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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 151**

**The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Order 2008**

**PART VI  
ENFORCEMENT**

**Penalties**

**24.**—(1) A person guilty of an offence under article 3(3), 4, 5, 9(1), 11(1), (2), or (5), 12(3), 14(1), 17(1), 19(1) or (2), 20(3), 21(4) or 22(2) or under any equivalent provision is liable—

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

(2) A person guilty of an offence under article 6(1) or (2), or under any equivalent provision is be liable—

- (a) on summary conviction, to a fine not exceeding the amount specified in column 3 of Schedules 1 or 2 in relation to the Community quota measure or Community third country fishing measure, the contravention of which, or failure to comply with, founded the offence; and
- (b) on conviction on indictment, to a fine.

(3) The court by or before which a person is convicted of an offence under article 6(1) or (2), 9(1), 11(1), (2) or (5), 14(1), 17(1), or 19(1) or (2) or under an equivalent provision is also liable to the forfeiture of—

- (i) any fish in respect of which the offence was committed; and
- (ii) 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.

(4) Any person found guilty of an offence under article 6(1) or (2), 9(1), 11(1), (2) or (5), 14(1), 17(1), or 19(1) or (2) or under an equivalent provision, subject to the following provisions of this article, is liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.

(5) A person is not liable to a fine under paragraph (4) in respect of such an offence if, under paragraph (3) the court orders the forfeiture of the fish in respect of which that offence was committed; and where a fine is imposed under paragraph (4) in respect of any offence, the court does not have power under paragraph (3) to order the forfeiture of the fish in respect of which the offence was committed.

(6) Subject to paragraph (5), any fine to which a person is liable under paragraph (4) is in addition to any other penalty (whether pecuniary or otherwise) to which that person is liable in respect of that offence under this article or under any other enactment.

### Recovery of fines

**25.**—(1) Without prejudice to the provisions of section 221 of the Criminal Procedure (Scotland) Act 1995<sup>(1)</sup>, where a court has imposed a fine on any person in respect of an offence under this Order, that court may for the purposes of recovering the fine—

- (a) order any boat involved in the commission of the offence and its gear and catch to be detained for a period not exceeding 3 months from the date—
  - (i) of the conviction or until the fine is paid;
  - (ii) the order is renewed for a further period (not exceeding 3 months); or
  - (iii) on which a warrant is issued under sub paragraph (b),
 whichever first occurs; or
- (b) subject to paragraph (2), at any time after the imposition of the fine, issue a warrant for the arrestment and sale of any such boat, its gear and catch.

(2) The court must not issue a warrant under paragraph (1)(b) without first affording the owner of the boat, gear or catch liable to be included in the warrant an opportunity to be heard on the issue of such warrant.

(3) A warrant issued under paragraph (1)(b), whatever the amount of the fine imposed, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff in a summary cause.

(4) Where in relation to a fine in respect of an offence under this Order a transfer of fine order under section 222 of the Criminal Procedure (Scotland) Act 1995, section 90 of the Magistrates' Courts Act 1980<sup>(2)</sup> or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(3)</sup> specifies a court of summary jurisdiction in Scotland, this article applies as if the fine were a fine imposed by that court.

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

**26.**—(1) For the purposes of enforcing article 6(1), or any equivalent provision made for the purposes of implementing a Community quota measure, a British sea fishery officer may exercise, in relation to any—

- (a) Scottish fishing boat wherever it may be; or
- (b) Community fishing boat within the Scottish zone,

the powers conferred by paragraphs (4), (5) and (6).

(2) For the purposes of enforcing article 6(2), or any equivalent provision made for the purposes of implementing a Community quota measure specified in that article or a Community third country fishing measure, a British sea fishery officer may exercise the powers conferred by paragraphs (4), (5) and (6) in relation to any third country fishing boat within the Scottish zone.

(3) For the purposes of enforcing articles 9, 11, 12, 14, 17, 19, 20, 21 and 22 or any equivalent provisions, a British sea fishery officer may exercise the powers conferred by paragraphs (4), (5) and (6) in relation to—

- (a) a Scottish fishing boat wherever it may be; or
- (b) any other fishing boat which is within the Scottish zone.

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(1) 1995 c. 46.

(2) 1980 c. 43.

(3) S.I.1981/1675.

(4) A British sea fishery officer may go on board the boat, with or without persons assigned to assist in the duties of that officer, and may require the boat to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, the boat.

(5) A British sea fishery officer may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to that officer to be necessary for the purposes of enforcement referred to in paragraph (1), (2) and (3) and, in particular, may—

- (a) search for fishery products or fishing gear on the boat and may examine any such products 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 that officer to be necessary for facilitating the examination;
- (b) require any person on board the boat to produce any document relating to the boat, to any fishing operations ancillary thereto or to the persons on board which is in the custody or possession of that person;
- (c) for the purpose of ascertaining whether a relevant offence has been committed, search the boat for any such document and may require any person on board the boat to do anything which appears to that officer to be necessary for facilitating the search;
- (d) inspect, take copies of and retain in the possession of that officer while any search, examination or inspection provided for under this article is being carried out, any such document produced to that officer or found on board;
- (e) require the master or any person for the time being in charge of the boat to render all such documents on a computer system into visible and legible form and to produce them in a form in which they may be taken away; and
- (f) where the boat is one in relation to which that officer has reason to suspect that a relevant offence has been committed, seize and detain any such document produced to that officer 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 (f) 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 a port.

(6) Where it appears to a British sea fishery officer that a relevant offence has at any time been committed the officer may—

- (a) require the master of the boat in relation to which the offence took place to take, or the officer may 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,

and where such an officer detains or requires the detention of a boat the officer must serve notice in writing on the master 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**

27.—(1) For the purpose of enforcing a relevant offence a 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 fishery products;
- (b) take with the officer such other persons as appear to the officer to be necessary and any equipment or materials;

- (c) examine any fishery product on the premises and require persons on the premises to do anything which appears to that officer 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 fishery product from such premises for such a period as may be reasonably necessary for the purposes of establishing whether a relevant offence has at any time been committed;
- (f) require any person on the premises to produce any documents which are in the custody or possession of that person relating to the catching, landing, transportation, transhipment, sale or disposal of any fishery product;
- (g) for the purpose of ascertaining whether a relevant offence has been committed, search the premises for any such document and may require any person on the premises to do anything which appears to that 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 documents on a computer system into a visible and legible form and to produce them in a form in which they may be taken away; and
- (j) if the officer has reason to suspect that a relevant offence has been committed, seize and detain any such document produced or found on the premises, for the purposes of enabling the document to be used as evidence in proceedings for the offence.

(2) The provisions of paragraph (1) apply in relation to any land used in connection with any of the activities described in paragraph (1), or in respect of any vehicle which a British sea fishery officer has reasonable cause to believe is being used to transport 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 inspection.

(3) If the sheriff by information on oath is—

- (a) satisfied that there are reasonable grounds to believe that any documents or other items which a British sea fishery officer has power under this article to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of a relevant offence; and
- (b) also satisfied either—
  - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant has been given to the occupier; or
  - (ii) that an application for admission or the giving of such notice would defeat the object of the entry; or
  - (iii) that the premises are unoccupied or the occupier is temporarily absent and it might defeat the object of the entry to await return of the occupier,

the sheriff may by signed warrant, valid for a period of no more than 1 month, authorise a British sea fishery officer to enter the premises, if need be by using reasonable force, accompanied by such persons as appear to the officer to be necessary.

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

**28.**—(1) Any British sea fishery officer may seize—

- (a) in Scotland or in the Scottish zone; or
- (b) on a Scottish fishing boat wherever it may be,

any fishery product (including any receptacle which contains such product) and any net or other fishing gear to which this article applies.

(2) This article applies to—

- (a) any fishery product (including any receptacle which contains such product), in respect of which the officer has reasonable grounds to suspect that a relevant offence has been committed; and
- (b) any net or other fishing gear which the officer has reasonable grounds to suspect has been used in the commission of such offence.

(3) For the purposes of paragraph 8.8 of Annex III the Scottish Ministers are the competent authorities.

### **Protection of officers**

**29.** A British sea fishery officer or a person assisting such an officer by virtue of article 26(4) or 27(1)(b) or (3) is not liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred by articles 26, 27, or 28 if the court is satisfied that—

- (a) the act was done in good faith;
- (b) there were reasonable grounds for doing it; and
- (c) it was done with reasonable skill and care.

### **Obstruction of officers**

**30.—**(1) 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 such officers by article 26 or 27;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with such requirement; or
- (c) obstructs any such officer in the exercise of the powers conferred by articles 26,27 or 28,

is guilty of an offence.

(2) Any person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

### **Offences by bodies corporate**

**31.—**(1) Where an offence under this Order committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity (or in the case of a partnership, a partner or a person who was purporting to act as such), that person as well as the body corporate or the partnership, as the case may be, is guilty of that offence and liable to be proceeded against and punished accordingly.

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

(3) Where any offence under 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, that person as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

### **Admissibility in evidence of logbooks and other documents**

**32.**—(1) Any—

- (a) logbook kept under Article 6, 17.2 or 28c;
- (b) declaration submitted under Article 8.1, 11, 12, 17.2 or 28f;
- (c) effort report completed under Articles 19b and 19c;
- (d) sales note submitted under Article 9;
- (e) document drawn up under Article 13; or
- (f) document containing required information received by a fisheries monitoring centre established under Article 3.7,

of Regulation 2847/93(4) is, in any proceedings for a relevant offence to be received in evidence without being produced or sworn to by any witness and is, unless the contrary is shown, conclusive evidence as to the matters stated therein.

(2) For the purposes of paragraph (1), “required information” means data relating to—

- (a) a fishing boat’s identification;
- (b) the most recent geographical position of the fishing boat expressed in degrees and minutes of longitude and latitude; and
- (c) the date and time of the fixing of that position,

as communicated via a satellite-based vessel monitoring system established under Article 3.1 of Regulation 2847/93.

(3) Any logbook, declaration, report or other document kept on board or held in pursuance of Article 30 of the Council Regulation is, in any proceedings for an offence under article 6(1) or (2), or under any equivalent provision made for the purposes of implementing a Community quota measure or a Community third country fishing measure, proceedings in respect of which were brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981(5), to be received in evidence without being produced or sworn to by any witness and is, unless the contrary is shown, conclusive evidence as to the matters stated therein.

### **Revocation**

**33.** The following are revoked—

- (a) the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2007(6); and
- (b) the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2007(7).

### **Amendment of the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2008**

**34.** Part 1 of Schedule 1 to the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2008(8) is amended as follows—

- (a) in the column headed “Enactment”—
  - (i) for “Sea Fish (Shellfish) Act 1967”, substitute “Sea Fisheries (Shellfish) Act 1967”;

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(4) O.J. No. L 261, 20.10.93, p.1.

(5) 1981 c. 29; section 30(2A) was inserted by S.I. 1999/1820.

(6) S.S.I. 2007/127 as amended by S.S.I. 2008/102.

(7) S.S.I. 2007/40.

(8) S.S.I. 2008/101.

- (ii) for Salmon and Migratory Trout (Prohibition of Fishing) (No. 2) (Scotland) Order 1972”, substitute “Salmon and Migratory Trout (Prohibition of Fishing) (No. 2) Order 1972”; and
  - (iii) at the end insert “The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Order 2008<sup>(9)</sup>”.
- (b) in the column headed “Offence provision”–
- (i) in the entry for the Sea Fishing (Control) Procedures for Herring, Mackerel and Horse Mackerel) (Scotland) Order 2008, for “7(4)” substitute “7”; and
  - (ii) at the end insert “3(3), 4, 5, 6(1) and (2), 9(1), 11(1), (2) and (5), 12(3), 14(1), 17(1), 19(1) and (2), 20(3), 21(4), 22(2)”.