
STATUTORY INSTRUMENTS

1993 No. 2015

SEA FISHERIES

COMMUNITY RESTRICTIONS

The Fishing Boats (Marking and Documentation) (Enforcement) 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(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 Fishing Boats (Marking and Documentation) (Enforcement) 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;

“Commission Regulation” means Commission Regulation (EEC) No. 1381/87 establishing detailed rules concerning the marking and documentation of fishing vessels(2);

“Community fishing boat” means a fishing boat flying the flag of, or registered in, a member State other than the United Kingdom;

“fish room” means any space or compartment in a vessel in which its catch may be stowed;

“Islands fishing boat” means a boat which is registered in the Isle of Man or in any of the Channel Islands.

(2) For the purposes of—

(1) 1981 c. 29.

(2) OJ No. L132, 21.5.87, p.9.

- (a) the information referred to in indents 1, 2, 4 and 5 of article 3(1) of the Commission Regulation, the competent authority in respect of vessels registered in England and Wales, is the Minister of Agriculture, Fisheries and Food, in respect of vessels registered in Scotland, is the Secretary of State for Scotland, and in respect of vessels registered in Northern Ireland, is the Secretary of State for Northern Ireland;
- (b) the information referred to in indent 3 of article 3(1) of the Commission Regulation, the competent authority is the Secretary of State for Trade and Industry;
- (c) the documents certifying the size of fish rooms and indicating the calibration of chilled or refrigerated sea-water tanks, the competent authority is any authority mentioned in subparagraph (a) above;
- (d) the document recording the date of entry into service in respect of vessels registered in the United Kingdom, the competent authority is the Secretary of State for Transport.

(3) In this Order, references to British fishing limits shall be construed as excluding the territorial sea adjacent to the Isle of Man.

(4) In relation to vessels registered in the Isle of Man, the competent authority for each of the purposes specified in paragraph (2) above, is the Department of Highways, Ports and Properties, a department of the Government of the Isle of Man.

Offences

3.—(1) Where there is, in respect of any British fishing boat wherever it may be, a contravention of, or failure to comply with, any provision of article 1, 2 or 3 of the Commission Regulation, the master, owner, charterer (if any) and any other person responsible for the vessel, shall each be guilty of an offence.

(2) Where there is, in respect of any Community fishing boat or any Islands fishing boat, which is within British fishery limits, a contravention of, or failure to comply with, any provision of article 1, 2 or 3(1) to (4) of the Commission Regulation, the master, owner, charterer (if any) and any other person responsible for the vessel, shall each be guilty of an offence.

Penalties

4. A person guilty of an offence under article 3 of this Order founded on a contravention of, or failure to comply with, a provision of the Commission Regulation shall be liable—

- (a) on summary conviction to a fine not exceeding the amount specified in column 3 of the Schedule to this Order opposite the reference to that provision in column 1; or
- (b) on conviction on indictment to a fine.

Defence of due diligence

5. It shall be a defence for a person charged with an offence under article 3 of this Order founded on a contravention of, or failure to comply with, any provision of article 1 or 2 of the Commission Regulation to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Recovery of fines

6.—(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 8 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, 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 8 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 and stay of execution 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

7.—(1) For the purposes of enforcing article 3 of this Order, a British sea-fishery officer may exercise—

- (a) in relation to any British fishing boat wherever it may be, or
- (b) in relation to any Community fishing boat or any Islands fishing boat, which is within British fishery limits,

the powers conferred by paragraphs (2) to (5) of this article.

(2) He may—

- (a) require the boat to stop and do anything else to enable him to board it;
- (b) go on board the boat;
- (c) take with him, to assist him in performing his functions, any other person and any equipment or materials;
- (d) require the attendance of the master of the boat or any other person on board;
- (e) require any person on board to assist him in the performance of his functions; and
- (f) make any examination or inquiry which appears to him to be necessary and, without prejudice to the generality of the foregoing, he may in particular—
 - (i) examine any fish rooms and the equipment of the boat;
 - (ii) require the production of any document relating to the boat or to its fishing operations or other operations ancillary to its fishing operations;
 - (iii) search the boat for any such document, and require any person on board the boat to do anything which appears to the officer to be necessary for facilitating the search; and
 - (iv) take copies of any such document.

⁽³⁾ 1980 c. 43; section 78 was amended by the Criminal Justice Act 1982 (c. 48), sections 37 and 46.

⁽⁴⁾ S.I.1981/1675 (NI 26).

(3) If a British sea-fishery officer has reasonable grounds to suspect that an offence under article 3 of this Order has been committed within British fishery limits, he may seize and detain any document produced to him or found on board the boat, and the officer—

- (a) may require the master to take, or may himself take, the boat and its crew to the port which appears to the officer to be the nearest convenient port; and
- (b) may detain the boat in the port.

(4) Nothing in paragraph (2) of this article shall permit any document required by law to be carried on board any boat to be seized or detained except while the boat is detained in a port.

(5) If a British sea-fishery officer detains a boat, he shall serve on the master a notice stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by a British sea-fishery officer.

Obstruction of officers

8. Any person who, on any British fishing boat wherever it may be, or on any Community fishing boat or any Islands fishing boat which is within British fishery limits—

- (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 article 7 of this Order; or
- (b) without reasonable excuse prevents any other person from complying with any such requirement; or
- (c) 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 £5,000; or
 - (ii) on conviction on indictment to a fine. Protection of officers

9. An 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 article 7 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.

Proceedings

10. 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.

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

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

SCHEDULE

Article 4

MAXIMUM FINES ON SUMMARY CONVICTION

(1) Provision of the Commission Regulation	(2) Subject matter	(3) Maximum fine on summary conviction
1. Article 1	Marking of fishing vessels	The statutory maximum
2. Article 2	Marking of small boats carried on fishing vessels and marking of buoys	The statutory maximum
3. Article 3(1)	Requirement to carry documentation on board boats over 10 metres in length	The statutory maximum
4. Article 3(2)	Requirement to keep on board boats over 17 metres in length, certified drawings or descriptions of fish rooms and documents indicating calibration of sea-water tanks	The statutory maximum

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes breaches of specified articles of Commission Regulation (EEC) No. 1381/87 (establishing detailed rules concerning the marking and documentation of fishing vessels) offences for the purposes of United Kingdom law wherever they occur in respect of any British fishing boat and within British fishery limits in respect of any Community fishing boat or Islands fishing boat.

The Commission Regulation requires—

(1) fishing vessels to be marked with the port or district in which it is registered (article 1 of the Regulation);

(2) small boats carried on fishing vessels and marker buoys to be marked with the letter and number of the vessel to which they belong (article 2 of the Regulation);

(3) vessels over 10 metres in length to carry on board specified documents (article 3(1) of the Regulation); and

(4) vessels over 17 metres in length to keep on board certified drawings or descriptions of fish rooms and documents indicating calibration of sea-water tanks (article 3(2) of the Regulation).

On summary conviction the offender will be liable to a fine not exceeding the amount specified in relation to the offence in column 3 of the Schedule to the Order (currently the statutory maximum is £5,000) and, on conviction on indictment, to a fine (article 4 of the Order). There is provision for a defence of due diligence (article 5). 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 the sheriff (article 6).

The Order confers powers of enforcement on British sea-fishery officers (article 7). Provision is made for the punishment of anyone found guilty of obstructing a British sea-fishery officer (article 8).