

2009 No. 3391

SEA FISHERIES, ENGLAND AND WALES

**The Sea Fishing (Illegal, Unreported and Unregulated Fishing)
Order 2009**

Made - - - - 23rd December 2009
Laid before Parliament 4th January 2010
Laid before the National Assembly for Wales 4th January 2010
Coming into force - - 25th January 2010

The Secretary of State for Environment, Food and Rural Affairs, the Secretary of State concerned with sea fishing in Northern Ireland and the Welsh Ministers are each designated **(a)** for the purposes of section 2(2) of the European Communities Act 1972 **(b)** in relation to the common agricultural policy of the European Union.

This Order makes provision for a purpose mentioned in that section and it appears to the Secretary of State for Environment, Food and Rural Affairs, the Secretary of State concerned with sea fishing in Northern Ireland and the Welsh Ministers that it is expedient for the references to the following Regulations to be construed as references to those Regulations as amended from time to time—

- (a) Council Regulation (EEC) No 2847/93 **(c)** establishing a control system applicable to the common fisheries policy;
- (b) Council Regulation (EC) No 1005/2008 **(d)** establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing; and
- (c) Commission Regulation (EC) No 1010/2009 **(e)** laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008.

The Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland make this Order in relation to England in exercise of the powers conferred by section 2(2) of, and paragraph 1A **(f)** of Schedule 2 to, the European Communities Act 1972 and section 30(2) of the Fisheries Act 1981 **(g)** and now vested in them **(h)**.

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- (a)** S.I. 1972/1811 and S.I. 2005/2766. By virtue of sections 59(1) and 162 of, and paragraphs 28 and 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), functions conferred on the National Assembly for Wales by the designation in S.I. 2005/2766 are exercisable by the Welsh Ministers.
 - (b)** 1972 c. 68.
 - (c)** OJ No L 261, 20.10.93, p1 as last amended by Council Regulation (EC) No 1967/2006 (OJ No L 409, 30.12.06, p.11).
 - (d)** OJ No L 286, 29.10.08, p1.
 - (e)** OJ No L 280, 27.10.09, p5.
 - (f)** Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).
 - (g)** 1981 c. 29.
 - (h)** The function of the Ministers (see the definition in section 30(3)) under section 30(2) of the Fisheries Act 1981 exercisable in relation to British fishing boats (other than Scottish ones) within the Scottish zone and Scottish fishing boats outside that zone but within British fishery limits remains exercisable by the Ministers despite being transferred to the Scottish Ministers

The Welsh Ministers make this Order in relation to Wales in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and section 30(2) of the Fisheries Act 1981 now vested in them^(a).

Citation and commencement

1. This Order may be cited as the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009 and comes into force on 25th January 2010.

Application

2.—(1) This Order applies—

- (a) in England and Wales;
- (b) in relation to English fishing boats and Welsh fishing boats, wherever they are;
- (c) in relation to other fishing boats within British fishery limits^(b), except when they are in—
 - (i) the Scottish zone, as defined in section 126(1) of the Scotland Act 1998^(c),
 - (ii) the Northern Ireland zone, as defined in section 98(1) of the Northern Ireland Act 1998^(d).

(2) In this article—

- (a) “English fishing boat” means a fishing boat which is—
 - (i) registered, with its specified port being in England, or
 - (ii) owned wholly by persons qualified to own British ships for the purposes of Part 2 of the Merchant Shipping Act 1995^(e), other than a Welsh fishing boat, a Northern Ireland fishing boat or a Scottish fishing boat;
- (b) “Welsh fishing boat” means a fishing boat which is registered, with its specified port being in Wales.

(3) In paragraph (2)(a)—

- (a) “Northern Ireland fishing boat” means a fishing boat which is registered, with its specified port being in Northern Ireland; and
- (b) “Scottish fishing boat” means a fishing boat which is registered, with its specified port being in Scotland.

(4) In paragraphs (2) and (3), “registered” means registered in the register maintained under section 8 of the Merchant Shipping Act 1995, and “specified port” means the port specified in the entry in that register as the one to which the boat is to be treated as belonging.

under section 53(1) of the Scotland Act 1998 (c. 46): see article 3(1) of, and Schedule 1 to, the Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592). The function under section 30(2) exercisable in relation to the Northern Ireland zone and Northern Ireland fishing boats outside that zone remains exercisable by the Ministers despite being transferred to the Department of Agriculture and Rural Development in Northern Ireland under article 3(2) of, and paragraph 3 of Schedule 2 to, the Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790): see paragraph 3(2) of Schedule 2 to that Order. Any remaining functions of the Secretaries of State for Scotland and Wales under section 30(2) of the Fisheries Act 1981 in relation to England have been transferred to the Minister of Agriculture, Fisheries and Food: see article 2(1) of the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812). The function of that Minister and the Secretary of State concerned with sea fishing in Northern Ireland acting jointly under section 30(2) has been transferred to the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland acting jointly: see article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).

- (a) The function of the Ministers under section 30(2) of the Fisheries Act 1981 was transferred to the National Assembly for Wales (as constituted under the Government of Wales Act 1998 (c.38)) in so far as exercisable in relation to Wales by article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).
- (b) As defined by section 1 of the Fishery Limits Act 1976 (c. 86).
- (c) 1998 c. 46.
- (d) 1998 c. 47.
- (e) 1995 c. 21.

Interpretation

3.—(1) In this Order—

“authorised officer” means a person authorised in writing by a local authority, a port health authority, the Secretary of State or the Welsh Ministers for the purposes of this Order;

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

“the Commission Regulation” means Commission Regulation (EC) No 1010/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008;

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“controlled consignment” means a consignment prohibited from movement under article 5;

“the Council Regulation” means Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing;

“England” includes the waters adjacent to England up to the seaward limits of the territorial sea;

“equivalent provision” means a provision in any other instrument extending to any part of the United Kingdom which has equivalent effect to a provision in this Order, proceedings in respect of which may be taken in England or Wales by virtue of section 30(2A) of the Fisheries Act 1981(b);

“local authority” means—

(a) in relation to England, a county council, a district council, a London Borough Council, the Common Council of the City of London or the Council of the Isles of Scilly; and

(b) in relation to Wales, a county council or a county borough council;

“port health authority” means—

(a) in relation to the London port health district (within the meaning given by section 7(1) of the Public Health (Control of Disease) Act 1984(c)), the Common Council of the City of London; and

(b) in relation to any port health district constituted by order under section 2(3) of that Act, the port health authority for that district constituted by order under section 2(4) of that Act;

“third country fishing vessel” means a fishing vessel which is not a Community fishing vessel; and

“Wales” has the meaning given in section 158(1) of the Government of Wales Act 2006(d).

(2) Terms used in this Order that are also used in the Council Regulation have the meaning they bear in that Regulation.

(3) In this Order, any reference to the Council Regulation is a reference to that Regulation as amended from time to time.

(4) In this Order, any reference to the Commission Regulation is a reference to that Regulation as amended from time to time.

Competent authority

4.—(1) The Secretary of State is, otherwise than in relation to Wales, the competent authority for the purposes of the Council Regulation and the Commission Regulation.

(a) 1968 c. 77; section 7 is amended by article 4 of, and paragraph 48 of Schedule 2 to, S.I. 1999/1820; by sections 26(1) and 46(2) of, and Part 2 of Schedule 5 to, the Fisheries Act 1981; by section 40 of, and Schedule 5 to, the Northern Ireland Constitution Act 1973 (c. 36) and by section 234 of the Marine and Coastal Access Act 2009 (c. 23).

(b) Section 30(2A) was inserted by S.I. 1999/1820.

(c) 1984 c. 22.

(d) 2006 c. 32.

(2) The Welsh Ministers are, in relation to Wales, the competent authority for the purposes of the Council Regulation and the Commission Regulation.

(3) Where fish or fishery products are imported into England or Wales by container ship, air, road or rail, the local authority and the port health authority are also the competent authority for the purposes of the provisions referred to in paragraph (4).

(4) The provisions are—

- (a) Article 12(2) of the Council Regulation (receipt of catch certificates);
- (b) Article 14(1) and (2) of the Council Regulation (receiving catch certificates and documentation, and statements describing consignments where fishery products have been processed in a third country or have come via a third country);
- (c) Article 16(1) and (2) of the Council Regulation (checking of catch certificates and receiving information from approved economic operators);
- (d) Article 17(2) of the Council Regulation and Article 20 of the Commission Regulation (verifications); and
- (e) Article 18 (1), (2) and (3) of the Council Regulation (refusal of importation).

Control on movement

5.—(1) An authorised officer may prohibit the movement of a consignment of fish or fishery products from the place of import while a verification takes place pursuant to Article 17 of the Council Regulation or Article 20 of the Commission Regulation.

(2) An authorised officer who has prohibited the movement of a consignment must, as soon as possible, give written notice to the importer or the person who appears to the officer to be in charge of the consignment.

(3) The notice must—

- (a) specify the controlled consignment;
- (b) state that it may not be moved without the written consent of an authorised officer under article 6;
- (c) specify the relevant provision of the Council Regulation or Commission Regulation in respect of which the authorised officer has reason to believe that there has been a failure to comply; and
- (d) specify what steps, if any, must be taken to demonstrate compliance with that provision, and within what time such steps must be taken.

(4) If the person to whom the authorised officer gives the notice does not appear to the officer to be the importer or an agent, contractor or employee of the importer, the authorised officer must take reasonable steps to bring the contents of the notice to the attention of such a person as soon as possible.

(5) Where—

- (a) a verification has been completed, and
- (b) any steps specified under paragraph (3)(d) have been fulfilled within the specified time frame,

the authorised officer must remove the prohibition on movement if satisfied that a breach of the Council Regulation or Commission Regulation has not taken place.

Consent to movement

6.—(1) An authorised officer may give written consent to the movement of a controlled consignment.

(2) Before giving such consent, an authorised officer may require the importer to give a written undertaking to the effect that the consignment will—

- (a) be moved to a place specified by an authorised officer; and

(b) not be moved from that place without the written consent of an authorised officer.

(3) Any consent given under this article must—

- (a) specify the controlled consignment to which it relates;
- (b) specify the place to which the controlled consignment is to be moved; and
- (c) state that the consignment continues to be controlled.

(4) Where such consent has been given and the consignment has been moved to the place in question, the prohibition on movement under article 5 applies to it at the place in question as it applied at the place of import.

Refusal of importation

7.—(1) For the purposes of exercising functions in relation to Article 18(3) of the Council Regulation, an authorised officer may exercise the powers in sections 268 and 270 to 278 of, and Schedule 18 to, the Marine and Coastal Access Act 2009, save that any reference in those provisions—

- (a) to an ‘enforcement officer’ is to be read as an ‘authorised officer’; and
- (b) to ‘fish’ is to be read as ‘fish or fishery products’.

(2) The competent authority must refuse importation or permission to use transshipment facilities where a declaration has not been submitted in accordance with Article 8 of the Council Regulation and Article 3 of the Commission Regulation.

(3) Where the competent authority has refused importation pursuant to Article 18(1) or (2) of the Council Regulation or paragraph (2) above, the importer may appeal to a magistrates’ court within 28 days of the refusal.

(4) The procedure in a magistrates’ court under this Order is by way of complaint, and the Magistrates’ Courts Act 1980(a) applies to the proceedings.

Fees relating to third country imports

8. A port health authority or local authority must charge an importer of a consignment a fee in respect of any expenses reasonably incurred by it in carrying out its functions under article 4(3) or 5 in respect of any consignment.

Offences under the Council Regulation

9.—(1) It is an offence for the person in charge of a third country fishing vessel to enter port without authorisation under Article 7 of the Council Regulation.

(2) It is an offence for the person in charge of a fishing vessel to conduct a transshipment with a third country fishing vessel contrary to Article 4(3) of the Council Regulation.

(3) It is an offence to import fishery products without a validated catch certificate pursuant to Article 12 of the Council Regulation.

(4) It is an offence for a person to engage in fishing for a stock which is subject to a moratorium or for which fishing is otherwise prohibited under Article 3(d) of the Council Regulation.

(5) It is an offence for a person to tranship fish or fishery products between, or participate in joint fishing operations with, a fishing vessel that—

- (a) has engaged in IUU fishing;
- (b) is on the Community IUU vessel list; or
- (c) is on an IUU vessel list of a regional fisheries management organisation.

(a) 1980 c. 43.

(6) In relation to a fishing vessel on the Community IUU vessel list, it is an offence for a person—

- (a) to enter into an agreement to operate or beneficially own it;
- (b) to furnish it with any supplies, gear or people; or
- (c) to engage in employment on it.

(7) It is an offence for a person to conduct business directly connected to IUU fishing, within the meaning of Article 42(1)(b) of the Council Regulation,

(8) It is an offence for a person to falsify, or use falsified, documents contrary to Article 42(1)(c) of the Council Regulation.

(9) It is an offence for a person, knowing a consignment to be a controlled consignment, to move it or cause it to be moved otherwise than in accordance with the written consent of an authorised officer.

(10) It is an offence for a person to disclose information received from the Commissioners contrary to article 19(3) of this Order.

(11) In paragraphs (1) and (2), the “person in charge” of a fishing vessel means the owner, master, charterer (if any) or their agents.

Penalties

10.—(1) A person found guilty of an offence under article 9(1) to (9) or 17 of this Order, or under an equivalent provision, is liable—

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

(2) A person found guilty of an offence under article 9(10) of this Order is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, to imprisonment for a term not exceeding three months or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or both.

Recovery of fines

11.—(1) Where a magistrates’ court imposes a fine on a person convicted of an offence under this Order or under an equivalent provision, the court may—

- (a) for the purpose of levying the amount of the fine, issue a warrant of distress against—
 - (i) the boat involved in the commission of the offence,
 - (ii) its gear and catch, and
 - (iii) any property of the person convicted; and
- (b) order that the boat, its gear and catch be detained until the earlier of—
 - (i) the expiry of a period not exceeding three months from the date of the conviction,
 - (ii) the fine being paid, or
 - (iii) the amount of the fine being levied in pursuance of any such warrant.

(2) Sections 77(1) and 78 of the Magistrates’ Courts Act 1980(a) apply to a warrant of distress issued under this article as they apply to a warrant of distress issued under Part 3 of that Act.

(3) Where, in relation to a fine in respect of an offence under this Order or under an equivalent provision, an order under Article 95 of the Magistrates’ Courts (Northern Ireland) Order 1981(b)

(a) Section 78 was amended by the Criminal Justice Act 1982 (c. 48), sections 37 and 46, and by the Courts Act 2003 (c. 39), section 109(1) and paragraph 219 of Schedule 8.

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

or section 222 of the Criminal Procedure (Scotland) Act 1995^(a) (which deal with the transfer of fines from one jurisdiction to another) specifies a local justice area in England and Wales, this article applies as if the fine were imposed by a court within that area.

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

12.—(1) For the purpose of enforcing this Order or an equivalent provision, a British sea-fishery officer has the powers set out in this article in relation to a fishing boat to which this Order applies.

(2) A British sea-fishery officer may go on board the boat, with or without persons assigned to assist in that officer's duties, and may require it to stop and do anything else which will facilitate boarding.

(3) A British sea-fishery officer may require the attendance of the master and other persons on board and may make any examination and inquiry as appears to the officer to be necessary for the purpose mentioned in paragraph (1), and in particular may—

- (a) search for fish or fishing gear on the boat and examine any fish on the boat and the equipment of the boat, including the fishing gear, and require persons on board to do anything which appears to the officer to be necessary for facilitating the examination;
- (b) require any person on board to produce any document in that person's custody or possession relating to the boat, to any fishing or ancillary operations or to persons on board;
- (c) for the purpose of ascertaining whether an offence under this Order or an equivalent provision has been committed, search the boat for any such document and may require any person on board to do anything which appears to the officer to be necessary for facilitating the search;
- (d) inspect and copy any such document produced 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;
- (e) where the boat is one in relation to which the officer has reason to suspect that an offence under this Order or an equivalent provision has been committed, seize and detain any such document produced or found on board for the purpose of enabling it to be used as evidence in proceedings in connection with any offence under this Order or an equivalent provision.

(4) Nothing in paragraph (3)(e) 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 port.

(5) Where it appears to a British sea-fishery officer that an offence under this Order or an equivalent provision has at any time been committed in relation to a fishing boat, the officer may—

- (a) take, or require the master of the boat 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.

(6) A British sea-fishery officer who detains or requires the detention of a boat must serve on the master a written notice stating that the boat is, or is required to be, detained until the notice is withdrawn by the service on the master of a further written notice signed by a British sea-fishery officer.

Powers of British sea-fishery officers on land

13.—(1) For the purpose of enforcing this Order or an equivalent provision, a British sea-fishery officer may—

(a) 1995 c. 46.

- (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 importation, processing, treatment, storage, weighing or sale of fish or fishery products;
- (b) bring such other persons as appear to the officer to be necessary and any equipment or materials;
- (c) examine any fish or fishery products on the premises and require any person on the premises to do anything which appears to the officer to be necessary for facilitating the examination;
- (d) carry out at the premises such other inspections or tests as may reasonably be necessary, including inspections and tests relating to equipment used to weigh fish or fishery products;
- (e) require any person not to remove or cause to be removed any fish or fishery products from the premises for such period as may be reasonably necessary for the purposes of establishing whether an offence under this Order or an equivalent provision has been committed;
- (f) require any person on the premises to produce any documents in that person's custody or possession relating to the importation, processing, catching, landing, weighing, transportation, transshipment, sale or disposal of any fish or fishery products or to the entry to, or exit from, any port or harbour by any fishing boat;
- (g) for the purpose of ascertaining whether any person has committed an offence under this Order or an equivalent provision, search the premises for any such document and require any person on the premises to do anything which appears to the officer to be necessary for facilitating the search;
- (h) inspect and take copies of any such document produced or found on the premises;
- (i) require any appropriate or responsible person to render any such document on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away; and
- (j) if the officer has reason to suspect that an offence under this Order or an equivalent provision has been committed, seize and detain any such document produced or found on the premises for the purpose of enabling it to be used as evidence in proceedings in connection with any offence under this Order or an equivalent provision.

(2) The provisions of paragraph (1) also apply in relation to any land used in connection with any of the activities described in paragraph (1)(a), or in respect of any vehicle which a British sea-fishery officer has reasonable cause to believe is being used to transport fish or fishery products, as they apply in relation to premises and, in the case of a vehicle, include power to require the vehicle to stop at any time and, if necessary, direct the vehicle to some other place to facilitate the inspection.

Warrants to enter premises

14.—(1) A justice of the peace who on sworn information in writing is satisfied that the circumstances in paragraph (2) apply may issue a warrant authorising a British sea-fishery officer to enter any premises, if necessary using reasonable force, and to take with that officer such persons as appear to be necessary.

(2) The circumstances are that—

- (a) there are reasonable grounds to believe that any documents or other items which a British sea-fishery officer has power under article 13 to inspect are on the premises;
- (b) the inspection of such documents or other items is likely to disclose evidence of the commission of an offence under this Order or an equivalent provision; and
- (c) either—

- (i) entry to the premises has been or is likely to be refused and notice of intention to apply for a warrant has been given to the occupier,
- (ii) an application for entry, or the giving of notice, would defeat the object of the entry,
- (iii) the premises are unoccupied, or
- (iv) the occupier is temporarily absent and it might defeat the object of the entry to await that person's return.

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

15. A British sea-fishery officer may seize—

- (a) any fish or fishery products, including any receptacle which contains the fish or fishery products, in respect of which the officer has reasonable grounds to suspect that an offence under this Order or an equivalent provision has been committed;
- (b) any net or other fishing gear which the officer has reasonable grounds to suspect has been used in the commission of such an offence.

Protection of officers

16.—(1) An officer is not liable in any civil or criminal proceedings for anything done or omitted to be done in the purported exercise of any of the powers conferred by articles 12 to 15 or in carrying out checks and verifications under the Council Regulation or the Commission Regulation if the court is satisfied that—

- (a) the officer acted in good faith;
- (b) there were reasonable grounds for so acting; and
- (c) the officer acted with reasonable skill and care.

(2) In paragraph (1), “officer” means—

- (a) an authorised officer,
- (b) a British sea-fishery officer, or
- (c) a person assisting a British sea-fishery officer by virtue of—
 - (i) article 12(2) or 13(1)(b), or
 - (ii) a warrant issued under article 14.

Obstruction of officers

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

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

(2) In paragraph (1), “officer” has the same meaning as in article 16(2)

Offences by corporate bodies

18.—(1) If an offence under this Order or an equivalent provision committed by a body corporate is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer, that officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body.

(3) In this article "officer", in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

Exchange of information

19.—(1) The Secretary of State, the Welsh Ministers, the Commissioners, any local authority or port health authority may exchange information for the purpose of this Order and may divulge information to the enforcement authorities of Scotland and Northern Ireland for the purposes of this Order or the equivalent provision in those jurisdictions

(2) Paragraph (1) is without prejudice to any other power of the Secretary of State, the Welsh Ministers, the Commissioners, the local authority or port health authority to disclose information.

(3) No person, including a servant of the Crown, may disclose any information received from the Commissioners under paragraph (1) if—

- (a) the information relates to a person whose identity—
 - (i) is specified in the disclosure; or
 - (ii) can be deduced from the disclosure;
- (b) the disclosure is for a purpose other than the purposes specified in paragraph (1); and
- (c) the Commissioners have not given their prior consent to its disclosure.

Obtaining samples and analysis etc

20.—(1) An authorised officer may, for the purposes of ascertaining whether any offence under this Order has been committed, purchase or take a sample of any fish or fishery products.

(2) An authorised officer who considers that the sample should be analysed, examined or tested, must submit it for that purpose to the public analyst for the area in which it was obtained (or, if in the office of the public analyst for the area is vacant, to the public analyst for some other area).

(3) The public analyst must—

- (a) ensure that the sample is analysed, examined or tested as soon as practicable; and
- (b) give the person who submitted the sample a certificate specifying the result.

(4) In any proceedings, the production by one of the parties—

- (a) of a document purporting to be a certificate under paragraph (3)(b), or
- (b) of a document supplied to the party by the other party as being a copy of such a certificate,

is evidence of the facts stated in it unless, in a case falling within sub-paragraph (a), the other party requires that the public analyst be called as a witness.

(5) In any such proceedings, if a person charged or summonsed intends to produce a certificate of a public analyst or require, under paragraph (4), the public analyst to be called as a witness, written notice of the intention together with a copy of the certificate (if appropriate) must be given to the other party at least three clear days before the hearing or trial.

(6) If such notice is not given, the court may adjourn the proceedings on such terms as it thinks fit.

(7) In this Order, "public analyst" has the same meaning as in section 27 of the Food Safety Act 1990(a).

(a) 1990 c. 16. Section 27(2) was amended by the Food Standards Act 1999 (c. 28), section 40(1) and Schedule 5, paragraph 7, and 8. There are further amendments not relevant to this Order.

Admissibility of documents in evidence

21.—(1) In any proceedings in respect of an offence under this Order or an equivalent provision, a document specified in paragraph (2) is evidence of the matters stated in that document.

(2) The documents are—

- (a) a logbook kept under Article 6 or 17(2) of the Control Regulation;
- (b) a declaration submitted under Article 8(1), 9, 12, 17(2) or 28f of the Control Regulation;
- (c) a sales note or document submitted under Article 9 of the Control Regulation;
- (d) a document drawn up under Article 13 of the Control Regulation;
- (e) a document containing required information received by a fisheries monitoring centre established under Article 3(7) of the Control Regulation.

(3) In paragraph (2)(e), “required information” means the following information as communicated via a satellite-based vessel monitoring system established under Article 3(1) of the Control Regulation—

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

(4) Terms used in this article that are also used in the Control Regulation have the meaning they bear in that Regulation.

(5) In this article, any reference to the Control Regulation is a reference to that Regulation as amended from time to time.

(6) In this article “the Control Regulation” means Council Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy^(a).

20th December 2009

Dan Norris
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

23rd December 2009

Paul Goggins
Parliamentary Under Secretary of State
Northern Ireland Office

18th December 2009

Elin Jones
Minister for Rural Affairs, one of the Welsh Ministers

(a) OJ No L 261, 20.10.93, p1 as last amended by Council Regulation (EC) No 1006/2008 (OJ No L 286, 29.10.2008, p 33).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the enforcement of Council Regulation (EC) No 1005/2008 (OJ No L 286, 29.10.2008, p.1) (“the Council Regulation”) and Commission Regulation (EC) 1010/2009 (OJ No L 280, 27.10.2009, p.5) (“the Commission Regulation”) establishing restrictions and obligations relating to illegal, unreported and unregulated fishing.

Article 4 designates the competent authority for the purposes of the Council and the Commission Regulations. Article 5 provides for controls on movement of consignments of fish or fishery products while verifications are carried out pursuant to Article 17 of the Council Regulation (which can include a request for assistance from the flag state of the vessel to ensure the accuracy of the information contained within, or the validity of, the catch certificate). Article 6 permits movement of such consignments under certain circumstances. Article 7 provides for the refusal of importation in the circumstances set out in Article 18(1) or (2) of the Council Regulation (where the catch certificate is lacking, invalid, inaccurate, incomplete, or where the request for assistance from the flag state, or lack of, confirms that a catch certificate should not have been issued). Article 18 of the Council Regulation also provides that Member States may confiscate, destroy, dispose or sell such fishery products in accordance with national law. The powers set out in sections 268 and 270 to 278 of the Marine and Coastal Access Act 2009 (fisheries enforcement powers) are available to authorised officers in relation to both fish and fishery products. This includes a power to seize the fish and fishery products and release them in return for a bond.

Article 8 requires the port health authority or local authority to charge a fee in respect of each consignment reflecting the expenses it has reasonably incurred. Article 9 provides that certain activities prohibited in the Council Regulation are offences punishable summarily or on indictment (article 10). Articles 12 to 15 provide for powers of British sea-fishery officers in the enforcement of this Order. Articles 18 to 20 make provisions about offences and bodies corporate, exchange of information and obtaining samples, and Article 21 for certain documents to be admitted as evidence.

An impact assessment has been prepared and a copy placed in the library of each House of Parliament. Copies can be obtained from the Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London, SW1P 2AL or from the Department’s website.

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£5.50