
STATUTORY INSTRUMENTS

1994 No. 1681

SEA FISHERIES

COMMUNITY RESTRICTIONS

The Third Country Fishing (Enforcement) Order 1994

<i>Made</i>	- - - -	<i>24th June 1994</i>
<i>Laid before Parliament</i>		<i>24th June 1994</i>
<i>Coming into force</i>	- -	<i>15th July 1994</i>

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 on them by section 30(2) and (3) of the Fisheries Act 1981(1) 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 Third Country Fishing (Enforcement) Order 1994 and shall come into force on 15th July 1994.

(2) In this Order, “a relevant Community provision” means a 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 thereof, opposite the reference to that Regulation, as read with any qualifying words relating to that provision in that column.

(3) In this Order any reference to a logbook or document includes, in addition to a logbook or document in writing—

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disk, tape, sound track or other device in which sounds or other data (not being visual aids) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (d) 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.

Offences

2. Where there is, in respect of any fishing boat to which a relevant Community provision applies, a contravention of, or failure to comply with, that provision within British fishery limits, the master of that boat shall be guilty of an offence.

Penalties

3.—(1) A person guilty of an offence under article 2 of this Order founded on a contravention of, or failure to comply with, a relevant Community provision specified in column 1 of the Schedule hereto, shall be liable—

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

(2) A person guilty of an offence under article 2 of this Order founded on a contravention of, or failure to comply with, article 2(2) or 3(1) of such relevant Community provision shall also be liable—

- (a) 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; and
- (b) to the forfeiture of any fish in respect of which the offence was committed, or, on summary conviction only, to a fine not exceeding the value of any fish in respect of which the offence was committed.

Recovery of fines

4.—(1) Where a fine is imposed by a magistrates' court in England and Wales or Northern Ireland on the master or a member of the crew of a fishing boat who is convicted by the court of an offence under article 2 or 7 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 or a member of the crew of a fishing boat who is convicted by the sheriff of an offence under article 2 or 7 of this Order, the sheriff may—

- (a) issue a warrant for the arrestment 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⁽²⁾ (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) Articles 114(2) and 154 of the Magistrates' Courts (Northern Ireland) Order 1981⁽³⁾ (postponement of issue of and stay of execution of certain warrants and objections as to want of form or variance between complaint etc and evidence adduced) shall apply to a warrant of distress issued under this article in Northern Ireland as it applies to a warrant referred to in those articles.

(2) 1980 c. 43; section 78 was amended by the Criminal Justice Act 1982 (c. 48), sections 37 and 46.

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

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

5.—(1) For the purpose of enforcing article 2 of this Order a British sea-fishery officer may exercise the powers conferred by paragraphs (2) to (4) of this article in relation to any fishing boat to which a relevant Community provision specified in column 1 of the Schedule hereto applies, which is within British fishery limits.

(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 purpose mentioned in paragraph (1) of this article and, in particular—

- (a) 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 him to be necessary for facilitating the examination; and
- (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 and may take copies of any such document;
- (c) for the purpose of ascertaining whether an offence has been committed under article 2 of this Order, 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) where the boat is one in relation to which he has reason to suspect that such an offence has been committed, may seize and detain any such document produced to him 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 (d) 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 an offence under article 2 of this Order has at any time been committed within British fishery limits, 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 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 to seize fish and fishing gear

6. Any 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 of this Order founded on a contravention of, or failure to comply with, article 2(2) or 3(1) of a relevant Community provision specified in column 1 of the Schedule hereto has been committed; and
- (b) any net or other fishing gear in respect of which he has reasonable grounds to suspect that an offence under article 2 of this Order founded on a contravention of, or failure to comply with, article 2(2) or 3(1) of such relevant Community provision has been committed.

Obstruction of officers

7. Any person who, on any fishing boat which is within British fishery limits and to which a relevant Community provision applies—

- (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 5 and 6 of this Order; or
- (b) without reasonable excuse prevents any other person from complying with any such requirement; or
- (c) assaults an 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 the statutory maximum; or
- (ii) on conviction on indictment to a fine.

Protection of officers

8. An 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.

Proceedings

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.

Admissibility in evidence of logbooks and other documents

10. Any logbook or other document kept on board or held in accordance with a relevant Community provision specified in column 1 of the Schedule hereto shall, in any proceedings for an offence under this Order—

- (a) in England, Wales or Northern Ireland, be evidence of the matters stated therein; and
- (b) in Scotland, be received in evidence without being produced or sworn to by any witness and shall be sufficient evidence of the matters stated therein.

Revocation and saving

11. The Third Country Fishing (Enforcement) Order 1993(4) is hereby revoked, but without prejudice to the application of articles 4 to 6 of that Order in relation to the enforcement of article 2 of that Order.

(4) S.I. 1993/1197.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on

L.S.

17th June 1994.

Gillian Shephard
Minister of Agriculture, Fisheries and Food

20th June 1994

Hector Monro
Parliamentary Under Secretary of State, Scottish
Office

Signed by authority of the Secretary of State for Wales.

20th June 1994

Gwilym Jones
Parliamentary Under Secretary of State, Welsh
Office

24th June 1994

Patrick Mayhew
Secretary of State for Northern Ireland

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SCHEDULE

Articles 1(2) and 3

PENALTIES

(1) Regulation of the European Communities	(2) Provision	(3) Subject Matter	(4) Maximum fine on summary conviction	
1. Council Regulation No. 3691/93 laying down for 1994 certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Norway(5).	Article 2(2)	Keeping of logbook	£50,000	
	Article 2(3)	Transmission of information	The statutory maximum	
	Article 2(4)	Keeping on board of certified document	The statutory maximum	
	Article 2(5)	specifying calibration of sea water tanks	The statutory maximum	
	Article 3(1)	Marking on vessels of registration letters and numbers	£50,000	
	Article 5	Marking on vessels of registration letters and numbers	£5,000	
		Holding of licence and observance of conditions thereof		
		Restriction on methods of fishing for blue ling, ling and tusk in certain areas		
	2. Council Regulation No. 3682/93 laying down for 1994 certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Sweden(6).	Article 2(2)	Keeping of logbook	£50,000
		Article 2(3)	Transmission of information	The statutory maximum
Article 2(4)		Keeping on board of certified document	The statutory maximum	
Article 2(5)		specifying calibration of sea-water tanks	The statutory maximum	
Article 3(1) in so far as it relates to licences and conditions		Marking on vessels of registration letters and numbers	£50,000	
Article 3(1) in so far as it relates to keeping documents on board		Holding of licence and compliance with conditions set out in Annex II of the Regulation	The statutory maximum	

(5) OJ No. L341, 31.12.93, p.96.

(6) OJ No. L341, 31.12.93, p.60.

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(1) Regulation of the European Communities	(2) Provision	(3) Subject Matter	(4) Maximum fine on summary conviction
3. Council Regulation (EEC) No. 3694/93 laying down for 1994 certain measures for the conservation and management of fishery resources applicable to vessels registered in the Faroe Islands(7).	Article 2(2)	Keeping on board of copies of Annexes II, III and IV to the Regulation	
	Article 2(3)	Keeping of logbook	£50,000
	Article 2(4)	Transmission of information	The statutory maximum
	Article 2(5)	Keeping on board of certified document specifying calibration of sea-water tanks	The statutory maximum
	Article 3(1)	Marking on vessels of registration letters and numbers	The statutory maximum
		Holding of licence and compliance with conditions set out in Annexes II and III to the Regulation	£50,000

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which replaces and revokes the Third Country Fishing (Enforcement) Order 1993, makes breaches of specified articles of the Community Regulations (set out in column 1 of the Schedule to the Order) offences for the purposes of United Kingdom law where they occur within British fishery limits.

The Community Regulations authorise fishing in certain specified areas within member States' fishery limits for specified descriptions of fish by vessels of third countries, namely, Norway, Sweden, and the Faroe Islands. The offences arise out of breaches of the provisions of the Community Regulations concerning methods of fishing, the holding of licences and observance of the conditions thereof, the keeping of log books, the making of radio reports and similar matters; all are triable summarily or on indictment. On summary conviction, the master of an offending vessel will be liable to a fine not exceeding the amount specified in relation to the offence in column 4 of the Schedule to the Order and to forfeiture of fish and fishing gear and, on conviction on indictment,

(7) OJ No. L341, 31.12.93, p.108.

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to a fine (article 2). The level of the maximum fine has been increased to £50,000 in respect of offences relating to the keeping of logbooks and the observance of licence conditions. The statutory maximum penalty specified in the Schedule is currently £5,000.

The Order confers powers of enforcement on British sea-fishery officers (articles 5 and 6). Provision is made for the punishment of anyone found guilty of obstructing or assaulting an officer (article 7).