

2009 No. 304

SEA FISHERIES

The Sea Fishing (Enforcement of Community Control Measures) (Scotland) Amendment Order 2009

Made - - - - *2nd September 2009*

Laid before the Scottish Parliament *3rd September 2009*

Coming into force - - *25th September 2009*

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

Citation and commencement

1. This Order may be cited as the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Amendment Order 2009 and shall come into force on 25th September 2009.

Amendment of the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000

2.—(1) The Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000(b) is amended in accordance with the provisions of this article.

(2) In article 2(1) (interpretation)—

(a) omit the definition of “Annex IIc”;

(b) for the definition of “Community control measure” substitute—

““Community control measure” means a provision of the Council Regulation specified in Column 1 of the Schedule;”;

(c) before the definition of “fishery product” insert—

““electronic means” means the transmission of data by an electronic system of a type specified by the Scottish Ministers in the form provided by them for the purposes of article 2A(2);”;

(a) 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).

(b) S.S.I. 2000/7; relevant amending instruments are S.S.I. 2005/552 and 2008/151.

- (d) for the definition of “Regulation 2807/83” substitute—
 ““Regulation 2807/83” means Commission Regulation (EEC) No. 2807/83 laying down detailed rules for recording information on Member States’ catches of fish(a) as amended by Act of Accession of Spain and Portugal(b), Commission Regulation (EEC) No. 473/89(c), Act of Accession of Austria, Sweden and Finland(d), Commission Regulation (EEC) No. 2945/95(e), Commission Regulation (EC) No. 395/98(f), Commission Regulation (EC) No. 1488/98(g), Commission Regulation (EC) No. 2737/1999(h), Commission Regulation (EC) No. 1965/2001(i) and Commission Regulation (EC) No. 1804/2005(j);”;
- (e) omit the definition of “Regulation 423/2004”;
- (f) before the definition of “relevant offence” insert—
 ““Regulation 1966/2006” means Council Regulation (EC) No. 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing(k);
 “Regulation 1077/2008” means Commission Regulation (EC) No. 1077/2008 laying down detailed rules for the implementation of Council Regulation (EC) No. 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing and repealing Regulation (EC) No. 1566/2007(l);”;
- (g) for the definition of “the Council Regulation” substitute—
 ““the Council Regulation” means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy(m) as amended by Council Regulation (EC) No. 2870/95(n), Council Decision 95/528/EC(o), Council Regulation (EC) No. 2489/96(p), Council Regulation (EC) No. 686/97(q), Council Regulation (EC) No. 2205/97(r), Council Regulation (EC) No. 2635/97(s), Council Regulation (EC) No. 2846/98(t), Council Regulation (EC) No. 806/2003(u), Council Regulation (EC) No. 1954/2003(v), Council Regulation (EC) No. 768/2005(w), Council Regulation (EC) No. 1967/2006(x), Council Regulation (EC) No. 1098/2007(y), Council Regulation (EC) No. 1006/2008(z) and as read with Article 20 of, and modified by Articles 28 and 29 of, Council Regulation (EC) No. 1342/2008(aa);”;

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- (a) O.J. No. L 276, 10.10.83, p.1, corrected by a Corrigendum published in O.J. No. L 353, 15.12.83, p.21.
 (b) O.J. No. L 302, 15.11.85, p.23.
 (c) O.J. No. L 53, 25.2.89, p.34.
 (d) O.J. No. C 241, 29.8.94, p.21, adapted by Council Decision 95/1/EC, Euratom, ECSC, O.J. No. L 1, 1.1.95, p.1.
 (e) O.J. No. L 308, 21.12.95, p.18.
 (f) O.J. No. L 50, 20.2.98, p.17.
 (g) O.J. No. L 196, 14.7.98, p.3.
 (h) O.J. No. L 328, 22.12.99, p.54, corrected by a Corrigendum published in O.J. No. L 12, 18.1.00, p.36 and a Corrigendum published in O.J. No. L 29, 4.2.00, p.38.
 (i) O.J. No. L 268, 9.10.01, p.23.
 (j) O.J. No. L 290, 4.11.05, p.10.
 (k) O.J. No. L 409, 30.12.06, p.1, corrected by a Corrigendum published in O.J. No. L 36, 8.2.07, p.3.
 (l) O.J. No. L 295, 4.11.08, p.3. The entry into force date was amended to 1st January 2009 by a Corrigendum published in O.J. No. L 6, 10.1.09, p.117.
 (m) O.J. No. L 261, 20.10.93, p.1.
 (n) O.J. No. L 301, 14.12.95, p.1.
 (o) 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.
 (p) O.J. No. L 338, 28.12.96, p.12.
 (q) O.J. No. L 102, 19.4.97, p.1.
 (r) O.J. No. L 304, 7.11.97, p.1.
 (s) O.J. No. L 356, 31.12.97, p.14.
 (t) 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.
 (u) O.J. No. L 122, 16.5.03, p.1.
 (v) O.J. No. L 289, 7.11.03, p.1.
 (w) O.J. No. L 128, 21.5.05, p.1.
 (x) 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.
 (y) O.J. No. L 248, 22.9.07, p.1.
 (z) O.J. No. L 286, 29.10.08, p.33.
 (aa) O.J. No. L 348, 24.12.08, p.20.

(h) before the definition of “transport document” insert—

““the prescribed annual financial turnover” means an annual financial turnover in first sales of fishery products for a person which is in excess of €400,000 and calculated for a calendar year using the annual financial turnover for that person from the calendar year and based on the European Central Bank’s official average euro foreign exchange reference rate applicable for that calendar year.”.

(3) After article 2 insert—

“Register of those with the prescribed annual financial turnover

2A.—(1) The Scottish Ministers are the competent authority for the purposes of—

- (a) maintaining a register of registered buyers, registered auctions and other authorised entities or persons responsible for the first sale of fishery products that have the prescribed annual financial turnover; and
- (b) publishing the register on an official website,

pursuant to Article 2(1) of Regulation 1077/2008.

(2) A registered buyer, registered auction or other authorised entity or person responsible for the first sale of fishery products in Scotland must—

- (a) on a form provided by the Scottish Ministers; and
- (b) before 1st October in each calendar year,

inform the Scottish Ministers whether or not it had the prescribed annual financial turnover in the preceding calendar year.”.

(4) After article 3(2) insert—

“(3) Any person who fails to comply with article 2A(2) shall be guilty of an offence.

(4) Any person who, in purported compliance with article 2A(2), knowingly or recklessly furnishes information which is false in a material particular shall be guilty of an offence.”.

(5) After article 4(3) insert—

“(4) A person guilty of an offence under article 3(3) or (4) shall be liable—

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

(6) In the Schedule (Community control measures, contravention of which constitutes an offence)—

(a) omit entries 1(a), (b) and (c) relating to Regulation 1382/87;

(b) before entry 2(b), relating to Article 6 of the Council Regulation, insert—

“(aa)	Article 5b	Article 3.1, 3.2 and 3.3 of and Annex II to Regulation 1382/87	Requirement, when a vessel is to be inspected, to— (a) stop, manoeuvre or carry out other actions to facilitate boarding;	The statutory maximum.	The master, the owner, the charterer (if any) and any other person responsible for the vessel.
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		<p>(b) provide a boarding ladder; and</p> <p>(c) make the vessel's communications equipment and operator available for messages to be sent and/or received for the purposes of the inspection.</p>		
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(c) for entry 2(e), relating to Article 9.1 and 9.5 of the Council Regulation, substitute—

“	(e)	Article 9.1 as read with Article 9.3, 9.4 and 9.5	Articles 1.3 and 3.4 of Regulation 1966/2006 and Articles 1.1c and 5.1 of Regulation 1077/2008	Requirement, where first marketing of fishery products is carried out by an auction centre or other authorised entity/person, to—	£50,000	As regards the requirement to—
				<p>(a) submit a sales note, except where paragraph (b) applies;</p> <p>(b) transmit information required to be recorded in a sales note by electronic means, where a</p>		<p>(a) submit a sales note, the auction centre or other authorised entity/person responsible for the first marketing of the fishery products;</p> <p>(b) transmit sales note information by electronic means, the registered auction or other authorised</p>

		<p>registered auction or other authorised entity/person responsible for the first sale of the fishery products has the prescribed annual financial turnover</p> <p>within 48 hours of sale.</p>		<p>entity/person responsible for the first sale of the fishery products.</p>
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(d) for entry 2(f), relating to Articles 9.2, 9.3, 9.4, 9.4b, 9.5 and 13 of the Council Regulation, substitute—

“	(f)	Article 9.2 as read with Articles 9.3, 9.4, 9.4b, 9.5 and 13	Articles 1.3 and 3.4 of Regulation 1966/2006 and Articles 1.1c, 5.1 and 5.4 of Regulation 1077/2008	<p>Requirements where first marketing of fishery products is carried out other than in accordance with Article 9.1 of Regulation 2847/93—</p> <p>(a) Requirement, where the products have been sold or are offered for sale at the place of landing, to—</p> <p>(i) submit a sales note, except where sub-paragraph (ii) applies;</p> <p>(ii) transmit information required to be recorded in a sales</p>	£50,000	<p>As regards the requirement to—</p> <p>(a)(i) submit a sales note, the buyer responsible for the first sale of the fishery products;</p> <p>(a)(ii) transmit sales note information by electronic</p>
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	<p>note by electronic means, where a registered buyer responsible for the first sale of the fishery products has the prescribed annual financial turnover; or</p>	<p>means, the registered buyer responsible for the first sale of the fishery products;</p>
	<p>(b) Requirement, where the products are offered for sale at a location other than the place of landing, to submit a transport document; or</p>	<p>(b) submit a transport document, the transporter of the fishery products;</p>
	<p>(c) Requirement, where the products are not offered for sale or are intended for sale at a later date, to—</p>	
	<p>(i) submit a take-over declaration, except where sub-paragraph (ii) applies;</p>	<p>(c)(i) submit a take-over declaration, the holder of this declaration;</p>
	<p>(ii) transmit information required to be recorded in a take-over declaration by electronic means, where the holder of</p>	<p>(c)(ii) transmit take-over declaration information by electronic means, the holder of the take-over declaration.</p>

		<p>the declaration is a registered buyer, registered auction or other authorised entity/ person responsible for first sale of fishery products that has the prescribed annual financial turnover</p> <p>before the landed products are collected and within 48 hours of the first marketing or the landing.</p>			”
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(e) omit entry 2(g), relating to Article 9.2 and 9.5 of the Council Regulation.

Pentland House,
Edinburgh
2nd September 2009

RICHARD LOCHHEAD
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000 (S.S.I. 2000/7) (“the principal Order”). The principal Order makes provision for the enforcement of restrictions and obligations contained in Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy (O.J. No. L 261, 20.10.93, p.1) (“the Council Regulation”).

This Order provides for the enforcement of Council Regulation (EC) No. 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing (O.J. No. L 409, 30.12.06, p.1) and Commission Regulation (EC) No. 1077/2008 laying down detailed rules for the implementation of Council Regulation (EC) No. 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing and repealing Regulation (EC) No. 1566/2007 (O.J. No. L 295, 4.11.08, p.3), which require the electronic transmission of information to be recorded in sales notes and take-over declarations.

This Order provides for a public register, to be maintained by the Scottish Ministers, of all registered buyers, registered auctions and other authorised entities or persons responsible for the first sale of fishery products in Scotland, which have the prescribed annual financial turnover: an annual financial turnover in first sales of fishery products in excess of €400,000 (Article 2(3)). (The sterling equivalent of €400,000 is calculated by reference to the European Central Bank’s official average euro foreign exchange reference rate for the year for which turnover is being assessed.)

This Order makes it an offence for any such registered buyer, registered auction or other authorised entity or person to fail to inform the Scottish Ministers whether or not it has the prescribed annual financial turnover or to knowingly or recklessly provide information concerning financial turnover which is materially false (Article 2(4)).

This Order also makes it an offence for any such registered buyers, registered auctions and other authorised entities or persons with the prescribed annual financial turnover, to fail to electronically transmit information required to be recorded in sales notes and take-over declarations or to knowingly or recklessly transmit information which is false in a material particular (Article 2(6)(c) and (d)).

Any such offences are punishable, on summary conviction, by a maximum fine of £50,000, or, on conviction on indictment, by a fine.

This Order also revises the Schedule to the principal Order by specifying the provisions of Commission Regulation (EEC) No. 1382/87 establishing detailed rules concerning the inspection of fishing vessels (O.J. No. L 132, 21.05.87, p.11) as detailed rules for the purposes of Article 5b of the Council Regulation (article 2(6)(a) and (b)).

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

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