
STATUTORY INSTRUMENTS

1994 No. 451

**SEA FISHERIES
COMMUNITY RESTRICTIONS**

**The Sea Fishing (Enforcement of
Community Control Measures) Order 1994**

<i>Made</i>	- - - -	<i>28th February 1994</i>
<i>Laid before Parliament</i>		<i>1st March 1994</i>
<i>Coming into force</i>	- -	<i>22nd March 1994</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⁽¹⁾, 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 1994 and shall come into force on 22nd March 1994.

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;

“fishing boat” includes a receiving vessel and a third vessel, within the meaning in each case of Regulation 2241/87 or Regulation 2847/93;

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

“Regulation 2807/83” means Commission Regulation (EEC) No. 2807/83 laying down detailed rules for recording information on member States' catches of fish⁽²⁾;

“Regulation 1382/87” means Commission Regulation (EEC) No. 1382/87 establishing detailed rules concerning the inspection of fishing vessels⁽³⁾;

(1) 1981 c. 29.

(2) OJ No. L276, 10.10.83, p.1, amended by Commission Regulation (EEC) No. 473/89 (OJ No. L53, 25.2.89, p.34).

(3) OJ No. L132, 21.5.87, p.11.

“Regulation 2241/87” means Council Regulation (EEC) No. 2241/87 establishing certain control measures for fishing activities⁽⁴⁾;

“Regulation 2847/93” means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy⁽⁵⁾;

“transporter” means the owner and the hirer of, and the person responsible for, the vehicle used to transport fisheries products.

(2) In this Order any reference to a logbook, declaration or document includes, in addition to a logbook, declaration or 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 aids) 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) 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, a Community provision specified in Column 1 of the Schedule hereto, as read with any qualifying words relating thereto in the Schedule, the following shall each be guilty of an offence—

- (i) in the case of article 5 of Regulation 2241/87, the master and the owner or the charterer (if any) and any other person responsible for the vessel;
- (ii) in the case of article 3.1, 3.2 or 3.3 of Regulation 1382/87, the master and the owner or the charterer (if any) and any other person responsible for the vessel;
- (iii) in Regulation 2847/93—
 - (aa) in the case of article 6, 7, 10.1, 11, 12, 17.2, 20.1 or 21.3, the master and the owner or the charterer (if any);
 - (bb) in the case of article 8.1, the master and his representative, the owner or the charterer (if any).

(2) Any of the following persons who contravenes, or fails to comply with, any of the provisions of Regulation 2847/93, set out below, shall each be guilty of an offence—

- (a) in the case of article 4.2, in its application to a vessel, the master and the owner or the charterer (if any) and any other person responsible for the vessel, and in its application to premises or a vehicle, the person responsible for the premises or vehicle;
- (b) in the case of the provision of a sales note for the purposes of article 9, the first seller of the fish in circumstances where he neither caught the fish nor landed it, or, in any other circumstances, the first buyer of the fish;

(4) OJ No. L207, 29.7.87, p.1, amended by Council Regulation (EEC) No. 3483/88 (OJ No. L306, 11.11.88, p.2).

(5) OJ No. L261, 20.10.93, p.1.

- (c) in the case of the provision of a document for the purposes of article 13 where the quantities of fish are transported outside the compound of the port of landing, the transporter of the fish.

(3) Any person who in purported compliance with article 5 of Regulation 2241/87 or articles 6 to 13, 17.2 or 21 of Regulation 2847/93, 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) or (2) of this Order founded on a contravention of, or failure to comply with, a Community provision specified in Column 1 of the Schedule hereto, 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 article 3(1) or (2) of this Order founded on a contravention of, or failure to comply with—

- (a) articles 20.1 or 21 of Regulation 2847/93 shall also be liable—
 - (i) 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
 - (ii) to the forfeiture of any fish in respect of which the offence was committed, or, on summary conviction only, to a fine not exceeding the value of any fish in respect of which the offence was committed; or
- (b) article 5 of Regulation 2241/87, article 6, 8.1 or 9 to 13 or 17.2 of Regulation 2847/93 shall also be liable 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(3) of this Order shall be liable—

- (a) on summary conviction to a fine not exceeding £50,000;
- (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 and the owner or the charterer (if any), any other person responsible for the vessel and any other person, 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; or
- (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 and the owner or the charterer (if any), any other person responsible for the vessel and any other person, 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; or

(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⁽⁶⁾ (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⁽⁷⁾ (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 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 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;
- (c) for the purpose of ascertaining whether an offence has been committed 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;

⁽⁶⁾ 1980 c. 43; section 78 was amended by the Criminal Justice Act 1982 (c. 48), sections 37 and 46.

⁽⁷⁾ S.I.1981/1675 (N.I. 26).

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 sea 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 his examination of it;
- (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 sea fish;
- (g) for the purpose of ascertaining whether any person on the premises has committed an offence under article 3 of this Order, may 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;
- (h) inspect and take copies of any such document.

(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. 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 5 of Regulation 2241/87 or article 6, 8.1, 9 to 13, 17.2 or 21 of Regulation 2847/93 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 20.1 of Regulation 2847/93 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 20.1 of Regulation 2847/93 has been committed, or

- (ii) 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 21 of Regulation 2847/ 93 has been committed.

Protection of officers

9. A British sea-fishery officer or a person assisting him by virtue of article 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 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 the statutory maximum; 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, 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.

(4) 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 other documents

12. Any logbook kept under article 5 of Regulation 2241/87 or under article 6, 10 or 17.2 of Regulation 2847/93, any declaration submitted under article 8.1, or 10 to 12 or 17.2 of Regulation 2847/93 and any document drawn up under article 9 or 13 of 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.

Revocation

13. The Sea Fishing (Enforcement of Community Control Measures) Order 1993⁽⁸⁾ is hereby revoked, but without prejudice to the application of articles 6 to 9 of that Order in relation to the enforcement of articles 3 and 4 of that Order.

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

L.S.

28th February 1994.

Gillian Shephard
Minister of Agriculture, Fisheries and Food

17th February 1994

Hector Monro
Parliamentary Under Secretary of State, Scottish
Office

21st February 1994

Gwilym Jones
Parliamentary Under Secretary of State, Welsh
Office

25th February 1994

Patrick Mayhew
Secretary of State for Northern Ireland

(8) S.I. 1993/2016.

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

SCHEDULE

Articles 3 and 4(1) and (2)

COMMUNITY PROVISIONS, CONTRAVENTION
OF WHICH CONSTITUTES AN OFFENCE

Column 1 Community provision	Column 2 Subject Matter	Column 3 Maximum fine on summary conviction
1. Article 5 of Regulation 2241/87, as read with article 1 of, and Annexes I, II, IV, V, VI and VII to, Regulation 2807/83.	Keeping and submission of logbooks.	£50,000
2. Article 3.1 of Regulation 1382/87.	Requirement to stop, manoeuvre or carry out other actions to facilitate boarding.	The statutory maximum.
3. Article 3.2 of, and Annex II to, Regulation 1382/87.	Provision of boarding ladder.	The statutory maximum.
4. Article 3.3 of Regulation 1382/87.	Use of communications equipment and operator thereof.	The statutory maximum.
5. Regulation 2847/93—		
(a) (a) Article 4	Requirement to cooperate in facilitating inspections of fishing vessels, premises and transport vehicles.	The statutory maximum.
(b) (b) Article 6	Keeping of logbook by fishing boats of 10 metres or more and registering of information either in computer readable form or on paper.	£50,000
(c) (c) Article 7	Requirement to give at least 2 hours advance notification by Community fishing boats to the control authority of the member State in whose zone it is intended to land fish of—	
	(a) (a) landing location and estimated time of arrival there and	The statutory maximum.
	(b) (b) quantities of each species to be landed.	The statutory maximum.
(d) (d) Article 8.1	Submission, after each trip and within 48 hours of landing by vessels of 10 metres or more,	£50,000

Column 1 Community provision	Column 2 Subject Matter	Column 3 Maximum fine on summary conviction
	of a landing declaration of quantities of each species.	
(e) (e) Article 9	Submission, within 48 hours of sale, of sales note by the first seller or buyer.	£50,000
(f) (f) Article 10.1	In respect of third country fishing boats of 10 metres or more—	
	(a) (a) keeping of logbook	£50,000
	(b) (b) submission on landing of a declaration of quantities, date and location of each catch	£50,000
	(c) (c) requirement to give at least 72 hours advance notification of landing, location and time of arrival there	The statutory maximum.
	(d) (d) requirement not to land where no confirmation of advance notification has been received.	The statutory maximum.
(g) (g) Article 11	Requirement in respect of any trans-shipping vessel, receiving vessel and third vessel to keep and notify details of trans-shipments anywhere and landings of specified stocks outside Community territory.	£50,000
(h) (h) Article 12	Requirement to keep and notify within 15 days of the catch, the details required under articles 8 and 11 of Regulation 2847/93 where trans-shipment or landing will take place more than 15 days after the catch.	£50,000
(i) (i) Article 13	Requirement to provide completed transportation document in cases where	£50,000

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Column 1 Community provision	Column 2 Subject Matter	Column 3 Maximum fine on summary conviction
	the fisheries products will be transported outside the compound of the port of landing and to ensure it accompanies fisheries products until time of first sale.	
(j) (j) Article 17.2	In respect of catches made outside Community waters, requirement to— <ul style="list-style-type: none"> (a) (a) keep logbook recording catches £50,000 (b) (b) submit landing declaration where landing made at a Community port £50,000 (c) (c) submit details of trans-shipments on to third country fishing boats or of landings in third countries. £50,000 	
(k) (k) Article 20.1	Requirement to stow nets.	The statutory maximum.
(l) (l) Article 21	As from specified date of exhaustion of quota, prohibitions on: fishing for stock subject to quota, the retention on board, the trans-shipment and the landing of such fish after that date.	£50,000

EXPLANATORY NOTE

(This note is not part of the Order)

This Order revokes the Sea Fishing (Enforcement of Community Control Measures) Order 1993. It re-enacts those Community provisions relating to logbooks, actions to facilitate boarding, provision of boarding ladder and use of communications equipment and operator thereof (articles 3 and 4 of, and paragraphs 1 to 4 of the Schedule to, the Order). Additional provisions, set out in the Schedule to the Order, which provide for the enforcement of Council Regulation (EEC) 2847/93 (“the Council Regulation”) establishing a control system applicable to the Common Fisheries Policy are—

- (1) requirements for Community fishing boats to give at least two hours advance notice of time and place of landing and quantities of species to be landed (Article 7 of the Council Regulation);
- (2) requirement to submit landing declaration (Article 8.1 of the Council Regulation);
- (3) requirement to submit sales note by the first seller or buyer (Article 9 of the Council Regulation);
- (4) requirement for third country fishing boats to give at least 72 hours advance notice of time and place of landing (Article 10.1 of the Council Regulation);
- (5) requirement to notify details of trans-shipments (Articles 11 and 12 of the Council Regulation);
- (6) requirement on the transporter carrying fisheries products in a vehicle to provide a transportation document (Article 13 of the Council Regulation);
- (7) requirement to keep logbooks, submit landing declarations and details of trans-shipments of catches outside Community waters (Article 17.2 of the Council Regulation);
- (8) requirement to stow nets (Article 20.1 of the Council Regulation);
- (9) prohibitions which apply on exhaustion of quota (Article 21 of the Council Regulation).

Offences for contravention of these Community provisions are to be found in articles 3 and 4 of, and paragraph 5 of the Schedule to, the Order.

For the purpose of enforcing the Community provisions specified in the Schedule, this Order confers on British sea-fishery officers powers to enter premises, to go on board fishing boats, to stop and search vehicles transporting fish, 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 of the Order).

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(1) and (2) and 10 of the Order). The maximum penalties specified for such offences, and for offences relating to the Community provisions specified in the Schedule 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 (c. 29), to the penalties imposed for such offences by those Acts (articles 4 and 10 of the Order). The statutory maximum penalty specified in the Schedule is currently £5,000.

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 of the Order).

The Compliance Cost Assessment relating to this Order is available in the library of each House of Parliament. A copy of it can be obtained from Fisheries IV Division of the Ministry of Agriculture, Fisheries and Food, Room 432, Nobel House, 17 Smith Square, London SW1P 3JR.