

2009 No. 1847

**SEA FISHERIES, ENGLAND**

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

<i>Made</i>	- - - -	<i>8th July 2009</i>
<i>Laid before Parliament</i>		<i>14th July 2009</i>
<i>Coming into force</i>	- -	<i>10th August 2009</i>

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(a) and it appears to the Secretary of State that it is expedient for the references to Council Regulation (EC) No 1966/2006 (b) (on electronic recording and reporting of fishing activities and on means of remote sensing) and Commission Regulation (EC) No 1077/2008(c) (laying down detailed rules for the implementation of Council Regulation (EC) No 1966/2006 and repealing Regulation (EC) No 1566/2007(d)) to be construed as references to those instruments as amended from time to time.

The Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland make the following Order, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(e) and now vested in them(f), and paragraph 1A of Schedule 2 to the European Communities Act 1972(g).

**Citation, commencement and application**

1.—(1) This Order may be cited as the Sea Fishing (Enforcement of Community Control Measures) (Amendment) Order 2009 and comes into force on 10th August 2009.

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- (a) 1972 c. 68.  
(b) OJ No L 409, 30.12.2006, p 1.  
(c) OJ No L 295, 4.11.2008, p 3.  
(d) OJ No L 340, 22.12.2007, p 46.  
(e) 1981 c. 29 (“the 1981 Act”). 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).  
(f) The function of the Ministers under section 30(2) of the 1981 Act in relation to Wales was transferred to the National Assembly for Wales and then transferred from that body to the Welsh Ministers: see article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). The function of the Ministers under section 30(2) of the 1981 Act in relation to the Northern Ireland zone and Northern Ireland fishing boats outside that zone was transferred to the Department of Agriculture and Rural Development in Northern Ireland under article 3(2) of, and paragraph 3(1) of Schedule 2 to the Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790). The functions of the Secretaries of State for Scotland and Wales under section 30(2) of the 1981 Act in relation to England have been transferred to the Minister of Agriculture, Fisheries and Food: see article 2(1) of the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812). The function of that Minister and the Secretary of State concerned with sea fishing in Northern Ireland acting jointly under section 30(2) has been transferred to the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland acting jointly: see article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).  
(g) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).

(2) This Order applies in England.

### **Amendments to the Sea Fishing (Enforcement of Community Control Measures) Order 2000**

**2.**—(1) The Sea Fishing (Enforcement of Community Control Measures) Order 2000(a) is amended as follows.

(2) In article 2—

(a) before the definition of “Community control measure” insert—

““buyer of the fish” means a buyer of fish obliged to submit sales notes pursuant to Article 9.2 of Regulation 2847/93(b);”;

(b) after the definition of “Community control measure” insert—

““first seller of the fish” means an auction centre or other authorised person obliged to submit sales notes pursuant to Article 9.1 of Regulation 2847/93, and a person is authorised for the purposes of that Article insofar as it sells fish being marketed for the first time by any form of competitive bidding at a designated auction site either on its own behalf or as the seller’s agent;”;

(c) for the definition of “Regulation 2847/93” substitute—

““Regulation 2847/93” means Council Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy;”;

(d) after the definition of “Regulation 423/04” insert—

““Regulation 1966/2006” means Council Regulation (EC) No 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing, as amended from time to time;

““Regulation 1077/2008” means Commission Regulation (EC) No 1077/2008 laying down detailed rules for the implementation of Regulation 1966/2006 and repealing Regulation (EC) No 1566/2007, as amended from time to time;”;

(e) after the definition of “relevant offence” insert—

““requisite financial turnover” means an annual financial turnover in first sales of fisheries 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 two years previously and based on European Central Bank Euro foreign exchange reference rates applicable on 1st January for the calendar year from which the annual financial turnover information is taken”; and

(f) after paragraph (4) insert—

“(5) References in this Order to sales notes or take-over declarations being submitted electronically mean sales notes or take-over declarations submitted using an electronic system of a type specified by the Secretary of State.”.

(3) After article 2 insert—

#### **“Register of those with a requisite annual turnover**

**2A.**—(1) The Secretary of State is the competent authority for the purposes of maintaining a register of first sellers, or buyers, of the fish who have a requisite financial turnover pursuant to Article 2(1) of Regulation 1077/2008.

(2) A first seller, or buyer, of the fish must, on a form provided by the Secretary of State, inform the Secretary of State whether it has a requisite financial turnover before 1st October in each calendar year.

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(a) S.I. 2000/51 to which there are amendments not relevant to this Order.

(b) OJ No L 261, 20.10.1993, p 1, as last amended by Council Regulation (EC) No 1006/2008 (OJ No L 286, 29.10.2008, p 33).

(3) The Secretary of State must make the register available for public inspection on an official website.”.

(4) After article 3(3) insert—

“(4) A person who fails to comply with article 2A(2) is guilty of an offence.”.

(5) After article 4(3) insert—

“(4) A person found guilty of an offence under article 3(4) is liable—

(a) on summary conviction, to a fine not exceeding £50,000;

(b) on indictment, to a fine.”.

(6) Paragraphs 2(e) and (f) of the table in the Schedule are replaced by—

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Community Provision</i>	<i>Detailed Rules</i>	<i>Subject Matter</i>	<i>Maximum fine on summary conviction</i>	<i>Persons liable</i>
(e) Article 9.1 as read with Article 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 authorised person to submit a completed sales note within 48 hours of sale, which in the case of a first seller of the fish with a requisite annual turnover is to be submitted electronically.	£50,000	The first seller of the fish.
(f) Article 9.2 as read with Article 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.	Requirement where first marketing of fishery products is carried out other than in accordance with Article 9.1 of Regulation 2847/93, to submit—  (a) a completed sales note (when products have been sold or are offered for sale at place of landing), which in the case of a buyer of the fish with a requisite financial turnover is to be submitted electronically; (b) a copy of a transport document (when the products are offered for sale at place of landing); or  (c) a completed take-over declaration (when products are not offered for sale or are intended for sale at a later date) electronically,	£50,000	As regards the requirement to submit—  (a) a completed sales note, the buyer of the fish;  (b) a transport document, the transporter of the fish;  (c) a completed take-over declaration, the holder of the fish

and the  
holder's  
agent (if  
any).

before the products are  
collected.

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2nd July 2009

*Huw Irranca-Davies*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

8th July 2009

*Paul Goggins*  
Minister of State  
Northern Ireland Office

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Sea Fishing (Enforcement of Community Control Measures) Order 2000 (S.I. 2000/51) ("the 2000 Order") in relation to England.

It provides for the enforcement of Council Regulation (EC) No 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing (OJ No L 409, 30.12.2006, p 1) and Commission Regulation (EC) No 1077/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 1966/2006 and repealing Regulation (EC) No 1566/2007 (OJ No L 295, 4.11.2008, p 3) in relation to the requirement to submit sales notes and take-over declarations electronically.

Article 2(3) establishes a public register, to be maintained by the Secretary of State, of those required to submit sales notes electronically because they have an annual financial turnover in excess of €400,000. A failure by a seller or a buyer of fish to inform the Secretary of State by 1st October in any calendar year whether it has such a financial turnover is an offence which is punishable on summary conviction by a maximum fine of £50,000 or, on indictment, by a fine.

Article 2(6) amends paragraphs 2(e) and (f) of the Schedule to the 2000 Order to make it an offence for a first seller, or a buyer, of fish with an annual financial turnover in excess of €400,000 not to submit sales notes electronically. It also makes it an offence for the holder of the fish when products are not offered for sale or are intended for sale at a later date not to submit take-over declarations electronically. The maximum fine on summary conviction for breach of either offence is £50,000 or, on indictment, a fine.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector has been prepared and placed in the library of both Houses of Parliament. It is available on the Defra website at [www.defra.gov.uk/corporate/consult/fisheries-control/index.htm](http://www.defra.gov.uk/corporate/consult/fisheries-control/index.htm).

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STATUTORY INSTRUMENTS

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Measures) (Amendment) Order 2009

£4.00