of a relevant offence a transfer of fine order under section 222 of the Criminal Procedure (Scotland) Act 1995, section 90 of the Magistrates' Courts Act 1980(**7**) or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(**8**) specifies a court of summary jurisdiction in Scotland this article shall apply as if the fine were a fine imposed by that court.

(**6**) 1995 c. 46.
(**7**) 1980 c. 43.
(**8**) S.I. 1981/1675 (N.I. 26)

Powers of British sea fishery officers in relation to fishing boats

6.—(1) For the purposes of enforcement of article 3 of this Order, or any provision extending to any other part of the United Kingdom made for the purposes of implementing the Community measure for the recovery of the stock of cod in the Irish Sea, any British sea fishery officer may exercise in relation to–

(a) any Scottish fishing boat wherever it may be; or

(b) any other fishing boat within the Scottish zone,

the powers conferred by paragraphs (2) to (4).

(2) He may go on board the boat, with or without persons assigned to assist him in his duties, and may require the boat to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, the boat.

(3) He may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to him to be necessary for the purposes of enforcement mentioned in paragraph (1) and, in particular–

(a) may search for fishery products or fishing gear on the boat and may examine any such products on board and the equipment of the boat, including the fishing gear, and require persons on board the boat to do anything which appears to him to be necessary for facilitating the examination;

(b) may require any person on board the boat to produce any document relating to the boat, to any fishing operations or other operations ancillary thereto or to the persons on board which is in his custody or possession;

(c) for the purpose of ascertaining whether a relevant offence has been committed, may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search;

(d) inspect and take copies of and retain in his possession while he completes any search examination or inspection any such document produced to him or found on board;

(e) may require the master or any person for the time being in charge of the boat to render all such documents on a computer system into a 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 he has reason to suspect that a relevant offence has been committed, may seize and detain any such document produced to him or found on board for the purpose of enabling the docume nt to be used as evidence in proceedings for the offence;

but nothing in sub paragraph (f) above shall permit any document required by law to be carried on board the boat to be seized and detained except while the boat is detained in a port.

(4) Where it appears to a British sea fishery officer that a relevant offence has at any time committed, he may–

(a) require the master of the boat in relation to which the offence took place to take, or may himself take, the boat and its crew to the port which appears to him to be in the nearest convenient port; and

(b) detain or require the master to detain the boat in the port;

and where such an officer detains or requires the detention of a boat he shall serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea fishery officer.

Powers of British sea-fishery officers on land

7.—(1) For the purpose of enforcing the provisions of article 3 or any provision extending to any other part of the United Kingdom made for the purposes of implementing the Community measure for the recovery of the stock of cod in the Irish Sea any British sea-fishery officer may–

(a) enter and inspect at any reasonable time any premises used for carrying on any business in connection with the operation of fishing boats or activities connected therewith or ancillary thereto or with the treatment, storage or sale of fishery products;

(b) take with him such other persons as appear to him to be necessary and any equipment or materials;

(c) examine any fishery product on the premises and require persons on the premises to do anything which appears to him to be necessary for facilitating the examination;

(d) carry out at such premises such other inspections or tests as may reasonably be necessary;

(e) require any person not to remove or cause to be removed any fishery product from such premises for such a period as may be reasonably necessary for the purposes of establishing whether a relevant offence has at any time been committed;

(f) require any person on the premises to produce any documents which are in the custody or possession of that person relating to the catching, landing, transportation, trans-shipment, sale or disposal of any fishery product;

(g) for the purpose of ascertaining whether any person on the premises has committed a relevant offence, search the premises for any such document and may require any person on the premises to do anything which appears to him to be necessary for facilitating the search;

(h) inspect and take copies of any such document produced to him or found on the premises;

(i) require any appropriate or responsible person to render any such documents on a computer system into a visible and legible form and to produce them in a form in which they may be taken away; and

(j) if he has a reason to suspect that a relevant offence has been committed, seize and detain any such document produced to him or found on the premises for the purpose of enabling the document to be used as evidence in proceedings for the offence.

(2) The provisions of paragraph (1) shall apply in relation to any land used in connection with any of the activities described in paragraph (1), or in respect of any vehicle which a British sea-fishery officer has reasonable cause to believe is being used to transport fishery products, as they apply in relation to premises and, in the case of a vehicle, shall include power to require the vehicle to stop at any time and, if necessary, direct the vehicle to some other place to facilitate the inspection.

(3) If a Sheriff on information on oath–

(a) is satisfied that there is reasonable ground to believe that any documents or other items which a British sea-fishery officer has power under this article to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of a relevant offence; and

(b) is also satisfied either–

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant has been given to the occupier; or

(ii) that an application for admission or the giving of such notice would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return;

the Sheriff may by warrant signed by him, and valid for one month, authorise a British sea-fishery officer to enter the premises, if need be by reasonable force, accompanied by such persons as appear to the officer to be necessary.

Powers of British sea fishery officers to seize fish and fishing gear

8.—(1) Any British sea fishery officer may seize–

(a) in Scotland or in the Scottish zone;

(b) on a Scottish fishing boat wherever it may be,

any fishery products (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 fish (including any receptacle which contains the fish) 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 course of the commission of such an offence.

Protection of officers

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

Obstruction of officers

10. Any person who–

(a) fails without reasonable excuse to comply with any requirement imposed by a British sea fishery officer under the powers conferred on British sea fishery officers by articles 6, 7 or 8;

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

(c) 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 the statutory maximum; or

(ii) on conviction on indictment to a fine.

Offences committed by bodies corporate and Scottish partnerships

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

(a) a director, manager, secretary or other similar officers of the body corporate; or

(b) any person who was purporting to act in any such capacity,

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

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

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

Admissibility in evidence of logbooks and other documents

12.—(1) Any–

(a) logbook kept under Articles 6, 17.2 or 28c;

(b) declaration submitted under Articles 8.1, 11, 12, 17.2 or 28f;

(c) effort report completed under Articles 19b and 19c;

(d) document drawn up under Articles 9 or 13; or

(e) document containing required information received by a fisheries monitoring centre established under Article 3.7,

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

(2) For the purpose of paragraph (1), "required information" shall mean–

(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.

St Andrew's House,
Edinburgh
15th February 2000

JOHN HOME ROBERTSON
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

The Order makes provision for the enforcement of restrictions concerning the conservation of fishery resources through measures for the recovery of the stock of cod in the Irish Sea (ICES Division VIIa) which are contained in Article 1, as read with Articles 1.2 and 2, of Commission Regulation (EC) No.304/2000 (O.J. No.L35, 10.2.2000, p.10) ("the Commission Regulation").

Article 1 of the Commission Regulation prohibits, during the period 14 February 2000 to 30 April 2000, the use of specified types of nets and fishing gear within a specified geographical area of the Irish Sea. The Commission Regulation also disapplies transitional measures for 2000 laid down in footnote 6 of Annex I of Council Regulation (EC) No. 850/98, for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms, which might otherwise allow a high by catch of cod to be taken in the Irish Sea.

The Order creates an offence in respect of breaches of the Commission Regulation (article 3). Penalties, which may include the forfeiture of fish, nets and other fishing gear, are specified in relation to an offence under article 3 of the Order or an offence under any equivalent provision extending to any other part of the United Kingdom proceedings in respect of which were brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981 (c. 29) (article 4).

The Order makes provisions in relation to the recovery of fines imposed in respect of such offences or an offence under article 10 (obstruction of officers) (article 5).

The Order confers on British sea fishery officers powers of enforcement in relation to fishing boats and on land. These include power 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 6, 7 and 8).

Provision is also made in relation to the liability of officers for anything done in the purported exercise of powers conferred by the Order (article 9). The Order creates offences and provides penalties in respect of the obstruction of a British sea fishery officer and makes provision in relation to offences committed by bodies corporate and Scottish partnerships and the admissibility of certain documents (articles 10,11 and 12).