

STATUTORY INSTRUMENTS

1985 No. 487

SEA FISHERIES

COMMUNITY RESTRICTIONS

The Sea Fishing (Enforcement of Community Control Measures) Order 1985

<i>Made</i>	- - - - -	21st March 1985
<i>Laid before Parliament</i>		27st March 1985
<i>Coming into Operation</i>		1st April 1985

The Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with sea fishing in Scotland, Wales and Northern Ireland, in exercise of the powers conferred on them by section 30(2) of the Fisheries Act 1981(a), and of all other powers enabling them in that behalf, hereby make the following order:—

Title and commencement

1. This order may be cited as the Sea Fishing (Enforcement of Community Control Measures) Order 1985 and shall come into operation on 1st April 1985.

Interpretation

2. In this order—

“British fishing boat” means a fishing boat which is—

- (a) registered in the United Kingdom, the Channel Islands or the Isle of Man; or
- (b) exempted from registration by regulations under section 373 of the Merchant Shipping Act 1894(a); or
- (c) owned wholly by a person who is (within the meaning of the Merchant Shipping Act 1894) qualified to own a British ship;

“the Commission Regulation” means Commission Regulation (EEC) No 2807/83 laying down detailed rules for recording information on Member States’ catches of fish(b), as read with the Commission communication of 29 January 1985 concerning the date of application of that Regulation(c);

(a) 1981 c.29.

(a) 1894 c.60.

(b) OJ No L 276, 10.10.83, p.1.

(c) OJ No L 24, 29.1.85, p.21.

“the Council Regulation” means Council Regulation (EEC) No 2057/82 establishing certain control measures for fishing activities by vessels of the Member States^(d), as amended by Council Regulation (EEC) No 1729/83^(e).

“foreign fishing boat” means a fishing boat which is not a British fishing boat.

Offences

3.— (1) Where there is, in respect of—

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

(b) any other fishing boat which is within British fishery limits,

a contravention of, or failure to comply with, any provision of the Council Regulation specified in column 1 of Part I or of Part II of the Schedule to this order as read with any qualification mentioned in relation thereto, the master shall be guilty of an offence and, in the case of a contravention of, or failure to comply with, any provision of the Council Regulation specified in column 1 of Part II of that Schedule, as so read, the owner and the charterer (if any) shall also each be guilty of an offence.

(2) Any person who in purported compliance with article 3, 6, 7 or 8 of the Council Regulation as read with article 1, 2 or 3 of the Commission Regulation furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular shall be guilty of an offence.

Penalties

4.— (1) A person guilty of an offence under article 3(1) of this order founded on a contravention of, or failure to comply with, article 2(2), 10(3) or 11 of the Council Regulation shall be liable on summary conviction—

(a) to a fine not exceeding the amount specified in the appropriate entry in column 3 of the Schedule to this order; and

(b) either—

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

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

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

(2) A person guilty of an offence under article 3(1) of this order founded on a contravention of, or failure to comply with, article 2(2), 10(3) or 11 of the Council Regulation shall be liable on conviction on indictment—

(d) OJ No L 220, 29.7.82, p.1.

(e) OJ No L 169, 20.6.83, p.14.

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

(3) A person guilty of an offence under article 3(1) of this order founded on a contravention of, or failure to comply with, article 3, 6, 7 or 8 of the Council Regulation, as read with article 1, 2 or 3 of the Commission Regulation, or of an offence under article 3(2) of this order shall be liable—

- (a) on summary conviction to a fine not exceeding £2000, or
- (b) on conviction on indictment to a fine.

Recovery of fines

5.— (1) Where a fine is imposed by a magistrates' court in England and Wales or Northern Ireland on the master, owner or charterer or a member of the crew of a fishing boat who is convicted by the court of an offence under article 3 or 10 of this order, the court may—

- (a) issue a warrant of distress against the boat and its gear and catch and any property of the person convicted for the purpose of levying the amount of the fine; and
- (b) if the boat is a foreign fishing boat, order it to be detained for a period not exceeding three months from the date of the conviction or until the fine is paid or the amount of the fine is levied in pursuance of any such warrant, whichever occurs first.

(2) Where a fine is imposed by a sheriff in Scotland on the master, owner or charterer or a member of the crew of a fishing boat who is convicted by the sheriff of an offence under article 3 or 10 of this order, the sheriff may

- (a) issue a warrant for the poinding and sale of the boat and its gear and catch and any property of the person convicted; and
- (b) if the boat is a foreign fishing boat, order it to be detained for a period not exceeding three months from the date of the conviction or until the fine is paid, whichever occurs first.

(3) Sections 77(1) and 78 of the Magistrates' Courts Act 1980^(a) (postponement of issue of, and defects in, warrants of distress) shall apply to a warrant of distress issued under this article in England and Wales as they apply to a warrant of distress issued under Part III of that Act.

(4) Article 114(2) of the Magistrates' Courts (Northern Ireland) Order 1981^(b) (postponement of issue of certain warrants) shall apply to a warrant of distress issued under this article in Northern Ireland as it applies to a warrant referred to in that paragraph.

^(a) 1980 c.43.

^(b) S.I. 1981/1675 (N.I. 26).

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

6.— (1) For the purpose of enforcing article 3 of this order a British sea-fishery officer may exercise in relation to—

- (a) any British fishing boat wherever it may be, or
- (b) any other fishing boat which is within British fishery limits the powers conferred by paragraphs (2) to (4) of this article.

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

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

- (a) may examine any fish on the boat and the equipment of the boat, including the fishing gear, and require persons on board the boat to do anything which appears to him to be necessary for facilitating the examination; and
- (b) may require any person on board the boat to produce any document relating to the boat, to its fishing operations or other operations ancillary thereto or to the persons on board which is in his custody or possession and may take copies of any such document;
- (c) for the purpose of ascertaining whether the master, owner or charterer of the boat has committed an offence under article 3 of this order, may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search;
- (d) where the boat is one in relation to which he has reason to suspect that such an offence has been committed, may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence;

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

(4) Where it appears to a British sea-fishery officer that an offence under article 3 of this order has at any time been committed within British fishery limits, he may—

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

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

Powers of British sea-fishery officers on land

7.— (1) Any British sea-fishery officer may—

- (a) enter at any reasonable time any premises (other than a dwelling-house) used for carrying on any business in connection with the operation of fishing boats or activities connected therewith or ancillary thereto or with the treatment, storage or sale of sea fish;
- (b) take with him such other persons as appear to him to be necessary;
- (c) examine any fish on the premises and require persons on the premises to do anything which appears to him to be necessary for facilitating the examination;
- (d) require any person on the premises to produce any documents which are in his custody or possession relating to the catching, landing, transshipment, sale or disposal of any sea fish;
- (e) take copies of any such document.

(2) If a justice of the peace is satisfied on information on oath that there is reasonable ground for suspecting that an offence under article 3 of this order has been committed, and that evidence of the commission of such an offence is to be found on any such premises, he may issue a warrant in writing authorising a British sea-fishery officer to enter those premises, if necessary by force, at any time within fourteen days from the time of the issue of the warrant and search them; and any British sea-fishery officer who enters the premises under the authority of the warrant may—

- (a) take with him such other persons as appear to him to be necessary; and
- (b) seize and remove any documents or other things whatsoever found on the premises which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of such an offence.

(3) In the application of paragraph (2) of this article to Scotland, the reference to a justice of the peace includes a reference to the sheriff and a stipendiary magistrate.

Power of British sea-fishery officer to seize fish and nets

8. Any British sea-fishery officer may seize—

- (a) any fish in respect of which he has reasonable grounds to suspect that an offence founded on a contravention of, or failure to comply with, article 10(3) of the Council Regulation has been committed; and
- (b) any fish caught with a net in respect of which he has reasonable grounds to suspect that an offence founded on a contravention of, or failure to comply with, article 11 of the Council Regulation has been committed; and
- (c) any net or other fishing gear—
 - (i) in respect of which he has reasonable grounds to suspect that an offence founded on a contravention of, or failure to comply with, article 11 of the Council Regulation has been committed, or
 - (ii) which he has reasonable grounds to suspect has been used in

- committing any offence founded on a contravention of, or failure to comply with, article 10(3) of the Council Regulation, or
- (iii) which he has reasonable grounds to suspect has been used for catching any fish in respect of which any such offence has been committed.

Protection of officers

9. A British sea-fishery officer shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by virtue of article 6, 7 or 8 of this order if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

Obstruction etc

10. Any person who—

- (a) fails without reasonable excuse to comply with any requirement imposed by a British sea-fishery officer under the powers conferred on him by virtue of article 6, 7 or 8 of this order;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) assaults any such officer who is exercising any of those powers or intentionally obstructs any such officer who is exercising any of those powers shall be guilty of an offence, and liable—
- (i) on summary conviction to a fine not exceeding £5,000; or
- (ii) on conviction on indictment to a fine.

Provisions as to offences and proceedings

11.— (1) Where any offence under article 3 of this order committed by a body corporate is proved to have been committed with the consent or approval of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Proceedings for an offence under the provisions of this order may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

Admissibility in evidence of logbooks and landing or trans-shipment declarations

12. Any logbook kept under article 3 of the Council Regulation and any declaration submitted under article 6 or 7 of the Council Regulation shall, in any proceedings for an offence under this order, be evidence, and in Scotland sufficient evidence, of the matters stated therein.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 21st March 1985.



Michael Jopling,
Minister of Agriculture, Fisheries and Food.

George Younger,
Secretary of State for Scotland.

19th March 1985.

Nicholas Edwards,
Secretary of State for Wales.

19th March 1985.

Douglas Hurd,
Secretary of State for Northern Ireland.

21st March 1985.

Article 4(1)

SCHEDULE

MAXIMUM FINES ON SUMMARY CONVICTION
(APART FROM FINES RELATED TO VALUE OF FISH)

PART I

FINES APPLICABLE TO MASTERS

Column 1	Column 2	Column 3
Provision of the Council Regulation	Subject matter	Amount
1. Article 3 of the Council Regulation, as read with article 1 of the Commission Regulation	Keeping of logbooks	£2,000
2. Article 6 or 7 of the Council Regulation as read with article 2 of the Commission Regulation	Making of declaration relating to catches landed or trans-shipped	£2,000
3. Article 8 of the Council Regulation, as read with article 3 of the Commission Regulation	Submission of information where landing or trans-shipment takes place more than 15 days after catch	£2,000

PART II

FINES APPLICABLE TO MASTERS, OWNERS AND CHARTERERS

Column 1	Column 2	Column 3
Provision of the Council Regulation	Subject matter	Amount
6. Article 2(2) of the Council Regulation	Requirement to co-operate in facilitating inspections	£5,000
7. Article 10(3) of the Council Regulation second sub-paragraph, in so far as it relates to retention on board, trans-shipment, landing, arranging for trans-shipment or arranging for landing	Prohibitions on retention on board, trans-shipment, landing, arranging for trans-shipment and arranging for landing which apply on exhaustion of quota	£5,000
8. Article 11 of the Council Regulation	Requirement to stow nets	£5,000

EXPLANATORY NOTE

(This Note is not part of the Order.)

This order makes provision for the enforcement of certain of the enforceable Community restrictions or other obligations relating to sea fishing set out in Council Regulation (EEC) No 2057/82 establishing certain control measures for fishing activities by vessels of the Member States (OJ No L220, 29.7.82, p.1) and Commission Regulation (EEC) No 2807/83 laying down detailed rules for recording information on Member States' catches of fish (OJ No L 276, 10.10.83, p.1).

The relevant provisions of the Council Regulation—

- (a) require co-operation in facilitating inspections (article 2(2));
- (b) require skippers to keep logbooks (ie records of their operations) when fishing for stocks subject to total allowable catches (article 3);
- (c) require skippers to make declarations to the authorities of Member States relating to catches landed or trans-shipped (articles 6, 7 and 8);
- (d) prohibit the retention on board, trans-shipment, landing, or arranging for trans-shipment or for landing of catches taken after the date on which a quota allocated to a Member State is deemed to have been exhausted (second subparagraph of article 10(3));
- (e) require nets to be stowed in certain circumstances (article 11).

The relevant provisions of the Commission Regulation—

- (a) impose detailed requirements for keeping a logbook (article 1);
- (b) impose detailed requirements for making a landing declaration and a trans-shipment declaration (article 2);
- (c) impose detailed requirements for the transmission of information (article 3).

For the purpose of enforcing the provisions of the Council and Commission Regulations this order confers on British sea-fishery officers powers to enter premises other than dwelling-houses, to go on board fishing boats, to examine fish, to require the production of documents, to search for and seize documents, to take a boat to the nearest port and to seize fish and fishing gear (articles 6, 7 and 8). The powers to search for and to seize documents are subject, in the case of premises on land, to the officer's having obtained a warrant from a justice of the peace, sheriff or stipendiary magistrate (article 7(2)).

Provision is also made for the prosecution of offenders and for the punishment of anyone found guilty of furnishing false information or obstructing or assaulting a British sea-fishery officer. The maximum penalties specified for such offences, and for offences relating to the provisions of the Council Regulation and the Commission Regulation (ranging from £2,000 to £5,000 on summary conviction) correspond to the penalties imposed for equivalent offences by virtue of the Sea Fish (Conservation) Act 1967 (c.84) and the Sea Fisheries Act 1968 (c.77), both as amended by the Fisheries Act 1981.

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