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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 304**

**The Sea Fishing (Enforcement of Community Control Measures) (Scotland) Amendment Order 2009**

**Amendment of the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000**

2.—(1) The Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000<sup>(1)</sup> is amended in accordance with the provisions of this article.

(2) In article 2(1) (interpretation)—

(a) omit the definition of “Annex IIc”;

(b) for the definition of “Community control measure” substitute—

““Community control measure” means a provision of the Council Regulation specified in Column 1 of the Schedule;”;

(c) before the definition of “fishery product” insert—

““electronic means” means the transmission of data by an electronic system of a type specified by the Scottish Ministers in the form provided by them for the purposes of article 2A(2);”;

(d) for the definition of “Regulation 2807/83” substitute—

““Regulation 2807/83” means Commission Regulation (EEC) No. 2807/83 laying down detailed rules for recording information on Member States’ catches of fish<sup>(2)</sup> as amended by Act of Accession of Spain and Portugal<sup>(3)</sup>, Commission Regulation (EEC) No. 473/89<sup>(4)</sup>, Act of Accession of Austria, Sweden and Finland<sup>(5)</sup>, Commission Regulation (EEC) No. 2945/95<sup>(6)</sup>, Commission Regulation (EC) No. 395/98<sup>(7)</sup>, Commission Regulation (EC) No. 1488/98<sup>(8)</sup>, Commission Regulation (EC) No. 2737/1999<sup>(9)</sup>, Commission Regulation (EC) No. 1965/2001<sup>(10)</sup> and Commission Regulation (EC) No. 1804/2005<sup>(11)</sup>;”;

(e) omit the definition of “Regulation 423/2004”;

(f) before the definition of “relevant offence” insert—

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(1) [S.S.I. 2000/7](#); relevant amending instruments are [S.S.I. 2005/552](#) and [2008/151](#).

(2) O.J. No. L 276, 10.10.83, p.1, corrected by a Corrigendum published in O.J. No. L 353, 15.12.83, p.21.

(3) O.J. No. L 302, 15.11.85, p.23.

(4) O.J. No. L 53, 25.2.89, p.34.

(5) O.J. No. C 241, 29.8.94, p.21, adapted by Council Decision [95/1/EC](#), Euratom, ECSC, O.J. No. L 1, 1.1.95, p.1.

(6) O.J. No. L 308, 21.12.95, p.18.

(7) O.J. No. L 50, 20.2.98, p.17.

(8) O.J. No. L 196, 14.7.98, p.3.

(9) O.J. No. L 328, 22.12.99, p.54, corrected by a Corrigendum published in O.J. No. L 12, 18.1.00, p.36 and a Corrigendum published in O.J. No. L 29, 4.2.00, p.38.

(10) O.J. No. L 268, 9.10.01, p.23.

(11) O.J. No. L 290, 4.11.05, p.10.

““Regulation 1966/2006” means Council Regulation (EC) No. 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing(12);

“Regulation 1077/2008” means Commission Regulation (EC) No. 1077/2008 laying down detailed rules for the implementation of Council Regulation (EC) No. 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing and repealing Regulation (EC) No. 1566/2007(13);”;

(g) for the definition of “the Council Regulation” substitute—

““the Council Regulation” means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy(14) as amended by Council Regulation (EC) No. 2870/95(15), Council Decision 95/528/EC(16), Council Regulation (EC) No. 2489/96(17), Council Regulation (EC) No. 686/97(18), Council Regulation (EC) No. 2205/97(19), Council Regulation (EC) No. 2635/97(20), Council Regulation (EC) No. 2846/98(21), Council Regulation (EC) No. 806/2003(22), Council Regulation (EC) No. 1954/2003(23), Council Regulation (EC) No. 768/2005(24), Council Regulation (EC) No. 1967/2006(25), Council Regulation (EC) No. 1098/2007(26), Council Regulation (EC) No. 1006/2008(27) and as read with Article 20 of, and modified by Articles 28 and 29 of, Council Regulation (EC) No. 1342/2008(28);”;

(h) before the definition of “transport document” insert—

““the prescribed annual financial turnover” means an annual financial turnover in first sales of fishery products for a person which is in excess of €400,000 and calculated for a calendar year using the annual financial turnover for that person from the calendar year and based on the European Central Bank’s official average euro foreign exchange reference rate applicable for that calendar year.”.

(3) After article 2 insert—

**“Register of those with the prescribed annual financial turnover**

**2A.—**(1) The Scottish Ministers are the competent authority for the purposes of—

- (a) maintaining a register of registered buyers, registered auctions and other authorised entities or persons responsible for the first sale of fishery products that have the prescribed annual financial turnover; and
- (b) publishing the register on an official website,

pursuant to Article 2(1) of Regulation 1077/2008.

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(12) O.J. No. L 409, 30.12.06, p.1, corrected by a Corrigendum published in O.J. No. L 36, 8.2.07, p.3.

(13) O.J. No. L 295, 4.11.08, p.3. The entry into force date was amended to 1st January 2009 by a Corrigendum published in O.J. No. L 6, 10.1.09, p.117.

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

(15) O.J. No. L 301, 14.12.95, p.1.

(16) O.J. No. L 301, 14.12.95, p.35, corrected by a Corrigendum published in O.J. No. L 302, 15.12.95, p.45.

(17) O.J. No. L 338, 28.12.96, p.12.

(18) O.J. No. L 102, 19.4.97, p.1.

(19) O.J. No. L 304, 7.11.97, p.1.

(20) O.J. No. L 356, 31.12.97, p.14.

(21) O.J. No. L 358, 31.12.98, p.5, corrected by a Corrigendum published in O.J. No. L 105, 22.4.99, p.32.

(22) O.J. No. L 122, 16.5.03, p.1.

(23) O.J. No. L 289, 7.11.03, p.1.

(24) O.J. No. L 128, 21.5.05, p.1.

(25) O.J. No. L 409, 30.12.06, p.11, corrected by a Corrigendum published in O.J. No. L 36, 8.2.07, p.6.

(26) O.J. No. L 248, 22.9.07, p.1.

(27) O.J. No. L 286, 29.10.08, p.33.

(28) O.J. No. L 348, 24.12.08, p.20.

(2) A registered buyer, registered auction or other authorised entity or person responsible for the first sale of fishery products in Scotland must—

- (a) on a form provided by the Scottish Ministers; and
- (b) before 1st October in each calendar year,

inform the Scottish Ministers whether or not it had the prescribed annual financial turnover in the preceding calendar year.”.

(4) After article 3(2) insert—

“(3) Any person who fails to comply with article 2A(2) shall be guilty of an offence.

(4) Any person who, in purported compliance with article 2A(2), knowingly or recklessly furnishes information which is false in a material particular shall be guilty of an offence.”.

(5) After article 4(3) insert—

“(4) A person guilty of an offence under article 3(3) or (4) shall be liable—

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

(6) In the Schedule (Community control measures, contravention of which constitutes an offence)

- (a) omit entries 1(a), (b) and (c) relating to Regulation 1382/87;
- (b) before entry 2(b), relating to Article 6 of the Council Regulation, insert—

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“(aa) Article 5b	Article 3.1, 3.2 and 3.3 of and Annex II to Regulation 1382/87	Requirement, when a vessel is to be inspected, to— (a) stop, manoeuvre or carry out other actions to facilitate boarding; (b) provide a boarding ladder; and (c) make the vessel’s communications equipment and operator available for messages to be sent and/or received for the purposes	The statutory maximum.	The master, the owner, the charterer (if any) and any other person responsible for the vessel.”
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of the inspection.

(c) for entry 2(e), relating to Article 9.1 and 9.5 of the Council Regulation, substitute—

“(e) Article 9.1 as read with Article 9.3, 9.4 and 9.5	Articles 1.3 and 3.4 of Regulation 1966/2006 and Articles 1.1c and 5.1 of Regulation 1077/2008	Requirement, where first marketing of fishery products is carried out by an auction centre or other authorised entity/ person, to—	£50,000	As regards the requirement to—
		(a) submit a sales note, except where paragraph (b) applies;		(a) submit a sales note, the auction centre or other authorised entity/ person responsible for the first marketing of the fishery products;
		(b) transmit information required to be recorded in a sales note by electronic means, where a registered auction or other authorised entity/ person responsible for the first sale of the fishery products has the prescribed annual		(b) transmit sales note information by electronic means, the registered auction or other authorised entity/ person responsible for the first sale of the fishery products.

financial  
turnover  
within 48 hours  
of sale.”

(d) for entry 2(f), relating to Articles 9.2, 9.3, 9.4, 9.4b, 9.5 and 13 of the Council Regulation, substitute—

“(f) Article 9.2 as read with Articles 9.3, 9.4, 9.4b, 9.5 and 13	Articles 1.3 and 3.4 of Regulation 1966/2006 and Articles 1.1c, 5.1 and 5.4 of Regulation 1077/2008	Requirements where first marketing of fishery products is carried out other than in accordance with Article 9.1 of Regulation 2847/93—	£50,000	As regards the requirement to—
		(a) Requirement, where the products have been sold or are offered for sale at the place of landing, to—		
		(i) submit a sales note, except where subparagraph (ii) applies;		(a) submit a sales note, the buyer responsible for the first sale of the fishery products;
		(ii) transmit information required to be recorded in a sales note by electronic means, where a registered buyer responsible for the first sale of the fishery		(a) transmit sales note information by electronic means, the registered buyer responsible for the first sale of the fishery products;

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products  
has the  
prescribed  
annual  
financial  
turnover; or

(b) Requirement,  
where the  
products  
are offered  
for sale at  
a location  
other than  
the place  
of landing,  
to submit  
a transport  
document;  
or

(c) Requirement,  
where the  
products are  
not offered  
for sale or  
are intended  
for sale at  
a later date,  
to—

(i) submit a  
take-over  
declaration,  
except  
where sub-  
paragraph (ii)  
applies;

(ii) transmit  
information  
required  
to be  
recorded in  
a take-over  
declaration  
by  
electronic  
means,  
where the  
holder  
of the  
declaration  
is a  
registered

(b) submit a  
transport  
document,  
the  
transporter  
of the  
fishery  
products;

(c) submit a  
(i) take-over  
declaration,  
the holder  
of this  
declaration;

(c) transmit  
(ii) take-over  
declaration  
information  
by  
electronic  
means,  
the holder  
of the  
take-over  
declaration.

buyer,  
registered  
auction  
or other  
authorised  
entity/  
person  
responsible  
for first sale  
of fishery  
products  
that has the  
prescribed  
annual  
financial  
turnover

before the landed  
products are  
collected and  
within 48 hours  
of the first  
marketing or the  
landing.”

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(e) omit entry 2(g), relating to Article 9.2 and 9.5 of the Council Regulation.