
STATUTORY INSTRUMENTS

1997 No. 1949

The Sea Fishing (Enforcement of Community Conservation Measures) Order 1997

Title and commencement

1. This Order may be cited as the Sea Fishing (Enforcement of Community Conservation Measures) Order 1997 and shall come into force on 12th August 1997.

Interpretation

2.—(1) In this Order—

“British fishing boat” means a boat which is registered in the United Kingdom, the Isle of Man or any of the Channel Islands;

“the Council Regulation” means Council Regulation (EC) No. 894/97 laying down certain technical measures for the conservation of fishery resources⁽¹⁾;

“fish” includes crustacea, molluscs and parts of fish;

“local fisheries committee” means a local fisheries committee constituted by an order made, or having effect as if made, under section 1 of the Sea Fisheries Regulation Act 1966⁽²⁾;

“specified Community provision” means a provision of the Council Regulation specified in column 1 of Schedule 1 to this Order, as read with any qualifying words relating to that provision in that column.

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

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

Offences

3.—(1) Subject to article 15 below, 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 specified Community provision, the master, the owner and the charterer (if any) shall each be guilty of an offence.

⁽¹⁾ OJ No. L132, 23.5.97, p. 1.

⁽²⁾ 1966 c. 38, section 1 was repealed in part by the Local Government Act 1972 (c. 70), section 272(1) and Schedule 30; and substituted in part by the Local Government Act 1985 (c. 51), section 16 and Schedule 8, paragraph 19.

(2) Subject to paragraph (3) below, any person who, in the United Kingdom, lands, transports, stores, sells, displays or offers for sale—

- (a) any fish in contravention of article 5 of the Council Regulation, or
- (b) any salmon (*Salmo salar*) or sea trout (*Salmo trutta*) in contravention of article 6(1) of the Council Regulation,

shall be guilty of an offence.

(3) Paragraph (2) above shall not apply to a person who lands a fish, salmon or sea trout if that person is guilty of an offence under paragraph (1) above as respects the landing of that fish, salmon or sea trout.

Penalties

4.—(1) A person guilty of an offence under article 3(1) of this Order shall be liable on summary conviction—

- (a) to a fine not exceeding the amount specified in column 3 of Schedule 1 to this Order in relation to the specified Community provision, the contravention of, or failure to comply with which, founded the offence; 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 shall be liable on conviction on indictment—

- (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(2) of this Order shall be liable on summary conviction—

- (a) to a fine not exceeding the statutory maximum; and
- (b) either—
 - (i) to a fine not exceeding the value of the fish in respect of which the offence was committed, or
 - (ii) to the forfeiture of the fish in respect of which the offence was committed.

(4) A person guilty of an offence under article 3(2) of this Order shall be liable on conviction on indictment—

- (a) to a fine; and
- (b) to the forfeiture of the fish in respect of which the offence was committed.

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 of this Order, the court may—

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

(2) Where a fine is imposed by a sheriff in Scotland on the master, 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 of this Order, the sheriff may—

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

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

(4) Articles 114(2) and 154 of the Magistrates' Courts (Northern Ireland) Order 1981⁽⁴⁾ (postponement of issue of certain warrants and objections as to want of form or variance between complaint etc. and evidence adduced) shall apply to a warrant of distress issued under this article in Northern Ireland as they apply to a warrant referred to in those articles.

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

6.—(1) For the purpose of enforcing article 3(1) of this Order any 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 may require the boat to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, the boat.

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

- (a) may search for fish or fishing gear on the boat and 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;
- (b) may require any person on board the boat to produce any document relating to the boat, to any fishing operations or other operations ancillary thereto or to the persons on board which is in his custody or possession;

(3) 1980 c. 43; the maximum fines in section 78 were converted to levels on the standard scale by sections 37 and 46 of the Criminal Justice Act 1982 (c. 48).

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

- (c) for the purpose of ascertaining whether an offence has been committed under article 3(1) 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 including rendering all documents on the boat's computer systems into a visible and legible form;
- (d) inspect and take copies of any such document produced to him or found on board and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away; and
- (e) where the boat is one in relation to which he has reason to suspect that such an offence has been committed, may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence;

but nothing in sub-paragraph (e) 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(1) of this Order has at any time been committed, 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) For the purpose of enforcing the provisions of article 3 of this Order, any 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 activities connected therewith or ancillary thereto or with the treatment, storage or sale of fish;
- (b) take with him such other persons as appear to him to be necessary and any equipment or materials;
- (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) 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 fish from such premises for such a period as may be reasonably necessary for the purposes of establishing whether an offence under article 3 of this Order has at any time been committed;
- (f) require any person on the premises to produce any documents which are in his custody or possession relating to the catching, landing, transportation, trans-shipment, sale or disposal of any fish;
- (g) for the purpose of ascertaining whether any person on the premises has committed an offence under article 3 of this Order, search the premises for any such document and may require any person on the premises to do anything which appears to him to be necessary for facilitating the search including rendering all documents on computer systems within the premises into a visible and legible form;

- (h) inspect and take copies of any such document produced to him or found on the premises and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away; and
- (i) if he has a reason to suspect that such an offence has been committed, seize and detain any such document produced to him or found on the premises for the purpose of enabling the document to be used as evidence in proceedings for the offence.

(2) The provisions of paragraph (1) above shall apply *mutatis mutandis* in relation to any land used in connection with any of the activities described in paragraph (1) above, or 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, shall include power to require the vehicle to stop at any time and, if necessary, direct the vehicle to some other place to facilitate the inspection.

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

8. A British sea-fishery officer may seize—

- (a) any fish (including any receptacle which contains the fish) in respect of which he has reasonable grounds to suspect that an offence under article 3 of this Order has been committed; and
- (b) any net or other fishing gear which he has reasonable grounds to suspect has been used in the course of the commission of such an offence.

Powers of other officers

9.—(1) For the purpose of enforcing article 3 of this Order in so far as it applies to undersized fish, any of the following officers, that is to say—

- (a) any officer authorised by any of the Ministers,
- (b) any officer of a market authority, acting within the limits of any market which that authority has power to regulate, and
- (c) any fishery officer of a local fisheries committee acting within the district of the committee,

may, at all reasonable times, go on board any British fishing boat or enter any premises (other than a dwelling) used for carrying on any business in connection with the treatment, storage or sale of fish, may search for and examine any fish in any place, whether on board a fishing boat or elsewhere, and whether in a receptacle or not, and may seize any fish in respect of which he has reasonable grounds to suspect that an offence under article 3 of this Order has been committed.

(2) For the purpose of enforcing article 3 of this Order in so far as it relates to nets and other fishing gear, any fishery officer of a local fisheries committee may, within the district of the committee, go on board any British fishing boat and search for and examine all nets or other fishing gear and any fish carried in that boat, and may seize any net or other fishing gear in respect of which he has reasonable grounds to suspect that an offence under article 3 of this Order has been committed.

(3) For the purpose of paragraph (1) of this article the district of a local fisheries committee shall be deemed to extend throughout the area of any council liable to pay, or contribute to the payment of, the expenses of the committee, except that the powers conferred by that paragraph on any fishery officer of a local fisheries committee shall not be exercisable in respect of any matter arising within the limits of any market under the control of the council of any district.

Protection of officers

10. An officer or a person assisting him by virtue of articles 6(2) or 7(1)(b) of this Order shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the

powers conferred on him by articles 6 to 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 of officers

11. 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 British sea-fishery officers by articles 6 and 7 of this Order;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) assaults an officer who is exercising any of the powers conferred on him by articles 6 to 8 of this Order or intentionally obstructs any such officer in the exercise of any of those powers

shall be guilty of an offence and liable—

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

Provisions as to offences

12.—(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 connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where any offence under article 3 of this Order committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where any offence under article 3 of this Order committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, he as well as the association shall be guilty of the offence and liable to be proceeded against and punished accordingly.

Proceedings

13.—(1) Proceedings for an offence under this Order may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

(2) A local fisheries committee may take proceedings in respect of any offence occurring within the district of the committee under—

- (a) article 3(1) of this Order where the offence is founded on a contravention of, or failure to comply with, articles 2, 4, 5 and 10 of the Council Regulation; or
- (b) article 3(2)(a) of this Order.

(3) For the purpose of paragraph (2) of this article the district of a local fisheries committee shall be deemed to extend throughout the area of any council liable to pay, or contribute to the payment of, the expenses of the committee, except that the powers conferred by that paragraph on the committee

shall not be exercisable in respect of any matter arising within the limits of any market under the control of the council of any district.

Admissibility in evidence of logbooks and other documents

14. Any document kept or held on board under Article 5 of Council Regulation (EEC) No. 2241/87 establishing certain control measures for fishing activities⁽⁵⁾ or Article 6 or 17.2 of Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy⁽⁶⁾, any declaration submitted under Article 8.1, 12 or 17.2 of Council Regulation 2847/93 and any document drawn up under Article 9 or 13 of Council Regulation 2847/93 shall, in any proceedings for an offence under this Order—

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

Jersey territorial waters

15.—(1) The provisions of this Order shall not extend to the territorial sea adjacent to the Bailiwick of Jersey.

(2) For the purposes of this article, the territorial sea adjacent to the Bailiwick of Jersey means the territorial sea as extended by the Territorial Sea Act 1987⁽⁷⁾.

Revocation

16. The Orders specified in Schedule 2 to this Order are hereby revoked.

4th August 1997

Elliot Morley
Parliamentary Secretary, Ministry of Agriculture,
Fisheries and Food

31st July 1997

Sewel
Parliamentary Under Secretary of State, Scottish
Office

4th August 1997

Win Griffiths
Parliamentary Under Secretary of State, Welsh
Office

5th August 1997

Marjorie Mowlam
Secretary of State for Northern Ireland

(5) OJ No. L207, 29.7.87, p. 1.

(6) OJ No. L261, 20.10.93, p. 1, to which there are amendments not relevant to this Order. Article 39 of the Regulation repealed Council Regulation (EEC) 2241/87 with the exception of Article 5.

(7) 1987 c. 49, extended to the Bailiwick of Jersey subject to exceptions, adaptations and modifications by the Territorial Sea Act 1987 (Jersey) Order 1997 (S.I. 1997/278).