SCOTTISH STATUTORY INSTRUMENTS

2005 No. 311

SEA FISHERIES

The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2005

Made - - - -	*7th June 2005*
Laid before the Scottish Parliament	*8th June 2005*
Coming into force - -	*1st July 2005*

The Scottish Ministers, in exercise of the powers conferred 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:

Citation, commencement and extent

1.—(1) This Order may be cited as the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2005 and shall come into force on 1st July 2005.

(2) Subject to paragraph (3), this Order extends to Scotland and the Scottish zone only.

(3) Insofar as it extends beyond Scotland and the Scottish zone, it does so only as a matter of Scots law.

Interpretation

2.—(1) In this Order–

"authorised officer" means a person authorised by the Scottish Ministers for the purpose of article 4(1);

"Community fishing boat" means a fishing boat flying the flag of and registered in a Member State of the European Community;

"Community quota measure" means a provision of the Council Regulation specified in column 1 of Schedule 1 as read with any qualifying words relating to the provision in that column and, in the case of Article 10 and Annex II of the Council Regulation, with article 3 of this Order;

"Community third country fishing measure" means a provision of the Council Regulation specified in column 1 of Schedule 3;

(**a**) 1981 c.29; relevant modifications are contained in the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748), article 5 and the Scotland Act 1998 (Modification of Functions) Order 1999 (S.I. 1999/1756), articles 3, 5 and 6. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). See section 30(3) of the 1981 Act for definitions of "enforceable Community restriction", "enforceable Community obligation" and "the Ministers". Section 30 has effect in relation to Scotland as modified by section 30(5) inserted by the Scotland Act (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68(5)(b).

"the Council Regulation" means Council Regulation (EC) No. 27/2005 of 22nd December 2004(**a**) fixing for 2005 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required;

"Council Regulation 1434/98" means Council Regulation (EC) No. 1434/98 of 29th June 1998 specifying conditions under which herring may be landed for industrial purposes other than direct human consumption(**b**);

"fishery product" includes fish;

"ICES" followed by a roman numeral with or without a letter shall be construed as a reference to whichever of the statistical sub-areas and divisions of the International Council for the Exploration of the Sea(**c**) identified therein by that roman numeral or that roman numeral and letter as the case may be;

"pelagic weighing system" means any system used to weigh herring, mackerel or horse mackerel for the purposes of paragraph 9 of Annex III of the Council Regulation;

"Regulation 2847/93" means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy(**d**) as amended by Council Regulation (EC) No. 2870/95(**e**), Council Decision (EC) No. 95/524(**f**), Council Regulation (EC) No. 2489/96(**g**), Council Regulation (EC) No. 686/97(**h**), Commission Regulation (EC) No. 1489/97(**i**), Council Regulation (EC) No. 2205/97(**j**), Council Regulation (EC) No. 2635/97(**k**) and Council Regulation (EC) No. 2846/98(**l**), Council Regulation (EC) No. 806/2003(**m**) and Council Regulation (EC) No. 1954/2003(**n**);

"relevant offence" means an offence under–

(a) articles 4(5) to (7) or 5(2) or 5(4) or 6(1) to (3); or

(b) any provision extending to any other part of the United Kingdom made for the purposes of implementing a Community quota measure, a specified Community provision or a Community third country fishing measure, being a provision in respect of which, by virtue of section 30(2A) of the Fisheries Act 1981(**o**), proceedings may be commenced in any place in the United Kingdom;

"Scotland" has the same meaning as in section 126(1) of the Scotland Act 1998(**p**);

"Scottish fishing boat" means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995(**q**) 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 section 126(1) of the Scotland Act 1998(**r**);

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

"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.

(**a**) O.J. No. L 12, 14.1.05, p.1.
(**b**) O.J. No. L 191, 7.7.98, p.10.
(**c**) Cmnd. 2586.
(**d**) O.J. No. L 261, 20.10.93, p.1.
(**e**) O.J. No. L 301, 14.12.95, p.1.
(**f**) O.J. No. L 301, 14.12.95, p.35.
(**g**) O.J. No. L 338, 28.12.96, p.12.
(**h**) O.J. No. L 102, 19.4.97, p.1.
(**i**) O.J. No. L 202, 30.7.97, p.18.
(**j**) O.J. No. L 304, 7.11.97, p.l.
(**k**) O.J. No. L 356, 31.12. 97, p.14.
(**l**) O.J. No. L 358, 31.12. 98, p.5.
(**m**) O.J. No. L 122, 16.5.03, p.1.
(**n**) O.J. No. L 289, 7.11.03, p.1.
(**o**) 1981 c.29; section 30(2A) was inserted by S.I. 1999/1820.
(**p**) 1998 c.46.
(**q**) 1995 c.21.
(**r**) The sea within British fishery limits (that is, the limits set by or under section 1 of the Fishery Limits Act 1976 (c.86)) which is adjacent to Scotland is determined by the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).

(2) In this Order, any reference to a logbook, declaration or document includes, in addition to a logbook, declaration or document in writing–

(a) any map, plan, graph or drawing;

(b) any photograph;

(c) any data, however reproduced, communicated via a satellite-based vessel monitoring system established under Article 3.1 of Regulation 2847/93;

(d) any disk, tape, sound track or other device on 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

(e) any film (including microfilm), negative, tape, disk or other device on which one or more visual images are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom.

(3) In this Order, any reference–

(a) to a numbered article is a reference to the article so numbered in this Order;

(b) to a numbered paragraph is a reference to the paragraph so numbered in the article in which it appears in this Order;

(c) to a numbered Schedule is a reference to the Schedule to this Order so numbered; and

(d) to a numbered Article or Annex is a reference to the Article or Annex so numbered in the Council Regulation.

(4) Column 2 of Schedule 1 (which provides in relation to each Community quota measure an indication of the subject matter of the measure) shall not be read as limiting the scope of any Community quota measure and shall be disregarded in relation to any question arising as to the construction of this Order.

(5) Column 2 of Schedule 2 (which provides in relation to each specified Community provision an indication of the subject matter of the provision) shall not be read as limiting the scope of any specified Community provision and shall be disregarded in relation to any question arising as to the construction of this Order.

(6) Column 2 of Schedule 3 (which provides in relation to each Community third country fishing measure an indication of the subject matter of the measure) shall not be read as limiting the scope of any Community third country fishing measure and shall be disregarded in relation to any question arising as to the construction of this Order.

Landing of unsorted catches

3.—(1) For the purpose of the prohibition set out in paragraph 1 of Annex II to the Council Regulation, the harbours in Scotland at which a fishing boat may land unsorted catches are, subject to paragraph (5), those harbours mentioned in paragraph (2).

(2) The harbours referred to in paragraph (1) are Peterhead, Fraserburgh, Ullapool, Aberdeen and Lerwick.

(3) The master of a fishing boat with unsorted catches on board may, before landing, apply to a British sea-fishery officer at any harbour in Scotland, other than a harbour mentioned in paragraph (2), for a decision as to the suitability of the harbour for landing of the catch.

(4) On receipt of an application under paragraph (3), the British sea-fishery officer shall decide whether the sampling systems at the harbour are adequate for the purposes of monitoring effectively the landing of the catch having regard to the overall size and characteristics of the catch and shall notify the decision of that officer to the master.

(5) Where a British sea-fishery officer notifies the master in accordance with paragraph (4) that the systems at a harbour are adequate for the purposes mentioned in that paragraph, the harbours in Scotland at which the catch may be landed shall include that harbour in addition to those mentioned in paragraph (2).

Approval of pelagic weighing systems

4.—(1) The Scottish Ministers may from time to time require authorised officers to–

(a) conduct any tests necessary to calibrate any pelagic weighing system;

(b) provide them with advice on the sealing of any pelagic weighing system which shall include advice on whether the system can be fixed or adjusted in a way which would cause the pelagic weighing system to provide an inaccurate weight reading and, if so, how the system may be fixed or adjusted; and

(c) provide them with a report relating to the suitability of any pelagic weighing system.

(2) The Scottish Ministers may approve for fisheries control purposes a pelagic weighing system in respect of which a report referred to in paragraph 1(c) has been provided.

(3) The Scottish Ministers may decline to approve a pelagic weighing system where they have reasonable grounds for suspecting that the system may be fixed or adjusted in a way which would cause the pelagic weighing system to provide an inaccurate weight reading.

(4) The Scottish Ministers may–

(a) determine conditions to which an approval given under paragraph (2) may be subject; and

(b) at any time amend such conditions.

(5) Where there is a contravention of, or a failure to comply with, a condition of an approval determined under paragraph (4) the owner of the pelagic weighing system, the operator of the pelagic weighing system and the owner of the premises in which the pelagic weighing system is located shall each be guilty of an offence.

(6) Where any person interferes with a pelagic weighing system approved under paragraph (2) causing the pelagic weighing system to provide an inaccurate weight reading that person shall be guilty of an offence.

(7) Any person who fails without reasonable excuse to comply with the request of an authorised officer exercising functions under paragraph (1) shall be guilty of an offence.

Weighing procedures for herring, mackerel and horse mackerel

5.—(1) Where a fishing boat lands in excess of 10 tonnes of herring, mackerel or horse mackerel or a combination thereof within Scotland, the buyer, the agent of the buyer or the holder, of the fish, shall weigh the fish landed prior to the fish being processed, held in cold storage, transported from the port of landing or resold using a pelagic weighing system which–

(a) has been approved for fisheries control purposes by the Scottish Ministers under article 4(2); or

(b) has been passed as fit for trade use in accordance with regulation 15 of the Weighing Equipment (Beltweighers) Regulations 2001(**a**).

(2) Where a buyer, agent of a buyer or a holder fails to comply with paragraph (1) that person is guilty of an offence.

(3) The person weighing the fish shall keep for a period of three years a logbook indicating–

(a) the weight of each landing; and

(b) the running total of the weight landed.

(4) Where there is a failure to comply with paragraph (3) the person who weighed the fish is guilty of an offence.

Offences

6.—(1) Where there is, in respect of–

(a) any Scottish fishing boat wherever it may be; or

(**a**) S.I. 2001/1208.

(b) any Community fishing boat within the Scottish zone,

a contravention of, or failure to comply with, any Community quota measure, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(2) Where there is in respect of–

(a) a Scottish fishing boat wherever it may be; or

(b) any Community fishing boat or third country fishing boat within the Scottish Zone,

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

(3) Where there is, in respect of any third country fishing boat within the Scottish zone, a contravention of, or failure to comply with, any Community third country fishing measure, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(4) Nothing in this Order shall be taken to constitute an offence to land, from a Scottish fishing boat, an unsorted catch at a harbour outwith Scotland where sampling programmes mentioned in paragraph 2 of Annex II to the Council Regulation are in place.

Penalties

7.—(1) A person guilty of an offence under article 4(5) to (7), or 5(2), or 5(4), or under any equivalent provision extending to any other part of the United Kingdom, proceedings in respect of which were brought in Scotland 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; and

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

(2) A person guilty of an offence under article 6(1) to (3), or under any equivalent provision extending to any other part of the United Kingdom, proceedings in respect of which were brought in Scotland 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 column 3 of the Schedule to this Order in relation to the Community quota measure, specified Community provision or Community third country fishing measure, the contravention of, or failure to comply with, which founded the offence; and

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

(3) A person guilty of an offence under articles 5(2) or 6(1) to (3) shall also be liable 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.

(4) A person guilty of an offence under articles 6(1) to (3) shall also be liable 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.

Recovery of fines

8.—(1) Without prejudice to the provisions of section 221 of the Criminal Procedure (Scotland) Act 1995(**a**), where a court has imposed a fine on any person in respect of a relevant offence or an offence under article 13, 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 three 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 three months); or

(iii) on which a warrant is issued under sub-paragraph (b) below,

(**a**) 1995 c.46.

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 shall not issue a warrant under paragraph (l)(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 a relevant offence a transfer of fine order under section 222 of the Criminal Procedure (Scotland) Act 1995, section 90 of the Magistrates' Courts Act 1980(**a**) or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(**b**) specifies a court of summary jurisdiction in Scotland, this article shall apply as if the fine were a fine imposed by that court.

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

9.—(1) For the purposes of enforcement of articles 6(1) or (2), or any provision extending to any other part of the United Kingdom made for the purposes of implementing a Community quota measure or a specified Community provision, a British sea-fishery officer may exercise, in relation to–

(a) any Scottish fishing boat wherever it may be; or

(b) any Community fishing boat within the Scottish zone,

the powers conferred by paragraphs (3) to (5).

(2) For the purposes of enforcement of article 6(2) or (3), or any provision extending to any other part of the United Kingdom made for the purposes of implementing a specified Community provision or a Community third country fishing measure, a British sea-fishery officer may exercise the powers conferred by paragraphs (3) to (5) in relation to any third country fishing boat within the Scottish zone.

(3) 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.

(4) 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) or (2) 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;

(**a**) 1980 c.43.
(**b**) S.I. 1981/1675.

(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) 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.

(5) Where it appears to a British sea-fishery officer that a relevant offence has at any time been committed that officer may–

(a) require the master of the boat in relation to which the offence took place to take, or that officer may take, the boat and its crew to the port which appears to that 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 that officer shall 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

10.—(1) For the purpose of enforcing the provisions of article 4(5) to (7), or 5(2), or 5(4), or 6(1) to (3), or any provision extending to any other part of the United Kingdom made for the purposes of implementing a Community quota measure, a specified Community provision or a Community third country fishing measure, any 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 that officer such other persons as appear to that 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 that 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) shall 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, shall 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 a sheriff by information on oath–

(a) is 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) is 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, and valid for a period of no more than one 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

11.—(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.

Protection of officers

12. A British sea-fishery officer or a person assisting such an officer by virtue of articles 9(3) or 10(l)(b) or (3) shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred by articles 9, 10, or 11 if the court is satisfied–

(a) that the act was done in good faith;

(b) that there were reasonable grounds for doing it; and

(c) that it was done with reasonable skill and care.

Obstruction of officers

13.—(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 9 or 10;

(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 any of those powers or the powers conferred by article 11, shall be guilty of an offence.

(2) Any person guilty of an offence under paragraph (1) shall be 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

14.—(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, shall be guilty of that offence and shall be 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) shall 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.

Admissibility in evidence of logbooks and other documents

15.—(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 Article 9 or 13; or

(e) document containing required information received by a fisheries monitoring centre established under Article 3.7,

of Regulation 2847/93(**a**) shall, in any proceedings for an offence under article 6(1) or 6(2), or any equivalent provision extending to any other part of the United Kingdom made for the purposes of implementing a Community quota measure or a specified Community provision, be received in evidence without being produced or sworn to by any witness and shall, unless the contrary is shown, be conclusive evidence as to 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.

(3) Any logbook, declaration, report or other document kept on board or held in pursuance of Article 23 of the Council Regulation shall, in any proceedings for an offence under article 6(2) or 6(3), or under any equivalent provision extending to any other part of the United Kingdom made for the purposes of implementing a specified Community provision or 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(**b**), be received in evidence without being produced or sworn to by any witness and shall, unless the contrary is shown, be conclusive evidence as to the matters stated therein.

(**a**) O.J. No. L 261, 20.10.93, p.1.
(**b**) 1981 c.29; section 30(2A) was inserted by S.I. 1999/1820.

Revocation and saving

16.—(1) Subject to paragraph (2), the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2004(**a**) ("the 2004 Order") is hereby revoked.

(2) The 2004 Order shall continue to apply for the purposes of the legal process of such charges as may be brought in relation to a relevant offence (within the meaning of the 2004 Order) or under article 11 of the 2004 Order.

ROSS FINNIE
A member of the Scottish Executive

St Andrew's House,
Edinburgh
7th June 2005

(**a**) S.S.I. 2004/209.

SCHEDULE 1 Articles 2(1) and (4), 6(1) and 7(2)

COMMUNITY QUOTA MEASURES (MAXIMUM FINES ON SUMMARY CONVICTION)

Column 1 *Provision of the Council Regulation*	*Column 2* *Subject matter*	*Column 3* *Maximum fine on summary conviction*
1 Article 8.1, in so far as that paragraph relates to retaining on board or landing	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 8.1, 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 not been sorted.	The statutory maximum
3. Article 8.3	Prohibition on landing catches which are unsorted and contain herring when fishing opportunities of a Member State are exhausted in Sub-areas II(EC waters), III, IV and subdivision VIId.	£50,000
4. Article 9	Prohibition of fishing by Community vessels in certain Norwegian waters.	£50,000
5. Article 10 and Annex II, paragraphs 1 and 2	Prohibition on landing unsorted catches in harbours where adequate sampling systems are not in place.	The statutory maximum

Column 1 *Provision of the Council Regulation*	*Column 2* *Subject matter*	*Column 3* *Maximum fine on summary conviction*
6. Article 11 as read with– (a) paragraph 5 of Annex III	Prohibition on fishing for cod in the Baltic Sea in the areas defined in paragraph 5 of Annex III.	£50,000
(b) paragraph 8 of Annex III and Appendix 3	Requirements as to mesh sizes and by-catches in the Skagerrak and Kattegat.	The statutory maximum
(c) paragraph 10 of Annex III	Prohibition on the landing or retention on board of herring caught in Area IIa (EC waters).	The statutory maximum
(d) Paragraph 12 of Annex III	Prohibition on fishing activity in certain waters off the West of Scotland until 31st December 2005.	£50,000
(e) paragraph 13 of Annex III	Prohibition on landing or retaining on board sandeels caught in certain waters.	£50,000
(f) paragraph 14 of Annex III	Prohibition on fishing (except with longlines) in the Haddock Box.	£50,000

SCHEDULE 2 Articles 2(1) and (5), 6(2) and 7(2)

SPECIFIED COMMUNITY PROVISIONS (MAXIMUM FINES ON SUMMARY CONVICTION)

Column 1 *Provision of Council Regulation (EC) No. 1434/98*	*Column 2* *Subject matter*	*Column 3* *Maximum fine on summary conviction*
1. Article 2.1(i)	Prohibition on retention on board of herring in certain circumstances.	The statutory maximum
Provision of the Council Regulation		
2. Article 11 as read with– (a) paragraph 9.2 of Annex III	Prohibition on landing more than 10 tonnes of herring, mackerel, horse mackerel or combination thereof other than in a designated port.	£50,000
(b) paragraph 9.4 of Annex III	Requirements on the master to notify Fisheries Department 4 hours in advance of entering port, of the port of entry, time of arrival and quantities in kilograms live weight by species retained on board where landing more than 10 tonnes of herring, mackerel, horse mackerel or combination thereof. Prohibition on landing commencing until authorised.	£50,000
(c) paragraph 9.5 of Annex III	Requirement to submit relevant page or pages of logbook upon arrival in port.	£50,000
	Requirement that quantities of fish retained on board (notified in accordance with paragraph 9.4(c) of Annex III) are equal to the quantities of fish recorded in completed logbook, subject to a permitted margin of tolerance of 8%.	£50,000

Column 1 *Provision of Council Regulation (EC) No. 1434/98*	*Column 2* *Subject matter*	*Column 3* *Maximum fine on summary conviction*
(d) paragraph 9.6 of Annex III	Requirement that when determining weight any deduction made for water must not exceed 2%.	£50,000
	Requirement that processor or buyer of fresh fish submit to Fisheries Department copy of invoice or VAT receipt on demand or within 48 hours of the completion of weighing.	£50,000
Paragraph 11 of Annex III	Prohibition on retention on board of herring in certain circumstances.	The statutory maximum

SCHEDULE 3 Articles 2(1) and (6), 6(3) and 7(2)

COMMUNITY THIRD COUNTRY FISHING MEASURES (MAXIMUM FINES ON SUMMARY CONVICTION)

Column 1 *Provision of the Council Regulation*	*Column 2* *Subject matter*	*Column 3* *Maximum fine on summary conviction*
1. Article 14	Requirement in relation to vessels flying the flag of Norway or the Faroe Islands to fish within the geographical zone set out in Article 14(a).	£50,000
2. Article 15	Requirement in relation to vessels flying the flag of Norway or the Faroe Islands to fish within the quota limits contained in Annex I.	£50,000
3. Article 18.1	Requirement in relation to vessels flying the flag of Norway (other than those of less than 200 GT) or the Faroe Islands to hold licence and special fishing permit and observance of conditions thereof.	£50,000
4. Article 23.1	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 23.	£50,000
5. Article 23.2	Requirement in relation to vessels flying the flag of Norway or the Faroe Islands to keep a logbook in compliance with Annex VII.	£50,000

Column 1 *Provision of the Council Regulation*	*Column 2* *Subject matter*	*Column 3* *Maximum fine on summary conviction*
6. Article 23.3	Requirement in relation to vessels flying the flag of Norway (other than those fishing in ICES Division IIIa) or the Faroe Islands to transmit information in compliance with Annex VIII.	The statutory maximum

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which forms part of the law of Scotland only, makes provision for the enforcement of certain enforceable Community restrictions and other obligations relating to sea fishing by Community vessels and third country vessels set out in Council Regulation (EC) 27/2005 ("the Council Regulation"). The Council Regulation fixes total allowable catches and the quotas of Member States for 2005 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 the fishery limits of Member States in 2005 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.

The Order makes provision for the purposes of Article 10 of and Annex II, of the Council Regulation (prohibition of landing of unsorted catches at harbours where adequate sampling systems are not in place) as to the harbours in Scotland at which such catches may be landed (article 3).

The Order makes provision for the Scottish Ministers to approve pelagic weighing systems for fisheries control purposes (article 4).

The Order provides that where over 10 tonnes of herring, mackerel or horse mackerel is landed in Scotland buyers or holders of the fish must weigh the fish using a pelagic weighing system which is approved by the Scottish Ministers or which has been passed as fit for trade use in accordance with the Weighing Equipment (Beltweighers) Regulations 2001 (S.I. 2001/1208). The Order also provides that the person weighing the fish must keep a logbook recording the weight of each landing of fish for a period of three years. Failure to comply with those provisions is an offence (article 5).

The Order creates offences in respect of contraventions of the provisions of the Council Regulation referred to in column 1 (and briefly described in column 2) of Schedules 1 (Community quota measures), 2 (specified Community provisions) and 3 (Community third country fishing measures) to the Order (article 6).

The Order provides penalties in relation to an offence under article 4(5) to (7), or 5(2) or (4) and 6(1) to (3) of the Order or any equivalent provision extending to any other part of the United Kingdom proceedings in respect of which were brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981 (c.29). The statutory maximum penalty specified in the Schedules is currently £5,000. The Order also makes provision for additional penalties such as forfeiture (article 7). The Order makes provision in relation to the recovery of fines imposed in respect of such offences or an offence under article 13 (obstruction of officers) (article 8).

The Order confers on British sea-fishery officers powers of enforcement in relation to fishing boats and on land. These include power to enter premises, to go on board fishing boats, to stop and search vehicles transporting fish, to examine fish, to require the production of documents, to search for and seize documents, to take a boat to the nearest convenient port and to seize fish and fishing gear (articles 9, 10 and 11).

Provision is also made in relation to the liability of officers for anything done in the purported exercise of powers conferred by the Order (article 12). The Order creates offences and provides penalties in respect of the obstruction of a British sea-fishery officer and makes provision in relation to offences committed by bodies corporate and partnerships and the admissibility of certain documents (articles 13, 14 and 15).

The Order revokes the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2004 (S.S.I. 2004/209), subject to a saving (article 16).

SCOTTISH STATUTORY INSTRUMENTS

2005 No. 311

SEA FISHERIES

The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2005

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