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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 238**

**SEA FISHERIES**

**The Sea Fishing (Restriction on  
Days at Sea) (Scotland) Order 2010**

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| <i>Made</i>                                    | - - - - | <i>8th June 2010</i> |
| <i>Laid before the Scottish<br/>Parliament</i> | - - - - | <i>9th June 2010</i> |
| <i>Coming into force</i>                       | - -     | <i>1st July 2010</i> |

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.

**Citation, commencement and extent**

**1.**—(1) This Order may be cited as the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2010 and comes into force on 1st July 2010.

(2) Subject to paragraph (3), this Order extends to Scotland and the Scottish zone only.

(3) Insofar as this Order extends beyond Scotland and the Scottish zone, it does so only as a matter of Scots law.

(4) Nothing in paragraph (2) is to be treated as prejudicing the effect of section 30(2A) of the Fisheries Act 1981(2) 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—

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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, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 ([c.46](#)). Definitions of “enforceable Community restriction”, “enforceable Community obligation” and “the Ministers” are contained in section 30(3) of the 1981 Act. 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).
- (2) Section 30(2A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999, Schedule 2, paragraph 68(5)(a).

“British sea-fishery officer” has the same meaning as in section 7 of the Sea Fisheries Act 1968(3);

“cod recovery zone” means the geographical areas specified in paragraph 2 of Annex I to Regulation 1342/2008 and referred to in Annex IIA to Regulation 23/2010;

“Control Regulation” means Council Regulation (EC) No. 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No. 847/96, (EC) No. 2371/2002, (EC) No. 811/2004, (EC) No. 768/2005, (EC) No. 2115/2005, (EC) No. 2166/2005, (EC) No. 388/2006, (EC) No. 509/2007, (EC) No. 676/2007, (EC) No. 1098/2007, (EC) No. 1300/2008, (EC) No. 1342/2008 and repealing Regulations (EEC) No. 2847/93, (EC) No. 1627/94 and (EC) No. 1966/2006(4);

“day” has the same meaning as in Article 4 of Regulation 1342/2008;

“equivalent provision” means any provision in any other Order made under section 30(2) of the Fisheries Act 1981 for the purposes of implementing Annex IIA to Regulation 23/2010 or Article 27, 29 or 30 of the Control Regulation, which extends to any part of the United Kingdom and has equivalent effect to a provision in this Order, proceedings in respect of which may be commenced in any place in the United Kingdom by virtue of section 30(2A) of the Fisheries Act 1981;

“EU fishing boat” means a Community fishing vessel as defined in Article 3(d) of Regulation 2371/2002, other than a Scottish fishing boat;

“fishery product” includes fish;

“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 any—

- (a) map, plan, graph or drawing;
- (b) photograph;
- (c) data, however reproduced, communicated via a satellite-based vessel monitoring system established under Article 9 of the Control Regulation;
- (d) data, however reproduced, communicated to a fisheries monitoring centre established under Article 9(7) of the Control Regulation;
- (e) 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
- (f) 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;

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

“regulated gear” means any gear within a grouping of fishing gears specified in paragraph 1 of Annex I to Regulation 1342/2008 and referred to in Annex IIA to Regulation 23/2010;

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(3) 1968 c.77; section 7 is relevantly amended by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999, Schedule 2, paragraph 48(3); the Fisheries Act 1981, section 46(2) and the Marine and Coastal Access Act 2009 (c.23), section 239.

(4) O.J. No. L 343, 22.12.09, p.1. The Control Regulation replaces Regulation 2847/93, although some of its provisions come into force in stages (either on specific dates or pending implementation of EU detailed rules).

“Regulation 2807/83” means Commission Regulation (EEC) 2807/83 of 22 September 1983 laying down detailed rules for recording information on Member States’ catches of fish(5);

“Regulation 2847/93” means Council Regulation (EEC) No. 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy(6);

“Regulation 2371/2002” means Council Regulation (EC) No. 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy(7);

“Regulation 1342/2008” means Council Regulation (EC) No. 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks and repealing Regulation (EC) No. 423/2004(8);

“Regulation 23/2010” means Council Regulation (EU) No. 23/2010 of 14 January 2010 fixing for 2010 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in waters where catch limitations are required and amending Regulations (EC) No. 1359/2008, (EC) No. 754/2009, (EC) No. 1226/2009 and (EC) No. 1287/2009(9);

“Regulation 237/2010” means Commission Regulation (EU) No. 237/2010 of 22 March 2010 laying down detailed rules for the application of Council Regulation (EC) No. 1342/2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks(10);

“relevant fishing boat” means—

(a) a Scottish fishing boat wherever it may be; and

(b) an EU fishing boat within the Scottish zone,

provided it has an overall length of 10 metres or more;

“relevant offence” means an offence under article 4 or 5 of this Order, or under any equivalent provision;

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- (5) 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, 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; Commission Regulation (EC) No. 1804/2005, O.J. No. L 290, 4.11.05, p.10 and Commission Regulation (EC) No. 409/2009, O.J. No. L 123, 19.5.09, p.78.
- (6) 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. 1005/2008, O.J. No. L 286, 29.10.08, p.1; Council Regulation (EC) No. 1006/2008, O.J. No. L 286, 29.10.08, p.33 and as read with Article 20, and modified by Articles 28 and 29, of Council Regulation (EC) No. 1342/2008, O.J. No. L 348, 24.12.08, p.20. With the exception of certain provisions, including Articles 6, 8, 11 and 13, Regulation 2847/93 has been repealed by Article 122(1) of Council Regulation (EC) No. 1224/2009, O.J. No. L 343, 22.12.09, p.1.
- (7) O.J. No. L 358, 31.12.02, p.59 as corrected by a Corrigendum published in O.J. No. L 240, 10.7.04, p.17 and as amended by Council Regulation (EC) No. 865/2007, O.J. No. L 192, 24.7.07, p.1 and Council Regulation (EC) No. 1224/2009, O.J. No. L 343, 22.12.09, p.1.
- (8) O.J. No. L 348, 24.12.08, p.20 as amended by Council Regulation (EC) No. 1224/2009, O.J. No. L 343, 22.12.09, p.1.
- (9) O.J. No. L 21, 26.1.10, p.1 as corrected by a Corrigendum published in O.J. No. L 24, 28.1.10, p.14, which re-numbers the Regulation from Council Regulation (EU) No. 23/2010 to Council Regulation (EU) No. 53/2010, and as amended by Council Regulation (EU) No. 219/2010, O.J. No. L 71, 19.3.10, p.1.
- (10) O.J. No. L 75, 23.3.10, p.2.

“Scotland” and “the Scottish zone” have the same meaning as in section 126(1) of the Scotland Act 1998<sup>(11)</sup>;

“Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995<sup>(12)</sup> and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging.

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

- (a) numbered article is, except where otherwise indicated, a reference to the article so numbered in this Order; and
- (b) numbered paragraph is, except where otherwise indicated, a reference to the paragraph so numbered in the article in which it appears in this Order.

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

(4) Any expressions used in this Order that appear in the Control Regulation or Regulations 1342/2008 and 23/2010, and which are not defined in this Order, have the same meaning in this Order as in those Regulations.

### **Cod recovery zone**

**3.** For the purposes of this Order, the references to “geographical area” or “geographical areas” in Articles 27, 29 and 30 of the Control Regulation are to be construed as references to the cod recovery zone.

### **Absence from port**

**4.—(1)** A person in charge of a relevant fishing boat is guilty of an offence if that boat is absent from port and within the cod recovery zone whilst carrying on board regulated gear either—

- (a) without a fishing authorisation; or
- (b) in excess of the number of days or hours allocated to it in contravention of Article 30(1) (a) or (2)(a) of the Control Regulation.

(2) For the purpose of paragraph (1)(b)—

- (a) the number of days or hours allocated to a relevant fishing boat is determined by reference to its fishing authorisation; and
- (b) in calculating whether a relevant fishing boat has exceeded the number of days or hours allocated to it, no account is taken of any days or hours spent—
  - (i) transiting the cod recovery zone in accordance with Article 29(1) of the Control Regulation; or
  - (ii) undertaking non-fishing related activities in the cod recovery zone in accordance with Article 29(2) of the Control Regulation.

(3) For the purposes of paragraphs (1) and (2)(a), a “fishing authorisation” means—

- (a) in relation to a Scottish fishing boat, an authorisation issued by the Scottish Ministers which—
  - (i) specifies the number of days or hours for which a fishing boat may be present within the cod recovery zone whilst carrying specified regulated gear; and

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<sup>(11)</sup> 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).

<sup>(12)</sup> 1995 c.21.

- (ii) constitutes a special fishing permit for the purpose of Article 14(2) of Regulation 1342/2008 (as read with Article 5 of Regulation 237/2010); and
  - (b) in relation to an EU fishing boat, a special fishing permit issued in accordance with Article 14(2) of Regulation 1342/2008 (as read with Article 5 of Regulation 237/2010).
- (4) Paragraph (1)(a) does not apply to a person in charge of a relevant fishing boat if that boat is absent from port and transiting the cod recovery zone in accordance with Article 29(1) of the Control Regulation.
- (5) It is a defence for a person charged with an offence under paragraph (1)(b) (“the accused”) to prove that—
- (a) the excess number of days or hours for which the boat was absent from port and within the cod recovery zone whilst carrying on board regulated gear was equal to, or less than, the number of additional days or hours transferred to it from another relevant fishing boat (“the transferor”); and
  - (b) if the transfer of days or hours referred to in sub-paragraph (a) was invalid because the transferor was not entitled to transfer the days or hours purportedly transferred, the accused neither knew, nor had reason to suspect, that the transfer was invalid.

### **Use of regulated gear**

- 5.—**(1) A person in charge of a relevant fishing boat is guilty of an offence if that boat fishes in the cod recovery zone in contravention of the notification requirement in Article 27(1) of the Control Regulation.
- (2) A person in charge of a relevant fishing boat is guilty of an offence if that boat carries on board, whilst within the cod recovery zone, regulated gear other than the regulated gear notified under Article 27(1) of the Control Regulation.
- (3) The Scottish Ministers are the competent authority to which prior notification must be made for the purpose of Article 27(1) of the Control Regulation.
- (4) A person in charge of a relevant fishing boat is guilty of an offence if that boat carries on board more than one grouping of regulated gear whilst within the cod recovery zone.
- (5) Paragraph (4) does not apply to a person in charge of an EU fishing boat which has received prior authorisation to use more than one grouping of regulated gear during a fishing trip within the cod recovery zone under Article 27(2) of the Control Regulation.

### **Penalties**

- 6.—**(1) A person guilty of a relevant offence is liable—
- (a) on summary conviction, to a fine not exceeding £50,000; and
  - (b) on conviction on indictment, to a fine.
- (2) Where the court convicts a person of a relevant offence, it may order the forfeiture of—
- (a) any fish in respect of which the offence was committed; and
  - (b) 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.
- (3) Subject to the following provisions of this article, any person found guilty of a relevant offence, is liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.

(4) A person is not liable to a fine under paragraph (3) if, under paragraph (2), the court orders the forfeiture of the fish in respect of which that offence was committed.

(5) The court may not order the forfeiture of any fish under paragraph (2), if a fine is imposed under paragraph (3).

(6) Subject to paragraphs (4) and (5), any fine to which a person is liable under paragraph (3) 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 equivalent provision.

### **Recovery of fines**

7.—(1) Without prejudice to the provisions of section 221 of the Criminal Procedure (Scotland) Act 1995(13), 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 boat involved in the commission of the offence, 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(14), section 90 of the Magistrates' Courts Act 1980(15) or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(16) 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**

8.—(1) For the purpose of enforcing article 4 or 5, or any equivalent provision, a British sea-fishery officer may exercise the powers conferred by paragraphs (2), (3), (4) and (5) in relation to any relevant fishing boat.

(2) 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.

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(13) 1995 c.46; section 221 was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), schedule 5, paragraph 23.

(14) Section 222 was amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), schedule 1, paragraph 20(3).

(15) 1980 c.43; section 90 was amended by the Criminal Justice and Public Order Act 1994 (c.33), section 47(2) and the Collection of Fines (Final Scheme) Order 2006 (S.I. 2006/1737), article 50.

(16) S.I. 1981/1675 (N.I. 26).

(3) 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 paragraph (1) 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.

(4) 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.

(5) If 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 is 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**

**9.—(1)** For the purpose of enforcing article 4 or 5, or any equivalent provision, 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 any connected or ancillary activities 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 the 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 the 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 or to the number of days for which a fishing boat is absent from port;
  - (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)(a), and 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;
    - (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 would defeat the object of the entry to await the 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**

**10.—**(1) Any British sea-fishery officer may seize—

- (a) in Scotland or in the Scottish zone; or
- (b) on board 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 a relevant offence.

### **Protection of officers**

**11.** A British sea-fishery officer, or a person assisting such an officer by virtue of article 8(2) or 9(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 8, 9 or 10 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**

**12.—(1)** A person is guilty of an offence if that person—

- (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 8 or 9;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with such a requirement;
- (c) conceals, tampers with or disposes of evidence relating to an investigation;
- (d) assaults an officer who is exercising any of the powers conferred by this Order; or
- (e) obstructs any such officer in the exercise of the powers conferred by article 8, 9 or 10.

**(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**

**13.—(1)** Where—

- (a) an offence under this Order has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant individual; or
  - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association, is guilty of the offence and is liable to be proceeded against and punished accordingly.

**(2)** In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
  - (i) a director, manager, secretary or other similar officer of the body;
  - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner;

- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

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

##### **14.—(1) Any—**

- (a) logbook kept under Article 6 of Regulation 2847/93<sup>(17)</sup> or sent under Article 15 of the Control Regulation<sup>(18)</sup>;
- (b) declaration submitted under Article 8(1) of Regulation 2847/93 or sent under Article 24 of the Control Regulation;
- (c) declaration submitted under Article 11 of Regulation 2847/93 or sent under Article 22 of the Control Regulation;
- (d) document drawn up under Article 13 of Regulation 2847/93;
- (e) declaration submitted under Article 66 of the Control Regulation;
- (f) sales note submitted under Article 62 of the Control Regulation; or
- (g) document containing required information received by a fisheries monitoring centre established under Article 9(7) of the Control Regulation,

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 purpose of paragraph (1)(g), “required information” means data relating to—**

- (a) a fishing boat’s identification;
- (b) a fishing boat’s course and speed;
- (c) the most recent geographical position of the fishing boat expressed in degrees and minutes of longitude and latitude; and
- (d) the date and time of the fixing of that position,

as communicated via a satellite-based vessel monitoring system established under Article 9 of the Control Regulation.

St Andrew’s House,  
Edinburgh  
8th June 2010

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

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<sup>(17)</sup> O.J. No. L 261, 20.10.93, p.1.

<sup>(18)</sup> O.J. No. L 343, 22.12.09, p.1.

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## EXPLANATORY NOTE

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

This Order enforces the EU control measures set out in Articles 27, 29 and 30 of Council Regulation (EC) No. 1224/2009<sup>(19)</sup> (“the Control Regulation”) for the purpose of enforcing the EU restrictions and obligations contained in Annex IIA to Council Regulation (EU) No. 23/2010<sup>(20)</sup>. These restrictions and obligations relate to sea fishing by EU fishing boats within the cod recovery zone (as defined in the Order).

The Order forms part of the law of Scotland only. It applies to Scottish fishing boats wherever they may be and to EU fishing boats within the Scottish zone. It provides that references to “geographical area(s)” in Articles 27, 29 and 30 of the Control Regulation are to be construed as references to the cod recovery zone for the purposes of this Order (article 3).

The Order makes it an offence to contravene Article 27(1) or 30(1)(a) or (2)(a) of the Control Regulation in relation to the number of days which a Scottish fishing boat or an EU fishing boat can spend, and the regulated gear (as defined in the Order) which it can use, within the cod recovery zone (articles 4 and 5).

The Order specifies the penalties for a relevant offence (as defined in the Order) (article 6) and makes provision for the recovery of fines imposed in respect of a relevant offence or an offence under article 12 of the Order (article 7).

For the purpose of enforcing articles 4 and 5 of the Order, or any equivalent provision, the Order confers on British sea-fishery officers powers to: go on board fishing boats; search for and examine fishery products and equipment; require the production of documents; search for and seize documents; take a boat to the nearest convenient port; enter and inspect premises; stop and search vehicles transporting fish, and seize fish and fishing gear (articles 8 to 10).

The Order provides for the protection of British sea-fishery officers in the exercise of their powers under the Order (article 11). It creates offences of, and specifies the penalties for, obstructing such officers (article 12).

The Order makes provision in relation to offences committed by a body corporate, a Scottish partnership or other unincorporated association (article 13) and in relation to the admissibility in evidence of logbooks and other documents (article 14).

A Regulatory Impact Assessment in relation to this Order has been prepared and placed in SPICE. Copies can be obtained from Marine Scotland, 1B South, Victoria Quay, Edinburgh, EH6 6QQ.

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<sup>(19)</sup> Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No. 847/96, (EC) No. 2371/2002, (EC) No. 811/2004, (EC) No. 768/2005, (EC) No. 2115/2005, (EC) No. 2166/2005, (EC) No. 388/2006, (EC) No. 509/2007, (EC) No. 676/2007, (EC) No. 1098/2007, (EC) No. 1300/2008, (EC) No. 1342/2008 and repealing Regulations (EEC) No. 2847/93, (EC) No. 1627/94 and (EC) No. 1966/2006 (O.J. No. L 343, 22.12.09, p.1).

<sup>(20)</sup> Council Regulation (EU) No. 23/2010 fixing for 2010 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in waters where catch limitations are required and amending Regulations (EC) No. 1359/2008, (EC) No. 754/2009, (EC) No. 1226/2009 and (EC) No. 1287/2009 (O.J. No. L 21, 26.1.10, p.1).