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STATUTORY INSTRUMENTS

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**1993 No. 2016**

**SEA FISHERIES**

COMMUNITY RESTRICTIONS

**The Sea Fishing (Enforcement of  
Community Control Measures) Order 1993**

<i>Made</i>	- - - -	<i>10th August 1993</i>
<i>Laid before Parliament</i>		<i>11th August 1993</i>
<i>Coming into force</i>	- -	<i>1st September 1993</i>

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) and (3) of the Fisheries Act 1981<sup>(1)</sup>, 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 1993 and shall come into force on 1st September 1993.

**Interpretation**

2.—(1) In this Order—

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

“the Council Regulation” means Council Regulation (EEC) No. 2241/87 establishing certain control measures for fishing activities<sup>(2)</sup>, as amended by Council Regulation (EEC) No. 3483/88<sup>(3)</sup>;

“the first Commission Regulation” means Commission Regulation (EEC) No. 2807/83 laying down detailed rules for recording information on Member States' catches of fish<sup>(4)</sup>, as read with the Commission communication of 29th January 1985 concerning the date of application

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(1) 1981 c. 29.

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

(3) OJ No. L306, 11.11.88, p.2.

(4) OJ No. L276, 10.10.83, p.1.

of that Regulation<sup>(5)</sup>, and as amended by the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community<sup>(6)</sup> and Commission Regulation (EEC) No.473/89<sup>(7)</sup>;

“fishing boat” includes a receiving vessel and a third vessel, within the meaning in each case of the Council Regulation;

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

“the second Commission Regulation” means Commission Regulation (EEC) No. 1382/87 establishing detailed rules concerning the inspection of fishing vessels<sup>(8)</sup>.

(2) Any reference in this Order to a numbered Schedule shall be construed as a reference to the Schedule bearing that number in this Order.

### 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 or second Commission Regulation specified in Schedule 1, as read with any qualifying words relating thereto in that Schedule, the master, owner, charterer (if any) and any other person responsible for the vessel, shall each be guilty of an offence.

(2) Any person who in purported compliance with article 5, 6, 7 or 8 of the Council Regulation, as read with article 1, 2 or 3 of the first 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, a provision of the Council Regulation or the second Commission Regulation specified in column 1 of Schedule 1, as read with any qualifying words relating thereto in that Schedule, shall be liable—

- (a) on summary conviction to a fine not exceeding the amount specified in the appropriate entry in column 3 of that Schedule;
- (b) on conviction on indictment to a fine.

(2) A person guilty of an offence under 3(1) of this Order founded on a contravention of, or failure to comply with, article 11(3), 11a(2), 11b(2) or 13 of the Council Regulation, as read with any qualifying words relating hereto in Schedule 1, shall also be liable—

- (a) 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; and
- (b) to the forfeiture of any fish in respect of which the offence was committed, or to a fine not exceeding the value of 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—

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

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<sup>(5)</sup> OJ No. L24, 29.1.85, p.21.

<sup>(6)</sup> OJ No. L302, 15.11.85, p.23, at p.241.

<sup>(7)</sup> OJ No. L53, 25.2.89, p.34.

<sup>(8)</sup> OJ No. L132, 21.5.87, p.11.

- (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, member of the crew, owner, charterer (if any) or any other person responsible for the vessel, 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, member of the crew, owner, charterer (if any) or any other person responsible for the vessel, 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 arrestment 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<sup>(9)</sup> (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<sup>(10)</sup> (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 it applies 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 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 any 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;

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<sup>(9)</sup> 1980 c. 43; section 78 was amended by the Criminal Justice Act 1982 (c. 48), sections 37 and 46.

<sup>(10)</sup> S.I. 1981/1675 (NI 26).

- (c) for the purpose of ascertaining whether the master, owner, charterer (if any) or any other person responsible for the vessel, 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 sub-paragraph (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 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, trans-shipment, 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.

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

**8.** Any British sea-fishery officer may seize—

- (a) any fish in respect of which he has reasonable grounds to suspect that an offence under article 3 of this Order founded on a contravention of, or failure to comply with, article 11(3), 11a(2) or 11b(2) 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 under article 3 of this Order founded on a contravention of, or failure to comply with, article 13 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 under article 3 of this Order founded on a contravention of, or failure to comply with, article 13 of the Council Regulation has been committed, or
  - (ii) which he has reasonable grounds to suspect has been used in committing any offence under article 3 of this Order founded on a contravention of, or failure to comply with, article 11(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 offence under article 3 of this Order founded on a contravention of, or failure to comply with, article 11(3), 11a(2) or 11b(2) of the Council Regulation 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 any other person from complying with any such requirement; or
- (c) 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.

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

12. Any logbook kept under article 5 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—

- (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.

**Revocation**

13. The Orders specified in Schedule 2 are hereby revoked.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on

L.S.

9th August 1993.

*Gillian Shephard*  
Minister of Agriculture, Fisheries and Food

10th August 1993

*Ian Lang*  
Secretary of State, Scottish Office

9th August 1993

*Gwilym Jones*  
Parliamentary Under Secretary of State, Welsh Office

6th August 1993

*Patrick Mayhew*  
Secretary of State for Northern Ireland

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## SCHEDULE 1

Articles 3(1) and 4(1) and (2)

COMMUNITY PROVISIONS CONTRAVENTION  
OF WHICH CONSTITUTES AN OFFENCE

(1) Community Provision	(2) Subject matter	(3) Maximum fine on summary conviction
1. Article 2(2) or the fourth sub-paragraph of article 7(2) of the Council Regulation	Requirement to co-operate in facilitating inspections or to permit verification of information relating to trans-shipments	The statutory maximum
2. Article 5 of the of Council Regulation, as read with article 1 of, and Annexes I, II, IV, V, VI and VII to, the first Commission Regulation	Keeping and submission logbooks	£50,000
3. Article 6 or 7 (except the fourth sub-paragraph of paragraph (2)) of the Council Regulation, as read with article 2 of, and Annexes I, III, IV and V to, the first Commission Regulation	Keeping and submission of information relating to catches landed, trans-shipped or received by trans-shipment	£50,000
4. Article 8 of the Council Regulation, as read with article 3 of, and Annex VIII to, the first Commission Regulation	Submission of information where landing or trans-shipment takes place more than 15 days after catch	£50,000
5. Article 11(3) of the Council Regulation, third 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	£50,000
6. Article 11a(2) of the Council Regulation, in so far as it relates to landing or trans-shipment	Prohibitions on landing and trans-shipment of fish without a licence in certain circumstances	£50,000
7. Article 11b(2) of the Council Regulation, in so far as it relates to landing or trans-shipment	Prohibitions on landing and trans-shipment by vessels subject to an additional control measure without a certified document on board	The statutory maximum
8. Article 13 of the Council Regulation	Requirement to stow nets	The statutory maximum

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(1) Community Provision	(2) Subject matter	(3) Maximum fine on summary conviction
<b>9.</b> Article 3(1) of the second Commission Regulation	Requirement to stop, manoeuvre or carry out other actions to facilitate boarding	The statutory maximum
<b>10.</b> Article 3(2) of, and Annex II to, the second Commission Regulation	Provision of boarding ladder	The statutory maximum
<b>11.</b> Article 3(3) of the second Commission Regulation	Use of communications equipment and operator	The statutory maximum

## SCHEDULE 2

Article 13

## ORDERS WHICH ARE REVOKED BY THIS ORDER

Orders revoked	References
The Sea Fishing (Enforcement of Community Control Measures) Order 1985	<a href="#">S.I. 1985/487</a>
The Sea Fishing (Enforcement of Community Control Measures) (Amendment) Order 1986	<a href="#">S.I. 1986/926</a>
The Sea Fishing (Enforcement of Community Control Measures) (Amendment) Order 1987	<a href="#">S.I. 1987/1536</a>
The Sea Fishing (Enforcement of Community Control Measures) (Amendment) Order 1990	<a href="#">S.I. 1990/2528</a>

**EXPLANATORY NOTE**

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

This Order consolidates with amendments the Sea Fishing (Enforcement of Community Control Measures) Order 1985, as amended, (“the 1985 Order”) which made provision for the enforcement of certain of the enforceable Community restrictions and other obligations relating to sea fishing set out in Council Regulation ([EEC](#)) No. 2241/87 establishing certain control measures for fishing activities (“the Council Regulation”) and Commission Regulation ([EEC](#)) No. 2807/83 laying down detailed rules for recording information on Member States' catches of fish (“the first Commission Regulation”).

The relevant provisions of the Council Regulation—



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- (a) require co-operation in facilitating inspections and require masters to permit the verification of information relating to trans-shipments (articles 2(2) and 7(2), fourth sub-paragraph);
- (b) require masters to keep logbooks (ie records of their operations) when fishing for stocks subject to total allowable catches (article 5);
- (c) require masters 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, arranging for trans-shipment or arranging for landing of catches taken after the date on which a quota allocated to a Member State is deemed to have been exhausted (third sub-paragraph of article 11(3));
- (e) require nets to be stowed in certain circumstances (article 13).

The relevant provisions of the first Commission Regulation—

- (a) impose detailed requirements for keeping a logbook (article 1 and Annexes I, II, IV, V, VI and VII);
- (b) impose detailed requirements for making a landing declaration and a trans-shipment declaration (article 2 and Annexes I, III, IV and V);
- (c) impose detailed requirements for the submission of information (article 3 and Annex VIII).

This Order amends the definition of “the Council Regulation” so as to incorporate within that definition the provisions of Council Regulation (EEC) No. 3483/88 amending Regulation (EEC) No. 2241/87 (article 2). The relevant provisions of the amending Regulation prohibit the landing and trans-shipment of fish without a licence or certified document in certain circumstances (articles 11a(2) and 11b(2) of the Council Regulation).

The Order also provides for the enforcement of Commission Regulation (EEC) No. 1382/87 establishing detailed rules concerning the inspection of fishing vessels (“the second Commission Regulation”).

The relevant provisions of the second Commission Regulation—

- (a) require the provision of a boarding ladder (article 3(2) and Annex II); and
- (b) require masters of inspected vessels to make communications equipment and operators available to an inspector (article 3(3)).

For the purpose of enforcing the Council and Commission Regulations this Order confers on British sea-fishery officers powers to enter premises, 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 convenient 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 obtaining a warrant from a justice of the peace, sheriff or stipendiary magistrate (article 7(2) and (3)).

Provision is also made for the prosecution of offenders and for the punishment of anyone found guilty of furnishing false information or obstructing a British sea-fishery officer (articles 3 and 10). The maximum penalties specified for such offences, and for offences relating to the provisions of the Council and Commission Regulations correspond, in the case of offences equivalent to those under the Sea Fish (Conservation) Act 1967 (c. 84), and the Sea Fisheries Act 1968 (c. 77), both as amended by the Fisheries Act 1981, to the penalties imposed for such offences by those Acts (articles 4 and 10).

The Order provides powers for the recovery of fines imposed by a magistrates' court in England and Wales or Northern Ireland, or in Scotland by a sheriff (article 5).

The Order revokes the 1985 Order together with the Orders which amended it (article 13).

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