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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 320**

**SEA FISHERIES**

**The Sea Fishing (EU Control Measures) (Scotland) Order 2015**

*Made* - - - - *2nd September 2015*  
*Laid before the Scottish*  
*Parliament* - - - - *4th September 2015*  
*Coming into force* - - *5th October 2015*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(1) and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(2) and all other powers enabling them to do so.

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for references in this Order to the Control Regulation and the Implementing Regulation (as both defined in article 2) and Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) 639/2004 and Council Decision 2004/585/EC(3) (in relation to the amendment at article 26(2)) to be construed as references to those instruments as amended from time to time.

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- (1) 1981 c.29 (“the 1981 Act”); relevant modifications are contained in article 5 of S.I. 1999/1748 and articles 3, 5 and 6 of S.I. 1999/1756. 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) (“the 1998 Act”). Definitions of “enforceable Community restriction”, “enforceable EU 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 (which was inserted by paragraph 68(5)(b) of Schedule 2 to S.I. 1999/1820).
- (2) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the 1998 Act (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7). The functions conferred on the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Part 2 and articles 24 and 26 of this Order are made under section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972.
- (3) OJ L 354, 28.12.2013, p.22, as amended by Council Regulation (EU) No 1385/2013 (OJ L 354, 28.12.2013, p.86) and Regulation (EU) 2015/812 (OJ L 133, 29.5.2015, p.1).

## PART 1

### GENERAL PROVISIONS

#### Citation, commencement and extent

1.—(1) This Order may be cited as the Sea Fishing (EU Control Measures) (Scotland) Order 2015 and comes into force on 5th October 2015.

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

(3) So far 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(4) 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—

“British sea-fishery officer” has the same meaning as in section 7 of the Sea Fisheries Act 1968(5);

“Control Regulation” means 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(6), as amended from time to time;

“equivalent provision” means any provision in any other order made under section 30(2) of the Fisheries Act 1981 or any other order, regulations, rules or scheme made under section 2(2) of the European Communities Act 1972 for the purpose of implementing any EU control measure or EU (third country) control measure—

- (a) which extends to any part of the United Kingdom and has equivalent effect to a provision in this Order; and
- (b) 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 control measure” means a requirement contained in a provision of the Control Regulation or Implementing Regulation, as read with any qualifying or supplementary provision in an EU instrument;

“EU instrument” means any instrument issued by any institution of the EU;

“EU recording and reporting requirement” means any requirement under the Control Regulation or the Implementing Regulation to record, keep, notify, submit, transmit or communicate any information or document;

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(4) Section 30(2A) was inserted by paragraph 68(5)(a) of Schedule 2 to S.I. 1999/1820.

(5) 1968 c.77; section 7 is relevantly amended by paragraph 48(3) of Schedule 2 to S.I. 1999/1820, section 46(2) of the 1981 Act and section 239 and Part 6 of Schedule 22 to the Marine and Coastal Access Act 2009 (c.23).

(6) OJ L 343, 22.12.2009, p.1, as last amended by Regulation (EU) 2015/812 (OJ L 133, 29.5.2015, p.1). The Control Regulation replaces Regulation (EEC) No 2847/93 (OJ L 261, 20.10.1993, p.1), although some of its provisions came into force in stages (either on specific dates or pending implementation of EU detailed rules).

“EU (third country) control measure” means a provision of Regulation 1006/2008, the Control Regulation or Regulation 201/2010 relating to third country fishing boats, as read with any qualifying or supplementary provision in an EU instrument, and in particular—

- (a) Article 22 of Regulation 1006/2008;
- (b) Article 23(1) of Regulation 1006/2008, as read with Article 9 of, and Annex III to, Regulation 201/2010;
- (c) Article 8 of, and Annex II to, Regulation 201/2010;
- (d) Article 9(6) of the Control Regulation;
- (e) Article 50(4) and (5) of the Control Regulation;

“first sale fisheries product” means a fisheries product (other than farmed fish) which is being sold for the first time;

“fisheries product” includes fish which is landed from a fishing boat;

“Implementing Regulation” means Commission Implementing Regulation (EU) No 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy(7), as amended from time to time;

“licensed fishing boat” means a fishing boat in respect of which a licence has been issued under section 4 of the Sea Fish (Conservation) Act 1967(8) or under similar provisions by another Member State or by another country;

“PLN number” means a fishing boat’s port number and register number within the meaning of regulation 31 of the Merchant Shipping (Registration of Ships) Regulations 1993(9);

“registered auction” means a centre or site registered or designated by the Scottish Ministers in accordance with article 10, at which fisheries products are marketed for sale by competitive bidding;

“registered buyer of fisheries products” means a person who is registered by the Scottish Ministers in accordance with article 6 (and includes an agent who buys fisheries products on behalf of that person);

“registered seller of fisheries products” means a person who is registered by the Scottish Ministers in accordance with article 8 (and includes an agent who sells fisheries products on behalf of that person);

“Regulation 1006/2008” means Council Regulation (EC) No 1006/2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, amending Regulations (EEC) No 2847/93 and (EC) No 1627/94 and repealing Regulation (EC) No 3317/94(10);

“Regulation 201/2010” means Commission Regulation (EU) No 201/2010 laying down detailed rules for the implementation of Council Regulation (EC) No 1006/2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters(11);

“relevant offence” means an offence under any provision of this Order except article 21(2), 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;

(7) OJ L 112, 30.4.2011, p.1, as corrected by a corrigendum (OJ L 328, 10.12.2011, p.58).

(8) 1967 c.84. Section 4 was amended by paragraph 3(a) of schedule 1 to the Aquaculture and Fisheries (Scotland) Act 2007 (asp 12), section 4(6) of the Marine and Coastal Access Act 2009 (c.23), and section 158 of the Marine (Scotland) Act 2010 (asp 5).

(9) S.I. 1993/3138. Regulation 31 was amended by S.I. 1999/3206, regulation 7.

(10) OJ L 286, 29.10.2008, p.33.

(11) OJ L 61, 11.3.2010, p.10.

“Scotland” and “the Scottish zone” have the same meaning as in section 126(1) of the Scotland Act 1998<sup>(12)</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>(13)</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; and

“third country fishing boat” means a third country fishing vessel as defined in Article 2(o) of Regulation 1006/2008.

(2) In this Order, except where otherwise indicated, any reference to—

- (a) a numbered article is a reference to the article so numbered in this Order;
- (b) a numbered paragraph is a reference to the paragraph so numbered in the article in which it appears in this Order; and
- (c) a numbered Part is a reference to the Part so numbered in this Order.

(3) 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; 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.

(4) 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.

(5) Expressions used in this Order that appear in the Control Regulation or Implementing Regulation and which are not defined in this Order, have the same meaning in this Order as in those Regulations.

(6) In this Order, a reference to anything done in writing includes an electronic communication as defined in section 15(1) of the Electronic Communications Act 2000<sup>(14)</sup> which has been recorded and is consequently capable of being reproduced.

### **Competent authority**

3. The Scottish Ministers are—

- (a) the competent authority responsible for the fisheries monitoring centre under Article 9(8) of the Control Regulation for Scottish fishing boats and for Union and third country fishing boats in Scotland or the Scottish zone; and
- (b) the competent national authority for the purposes of Article 125 of the Implementing Regulation for Scottish fishing boats.

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<sup>(12)</sup> 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 is determined by S.I. 1999/1126.

<sup>(13)</sup> 1995 c.21.

<sup>(14)</sup> 2000 c.7. Section 15(1) was amended by the Communications Act 2003 (c.21), section 406 and Schedule 17, paragraph 158.

## PART 2

### FIRST SALE OF FISHERIES PRODUCTS

#### **First sale of fisheries products**

4.—(1) In Article 59(1) of the Control Regulation, the reference to “auction centre” is to be construed as a reference to a registered auction.

(2) Pursuant to Article 59(1) of the Control Regulation, it is an offence—

- (a) for first sale fisheries products to be offered for sale at an auction other than a registered auction;
- (b) for any person, other than a registered seller, to offer for sale first sale fisheries products at a registered auction.

(3) In paragraph (2)(a), “auction” includes any business, premises or land used for the purpose of the first marketing of fisheries products.

#### **Purchase of fisheries products by an unregistered buyer**

5. Pursuant to Article 59(2) and (3) of the Control Regulation—

- (a) subject to paragraph (b), it is an offence for any person other than a registered buyer of fisheries products to purchase first sale fisheries products from a fishing boat;
- (b) paragraph (a) does not apply to a person who, in a single day, purchases first sale fisheries products weighing no more than 30 kilogrammes which are not subsequently placed on the market but are used only for private consumption.

#### **Registration of buyers of fisheries products**

6.—(1) For the purposes of Article 59(2) of the Control Regulation, a registered buyer of fisheries products is to be regarded as registered with the competent authority.

(2) Any person may apply to the Scottish Ministers to be registered as a registered buyer of fisheries products.

(3) Such an application must be in writing and must also—

- (a) be made in such form and manner;
- (b) include such information and undertakings; and
- (c) be delivered to such address,

as the Scottish Ministers may specify in a notice or from time to time require.

(4) Having considered the application, the Scottish Ministers may—

- (a) register the applicant unconditionally;
- (b) register the applicant subject to such conditions as they consider appropriate; or
- (c) refuse the application.

(5) The Scottish Ministers must notify the applicant in writing—

- (a) whether or not the application has been approved; and
- (b) where the application has been approved—
  - (i) of any conditions that may be attached to the registration under paragraph (4)(b); and
  - (ii) of the registration number allocated to the applicant for the purposes of this Part.

(6) The Scottish Ministers must publish the fact that a person is a registered buyer of fisheries products in such manner as they see fit.

(7) A registered buyer of fisheries products commits an offence if that buyer fails to comply with any—

- (a) condition to which the registration of that buyer is subject; or
- (b) undertaking provided in the application for registration.

(8) A person commits an offence if that person, in an application under this article—

- (a) makes a statement which is false or misleading in a material way, knowing the statement to be false or misleading;
- (b) makes a statement which is false or misleading in a material way, being reckless as to whether the statement is false or misleading; or
- (c) intentionally fails to disclose any material information.

(9) The registration of a registered buyer of fisheries products may be suspended where, in the view of the Scottish Ministers, the registered buyer of fisheries products has not—

- (a) complied with a condition of registration; or
- (b) complied with any requirement of Article 62, 63, 64, 66 or 67 of the Control Regulation.

#### **Obligation of registered buyers of fisheries products to keep records**

7.—(1) Subject to paragraph (2), a registered buyer of fisheries products must keep records of each purchase of first sale fisheries products made by that buyer at the place in the United Kingdom which is notified to the Scottish Ministers for that purpose in the buyer's application for registration.

(2) Where a registered buyer of fisheries products does not operate that buyer's business from the United Kingdom, or where a registered buyer of fisheries products is not established in the United Kingdom, the registered buyer of fisheries products must send records of every purchase of first sale fisheries products made by the buyer to the Scottish Ministers by 31st December in each year.

(3) The records referred to in this article must include all of the following information in relation to each individual purchase—

- (a) the date and location of the purchase;
- (b) the quantity of each species purchased;
- (c) the price paid for each species purchased;
- (d) the name and PLN number of the vessel which landed the fish;
- (e) the name, address and registration number of the seller; and
- (f) the reference number of the invoice or contract of sale.

(4) A registered buyer of fisheries products must keep the records of each purchase, as required by this article, for the period of 3 years beginning with the date of that purchase.

(5) A registered buyer of fisheries products must produce the records referred to in this article—

- (a) upon the request of a British sea-fishery officer; and
- (b) where the registered buyer of fisheries products does not operate that buyer's business from the United Kingdom, or where the registered buyer of fisheries products is not established in the United Kingdom, to the Scottish Ministers within 28 days of receiving a request from a British sea-fishery officer under sub-paragraph (a) to produce those records.

(6) A registered buyer of fisheries products who fails to keep or send the records required by this article, or to produce the records in accordance with paragraph (5), commits an offence.

(7) A person commits an offence if that person, in purported compliance with this article, keeps, sends or produces records which are false or misleading in a material way—

- (a) knowing the records to be false or misleading; or
- (b) being reckless as to whether the records are false or misleading.

### **Registration of sellers of fisheries products**

**8.—**(1) A registered seller of fisheries products is authorised for the purposes of Chapter II of Title V of the Control Regulation (control of marketing: post-landing activities), so far as that seller sells first sale fisheries products by way of competitive bidding at a registered auction.

(2) Any person may apply to the Scottish Ministers to be registered as a registered seller of fisheries products.

(3) Such an application must be in writing and must also—

- (a) be made in such form and manner;
- (b) include such information and undertakings; and
- (c) be delivered to such address,

as the Scottish Ministers may specify in a notice or from time to time require.

(4) Having considered the application, the Scottish Ministers may—

- (a) register the applicant unconditionally;
- (b) register the applicant subject to such conditions as they consider appropriate; or
- (c) refuse the application.

(5) The Scottish Ministers must notify the applicant in writing—

- (a) whether or not the application has been approved; and
- (b) where the application has been approved—
  - (i) of any conditions that may be attached to the registration under paragraph (4)(b); and
  - (ii) of the registration number allocated to the applicant for the purposes of this Part.

(6) The Scottish Ministers must publish the fact that a person is a registered seller of fisheries products in such manner as they see fit.

(7) A registered seller of fisheries products commits an offence if that seller fails to comply with any—

- (a) condition to which the registration of that seller is subject; or
- (b) undertaking provided in the application for registration.

(8) A person commits an offence if that person, in an application under this article—

- (a) makes a statement which is false or misleading in a material way, knowing the statement to be false or misleading;
- (b) makes a statement which is false or misleading in a material way, being reckless as to whether the statement is false or misleading; or
- (c) intentionally fails to disclose any material information.

(9) The registration of a registered seller of fisheries products may be suspended where, in the view of the Scottish Ministers, the registered seller of fisheries products has not—

- (a) complied with a condition of registration; or
- (b) complied with any requirement of Article 62, 63, 64, 66 or 67 of the Control Regulation.

### **Obligation of registered sellers of fisheries products to keep records**

9.—(1) Subject to paragraph (2), a registered seller of fisheries products must keep records of each sale of first sale fisheries products made by that seller at the place in the United Kingdom which is notified to the Scottish Ministers for that purpose in the application for registration made by the registered seller of fisheries products.

(2) Where a registered seller of fisheries products does not operate that seller's business from the United Kingdom, or where a registered seller of fisheries products is not established in the United Kingdom, the registered seller of fisheries products must send records of every sale of first sale fisheries products made by the seller to the Scottish Ministers by 31st December in each year.

(3) The records referred to in this article must include all of the following information in relation to each sale—

- (a) the date and location of the sale;
- (b) the quantity of each species sold;
- (c) the price paid for each species sold;
- (d) the name and PLN number of the vessel which landed the fish;
- (e) the name, address and registration number of the buyer; and
- (f) the reference number of the contract of sale or invoice.

(4) A registered seller of fisheries products must keep the records of each sale, as required by this article, for the period of 3 years beginning with the date of that sale.

(5) A registered seller of fisheries products must produce the records referred to in this article—

- (a) upon the request of a British sea-fishery officer; and
- (b) where the registered seller of fisheries products does not operate that seller's business from the United Kingdom, or where the registered seller of fisheries products is not established in the United Kingdom, to the Scottish Ministers within 28 days of receiving a request from a British sea-fishery officer under sub-paragraph (a) to produce those records.

(6) A registered seller of fisheries products who fails to keep or send the records required by this article, or to produce the records in accordance with paragraph (5), commits an offence.

(7) A person commits an offence if that person, in purported compliance with this article, keeps, sends or produces records which are false or misleading in a material way—

- (a) knowing the records to be false or misleading; or
- (b) being reckless as to whether the records are false or misleading.

### **Registration of auctions**

10.—(1) Any person may apply to the Scottish Ministers to have a site or centre registered as an auction for the purposes of Chapter II of Title V of the Control Regulation.

(2) Such an application must be in writing and must also—

- (a) be made in such form and manner;
- (b) include such information and undertakings; and
- (c) be delivered to such address,

as the Scottish Ministers may specify in a notice or from time to time require.

(3) Having considered the application, the Scottish Ministers may—

- (a) register the site or centre as an auction unconditionally;

- (b) register the site or centre as an auction subject to such conditions as they consider appropriate; or
  - (c) refuse the application.
- (4) The Scottish Ministers must notify the applicant in writing—
- (a) whether or not the application has been approved; and
  - (b) where the application has been approved, of any conditions that may be attached to the registration under paragraph (3)(b).
- (5) The Scottish Ministers must publish the fact that a site or centre has been registered as an auction in such manner as they see fit.
- (6) The applicant commits an offence if the applicant fails to comply with any—
- (a) condition to which the registration of a particular site or centre as an auction is subject; or
  - (b) undertaking provided in the application for registration.
- (7) A person commits an offence if that person, in an application under this article—
- (a) makes a statement which is false or misleading in a material way, knowing the statement to be false or misleading;
  - (b) makes a statement which is false or misleading in a material way, being reckless as to whether the statement is false or misleading; or
  - (c) intentionally fails to disclose any material information.

#### **Sale of first sale fisheries products landed from a licensed fishing boat**

**11.** It is an offence for any person to market first sale fisheries products which were landed in the United Kingdom by a fishing boat other than a licensed fishing boat.

#### **Prohibition on purchase of first sale fisheries products not landed by a licensed fishing boat**

**12.—(1)** It is an offence for any person to buy first sale fisheries products which were landed by a fishing boat other than a licensed fishing boat.

(2) In any proceedings for an offence under paragraph (1), it is a defence for a person to show that—

- (a) that person did not know; and
- (b) it was reasonable for that person not to suspect,

that the fisheries products had not been landed by a licensed fishing boat.

## **PART 3**

### **ENFORCEMENT AND OBSTRUCTION OFFENCES**

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

**13.—(1)** For the purpose of enforcing this Order, or any equivalent provision, a British sea-fishery officer may exercise the powers set out in this article in relation to any—

- (a) Scottish fishing boat wherever it may be; or
- (b) any other fishing boat within the Scottish zone.

(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.

(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 fisheries 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) take, or require the master of the boat in relation to which the offence took place to 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**

**14.—**(1) For the purpose of enforcing this Order, 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 fisheries 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 fisheries 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 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 fisheries 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, transshipment, sale or disposal of any fisheries product;
- (g) for the purpose of ascertaining whether an offence under this Order or any equivalent provision 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 on the premises not to remove any such document produced or found on the premises;
- (j) 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
- (k) 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 fisheries products, as they apply in relation to premises and, in the case of a vehicle, include the 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 a sheriff, on 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 an offence under this Order or any equivalent provision; 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 one 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.

(4) If a sheriff, on information on oath, is—

- (a) satisfied that there are reasonable grounds to believe that any computers, or other devices which may be used to record data electronically, are on the premises and their inspection is likely to disclose evidence of the commission of an offence under this Order or any equivalent provision; 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 one 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, and to search for and seize any computers or other devices in which data may be recorded in electronic form, including any related equipment, and to undertake forensic examination of any such computers or other devices including the copying of data and files held on any such computers or devices.

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

**15.**—(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 fisheries 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 fisheries product (including any receptacle which contains the fisheries 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 commission of such an offence.

### **Protection of officers**

**16.**—(1) A person mentioned in paragraph (2) is not to be liable in any civil or criminal proceedings for anything done (or omitted to be done) in, or in connection with, the exercise or purported exercise of the powers conferred by this Order.

(2) The persons are—

- (a) any British sea-fishery officer;
- (b) any person assisting a British sea-fishery officer by virtue of this Part.

(3) Paragraph (1) does not apply if—

- (a) the act or omission is shown to have been in bad faith;
- (b) there were no reasonable grounds for the act or omission; or
- (c) the act was carried out without reasonable skill or care.

### **Obstruction of officers**

**17.** It is an offence for any person to—

- (a) fail without reasonable excuse to comply with any requirement imposed by a British sea-fishery officer under the powers conferred by this Order;

- (b) without reasonable excuse prevent, or attempt to prevent, any other person from complying with any such requirement;
- (c) conceal, tamper with or dispose of evidence relating to an investigation; or
- (d) assault an officer who is exercising any of the powers conferred by this Order.

## PART 4

### SUPPLEMENTARY PROVISIONS AND PENALTIES

#### **Offences by bodies corporate etc.**

18.—(1) Where—

- (a) a relevant offence 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, commits 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**

19.—(1) Any—

- (a) fishing logbook kept under Article 14, or sent under Article 15, of the Control Regulation;
- (b) transshipment declaration submitted under Article 21, or sent under Article 22, of the Control Regulation;
- (c) landing declaration submitted under Article 23, or sent under Article 24, of the Control Regulation;
- (d) sales note submitted under Article 62, or sent under Article 63, of the Control Regulation;
- (e) take-over declaration submitted under Article 66, or sent under Article 67, of the Control Regulation;
- (f) transport document drawn up under Article 68 of 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.

#### **Admissibility in evidence of the weight of fish**

**20.** In any proceedings in Scotland where the weight of fish is a material consideration, any record of weighing kept for the purpose of complying with any provision of the Control Regulation or the Implementing Regulation is to be received in evidence without being produced or sworn to by any witness and is, unless the contrary is shown, conclusive evidence of the matters stated therein.

#### **Weighing of fisheries products: landing of certain pelagic species in specified ports**

**21.—**(1) Pursuant to Article 79(2) of the Implementing Regulation, any fishing boat that lands a controlled catch in Scotland must do so in a port specified in a list which must be maintained, and may be updated from time to time, by the Scottish Ministers<sup>(15)</sup>.

(2) The person in charge of the boat commits an offence if there is a failure to comply with paragraph (1).

(3) In this article—

- (a) “controlled catch” means any catch (or combination of catches) which falls within the scope of Article 78 of the Implementing Regulation; and
- (b) “person in charge” means each of the following persons—
  - (i) the master;
  - (ii) the owner;
  - (iii) the charterer (if any).

#### **Penalties**

**22.—**(1) Subject to paragraph (2), a person guilty of a relevant offence is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(2) A person guilty of an offence under article 21(2) is liable—

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

(3) The court which convicts a person of an offence under article 21(2) may order the forfeiture of—

- (a) any fish in respect of which the offence was committed; and

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<sup>(15)</sup> The list of designated ports is published on the Scottish Government’s (Marine and Fisheries) website and can be accessed via the following web-link: <http://www.scotland.gov.uk/Topics/marine/Compliance/DLP>.

- (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.
- (4) Subject to the following provisions of this article, any person found guilty of an offence under article 21(2) is liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.
- (5) A person is not liable to a fine under paragraph (4) if, under paragraph (3), the court orders the forfeiture of the fish in respect of which that offence was committed.
- (6) The court may not order the forfeiture of any fish under paragraph (3), if a fine is imposed under paragraph (4).
- (7) Subject to paragraphs (5) and (6), any fine to which a person is liable under paragraph (4) 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 an equivalent provision.
- (8) In addition to the penalties in paragraph (1), a court may also—
  - (a) in the case of an offence under article 4(2), 8(7) or (8) or 9(6) or (7), order that the registration of the person convicted is revoked, and that person be disqualified from applying for registration under article 8 for a specified or unlimited period;
  - (b) in the case of an offence under article 5, 6(7) or (8) or 7(6) or (7), order that the registration of the person convicted is revoked, and that person be disqualified from applying for registration under article 6 for a specified or unlimited period;
  - (c) in the case of an offence under article 10(6) or (7), order that the registration of the site or centre as an auction be revoked, and order that the person convicted be disqualified from applying to have a site or centre registered under article 10 for a specified or unlimited period.

### **Recovery of fines**

**23.**—(1) Without prejudice to section 221 of the Criminal Procedure (Scotland) Act 1995<sup>(16)</sup>, where a court has imposed a fine on any person in respect of an offence under this Order, that court may for the purpose 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.

<sup>(16)</sup> 1995 c.46; section 221 was amended by paragraph 23 of schedule 5 to the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

(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(17), section 90 of the Magistrates' Courts Act 1980(18) or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(19) specifies a court of summary jurisdiction in Scotland, this article applies as if the fine were a fine imposed by that court.

## PART 5

### AMENDMENTS, REVOCATIONS AND SAVINGS

#### Amendment of the Sea Fish (Marketing Standards) (Scotland) Regulations 2004

**24.**—(1) The Sea Fish (Marketing Standards) (Scotland) Regulations 2004(20) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) for the definition of “Regulation 104/2000” substitute—

““Regulation 1379/2013” means Regulation (EU) No 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000(21);”;

(b) in the definition of “specified EU provision”, for “Regulation 104/2000” substitute “Regulation 1379/2013”.

(3) In regulation 4 (powers of authorised officers), in paragraph (1)(a), for “Regulation 104/2000” substitute “Regulation 1379/2013”.

(4) In the Schedule (specified community provision)—

(a) for the entry relating to Article 2 of Regulation 104/2000 substitute—

<i>“Column 1</i>	<i>Column 2</i>
<i>Article of the Regulation</i>	<i>Subject matter</i>
Articles 33 and 34 of Regulation 1379/2013, read with Annex I to that Regulation	Fishery products intended for human consumption and listed in Annex I to Regulation 1379/2013 to comply with any common marketing standards established under Article 33 of that Regulation. All fishery products landed may be used for purposes other than direct human consumption.”

(b) omit the final entry relating to Article 29 and 30 of Regulation 104/2000.

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

(18) 1980 c.43; section 90 was amended by section 47(2) of the Criminal Justice and Public Order Act 1994 (c.33) and by S.I. 2006/1737 and S.I. 2013/630.

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

(20) S.S.I. 2004/498, amended by S.I. 2011/1043.

(21) OJ L 354, 28.12.2013, p.1, as amended by Council Regulation (EU) No 1385/2013 (OJ L 354, 28.12.2013, p.86) and Regulation (EU) 2015/812 (OJ L 133, 29.5.2015, p.1).

## Amendment of the Sea Fishing (Prohibition on the Removal of Shark Fins) (Scotland) Order 2007

25.—(1) The Sea Fishing (Prohibition on the Removal of Shark Fins) (Scotland) Order 2007(22) is amended as follows.

(2) In article 2(1) (interpretation)—

(a) omit the definitions of “Community fishing boat” and “relevant British fishing boat”; and

(b) for the definition of “relevant fishing boat” substitute—

““relevant fishing boat” means—

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

(b) any other fishing boat which is within the Scottish zone;”.

(3) In article 3 (offences), omit paragraphs (3) and (4).

(4) Omit article 11 (admissibility in evidence of logbooks and other documents).

(5) For the Schedule (specified Community provisions, contravention of which constitutes an offence) substitute the following Schedule—

### “SCHEDULE

Article 3

#### SPECIFIED PROVISIONS OF THE REGULATION, CONTRAVENTION OF WHICH CONSTITUTES AN OFFENCE

### PART 1

<i>Column 1</i>	<i>Column 2</i>
<i>Provision of Regulation</i>	<i>Subject Matter</i>
1. Article 3.1, as read with Article 3.1a	Prohibition on the removal of or retention of shark fins on board vessels, and the transhipment or landing of shark fins.

### PART 2

<i>Column 1</i>	<i>Column 2</i>
<i>Provision of Regulation</i>	<i>Subject Matter</i>
1. Article 3.2	Prohibition on the purchase, offer for sale or sale of shark fins which have been removed on board, transhipped or landed in contravention of the Regulation.”.

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(22) [S.S.I. 2007/39](#), amended by [S.S.I. 2009/413](#). The definitions of “Community fishing boat”, “relevant British fishing boat” and “relevant fishing boat” and paragraphs (3) and (4) of article 3 were inserted or substituted by articles 2(2) and 3 of [S.S.I. 2009/413](#).

### **Amendment of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007**

**26.**—(1) The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007(**23**) are amended as follows.

(2) In regulations 32(14)(b)(ii) (offences relating to European offshore marine sites), 34(6)(b)(ii) (protection of wild birds, their eggs and nests) and 39(11)(b)(ii) (protection of wild animals listed in Annex IV(a) to the Habitats Directive), for “Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy” substitute “Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC(**24**), as amended from time to time”.

### **Amendment of the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2010**

**27.**—(1) The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2010(**25**) is amended as follows.

(2) In article 2(1) (interpretation)—

(a) for the definition of “EU fishing boat” substitute—

““EU fishing boat” means a Union fishing vessel as defined in Article 4.1(5) of Regulation 1380/2013, other than a Scottish fishing boat;”;

(b) in the definition of “logbook”, for “Article 6 of Regulation 2847/93 (as read with Regulation 2807/83)” substitute “Article 14 of the Control Regulation (as read with Article 51 of Regulation 404/2011)”;

(c) omit the definitions of “Regulation 2807/83” and “Regulation 2371/2002”; and

(d) after the definition of “Regulation 57/2011”(**26**) insert—

““Regulation 404/2011” means Commission Implementing Regulation (EU) No 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy(**27**);”;

“Regulation 1380/2013” means Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC(**28**);”.

(3) In article 14 (admissibility in evidence of logbooks and other documents)—

(a) in paragraph (1)(a), for “Article 6 of Regulation 2847/93” substitute “Article 14”;

(b) in paragraph (1)(b), for “Article 8(1) of Regulation 2847/93” substitute “Article 23(3)”; and

(c) in paragraph (1)(c), for “Article 11 of Regulation 2847/93” substitute “Article 21(4)”.

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(23) S.I. 2007/1842. Regulations 32(14), 34(6) and 39(11) were amended by S.I. 2011/1043) and S.I. 2012/1809.

(24) OJ L 354, 28.12.2013, p.22, as amended by Council Regulation (EU) No 1385/2013 (OJ L 354, 28.12.2013, p.86) and Regulation (EU) 2015/812 (OJ L 133, 29.5.2015, p.1).

(25) S.S.I. 2010/238, amended by S.S.I. 2011/59.

(26) The definition of “Regulation 57/2011” was inserted by S.S.I. 2011/59, article 8 and Schedule 2, paragraph 2(2)(a)(ii).

(27) OJ L 112, 30.4.2011, p.1, as corrected by a corrigendum (OJ L 238, 10.12.2011, p.58).

(28) OJ L 354, 28.12.2013, p.22, as amended by Council Regulation (EU) No 1385/2013 (OJ L 354, 28.12.2013, p.86) and Regulation (EU) 2015/812 (OJ L 133, 29.5.2015, p.1).

## **Amendment of the Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010**

**28.**—(1) The Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010<sup>(29)</sup> is amended as follows.

(2) In article 2(1) (interpretation)—

(a) after the definition of “British sea-fishery officer” insert—

““Common Fisheries Policy Regulation” means Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC<sup>(30)</sup>”;

(b) for the definition of “EU fishing boat” substitute—

““EU fishing boat” means a Union fishing vessel as defined in Article 4.1(5) of the Common Fisheries Policy Regulation”;

(c) in the definition of “EU recording and reporting requirement”, for “, Regulation 1077/2008 or Regulation 2847/93” substitute “ or Regulation 404/2011”;

(d) in the definition of “logbook”, for “Article 6 of Regulation 2847/93 (as read with Regulation 2807/83)” substitute “Articles 14, 15 and 16 of the Control Regulation (as read with Regulation 404/2011)”;

(e) omit the definition of “Regulation 2807/83”;

(f) omit the definition of “Regulation 2847/93”;

(g) omit the definition of “Regulation 1077/2008”;

(h) after the definition of “Regulation 201/2010” insert—

““Regulation 404/2011” means Commission Implementing Regulation (EU) No 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy<sup>(31)</sup>”;

(i) in the definition of “relevant offence” omit “4,”.

(3) In article 2(5), for “Regulations 2847/93, 1006/2008, 1077/2008 and 201/2010,” substitute “Regulations 1006/2008, 201/2010 and 404/2011,”.

(4) Omit article 4 (register of fish buyers and sellers with the prescribed annual financial turnover).

(5) In article 5 (EU recording and reporting requirements), in paragraph (3)<sup>(32)</sup>, for “on the same basis as the prescribed annual financial turnover referred to in article 4(3)” substitute “for a calendar year using the annual financial turnover for a person for the calendar year and based on the European Central Bank’s official average euro foreign exchange reference rate applicable for that calendar year”.

(6) In article 6 (EU (third country) recording and reporting requirements), in paragraph (2), for “1(a) to (e), 2(c) to (g) and 3(a) to (c)” substitute “1(aa) to (e) and 2(a) to (e)”.

(7) In article 7 (penalties), in paragraph (3) omit “, other than an offence under article 4(4) or (5),”.

(8) In article 10 (powers of British sea-fishery officers on land), in paragraph (1) omit “4,”.

<sup>(29)</sup> S.S.I. 2010/334, amended by S.S.I. 2011/59.

<sup>(30)</sup> OJ L 354, 28.12.2013, p.22, as amended by Council Regulation (EU) No 1385/2013 (OJ L 354, 28.12.2013, p.86) and Regulation (EU) 2015/812 (OJ L 133, 29.5.2015, p.1).

<sup>(31)</sup> OJ L 112, 30.4.2011, p.1, as corrected by a corrigendum (OJ L 328, 10.12.2011, p.58).

<sup>(32)</sup> Article 5(3) was amended by S.S.I. 2011/59.

(9) In article 11 (powers of British sea-fishery officers to seize fish), omit “, other than an offence under article 4(4) or (5).”.

(10) In article 15 (admissibility in evidence of logbooks and other documents)—

- (a) in paragraph (1)(a) for “Article 6 of Regulation 2847/93” substitute “Article 14”;
- (b) in paragraph (1)(b) for “Article 8(1) of Regulation 2847/93” substitute “Article 23(3)”; and
- (c) in paragraph (1)(c) for “Article 11 of Regulation 2847/93” substitute “Article 21(4)”.

(11) In the table in Schedule 1 (EU recording and reporting requirements, contravention of which constitutes an offence)—

- (a) before entry 1(a), insert entry 1(aa) as set out in the table in Part 1 of the Schedule to this Order;
- (b) in entry 1(a), in column 2 (detailed rules), for “Article 6(1), (2) and (5) of Regulation 1077/2008” substitute “Article 47 of Regulation 404/2011”;
- (c) after entry 1(c), insert entry 1(ca) as set out in the table in Part 1 of the Schedule to this Order;
- (d) in entry 1(d), in column 2 (detailed rules), for “Article 6(2) of Regulation 1077/2008” substitute “Article 47(2) of Regulation 404/2011”;
- (e) after entry 1(d), insert entry 1(da) as set out in the table in Part 1 of the Schedule to this Order;
- (f) for entry 1(ha)(33), substitute entry 1(ha) as set out in the table in Part 1 of the Schedule to this Order;
- (g) for entries 2(c) to (g)(34) (relating to Regulation 1077/2008) substitute the entries set out in the table in Part 2 of the Schedule to this Order; and
- (h) omit entries 3(a) to (c)(35) (relating to Regulation 2847/93).

### **Amendment of the Sharks, Skates and Rays (Prohibition of Fishing, Trans-shipment and Landing) (Scotland) Order 2012**

**29.**—(1) The Sharks, Skates and Rays (Prohibition of Fishing, Trans-shipment and Landing) (Scotland) Order 2012(36) is amended as follows.

(2) In article 2 (interpretation)—

(a) before the definition of “EU fishing boat” insert—

““Common Fisheries Policy Regulation” means Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC(37);”; and

(b) for the definition of “EU fishing boat” substitute—

““EU fishing boat” means a Union fishing vessel as defined in Article 4.1(5) of the Common Fisheries Policy Regulation, other than a Scottish fishing boat and a relevant British fishing boat;”.

(3) In article 3 (application), for paragraph (2)(c) substitute—

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(33) Entry 1(ha) was inserted by [S.S.I. 2011/59](#).

(34) Entries 2(a) and (b) were omitted by [S.S.I. 2011/59](#), article 7(c).

(35) Entry 3(d) was omitted by [S.S.I. 2011/59](#), article 7(d).

(36) [S.S.I. 2012/63](#).

(37) OJ L 354, 28.12.2013, p.22, as amended by Council Regulation (EU) No 1385/2013 (OJ L 354, 28.12.2013, p.86).

- “(c) any other fishing boat or vessel (other than an EU fishing boat or third country fishing boat), whose master, owner or charterer (if any) is a person established in the United Kingdom within the meaning of Article 19(1)(a) of the Common Fisheries Policy Regulation(38).”.

### **Amendment of the Sea Fishing (Illegal, Unreported and Unregulated Fishing) (Scotland) Order 2013**

**30.**—(1) The Sea Fishing (Illegal, Unreported and Unregulated Fishing) (Scotland) Order 2013(39) is amended as follows.

- (2) In article 1 (citation, commencement, extent and application), for paragraph (2) substitute—

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

(2A) So far as this Order extends beyond Scotland and the Scottish zone, it does so only as a matter of Scots law.”.

- (3) In article 9 (offences)—

- (a) after paragraph (4) insert—

“(4A) It is an offence for a person to import fishery products caught by a third country fishing boat flying the flag of a non-cooperating third country unless the products are from stock or species to which the listing by the Council under Article 33 of the Council Regulation of the country as a non-cooperating third country does not apply.”; and

- (b) after paragraph (10) insert—

“(10A) It is an offence for a person to reflag a fishing boat flying the flag of a member State so that it flies the flag of a non-cooperating third country.”.

### **Revocations and savings**

**31.**—(1) The following instruments are revoked—

- (a) the Foreign Fishing Boats (Stowage of Gear) Order 1970(40);
- (b) the Fishing Boats (Marking and Documentation) (Enforcement) Order 1993(41);
- (c) the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Scotland) Order 2004(42);
- (d) the Registration of Fish Sellers and Buyers and Designation of Auction Sites (Scotland) Regulations 2005(43);
- (e) the Registration of Fish Sellers and Buyers and Designation of Auction Sites (Scotland) Amendment Regulations 2005(44);
- (f) the Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls (Scotland) Order 2006(45);
- (g) the Sea Fishing (Northern Hake Stock) (Scotland) Order 2006(46);

(38) Article 19 permits a Member State to take measures for the conservation and management of stocks in its own waters, subject to certain conditions. (For the purposes of interpreting Article 19(1)(a), “fishing vessel” is defined in Article 4.1(4) of regulation (EU) No 1380/2013.

(39) S.S.I. 2013/189.

(40) S.I. 1970/318.

(41) S.I. 1993/2015.

(42) S.S.I. 2004/392.

(43) S.S.I. 2005/286, amended by S.S.I. 2005/438.

(44) S.S.I. 2005/438.

(45) S.S.I. 2006/284.

(46) S.S.I. 2006/505.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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- (h) the Sea Fishing (Control Procedures for Herring, Mackerel and Horse Mackerel) (Scotland) Order 2008~~(47)~~;
- (i) the Sea Fishing (Control Procedures for Herring, Mackerel and Horse Mackerel) (Scotland) Amendment Order 2008~~(48)~~; and
- (j) the Sea Fishing (Prohibition on the Removal of Shark Fins) (Scotland) Amendment Order 2009~~(49)~~.

(2) Articles 4 and 7(a) of, and Part 1 of Schedule 1 to, the Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Amendment Order 2011 are revoked.

(3) Notwithstanding paragraphs (1) and (2), the provisions and instruments referred to in those paragraphs continue to have effect for the purposes of any investigation or legal proceedings relating to any acts or omissions which occurred before 5th October 2015 and constitute an offence under any of those instruments.

St Andrew's House,  
Edinburgh  
2nd September 2015

*RICHARD LOCHHEAD*  
A member of the Scottish Government

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~~(47)~~ S.S.I. 2008/102, amended by S.S.I. 2008/156 and S.S.I. 2011/1043.

~~(48)~~ S.S.I. 2008/156.

~~(49)~~ S.S.I. 2009/413.

## SCHEDULE

Article 28(11)

EU RECORDING AND REPORTING REQUIREMENTS,  
CONTRAVENTION OF WHICH CONSTITUTES AN OFFENCE

## PART 1

## Insertion of entries 1(aa), (ca) and (da) and substitution of entry 1(ha)

## Entry 1(aa)

<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Provision</i>	<i>Detailed Rules</i>	<i>Subject matter</i>	<i>Persons liable</i>
(aa) Article 14(1) to (7) and (9), subject to Article 15(1) and (5).	Articles 29 to 33, and 48 to 51 of Regulation 404/2011.	In relation to EU fishing boats with an overall length of 10 metres or more— Requirement: (a) to keep a fishing logbook of their operations (recording specific information); and (b) to submit the fishing logbook information as soon as possible, and not later than 48 hours after landing— (i) to the competent authority of the flag Member State; and (ii) where the landing has taken place in a Member State other than the flag Member State, to the competent authority of the port/coastal Member State.”	The master; the master’s agent.

## Entry 1(ca)

<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Provision</i>	<i>Detailed Rules</i>	<i>Subject matter</i>	<i>Persons liable</i>
(ca) Article 21(1) to (5), subject to Articles 15(5) and 22(1).	Articles 29 to 32, 34, 48 to 50 and 52 and 53 of Regulation 404/2011.	In relation to EU fishing boats with an overall length of 10 metres or more— Requirement: (a) to complete a transhipment declaration	The master of the transhipping fishing boat; the master of the receiving fishing boat; either master’s agent.

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<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Provision</i>	<i>Detailed Rules</i>	<i>Subject matter</i>	<i>Persons liable</i>
		<p>(recording specific information); and</p> <p>(b) to submit the transhipment declaration as soon as possible, and not later than 48 hours after transhipment—</p> <p>(i) to the competent authority of the flag Member State; and</p> <p>(ii) where the transhipment has taken place in a Member State other than the flag Member State, to the competent authority of the port/ coastal Member State.”</p>	

Entry 1(da)

<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Provision</i>	<i>Detailed Rules</i>	<i>Subject matter</i>	<i>Persons liable</i>
(da) Article 23(1) to (4), subject to Articles 15(5) and 24(1) and (5).	Articles 29 to 32, 35, 48 to 50, 54 and 55 of Regulation 404/2011.	<p>In relation to EU fishing boats with an overall length of 10 metres or more—</p> <p>Requirement:</p> <p>(a) to complete a landing declaration (recording specific information); and</p> <p>(b) to submit the landing obligation as soon as possible, and not later than 48 hours after landing—</p> <p>(i) to the competent authority of the flag Member State; and</p> <p>(ii) where the landing has taken place in a Member State other than the flag Member State, to the competent authority of the port/coastal Member State.”</p>	The master; the master’s agent.

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## Entry 1(ha)

<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Provision</i>	<i>Detailed Rules</i>	<i>Subject matter</i>	<i>Persons liable</i>
(ha) Article 63(1), as read with Articles 60(5) and 64, and subject to Article 65.	Article 90 and 91(1) of Regulation 404/2011.	In relation to the registered buyers, registered auctions or other bodies or persons authorised by Member States that are responsible for the first marketing of fisheries products landed in a Member State and have an annual financial turnover in first sales of fisheries products of EUR 200,000 or more—  Requirement:  (a) to record sales note data by electronic means; and  (b) to send that data by electronic means to the competent authority of the Member state where the first sales takes place, within 24 hours of the first sale.”	The registered buyer; the registered auction; any other authorised body or person responsible for the first sale of fisheries products.

## PART 2

## Insertion of entries 2(a) to (e)

<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Provision</i>	<i>Detailed Rules</i>	<i>Subject matter</i>	<i>Persons liable</i>
2. Regulation 404/2011			
(a) Article 39(1) and (2)		In relation to any EU fishing boat to which Articles 15, 17, 22 and 24 (electronic completion and transmission of fishing logbook, prior notification, transshipment declaration and landing declaration data) of the Control Regulation apply, and whose electronic recording and reporting system malfunctions—	The master; the owner; the charterer (if any); the agent of any of these persons.

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<i>“Column 1 Provision</i>	<i>Column 2 Detailed Rules</i>	<i>Column 3 Subject matter</i>	<i>Column 4 Persons liable</i>
		<p>Requirement to communicate certain data (e.g. fishing logbook, transhipment declaration, landing declaration and prior notification data), as specified, to the competent authority of the flag Member State, by telecommunication means prescribed by it—</p> <ul style="list-style-type: none"> <li>(a) at least once a day and not later than 24:00 hours (event where there are no catches); and</li> <li>(b) at the request of the competent authority of the flag Member State, immediately after the last fishing operation or after completion of any transhipment, before entering into port, at the time of any inspection at sea, and at the time of events defined in EU legislation or by the flag Member State.</li> </ul>	
(b) Article 39(4)		<p>In relation to any EU fishing boat to which Articles 15, 17, 22 and 24 (electronic completion and transmission of fishing logbook, prior notification, transhipment declaration and landing declaration data) of the Control Regulation apply—</p> <p>Prohibition on leaving port following a technical failure or malfunction of the electronic recording and reporting system fitted on board unless—</p> <ul style="list-style-type: none"> <li>(a) the system is fully functioning to the satisfaction of the competent authority of the flag Member State; or</li> </ul>	<p>The master; the owner; the charterer (if any); the agent of any of those persons.</p>

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<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Provision</i>	<i>Detailed Rules</i>	<i>Subject matter</i>	<i>Persons liable</i>
		(b) the competent authority of the flag Member State has authorised the boat to leave port with a non-functioning electronic recording and reporting system.	
(c) Article 40(3)		In relation to any EU fishing boat to which Articles 15, 22 and 24 (electronic completion and transmission of fishing logbook, transhipment declaration and landing declaration data) of the Control Regulation apply, and which has been notified that its flag Member State has not received data transmissions in accordance with those Articles—  Requirement to send the notified data to the competent authority of the flag Member State immediately on receipt of such notification.	The master, the owner; the charterer (if any); the agent of any of those persons.
(d) Article 41(3)		In relation to any EU fishing boat to which Articles 15, 22 and 24 (electronic completion and transmission of fishing logbook, transhipment declaration and landing declaration data) of the Control Regulation apply, and which has been notified that a coastal Member State cannot access the boat’s electronic logbook or transhipment data (in accordance with Article 44 of Regulation 404/2011)—  Requirement to send such data, and a copy of the return message issued in accordance with Article 38(1) of Regulation 404/2011, to the competent authority of the coastal Member State upon request and by any available	The master; the owner; the charterer (if any); the agent of any of those persons.

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<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Provision</i>	<i>Detailed Rules</i>	<i>Subject matter</i>	<i>Persons liable</i>
		electronic means prescribed by it.	
(e) article 41(4), as read with Article 41(3)		<p>In relation to any EU fishing boat to which Articles 15, 22 and 24 (electronic completion and transmission of fishing logbook, transhipment declaration and landing declaration data) of the Control Regulation apply, and which cannot provide a copy of a return message in compliance with a coastal Member State’s request under Article 41(3) of the Implementing Regulation—</p> <p>Prohibition on undertaking any fishing activities in the coastal Member State’s waters until a copy of the return message (issued in accordance with Article 38(1) of Regulation 404/2011) or fishing logbook information (referred to in Article 14(1) of the Control Regulation) is provided to the competent authority of the coastal Member State.”</p>	The master; the owner; the charterer (if any); the agent of any of those persons.

## EXPLANATORY NOTE

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

This Order provides for the implementation and enforcement of certain provisions of Council Regulation (EC) No. 1224/2009 (OJ L 343, 22.12.2009, p.1) (“the Control Regulation”) and Commission Implementing Regulation (EU) No. 404/2011 (OJ L 112, 30.4.2011, p.1) (“the Implementing Regulation”).

Article 3 of the Order designates the Scottish Ministers as the competent authority for specified purposes of the Control Regulation and the Implementing Regulation.

The Order makes provision for the registration of buyers of fisheries products (article 6) and makes provision for offences in relation to the purchase of fish by unregistered buyers (article 5). The Order requires registered buyers of fisheries products to keep records of the purchase of first sale fish and

makes provision for offences in relation to record keeping (article 7). The Order also makes provision for offences relating to the purchase of first sale fish (article 4).

The Order makes provision for the registration of sellers of fisheries products (article 8). A registered seller of fisheries products is required to maintain records and it is an offence to fail to keep records or to fail to produce them to a British sea-fishery officer at the request of that officer or to keep records which are knowingly or recklessly false or misleading (article 9).

The Order makes provision for the registration of auctions (article 10).

Articles 11 and 12 make provision for offences in relation to the marketing and purchase of fisheries products landed from unlicensed fishing boats.

Articles 13, 14 and 15 confer powers on British sea-fishery officers for the purposes of enforcing the Order or any equivalent provision.

Article 16 makes provision for the protection of British sea-fishery officers in the exercise of their powers under the Order.

Article 17 makes it an offence to obstruct such officers.

Provision is made in relation to offences and proceedings (articles 18 and 19).

Article 20 of the Order makes provision in relation to the admissibility of evidence of the weight of fish in any proceedings.

Article 21 makes provision in relation to the landing of herring, mackerel and horse mackerel.

Provision is made in relation to penalties (articles 22 and 23).

Amendments are made to specified instruments (articles 24 to 30 and the Schedule). Other instruments are revoked and savings provision is made (article 31).

A Business and Regulatory Impact Assessment (“BRIA”) has been prepared in relation to this Order and placed in the Scottish Parliament Information Centre. Copies of the BRIA are available from Marine Scotland, Victoria Quay, Leith, Edinburgh EH6 6QQ and online at [www.legislation.gov.uk](http://www.legislation.gov.uk).