SCOTTISH STATUTORY INSTRUMENTS

2007 No. 40

SEA FISHERIES

The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2007

Made - - - -	*1st February 2007*
Laid before the Scottish Parliament	*2nd February 2007*
Coming into force - -	*7th February 2007*

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SCHEDULE – DESIGNATED PORTS

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:

PART I

PRELIMINARY

Citation, commencement and extent

1.—(1) This Order may be cited as the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2007 and shall come into force on 7th February 2007.

(2) Subject to paragraph (3), this Order shall extend to Scotland and the Scottish zone, and insofar as it extends beyond Scotland and the Scottish zone, it does so only as a matter of Scots law.

(**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 (Modifications 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) for a definition of "the Ministers". Section 30(2) has effect in relation to Scotland as modified by section 30(5). Section 30(5) was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order (S.I. 1999/1820), Schedule 2, paragraph 68.

(3) Nothing in paragraph (2) shall be treated as prejudicing the effect of section 30(2A)(**a**) of the Fisheries Act 1981 in the rest of the United Kingdom in relation to, or for purposes incidental to, any provision which creates an offence.

Interpretation

2.—(1) In this Order–

"Annex IIa" means Annex IIa to Council Regulation 41/2006 of 21 December 2006 fixing for 2007 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(**b**);

"Annex IIc" means Annex IIc to Council Regulation 41/2006 of 21 December 2006 fixing for 2007 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;

"British fishing boat" means a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(**c**) or is owned wholly by persons qualified to own British ships for the purposes of that part of that Act;

"cod recovery zone" means the geographical area defined in paragraph 2 of Annex IIa;

"day" has the same meaning as in paragraph 3 of Annex IIa and paragraph 2 of Annex IIc;

"equivalent provision" means any provision in any other order made under section 30(2) of the Fisheries Act 1981 for the purposes of implementing Annex IIa, Annex IIc or Regulation 423/2004, extending to any part of the United Kingdom which has equivalent effect to a specified provision in this Order, proceedings in respect of which, by virtue of section 30(2A) of the Fisheries Act 1981, may be commenced in any place in the United Kingdom;

"English 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 England as the port to which the vessel is to be treated as belonging;

"fishery product" includes fish;

"fishing boat" includes any vessel to which Annex IIa or Annex IIc applies;

"foreign fishing boat" means a fishing boat which is not a British fishing boat but to which Annex IIa or Annex IIc applies;

"management period" means, in Part II of this Order, the management period determined by the Scottish Ministers in accordance with article 3(1), and in Part III of this Order, the management period determined by the Scottish Ministers in accordance with article 14(1);

"Northern Ireland 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 Northern Ireland as the port to which the vessel is to be treated as belonging;

"person in charge" in relation to a relevant fishing boat or a foreign fishing boat, means the owner, master or charterer or the agent of the owner, master or charterer;

"regulated gear" means any gear within a grouping of fishing gears specified in paragraph 4 of Annex IIa in relation to cod and paragraph 3 of Annex IIc in relation to sole;

"Regulation 2807/83" means Commission Regulation (EEC) 2807/1983 which lays down detailed rules for recording information on Member States' catches of fish(**d**);

(**a**) Section 30(2A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68.
(**b**) O.J. No. L 15, 20.1.07, p.1.
(**c**) 1995 c.21.
(**d**) O.J. No L 276, 10.10 83, p.1; the last amending instrument is Commission Regulation (EC) No. 1804/2005 (O.J. No. L 290, 04.11.05, p 10).

"Regulation 2847/93" means Council Regulation (EEC) 2847/1993 which establishes a control system applicable to the common fisheries policy(**a**);

"Regulation 423/2004" means Council Regulation (EC) No. 423/2004 of 26th February 2004 establishing measures for the recovery of cod stocks(**b**);

"relevant fishing boat" means–

(a) except in relation to articles 3, 7, 14 and 18–

(i) a Scottish fishing boat wherever it may be; and

(ii) any other fishing boat which is within the Scottish zone other than a foreign fishing boat;

(b) in relation to articles 3 and 14, a Scottish fishing boat;

(c) in relation to articles 7 and 18–

(i) a Scottish fishing boat; and

(ii) an English, Welsh or Northern Ireland fishing boat where a Scottish fishing boat is the donor and it is the recipient or it is the donor and a Scottish fishing boat is the recipient,

licensed under section 4 of the Sea Fish (Conservation) Act 1967(**c**), but, except in relation to articles 8 to 12, does not include a British fishing boat which has an overall length of less than 10 metres.**;**

"relevant offence" means an offence under this Order or under any equivalent provision;

"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 section 126(1) of the Scotland Act 1998(**d**);

"sole recovery zone" means the geographical area defined in paragraph 1 of Annex IIc;

"unused day" means any period of 24 consecutive hours in the cod recovery zone or the sole recovery zone to which a relevant fishing boat carrying regulated gear is entitled to and has not used in any management period determined under article 3 or 14;

"Welsh 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 Wales as the port to which the vessel is to be treated as belonging.

(2) In this Order, "logbook" has the same meaning as in Article 6 of Regulation 2847/93 as read with Regulation 2807/83, and for the purposes of any provision of this Order, other than article 24, any reference to a document, logbook or declaration includes, in addition to a document, logbook or declaration in writing–

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

(b) any photograph;

(c) any data, howsoever 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 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

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(**a**) O.J. No. L 261, 20.10.93, p.1; the last amending instrument is Council Regulation (EC) No. 768/2005 (O.J. No. L 128 21.05.05, p1).

(**b**) O.J. No. L 70, 9.3.04, p.8.

(**c**) 1967 c.84. Section 4 was amended by the Fishery Limits Act 1976 (c.86), section 3, the Fisheries Act 1981 (c.29), section 20 and the Sea Fish (Conservation) Act 1992 (c.60), section 1 and has effect in relation to Scotland as modified by section 22A inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43(13).

(**d**) 1998 c.46. 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).

(e) 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 information provided to any authority for the purposes of any provision of this Order shall be treated as also provided for the purposes of any equivalent provision.

PART II

COD

Determination of management periods and number of days

3.—(1) Management periods, as referred to in paragraph 9.1 of Annex IIa, and the number of days referred to in paragraph 9.2 of Annex IIa, in relation to a relevant fishing boat shall be determined by the Scottish Ministers.

(2) A person in charge of a relevant fishing boat may notify the Scottish Ministers indicating the preference of that person as to the length of the management period for that boat.

(3) In determining the management period for that boat the Scottish Ministers shall have regard to any preference as to the length of the management period indicated in a notification under paragraph (2).

Absence from port

4.—(1) A person in charge of a relevant fishing boat which–

(a) is absent from port and within the cod recovery zone in excess of the number of days permitted to it under this Part of this Order in contravention of paragraph 9.3 of Annex IIa; or

(b) without having a management period, enters the cod recovery zone carrying on board any regulated gear,

is guilty of an offence.

(2) Paragraph (1)(a) does not apply to–

(a) a person in charge of a relevant fishing boat in respect of which paragraph 20 of Annex IIa applies, provided that the person complies with the requirements of that paragraph; or

(b) a person in charge of a relevant fishing boat which is permitted by paragraph 21 of Annex IIa to transit the cod recovery zone provided that the person complies with the requirements of that paragraph.

(3) Paragraph (1)(b) does not apply to a person in charge of a relevant fishing boat which is permitted by paragraph 21 of Annex IIa to transit the cod recovery zone provided that the person complies with the requirements of that paragraph.

(4) In addition to the determined number of days, for each management period, there is added to, or substituted for as the case may be, the determined number of days, such further number of days (if any) as may be allocated to the boat by the Scottish Ministers.

(5) Where unused days have been transferred from a relevant fishing boat ("the donor") to another relevant fishing boat ("the recipient") the following shall apply, subject to any adjustment required by paragraph 14.1 of Annex IIa–

(a) the donor shall have deducted from its allocation of days such number of days as have been transferred to the recipient;

(b) the recipient shall have added to its allocation of days such number of days as have been transferred by the donor.

(6) Where unused days have been transferred from a relevant fishing boat ("the donor") to a foreign fishing boat ("the recipient"), subject to any adjustment required by paragraph 15 of Annex IIa, the donor shall have deducted from its allocation of days such number of days as have been transferred to the recipient.

(7) Where unused days have been transferred from a foreign fishing boat ("the donor") to a relevant fishing boat ("the recipient"), subject to any adjustment required by paragraph 15 of Annex IIa the recipient shall have added to its allocation of days such number of days as have been transferred by the donor.

(8) Where in the course of an absence from port during any management period within the cod recovery zone regulated gear is affixed to two or more fishing boats there shall be deducted from the determined number of days for each such boat that is a relevant fishing boat in relation to that gear and that period a number of days equal to the number when it was absent from port.

(9) Where during any management period a relevant fishing boat is absent from port operating with regulated gear within the same grouping of fishing gear and present within the sole recovery zone there shall be deducted from the determined number of days for that boat in relation to that period a number of days equal to the number when it was absent from port and present within that area.

(10) Subject to article 5, where during any management period a relevant fishing boat has–

(a) been absent from port carrying fishing gear in excess of the determined number of days or the days permitted to it by this article; or

(b) purported to transfer days in accordance with article 7 in excess of its unused days,

the Scottish Ministers may deduct a number equal to the number of days in that excess.

(11) In any proceedings for an offence under paragraph (1)(a) of this article, it shall be a defence for a person to show that the number of days of absence from port carrying any type of fishing gear comprising the offence was no greater than the number of days of absence carrying that gear purportedly but not validly transferred to that person under article 7 and that person did not know and had no reasonable cause to suspect that the donor was not entitled to transfer the days.

(12) In this article "determined number of days" means the number of days applicable to a boat in accordance with any regulated gear it carries determined by the Scottish Ministers in accordance with article 3(1) and adjusted as necessary in terms of paragraphs 17.2 to 17.6 of Annex IIa.

Procedure as to decisions to deduct days

5.—(1) In making a decision to deduct days under article 4(10), the Scottish Ministers–

(a) shall specify which management period the days deducted will relate to; and

(b) may deduct days in respect of one or more than one management period, as they consider fit.

(2) The Scottish Ministers, before making a decision to deduct days under article 4(10), shall–

(a) give the affected person a written notification of that intention (including a note of the management period or periods to which that deduction is proposed to apply) and an explanation of the reasons for considering the deduction of days (and the basis for proposing the deduction from a particular period or periods);

(b) afford that person an opportunity of making representations in that regard within such time and in such form as they think fit and, in order to effectively give such opportunity, may appoint a person ("the reporter") to report to them as to the relevant factual circumstances; and

(c) consider any such representations (including the report prepared by the reporter) in making their decision in the case.

(3) In this article "affected person" means the owner, master or charterer of the boat in respect of which a decision to deduct days under article 4(10) is made or is proposed to be made.

Use of regulated gear

6.—(1) A person in charge of a relevant fishing boat which fishes in contravention of the notification requirement in paragraph 16 of Annex IIa is guilty of an offence.

(2) A person in charge of a relevant fishing boat which carries or uses, whilst present in the cod recovery zone, regulated gear other than the regulated gear notified under a requirement in paragraphs 16 to 18 of Annex IIa is guilty of an offence.

(3) The competent authority for the purpose of paragraph 17.7(b) and 17.8 of Annex IIa is the Scottish Ministers.

(4) Subject to the derogation in paragraph 19.2 of Annex IIa, a relevant fishing boat or a foreign fishing boat within the Scottish zone which is present in the cod recovery zone carrying on board regulated gear falling within one of the groupings of fishing gears specified in paragraph 4 of Annex IIa shall not simultaneously carry on board regulated gear falling within any of the other groupings of fishing gear specified in paragraph 4 of Annex IIa.

(5) A person in charge of a relevant fishing boat or a foreign fishing boat which contravenes the prohibition in paragraph (4) is guilty of an offence.

Transfer of days from one boat to another

7.—(1) Transfer of unused days within the same management period from one relevant fishing boat ("the donor") to another ("the recipient") for the purposes of paragraph 14 of Annex IIa where either the donor or the recipient is, or both are, a relevant fishing boat, is permitted subject to the conditions specified in paragraphs 14.1 to 14.4 of Annex IIa, to the extent specified in a notification of transfer sent to the Scottish Ministers.

(2) Transfer of unused days within the same management period between a relevant fishing boat and a foreign fishing boat for the purposes of paragraph 15 of Annex IIa is permitted subject to the conditions specified in paragraph 15 of Annex IIa, to the extent specified in a notification of transfer sent to the Scottish Ministers and consented to by the Scottish Ministers.

(3) A person who knowingly or recklessly makes a statement in a notification under paragraph (1) or (2) which is false in a material particular is guilty of an offence.

(4) For the purposes of this article "the same management period" means any two management periods provided that the transfer takes place during the concurrence of the management periods.

Mixing of species

8. A person in charge of a relevant fishing boat or a foreign fishing boat within the Scottish zone which retains species in contravention of Article 14 of Regulation 423/2004 (separate storage of cod) is guilty of an offence.

Transportation of cod

9. Where any quantities of cod are transported in contravention of Article 15(2) of Regulation 423/2004 (transportation of cod to be accompanied by a copy of the relevant part of the logbook), the owner or hirer of, and the person responsible for, the vehicle used to transport the cod is guilty of an offence.

Landing of cod where prior notification is required

10.—(1) The competent authority for the purposes of Article 11 of Regulation 423/2004 (advance notice of entry into port or landing location) is the Scottish Ministers.

(2) Where there is in respect of a relevant fishing boat or a foreign fishing boat entering a port or landing location in Scotland, a failure to comply with Article 11(1), or with a requirement given under Article 11(2), of Regulation 423/2004 the master, the representative of the master, the owner and the charterer (if any) are guilty of an offence.

(3) Where there is in respect of a relevant fishing boat a failure to comply with Article 11(3) of Regulation 423/2004 the master, the representative of the master, the owner and the charterer (if any) are guilty of an offence.

Landing of cod at a designated port

11.—(1) A person in charge of a relevant fishing boat which lands cod or a foreign fishing boat which lands cod within Scotland in contravention of Article 12(1) of Regulation 423/2004 as read with paragraph (3) of this article is guilty of an offence.

(2) If cod is first landed in a designated port within the United Kingdom an appropriate sample of at least 20% of all landings including 2 tonnes or more of cod shall be weighed in the presence of a British sea-fishery officer prior to being offered for first sale, unless the following requirements are met–

(a) the boat is party to an arrangement made among vessels using the ports with a person or organisation to act as its controller for the purposes of Article 15 of Regulation 423/2004; and

(b) details of the arrangement, and the vessels which are party to it, have been notified to the Scottish Ministers.

(3) A person in charge of a relevant fishing boat or a foreign fishing boat who fails to comply with a requirement to weigh cod imposed in respect of that boat by a British sea-fishery officer or a person or organisation acting as a controller for the purpose of Article 15 of Regulation 423/2004 is guilty of an offence.

(4) For landings in the United Kingdom the ports, and where applicable the landing locations within them, designated for the purposes of Article 12(2) of Regulation 423/2004 are the ports specified in the Schedule to this Order.

Recording information on catches of fish

12. A person in charge of a relevant fishing boat or a foreign fishing boat in respect of which the 8% margin of tolerance referred to in Article 13 of Regulation 423/2004 is exceeded, is guilty of an offence.

Offences in relation to fishing gears

13.—(1) A person in charge of a relevant fishing boat or a foreign fishing boat in respect of which paragraph 17 or 18 of Annex IIa applies is guilty of an offence if that person fails to comply with the obligations imposed by either of those paragraphs.

(2) Where, in respect of the obligations referred to in paragraph (1) there is an obligation to supply information, the information should be supplied to the Scottish Ministers.

PART III

SOLE

Determination of management periods and number of days

14.—(1) Management periods, as referred to in paragraph 8.1 of Annex IIc, and the number of days referred to in paragraph 8.2 of Annex IIc in relation to a relevant fishing boat shall be determined by the Scottish Ministers.

(2) A person in charge of a relevant fishing boat may notify the Scottish Ministers indicating the preference of that person as to the length of the management period for that boat.

(3) In determining the management period for that boat the Scottish Ministers shall have regard to any preference as to the length of the management period indicated in a notification under paragraph (2).

Absence from port

15.—(1) A person in charge of a relevant fishing boat which–

(a) is absent from port and within the sole recovery zone in excess of–

(i) the determined number of days; or

(ii) the number of days permitted to it under the following provisions of this article,

in contravention of paragraph 8.3 of Annex IIc; or

(b) without having a management period, enters the sole recovery zone carrying on board any regulated gear,

is guilty of an offence.

(2) Paragraph (1)(a) does not apply to–

(a) a person in charge of a relevant fishing boat in respect of which paragraph 14 of Annex IIc applies provided that the person complies with the requirements of that paragraph; or

(b) a person in charge of a relevant fishing boat which is permitted by paragraph 15 of Annex IIc to transit the sole recovery zone, provided that the person complies with the requirements of that paragraph.

(3) Paragraph (1)(b) does not apply to a person in charge of a relevant fishing boat which is permitted by paragraph 15 of Annex IIc to transit the sole recovery zone, provided that the person complies with the requirements of that paragraph.

(4) In addition to the determined number of days, for each management period there is added to the determined number of days, such number of days (if any) as may be allocated to the boat by the Scottish Ministers.

(5) Where unused days have been transferred from a relevant fishing boat ("the donor") to another relevant fishing boat ("the recipient") the following shall apply, subject to any adjustment required by paragraph 11.1 of Annex IIc–

(a) the donor shall have deducted from its allocation of days such number of days as have been transferred to the recipient;

(b) the recipient shall have added to its allocation of days such number of days as have been transferred by the donor.

(6) Where unused days have been transferred from a relevant fishing boat ("the donor") to a foreign fishing boat ("the recipient"), subject to any adjustment required by paragraph 12 of Annex IIc, the donor shall have deducted from its allocation of days such number of days as have been transferred to the recipient.

(7) Where unused days have been transferred from a foreign fishing boat ("the donor") to a relevant fishing boat ("the recipient"), subject to any adjustment required by paragraph 12 of Annex IIc the recipient shall have added to its allocation of days such number of days as have been transferred by the donor.

(8) Where in the course of an absence from port during any management period within the sole recovery zone regulated gear is affixed to two or more fishing boats there shall be deducted from the determined number of days for each such boat that is a relevant fishing boat in relation to that gear and that period a number of days equal to the number when it was absent from port but the gear was being carried by any other such boat.

(9) Where during any management period a relevant fishing boat is absent from port operating with regulated gear within the same grouping of fishing gear and present within the cod recovery zone there shall be deducted from the determined number of days for that boat in relation to that period a number of days equal to the number when it was absent from port and present within that area.

(10) Subject to article 16, where during any management period a relevant fishing boat has–

(a) been absent from port carrying fishing gear in excess of the determined number of days or the days permitted to it by this article; or

(b) purported to transfer days in accordance with article 18 in excess of its unused days,

the Scottish Ministers may deduct a number equal to the number of days in that excess.

(11) In any proceedings for an offence under paragraph (1)(a) of this article, it shall be a defence for a person to show that the number of days of absence from port carrying any type of fishing gear comprising the offence was no greater than the number of days of absence carrying that gear purportedly but not validly transferred to that person under article 18 and that person did not know and had no reasonable cause to suspect that the donor was not entitled to transfer the days.

(12) In this article "determined number of days" means the number of days applicable to a boat in accordance with any regulated gear it carries determined by the Scottish Ministers in accordance with article 14(1).

Procedure as to decisions to deduct days

16.—(1) In making a decision to deduct days under article 15(10) the Scottish Ministers–

(a) shall specify which management period the days deducted will relate to; and

(b) may deduct days in respect of one or more than one management period, as they consider fit.

(2) The Scottish Ministers, before making a decision to deduct days under article 15(10) shall–

(a) give the affected person a written notification of that intention (including a note of the management period or periods to which that deduction is proposed to apply) and an explanation of the reasons for considering the deduction of days (and the basis for proposing the deduction from a particular period or periods);

(b) afford that person an opportunity of making representations in that regard within such time and in such form as they think fit and, in order to effectively give such opportunity, may appoint a person ("the reporter") to report to them as to the relevant factual circumstances; and

(c) consider any such representations (including the report prepared by the reporter) in making their decision in the case.

(3) In this article "affected person" means the owner, master or charterer of the boat in respect of which a decision to deduct days under article 15(10) is made or is proposed to be made.

Use of regulated gear

17.—(1) A person in charge of a relevant fishing boat which fishes in contravention of the notification requirement in paragraph 13 of Annex IIc is guilty of an offence.

(2) A person in charge of a relevant fishing boat which carries or uses, whilst present in the sole recovery zone, regulated gear other than the regulated gear notified under the requirement in paragraph 13 of Annex IIc is guilty of an offence.

Transfer of days from one boat to another

18.—(1) Transfer of unused days within the same management period from one relevant fishing boat ("the donor") to another ("the recipient") for the purposes of paragraph 11 of Annex IIc where either the donor or the recipient is, or both are, a relevant fishing boat, is permitted subject to the conditions specified in paragraphs 11.1 to 11.3 of Annex IIc, to the extent specified in a notification of transfer sent to the Scottish Ministers.

(2) Transfer of unused days within the same management period between a relevant fishing boat and a foreign fishing boat for the purposes of paragraph 12 of Annex IIc is permitted subject to the conditions specified in paragraph 12 of Annex IIc, to the extent specified in a notification of transfer sent to the Scottish Ministers and consented to by the Scottish Ministers.

(3) A person who knowingly or recklessly makes a statement in a notification under paragraph (1) or (2) which is false in a material particular is guilty of an offence.

(4) For the purposes of this article "the same management period" means any two management periods provided that the transfer takes place during the concurrence of the management periods.

Mixing of species

19. A person in charge of a relevant fishing boat or a foreign fishing boat within the Scottish zone which retains species in contravention of paragraph 22 of Annex IIc (separate stowage) is guilty of an offence.

Transportation of sole

20. Where any quantities of sole are transported in contravention of paragraph 24 of Annex IIc (transportation of sole to be accompanied by a copy of the relevant part of the logbook), the owner or hirer of, and the person responsible for, the vehicle used to transport the sole is guilty of an offence.

Landing of sole where prior notification is required

21.—(1) The competent authority for the purposes of paragraph 20 of Annex IIc is the Scottish Ministers.

(2) Where there is in respect of a relevant fishing boat a failure to comply with paragraph 20 of Annex IIc the master, the representative of the master, the owner and the charterer (if any) are guilty of an offence.

Recording information on catches of fish

22. A person in charge of a relevant fishing boat or a foreign fishing boat in respect of which the 8% margin of tolerance referred to in paragraph 21 of Annex IIc is exceeded, is guilty of an offence.

Weighing of sole

23.—(1) Any quantity of sole exceeding 300kg caught in the sole recovery zone by a relevant fishing boat or a foreign fishing boat shall be weighed in accordance with paragraph 23.1 of Annex IIc.

(2) Where there is a failure to comply with paragraph (1) the person in charge of the relevant fishing boat or foreign fishing boat is guilty of an offence.

PART IV

PROVISIONS APPLICABLE TO COD AND SOLE

Maintenance of logbook

24.—(1) An entry shall be made in a logbook of a relevant fishing boat which is absent from port carrying any regulated gear but not fishing as specified in Article 6 of Regulation 2847/93, in respect of each particular which would be required to be entered by that Article (as read with Regulation 2807/83) were the boat so fishing, and such an entry shall state the type of fishing gear carried.

(2) Such an entry shall be made–

(a) daily, but not later than midnight at the end of each day;

(b) at the time of arrival in port;

(c) at the time of any inspection at sea; and

(d) at the time that an effort report is made as required by Article 19e.3 of Regulation 2847/93,

and the requirements of the Regulations specified in paragraph (1) for handing over and dispatch of logbook entries, as modified by article 25, shall apply to the entries required by this article as they apply to other entries.

(3) Where a relevant fishing boat is absent from port and paragraph (1) requires a logbook entry to be made in respect of that absence the logbook entries shall be handed over and dispatched as if landing were made at the time of the arrival of the boat in port.

(4) Where there is, in respect of a relevant fishing boat, a failure to make an entry required by this article the person in charge of that fishing boat is guilty of an offence.

Submission of logbook at designated port

25.—(1) The relevant part (the white top copy) of the logbook shall be–

(a) given to a British sea-fishery officer; or

(b) deposited in the box provided for that purpose,

by the person in charge of a relevant fishing boat prior to any landing in a designated port.

(2) A person in charge of a relevant fishing boat who fails to comply with paragraph (1) is guilty of an offence.

(3) In this article "designated port" means a port specified in the Schedule to this Order.

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

26. Article 2(1) of the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000(**a**) is amended as follows–

(a) for the definition of "Annex IIc" substitute–

""Annex IIc" means Annex IIc to Council Regulation 41/2006(**b**) fixing for 2007 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;";

(b) in the definition of "the Council Regulation" for " as applied by paragraph 17 of Annex IIc and modified by paragraphs 25 and 26 of Annex IIc", substitute " as applied by paragraph 16 of Annex IIc and modified by paragraphs 24 and 25 of Annex IIc.".

Penalties

27.—(1) A person guilty of an offence under this Order, or under any equivalent provision shall be liable–

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

(b) on conviction on indictment to a fine.

(2) The court by or before which a person is convicted of an offence under articles 4, 6, 8 to 13, 15, 17 and 19 to 23, or under an equivalent provision may order the forfeiture of–

(a) any fish in respect of which the offence was committed; and

(b) any net or other fishing gear used in committing the offence.

(3) Any person found guilty of an offence under articles 4, 6, 8 to 13, 15, 17 and 19 to 23 or under any equivalent provision shall, subject to the following provisions of this article, be liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.

(**a**) S.S.I. 2000/7.
(**b**) O.J. No. L 15, 20.01.07, p.1.

(4) A person shall not be liable to a fine under paragraph (3) in respect of such an offence if, under paragraph (2), the court orders the forfeiture of the fish in respect of which that offence was committed; and where a fine is imposed under paragraph (3) in respect of any offence, the court shall not have power under paragraph (2) to order the forfeiture of the fish in respect of which the offence was committed.

(5) Subject to paragraph (4), any fine to which a person is liable under paragraph (3) shall be in addition to any other penalty (whether pecuniary or otherwise) to which that person is liable in respect of that offence under this article or under any other enactment.

Recovery of fines

28.—(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, 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),

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 (1)(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(**b**) or Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(**c**) 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

29.—(1) For the purpose of enforcing articles 4, 6 to 13, 15, and 17 to 25 of this Order or any equivalent provisions, any British sea-fishery officer may exercise the powers conferred by this article in relation to–

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

(b) any other fishing boat which is within the Scottish zone.

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

(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 that 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

(**a**) 1995 c.46.
(**b**) 1980 c.43.
(**c**) S.I. 1981/1675.

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 the custody or possession of that person;

(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 that officer to be necessary for facilitating the search;

(d) may inspect and take copies of any such document produced to that 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 to the 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.

(4) Where it appears to a British sea-fishery officer that an offence under this Order or any equivalent provision has at any time been committed, that officer–

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

(b) may 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 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

30.—(1) For the purpose of enforcing articles 4, 6 to 13, 15 and 17 to 25 of this Order or any equivalent provisions, 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 fish;

(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, trans-shipment, sale or disposal of any fish or to the entry to, or exit from, any port or harbour by any fishing vessel;

(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 that officer to be necessary for facilitating the search;

(f) inspect and take copies of any such document produced to that officer or found on the premises;

(g) require any appropriate or responsible person to render any such document on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away; and

(h) 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 purpose of enabling the document to be used as evidence in proceedings for the offence.

(2) The provisions of paragraph (1) shall also 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 the inspection.

(3) If a sheriff by information on oath is satisfied–

(a) 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) 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;

(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 the return of the occupier,

the sheriff may by signed warrant, valid for a period of no more than one month, authorise a British sea-fishery officer to enter the premises, if need be by 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

31.—(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 an offence under article 4, 6 to 13, 15, or 17 to 25 has been committed; and

(b) any net or other fishing gear which the officer has reasonable grounds to suspect has been used in the course of the commission of such an offence.

Protection of officers

32. A British sea-fishery officer or a person assisting such an officer by virtue of articles 29(2) or 30(1)(b) or an authorisation under article 30(3) of this Order shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred by articles 29 and 30 of this Order 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

33.—(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 articles 29 to 31 of this Order;

(b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or

(c) intentionally obstructs any such officer in the exercise of any of those powers,

is guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable–

(a) on summary conviction to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment to a fine.

Provisions as to offences

34.—(1) Where any 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 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, (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 the offence and 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 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.

(3) Where any offence under 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

35.—(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 in Scotland for an offence under this Order or any equivalent 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 purpose of paragraph (1), "required information" means–

(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

36.—The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2006(**a**) is hereby revoked.

ROSS FINNIE
A member of the Scottish Executive

St Andrew's House,
Edinburgh
1st February 2007

(**a**) S.S.I. 2006/341.

SCHEDULE

Article 11(4)
Article 25(3)

DESIGNATED PORTS

Port	**Location within port (where applicable)**
ENGLAND AND WALES	
North Shields	
Whitby	Fish quay
Scarborough	West Pier
Humberside (Hull and Grimsby)	Hull - North side of Albert Dock & William Wright Dock Grimsby - Fish Dock, Market Quay
Lowestoft	Waveney Dock
Shoreham	Within the confines of the harbour
Plymouth	Sutton Harbour, New Fish Market
Brixham	
Newlyn	
Milford Haven	
Holyhead	Fish Dock
Whitehaven	North Harbour on the Old North Wall Quay next to the Ice Plant and on the North Wall Quay next to the Fish Handling Facility building
Fleetwood	Wyre Fish Dock
SCOTLAND	
Eyemouth	
Pittenweem	
Aberdeen	Palmerston Quay & Commercial Quay
Peterhead	Peterhead Harbour excluding Peterhead Bay Harbour
Fraserburgh	
Buckie	
Lerwick	All piers, quays and docks within harbour limits excluding those in Dales Voe
Scalloway	
Kirkwall	
Scrabster	
Kinlochbervie	All quays lying to the North of the ice factory quay.
Lochinver	
Ullapool	
Stornoway	
Portree	
Mallaig	
Oban	
Campbeltown	
Troon	
NORTHERN IRELAND	
Ardglass	

Port	Location within port (where applicable)
Portavogie	
Kilkeel	
Bangor	

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the enforcement in Scotland of the provisions of Annex IIa and IIc ("the Annexes") to Council Regulation 41/2006 fixing for certain fish stocks and groups of fish stocks the fishing opportunities in Community waters for 2007 and the monitoring, inspection and surveillance provisions in Council Regulation 423/2004.

The Order contains provisions relating to the determination for certain fishing boats of the management periods referred to in paragraphs 9.1 and 8.1 of the Annexes (articles 3 and 14); and the calculation of the number of days on which a vessel may be absent from port for the purposes of the Annexes (articles 4 and 15). It contains provisions relating to the deduction of days by the Scottish Ministers (articles 4(10) and 15(10)) and the procedure to be followed in doing so (articles 5 and 16).

Provision is made as to the use of regulated gears and associated offences (articles 6 and 17), and the transfer of days from one boat to another (articles 7 and 18).

The Order creates offences in respect of contraventions by certain persons of other provisions of Regulation 423/2004 and Annex IIc concerning mixing of species, transportation of cod and sole, the landing of cod and sole where prior notification is required, the landing of cod at a designated port, the recording of information on catches of fish and the weighing of sole (articles 8 to 12 and 19 to 23). By virtue of article 11(4), the ports named in the Schedule to the Order are designated for the purposes of Article 12 of Regulation 423/2004.

Provision is made for the maintenance of a logbook (article 24), and for the submission of the relevant part of the logbook at a designated port (article 25).

The Order extends the application of the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000 in pursuance of Regulation 423/2004 and Annex IIc (article 26).

The Order provides for penalties (article 27) and for the recovery of fines imposed in respect of a relevant offence as defined in the Order (article 28).

For the purposes of enforcing provisions of the Annexes and Council Regulation 423/2004 the Order confers on British sea-fishery officers the powers 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 29 to 31).

Provision is made for the protection of British sea-fishery officers in the exercise of their powers under the Order (article 32) and for an offence of obstructing such officers (article 33).

Provision is made in relation to offences committed by a body corporate, a partnership or an unincorporated association (article 34) and in relation to the admissibility in evidence of logbooks and other documents (article 35).

The Order revokes the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2006 (article 36).

A Regulatory Impact Assessment in the relation to this Order has been prepared and placed in SPICE. Copies can be obtained from the Scottish Executive Environment and Rural Affairs Department, Robb's Loan, Edinburgh, EH14 1TY.

£3.50

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