
EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which forms part of the law of Scotland only, makes provision for the enforcement of certain enforceable Community restrictions and other obligations relating to sea fishing by Community vessels and third country vessels set out in Council Regulation (EC) 2341/2002 (O.J. No. L 356, 31.12.02, p.12) (“the Council Regulation”). The Council Regulation fixes total allowable catches and the quotas of Member States for 2003 and lays down certain conditions under which they may be fished (“Community quota measures”). It also authorises fishing by vessels of Norway and the Faroe Islands for specified descriptions of fish in certain specified areas within the fishery limits of Member States in 2003 and imposes requirements concerning fishing quotas and authorised zones, methods of fishing, the holding of licences and observance of licence conditions, the keeping of logbooks, the making of reports and similar matters (“Community third country fishing measures”).

The Order makes provision for the purposes of Article 8 of and Annex IV, paragraph 1 to the Council Regulation (prohibition of landing of catches of unsorted herring at harbours where adequate sampling systems are not in place) as to the harbours in Scotland at which such catches may be landed (article 3).

The Order creates offences in respect of contraventions of the provisions of the Council Regulation referred to in column 1 (and briefly described in column 2) of Schedules 1 (Community quota measures) and 2 (Community third country fishing measures) to the Order (article 4).

The Order provides penalties in relation to an offence under article 4 of the Order or any equivalent provision extending to any other part of the United Kingdom proceedings in respect of which were brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981 (c. 29). The statutory maximum penalty specified in the Schedules is currently £5,000 (article 5). The Order makes provision in relation to the recovery of fines imposed in respect of such offences or an offence under article 11 (obstruction of officers) (article 6).

The Order confers on British sea-fishery officers powers of enforcement in relation to fishing boats and on land. These include power 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 7, 8 and 9).

Provision is also made in relation to the liability of officers for anything done in the purported exercise of powers conferred by the Order (article 10). The Order creates offences and provides penalties in respect of the obstruction of a British sea fishery officer and makes provision in relation to offences committed by bodies corporate and Scottish partnerships and the admissibility of certain documents (articles 11, 12 and 13).

The Order revokes the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2002 (S.S.I. 2002/51), subject to a saving.