
WELSH STATUTORY INSTRUMENTS

2000 No. 1075

**The Sea Fishing (Enforcement of Community
Control Measures) (Wales) Order 2000**

Title, commencement and application

1.—(1) This Order may be cited as the Sea Fishing (Enforcement of Community Control Measures) (Wales) Order 2000 and shall come into force on 1st April 2000.

(2) This Order applies to Wales only.

Interpretation

2.—(1) In this Order—

“Community control measure” (*“mesurau rheoli'r Gymuned”*) means a provision of Regulation 2847/93 or of Regulation 1382/87 specified in Column 1 of the Schedule;

“fishing boat” (*“cwch pysgota”*) includes a receiving vessel and a third country vessel, within the meaning of Regulation 2847/93;

“fishery products” (*“cynhyrchion pysgodfeydd”*) includes fish;

“Regulation 2807/83” (*“Rheoliad 2807/83”*) means Commission Regulation (EEC) No 2807/83 laying down detailed rules for recording information on Member States' catches of fish(1) as amended by Commission Regulation (EEC) No. 473/89(2), Commission Regulation (EC) No. 2945/95(3), Commission Regulation (EC) No. 395/98(4), Commission Regulation (EC) No. 1488/98(5) and Commission Regulation (EC) No. 2737/99(6);

“Regulation 1382/87” (*“Rheoliad 1382/87”*) means Commission Regulation (EEC) No. 1382/87 establishing detailed rules concerning the inspection of fishing vessels(7);

“Regulation 2847/93” (*“Rheoliad 2847/93”*) means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy(8) as amended by Council Regulation (EC) No. 2870/95(9), Council Decision (EC) 95/528(10), Council Regulation (EC) 2489/96(11), Council Regulation (EC) 686/97(12), Council Regulation (EC) 2205/97(13), Council Regulation (EC) 2635/97(14) and Council Regulation (EC) 2846/98(15);

(1) OJ No. L276, 10.10.83, p.1.

(2) OJ No. L53, 25.2.89, p.34.

(3) OJ No. L308, 21.12.95, p.18.

(4) OJ No. L50, 20.2.98, p.17.

(5) OJ No. L196, 14.7.98, p.3.

(6) OJ No. L328, 22.12.99, p.54.

(7) OJ No. L132, 21.5.87, p.11.

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

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

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

(11) OJ No. L338, 28.12.96, p.12.

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

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

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

(15) OJ No. L358, 31.12.98, p.5.

“Regulation 1449/98” (“*Rheoliad 1449/98*”) means Commission Regulation (EC) No. 1449/98 laying down detailed rules for the application of Council Regulation (EEC) No. 2847/93 as regards effort reports⁽¹⁶⁾

“relevant British fishing boat” (“*cwch pysgota Prydeinig berthnasol*”) 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⁽¹⁷⁾ or is owned wholly by persons qualified to own British ships for the purposes of that part of the Act;

“relevant offence” (“*tramgwydd perthnasol*”) means an offence under:

- (a) article 3 of this Order, or
- (b) any provision in an order extending to any other part of the United Kingdom made for the purposes of implementing a Community control measure, being a provision in respect of which, by virtue of section 30(2A)⁽¹⁸⁾ of the Fisheries Act 1981, proceedings may be commenced in any place in the United Kingdom;

“Scottish fishing boat” (“*cwch pysgota Albanaid*”) 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;

“transport document” (“*dogfen drafndiaeth*”) means a document drawn up in accordance with Article 13 of Regulation 2847/93;

“transporter” (“*cludwr*”) means the owner or the hirer of, or the person responsible for, any vehicle used to transport fisheries products.

“Wales” is to be interpreted in accordance with section 155(1) and (2) of the Government of Wales Act 1998⁽¹⁹⁾.

(2) In this Order any reference to a logbook, declaration or document includes, in addition to a logbook, declaration or document 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,
- (iv) any disk, tape, sound track or other device in which sounds or other data (not being visual aids) 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) Any reference in this Order—

- (a) to the Schedule is a reference to the Schedule to this Order; and
- (b) to a Community instrument is a reference to that instrument and any amendment of such instrument in force on the date this Order is made;
- (c) to a numbered Article of Council Regulation 2847/93 is a reference to the Article so numbered in that Regulation as read with any detailed rules for the implementation of that Article specified in the appropriate entry in column 2 of the Schedule.

⁽¹⁶⁾ OJ No. L192, 8.7.98, p.4.

⁽¹⁷⁾ 1995, c. 21

⁽¹⁸⁾ Inserted by the Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999 (S.I. 1999/1820).

⁽¹⁹⁾ 1998, c. 38.

(4) Column 3 of the Schedule (which provides in relation to each Community control measure an indication of the subject matter of the measure) shall not be read as limiting the scope of any Community control measure and shall be disregarded in relation to any question arising as to the construction of this Order.

Offences

3.—(1) Where there is, in respect of—

- (a) any fishing boat within the territorial sea adjacent to Wales⁽²⁰⁾;
- (b) any entry into the territorial sea adjacent to Wales by any fishing boat; or
- (c) any fishery products, premises or vehicle in Wales,

a contravention of, or failure to comply with, a Community control measure specified in column 1 of the Schedule, the persons specified in the appropriate entry in column 5 of the Schedule shall each be guilty of an offence.

(2) Subject to paragraph (3), any person who in purported compliance with Articles 6, 7, 8.1, 9.1, 9.2, 9.5, 11, 12, 13 or 17.2, Articles 19b and 19c or Articles 19e, 20.2, 28.2a, 28c, 28e or 28f of Regulation 2847/93, furnishes information which he or she knows to be false in a material particular or recklessly furnishes information which is false in a material particular shall be guilty of an offence.

(3) Paragraph (2) applies to any furnishing of information —

- (a) in Wales (which includes the territorial sea adjacent to Wales),
- (b) to a British sea-fishery officer performing any function under article 6 or 7 of this Order,
- (c) in relation to any activity of a relevant British fishing boat, to the competent authorities in another Member State within the meaning of Regulation 2847/93.

Penalties

4.—(1) A person found guilty of an offence under article 3(1) of this Order, or under any equivalent provision in an order extending to any other part of the United Kingdom, proceedings in respect of which were brought in Wales 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 in the appropriate entry in column 4 of the Schedule;
- (b) on conviction on indictment to a fine.

(2) A person found guilty of an offence under Article 3(1) of this Order, or under any equivalent provision in an order extending to any other part of the United Kingdom proceedings in respect of which were brought in Wales by virtue of section 30(2A) of the Fisheries Act 1981, founded on a contravention of, or failure to comply with—

- (a) Articles 19a.2, 20.1, 20a or 21c.2 of Regulation 2847/93 shall also be liable—
 - (i) to the forfeiture of 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; and

(20) For the purposes of this Order “the territorial sea adjacent to Wales” shall be determined in accordance with the provisions of section 1 of the Territorial Sea Act 1987 (c. 47) and with any provisions made, or having effect as if made, under that section. The boundary between those parts of the sea within the Severn and Dee Estuaries which are to be treated as being territorial seas adjacent to Wales, and those which are not, shall in each case, be determined in accordance with Article 6 and Schedule 3 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

- (ii) to the forfeiture of any fish in respect of which the offence was committed, or, on summary conviction only, to a fine not exceeding the value of any fish in respect of which the offence was committed; or
- (b) Articles 6, 8.1, 9, 11, 12, 13 or 17.2, Articles 19b and 19c or Articles 19e, 20.2, 28c (in relation to the requirements in respect of logbooks and recording of catches on board) or 28d of Regulation 2847/93 shall also be liable to the forfeiture of any fish in respect of which the offence was committed, or to a fine not exceeding the value of any fish in respect of which the offence was committed.
- (3) A person found guilty of an offence under article 3(2) of this Order, or under any equivalent provision extending to any other part of the United Kingdom, proceedings in respect of which were brought in Wales by virtue of section 30(2A) of the Fisheries Act 1981, shall be liable —
- (a) on summary conviction, to a fine not exceeding £50,000;
- (b) on conviction on indictment to a fine.

Recovery of fines

5.—(1) Where a fine is imposed by a magistrates court on the master, owner, charterer, person responsible for the vessel or any other person who is convicted by the court of a relevant offence or an offence under article 10 of this Order, the court may, for the purposes of recovering the fine —

- (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; or
- (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⁽²¹⁾ (postponement of issue of, and defects in, warrants of distress) shall apply to a warrant of distress issued under this article as they apply to a warrant of distress issued under Part III of that Act.

(3) Where in relation to a fine in respect of a relevant offence a transfer of fine order under section 90 of the Magistrates Court Act 1980, Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981⁽²²⁾ or section 222 of the Criminal Procedure (Scotland) Act 1995⁽²³⁾ specifies a petty sessions area in Wales, this article shall apply as if the fine were imposed by a court within that petty sessions area.

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

6.—(1) For the purpose of enforcing article 3 of this Order or any equivalent provision in an order extending to any other part of the United Kingdom made for the purposes of implementing a Community control measure, a British sea-fishery officer may exercise in relation to any fishing boat within the territorial sea adjacent to Wales the powers conferred by paragraphs (2) to (4) of this article.

(2) The officer may go on board the boat, with or without persons assigned to assist with his or her 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.

(21) 1980 c. 43.

(22) S.I. 1981/1675 (N.I. 26).

(23) 1995 c. 46.

(3) The 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 the officer 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 the officer 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 the officer to be necessary for facilitating the search;
- (d) inspect, take copies of and retain in his or her possession while completing any search, examination and inspection provided for under this article, any such document produced to the officer or found on board;
- (e) without prejudice to sub-paragraphs (c) and (d), may require the master and any person for the time being in charge of the boat to render all such documents on a computer system into a visible and legible form, including requiring any such document to be produced in a form in which it may be taken away; and
- (f) where the boat is one in relation to which the officer has reason to suspect that a relevant offence has been committed, may seize and detain any such document produced 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) 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.

(4) 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 personally 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 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 of this Order or any equivalent provision in an order extending to any other part of the United Kingdom made for the purposes of implementing a Community control measure, any British sea-fishery officer may in Wales —

- (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 sea fish;
- (b) take with him or her such other persons as appear to the officer 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 the 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 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 his or her 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 the officer to be necessary for facilitating the search;
- (h) inspect and take copies of any such document produced to the officer or found on the premises;
- (i) require any appropriate or responsible person to render any such document on a computer system into a visible and legible form; including requiring any such document to be produced in a form in which it 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 purpose of enabling the document to be used in proceedings for the offence.

(2) The provisions of paragraph (1) above shall apply with necessary modifications 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 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 the occupier's return;

the justice may by warrant signed by him or her, 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 or her such persons as appear to the officer to be necessary.

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

8. In Wales (which includes the territorial sea adjacent to Wales), any British sea-fishery officer may, in relation to any fishing boat, seize—

- (a) any fish (including any receptacle which contains the fish) in respect of which the officer has reasonable grounds to suspect that a relevant offence founded on a contravention of, or failure to comply with, Articles 6, 8.1, 9, 11, 12, 13, 17.2 or 19a.2, Articles 19b and 19c, Articles 19e, 20.2 or 21c.2 or Articles 28c or 28d of Regulation 2847/93 has been committed;

- (b) any fish caught with a net in respect of which the officer has reasonable grounds to suspect that a relevant offence founded on a contravention of, or failure to comply with, Articles 20.1 or 20a of Regulation 2847/93 has been committed; and
- (c) any net or other fishing gear—
 - (i) in respect of which the officer has reasonable grounds to suspect that a relevant offence founded on a contravention of, or failure to comply with, Articles 20.1 or 20a of Regulation 2847/93 has been committed, or
 - (ii) which the officer has reasonable grounds to suspect has been used for catching any fish in respect of which a relevant offence founded on a contravention of, or failure to comply with, Articles 19a.2, or 21c.2 of Regulation 2847/ 93 has been committed.

Protection of officers

9. A British sea-fishery officer or a person assisting him or her by virtue of article 6(2) or 7(1) (b) of this Order shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him or her by virtue of article 6, 7 or 8 of this Order 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 etc.

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 him by virtue of article 6, 7 or 8 of this Order;
- (b) without reasonable excuse prevents any other person from complying with any such requirement; or
- (c) obstructs any such officer who is exercising 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 and proceedings

11.—(1) Where any offence under article 3 of this Order committed by a body corporate is proved to have been committed with the consent or approval 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, that person, 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 of this Order 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, that person 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 of 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, 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 Articles 6, 17.2 or 28c;
- (b) declaration submitted under Articles 8.1, 11, 12, 17.2 or 28f;
- (c) effort report completed under Articles 19b and 19c;
- (d) document drawn up under Articles 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 for a relevant offence, be evidence of the matters stated therein.

(2) For the purposes of paragraph (1), “required information” shall mean 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.

Revocation

13. The Sea Fishing (Enforcement of Community Control Measures) Order 1994⁽²⁴⁾ and the Sea Fishing (Enforcement of Community Control Measures) (Amendment) Order 1996⁽²⁵⁾ are hereby revoked insofar as they apply to Wales.

Signed on behalf of the National Assembly for Wales under section 66 of the Government of Wales Act 1998

29th March 2000

D. Elis Thomas
The Presiding Officer

⁽²⁴⁾ S.I. 1994/451.

⁽²⁵⁾ S.I. 1996/2.