

2001 No. 1631

SEA FISHERIES, ENGLAND

SEA FISHERIES, NORTHERN IRELAND

**The Sea Fishing (Enforcement of Community Quota and
Third Country Fishing Measures) Order 2001**

<i>Made</i> - - - - -	<i>30th April 2001</i>
<i>Laid before Parliament</i>	<i>2nd May 2001</i>
<i>Coming into force</i> - -	<i>29th May 2001</i>

The Minister of Agriculture, Fisheries and Food and the Secretary of State concerned with sea fishing in Northern Ireland, in exercise of the powers conferred on them by section 30(2) of the Fisheries Act 1981(a) and of all other powers enabling them in that behalf, hereby make the following Order:

Title, commencement and extent

1.—(1) This Order may be cited as the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) Order 2001 and shall come into force on 29th May 2001.

(2) Subject to paragraph (3), this Order shall not form part of the law of Scotland.

(3) Nothing in paragraph (2) shall be treated as prejudicing the effect in Scotland of section 30(2A) of the Fisheries Act 1981(b) in relation to, or for purposes incidental to, any provision in this Order which creates an offence.

(a) 1981 c. 29. *See* section 30(3) for the definitions of “enforceable Community restriction”, “enforceable Community obligation” and “the Ministers”, as modified by Schedule 2, paragraph 68(5) of the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820). Article 3(1) and Schedule 1 of the Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592) provide for the functions exercisable under section 30(2) of the 1981 Act to be exercised by the Ministers, concurrently with Scottish Ministers, in relation to: relevant British fishing boats within the Scottish zone; and, Scottish fishing boats within British fishery limits but outside the Scottish zone. By virtue of article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under section 30(2) of the 1981 Act were transferred to the National Assembly in so far as exercisable in relation to Wales (defined in section 155(1) of the Government of Wales Act 1998 (c. 38) as including “the sea adjacent to Wales out as far as the seaward boundary of the territorial sea”); in respect of waters beyond Wales these functions remain exercisable by the Ministers. By virtue of article 2(1) of the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812) any remaining functions of the Secretaries of State for Scotland and Wales under section 30(2) of the 1981 Act were transferred to the Minister of Agriculture, Fisheries and Food.

(b) Section 30(2A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820).

Interpretation

2.—(1) In this Order—

“the Council Regulation” means Council Regulation (EC) No. 2848/2000 fixing for 2001 the fishing opportunities and associated conditions for fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required(a);

“Council Regulation 2847/93” means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy(b), as amended by Council Regulation (EC) No. 2870/95(c), Council Decision (EC) 95/258(d), Council Regulation (EC) 2489/96(e), Council Regulation (EC) 2205/97(f), Council Regulation (EC) 2635/97(g) and Council Regulation (EC) 2846/98(h);

“relevant British fishing boat” means a fishing boat, other than a Scottish fishing boat, which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(i) or is owned wholly by persons qualified to own British ships for the purposes of that part of that Act;

“relevant offence” means an offence under:

- (a) article 3 of this Order, or
- (b) any provision in any other order extending to any part of the United Kingdom made for the purposes of implementing a specified Community provision, being a provision in respect of which, by virtue of section 30(2A) of the Fisheries Act 1981, proceedings may be commenced in any place in the United Kingdom;

“Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging;

“Scottish zone” has the same meaning as in the Scotland Act 1998(j);

“specified Community provision” means a provision of the Council Regulation specified in column 1 of Schedule 1 or 2 as read with any qualifying words relating to that provision in that column; and

“third country fishing boat” means a fishing boat flying the flag of and registered in a state other than a Member state of the European Community.

(2) In this Order—

- (a) the term “within relevant British fishery limits” does not include—
 - (i) the Scottish zone;
 - (ii) the territorial sea adjacent to Wales;
 - (iii) the territorial sea adjacent to the Isle of Man;
 - (iv) the territorial sea adjacent to the Bailiwick of Jersey; and
 - (v) seas within British fishery limits adjacent to Guernsey, as defined by section 8 of the Fishery Limits Act 1976(k);
- (b) any reference to any relevant British fishing boat “wherever it may be” does not include such a fishing boat while in the territorial sea adjacent to Wales;
- (c) any reference to a document, logbook or declaration includes, in addition to a document, logbook or declaration in writing—
 - (i) any map, plan, graph or drawing;
 - (ii) any photograph;
 - (iii) any data, howsoever reproduced, communicated via a satellite-based vessel monitoring system established under Article 3.1 of Regulation 2847/93,

(a) OJ No. L334, 30.12.2000, p. 1.

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

(c) OJ No. L301, 14.12.95, p. 1.

(d) OJ No. L301, 14.12.95, p. 35.

(e) OJ No. L338, 28.2.08, p. 6.

(f) OJ No. L102, 19.4.97, p. 1.

(g) OJ No. L304, 7.11.97, p. 1.

(h) OJ No. L356, 31.12.97, p. 14.

(i) 1995 c. 21.

(j) 1998 c. 46; *see* section 126 and the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).

(k) 1976 c. 86; as modified by paragraph 3(c) of the Schedule to the Fishery Limits Act 1976 (Guernsey) Order 1989 (S.I. 1989/2407).

- (iv) any disk, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (v) 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.

(3) In this Order—

- (a) any reference to a Community instrument is a reference to that instrument as amended on the date this Order is made; and
- (b) any reference to a Schedule or to an article shall, unless the context otherwise requires, be construed as a reference respectively to a Schedule to this Order or an article of this Order.

(4) For the purpose of the prohibition contained in paragraph 2 of Annex IV to the Council Regulation (which prohibits the landing of herring unsorted from the remainder of the catch at a harbour where adequate sampling programmes are not in place), a harbour in England or Northern Ireland shall not be regarded as having in place a system which is adequate for sampling a catch that includes unsorted herring unless, before the landing of the catch in question—

- (a) the master of the fishing boat in question has applied to a British sea-fishery officer at the harbour in question for a decision as to the suitability of that harbour for landing the catch on that boat; and
- (b) the British sea-fishery officer has decided that the sampling systems at the harbour are adequate, having regard to the overall size and characteristics of the catch, for the purpose of monitoring effectively the landing of that catch, and has so notified the master.

Offences

3.—(1) Where there is, in respect of—

- (a) any relevant British fishing boat wherever it may be, or
- (b) any other fishing boat which is within relevant British fishery limits,

a contravention of, or failure to comply with, any specified Community provision in column 1 of Schedule 1, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(2) Where there is, in respect of any third country fishing boat to which any specified Community provision in column 1 of Schedule 2 applies which is within relevant British fishery limits, a contravention of, or failure to comply with, that specified Community provision, the master, the owner and the charterer (if any) shall each be guilty of an offence.

Penalties

4.—(1) A person found guilty in England or Northern Ireland of an offence under article 3(1) or (2), or under any equivalent provision in any other order extending to any part of the United Kingdom, proceedings in respect of which were brought in England or Northern Ireland by virtue of section 30(2A) of the Fisheries Act 1981, shall be liable—

- (a) on summary conviction to a fine not exceeding the amount specified—
 - (i) in respect of an offence under article 3(1), in column 3 of Schedule 1, or
 - (ii) in respect of an offence under article 3(2), in column 3 of Schedule 2,

in relation to the specified Community provision, the contravention of which or failure to comply with which founded the offence; and

- (b) on conviction on indictment, to a fine.

Recovery of fines

5.—(1) Where a fine is imposed by a magistrates' court in England or Northern Ireland on the master, owner or charterer, or a member of the crew, of a fishing boat who is convicted by the court of a relevant offence or an offence under article 10, the court may—

- (a) issue a warrant of distress against the boat involved in the commission of the offence 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 such boat and its gear and catch 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) Sections 77(1) and 78 of the Magistrates' Courts Act 1980^(a) (postponement of issue of, and defects in, warrants of distress) shall apply to a warrant of distress issued under this article in England as they apply to a warrant of distress issued under Part III of that Act.

(3) Article 114(2) and 154 of the Magistrates' Courts (Northern Ireland) Order 1981^(b) (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 to distress issued under this article in Northern Ireland as it applies to a warrant referred to in those articles of that Order.

(4) Where in relation to a fine in respect of a relevant offence a transfer of fine order under section 90 of the Magistrates' Courts Act 1980, Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981 or section 222 of the Criminal Procedure (Scotland) Act 1995^(c) specifies a petty sessions area in England or a petty sessions district in Northern Ireland this article shall apply as if the fine were imposed by a court within that petty sessions area or petty sessions district.

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

6.—(1) For the purpose of enforcing the provisions of article 3(1) or (2), or any equivalent provision in any other order extending to any part of the United Kingdom made for the purposes of implementing a specified Community provision, any British sea-fishery officer may exercise the powers conferred by paragraphs (2) to (4) of this article in relation to—

- (a) any relevant British fishing boat wherever it may be; or
- (b) any other fishing boat which is within relevant British fishery limits.

(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 search for fish or fishing gear on the boat and 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;
- (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 that person's custody or possession;
- (c) for the purpose of ascertaining whether a relevant offence has been committed, 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) may inspect and take copies of any such document produced to him or found on board and where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away; and
- (e) where the boat is one in relation to which he has reason to suspect that a relevant 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 (e) 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.

^(a) 1980 c. 43; the maximum fines in section 78 were converted to levels on the standard scale by sections 37 and 46 of the Criminal Justice Act 1982 (c. 48).

^(b) S.I. 1981/1675 (NI 26).

^(c) 1995 c. 46.

(4) Where it appears to a British sea-fishery officer that a relevant offence has at any time been committed, 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;

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(1) or (2), or any equivalent provision in any other order extending to any part of the United Kingdom made for the purposes of implementing a specified Community provision, any British sea-fishery officer may in England or Northern Ireland—

- (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 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 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 that person's 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 a relevant offence, 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 including rendering all documents on computer systems into visible and legible form;
- (h) inspect and take copies of any such document produced to him or found on the premises and where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away; and
- (i) if he has a reason to suspect that a relevant offence has been committed, seize and detain any such document produced to him or found on the premises for the purpose of enabling the document to be used as evidence in proceedings for the offence.

(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.

(3) If in England or Northern Ireland a justice of the peace on sworn information in writing is satisfied—

- (a) that there is reasonable ground 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) 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 that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his return, the justice may by warrant signed by him, and valid for one month, authorise a British sea-fishery officer to enter the premises, if need be by reasonable force, and take with him such persons as appear to him to be necessary.

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

8.—(1) This article applies—

- (a) in England and Northern Ireland,
- (b) to any relevant British fishing boat wherever it may be, and
- (c) to any other fishing boat which is within relevant British fishery limits.

(2) Where this article applies, any British sea-fishery officer may seize—

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

Protection of officers

9. An officer or a person assisting him by virtue of article 6(2), 7(1)(b) or 7(3) shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by articles 6 to 8 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 of officers

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 British sea-fishery officers by article 6, 7 or 8;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) assaults an officer who is exercising any of the powers conferred on him by article 6, 7 or 8 or 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 the statutory maximum; or
- (ii) on conviction on indictment to a fine.

Provisions as to offences

11.—(1) Where any offence under article 3(1) committed by a body corporate is proved to have been committed with the consent or connivance 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(1) 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(1) 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.

Admissibility in evidence of logbooks and other documents

12.—(1) Any—

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

of Regulation 2847/93 shall, in any proceedings in England or Northern Ireland for a relevant offence, be evidence of the matters stated therein.

(2) For the purpose of paragraph (1), “required information” shall mean—

- (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.

Revocation

13.—(1) The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) Order 2000(a) and the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Amendment) Order 2000(b) are hereby revoked, except in so far as:

- (a) they form part of the law of Scotland; or
- (b) they have effect in relation to Wales (as that term is defined in section 155(1) of the Government of Wales Act 1998(c)).

30th April 2001

Elliot Morley
Parliamentary Secretary,
Ministry of Agriculture, Fisheries and Food

25th April 2001

John Reid
Secretary of State for Northern Ireland

(a) S.I. 1997/1949.
(b) S.I. 2000/2008.
(c) 1998 c. 38.

SCHEDULE 1

Article 4(1)

SPECIFIED COMMUNITY PROVISIONS APPLICABLE TO COMMUNITY VESSELS AND MAXIMUM FINES ON SUMMARY CONVICTION

<i>Column 1 Provision of the Council Regulation</i>	<i>Column 2 Subject matter</i>	<i>Column 3 Maximum fine on summary conviction</i>
1. Article 6.1, except in so far as referred to in paragraph 2 of this column	Prohibitions on retaining on board or landing catches from stocks for which total allowable catches or quotas are fixed and have been exhausted.	£50,000
2. Article 6.1, in so far as that paragraph relates to catch composition or sorting	Prohibitions in certain circumstances on retaining on board or landing catches having a certain composition or which have been sorted.	The statutory maximum
3. Article 6.2	Prohibition on landing catches which are unsorted and contain herring when the catch limitations set out in Annex II to the Council Regulation have been exhausted.	£50,000
4. Article 7(2)	Prohibition on fishing by Community vessels in certain Norwegian and Icelandic waters.	£50,000
5. Article 8 and Annex IV, paragraphs 2 and 6	Prohibition on landing catches containing unsorted herring in harbours where adequate sampling systems are not in place; prohibition on offering for sale for human consumption landed herring which have been caught in the areas specified in Annex IV, paragraph 6, by vessels carrying towed nets of a minimum mesh size less than 32 mm.	The statutory maximum

SCHEDULE 2

Article 4(2)

SPECIFIED COMMUNITY PROVISIONS APPLICABLE TO THIRD COUNTRY VESSELS AND MAXIMUM FINES ON SUMMARY CONVICTION

<i>Column 1 Provision of the Council Regulation</i>	<i>Column 2 Subject matter</i>	<i>Column 3 Maximum fine on summary conviction</i>
1. Articles 10 and 11	Requirements in relation to vessels flying the flag of Norway or the Faroe Islands to fish within the quota limits contained in Annex 1 to the Council Regulation and within the geographical zone set out in Article 11(i).	£50,000
2. Articles 10 and 13	Requirement in relation to vessels flying the flag of Norway or the Faroe Islands to fish in accordance with the conditions stipulated in Article 13.	£50,000
3. Article 14	Requirement in relation to vessels flying the flag of Norway or the Faroe Islands to comply with the conservation and control measures and all other provisions governing fishing by Community vessels in the zones concerned, including those measures and provisions referred to in Article 14.1.	£50,000
4. Article 14.3	Requirement in relation to vessels flying the flag of Norway or the Faroe Islands to keep a logbook in compliance with Annex VII, Part 1 to the Council Regulation.	£50,000
5. Article 14.4	Requirement in relation to vessels flying the flag of Norway (other than those fishing in ICES division IIIa) or the Faroe Islands to transmit to the Commission information in compliance with Annex VIII to the Council Regulation.	The statutory maximum

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the enforcement of certain enforceable Community restrictions and other obligations relating to sea fishing by both Community and third country vessels set out in Council Regulation (EC) No. 2848/2000 (OJ No. L334, 30/12/00, p. 1) (“the Council Regulation”). The Council Regulation fixes total allowable catches and member States’ quotas for 2001 and lays down certain conditions under which they may be fished. It also authorises fishing by vessels of Norway and the Faroe Islands for specified descriptions of fish in certain specified areas within member States’ fishery limits in 2001 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. This Order does not form part of the law of Scotland and does not apply in relation to fishing activities within the territorial sea of Wales.

Article 3 of the Order creates offences in respect of breaches of the provisions of the Council Regulation referred to in column 1 (and briefly described in column 2) of Schedule 1 to the Order, in the case of Community vessels, and Schedule 2, in the case of third country vessels. Penalties are specified for such offences (article 4). The statutory maximum penalty specified in the Schedules is currently £5,000. Provision is made for the recovery of fines (article 5).

The Order confers powers of enforcement on British sea-fishery officers in relation to certain fishing boats as well as on land in England and Northern Ireland and in relation to the seizure of fish and fishing gear (articles 6, 7, 8 and 9). Provision is made for the punishment of anyone found guilty of assaulting or obstructing an officer (article 10).

The Order revokes the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) Order 2000(a) and the Sea Fishing (Enforcement and Community Quota and Third Country Fishing Measures) (Amendment) Order 2000(b) except in so far as they form part of the law of Scotland or they apply in relation to Wales (article 13).

(a) S.I. 1997/1949.

(b) S.I. 2000/2008.

2001 No. 1631

SEA FISHERIES, ENGLAND

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