STATUTORY INSTRUMENTS

1987 No. 213

SEA FISHERIES

CONSERVATION OF SEA FISH

The Sole (North Sea) (Enforcement of Community Conservation Measures) Order 1987

Made - - - -	*15th February 1987*
Laid before Parliament	*17th February 1987*
Coming into Force	*18th February 1987*

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

Title, commencement, duration and interpretation

1.—(1) This Order may be cited as the Sole (North Sea) (Enforcement of Community Conservation Measures) Order 1987, shall come into force on 18th February 1987 and shall cease to have effect on 16th April 1987.

(2) In this Order, "the Commission Regulation" means the Regulation adopted by the Commission of The European Communities on 6th February 1987 establishing temporary limits on landings of sole from the North Sea**(b)**.

Offences

2.—(1) Where there is, in respect of–

(a) any British fishing boat registered in the United Kingdom wherever it may be, or

(b) any other fishing boat which is within British fishery limits,

a contravention of, or failure to comply with, article 1 of the Commission Regulation as respects the retention on board of sole (*Solea solea*), the master, the owner and the charterer (if any) shall each be guilty of an offence.

(2) Any person who, in the United Kingdom, lands any sole in contravention of article 1 of the Commission Regulation shall be guilty of an offence.

Penalties

3.—(1) A person guilty of an offence under article 2(1) or (2) of this Order shall be liable on summary conviction–

(a) to a fine not exceeding £5,000; and

(b) either–

(i) to a fine not exceeding the value of any fish in respect of which the offence was committed, or

(a) 1981 c.29.
(b) Commission Regulation (EEC) No. 384/87, O.J. No. L.36, 7.2.87, p.14.

(ii) to the forfeiture of any fish in respect of which the offence was committed; and

(c) to the forfeiture of any net or other fishing gear which was used for catching any fish in respect of which the offence was committed.

(2) A person guilty of an offence under article 2(1) or (2) of this Order shall be liable on conviction on indictment–

(a) to a fine; and

(b) to the forfeiture of any fish in respect of which the offence was committed; and

(c) to the forfeiture of any net or other fishing gear which was used for catching any fish in respect of which the offence was committed.

Recovery of fines

4.—(1) Where a fine is imposed by a magistrates' court in England and Wales or Northern Ireland on the master, owner or charterer, or a member of the crew, of a fishing boat who is convicted by the court of an offence under article 2 of this Order, the court may–

(a) issue a warrant of distress against the boat and its gear and catch and any property of the person convicted for the purpose of levying the amount of the fine; and

(b) order the boat to be detained for a period not exceeding three months from the date of the conviction or until the fine is paid or the amount of the fine is levied in pursuance of any such warrant, whichever occurs first.

(2) Where a fine is imposed by a sheriff in Scotland on the master, owner or charterer, or a member of the crew, of a fishing boat who is convicted by the sheriff of an offence under article 2 of this Order, the sheriff may–

(a) issue a warrant for the poinding and sale of the boat and its gear and catch and any property of the person convicted; and

(b) order the boat to be detained for a period not exceeding three months from the date of the conviction or until the fine is paid, whichever occurs first.

(3) Sections 77(1) and 78 of the Magistrates' Courts Act 1980**(a)** (postponement of issue of, and defects in, warrants of distress) shall apply to a warrant of distress issued under this article in England and Wales as they apply to a warrant of distress issued under Part III of that Act.

(4) Article 114(2) of the Magistrates' Courts (Northern Ireland) Order 1981**(b)** (postponement of issue of certain warrants) shall apply to a warrant of distress issued under this article in Northern Ireland as it applies to a warrant referred to in that article.

Powers of British sea-fishery officers

5.—(1) For the purpose of enforcing article 2(1) of this Order, a British sea-fishery officer–

(a) may go on board any British fishing boat wherever it may be or any other fishing boat which is within British fishery limits;

(b) may require any such boat to stop and do anything else to enable him to board it;

(c) may require the attendance of the master of the boat or any other person on board;

(d) may require any person on board to assist him in the performance of his functions;

(e) may take with him, to assist him in performing his functions, any other person and any equipment or materials; and

(f) may make any examination or inquiry which appears to him to be necessary and, without prejudice to the generality of the foregoing, he may in particular–

(i) examine any fish on the boat and the equipment of the boat, including the fishing gear;

(a) 1980 c.43.
(b) S.I. 1981/1675 (NI 26).

(ii) require the production of any document relating to the boat or to its fishing operations or other operations ancillary to its fishing operations;

(iii) search the boat for any such document, and require any person on board the boat to do anything which appears to the officer to be necessary for facilitating the search; and

(iv) take copies of any such document.

(2) If a British sea-fishery officer has reasonable grounds to suspect that an offence under article 2(1) of this Order has been committed in respect of a boat that he has power to go on board under paragraph (1)(a) of this article, he may seize and detain any document produced to him or found on board the boat, and, if he has reasonable grounds to suspect that such an offence has been committed within British fishery limits, the officer–

(a) may require the master to take, or may himself take, the boat and its crew to the port which appears to the officer to be the nearest convenient port; and

(b) may detain the boat in the port.

(3) Nothing in paragraph (2) of this article shall permit any document required by law to be carried on board any boat to be seized or detained except while the boat is detained in a port.

(4) If a British sea-fishery officer detains a boat, he shall serve on the master a notice stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by a British sea-fishery officer.

(5) For the purpose of enforcing article 2 of this Order, a British sea-fishery officer–

(a) may enter at any reasonable time any premises (other than a dwelling) used for carrying on any business in connection with the operation of fishing boats or activities connected therewith or ancillary thereto or with the treatment, storage or sale of sea fish;

(b) may search the premises for and examine any fish thereon;

(c) may require any person on the premises to produce any documents which are in his custody or possession relating to the catching, landing, trans-shipment, sale or disposal of sea fish;

(d) may take copies of any such document;

and, if he has reason to suspect that an offence under article 2 of this Order has been committed, the officer–

(e) may search the premises for any such document and require any person on the premises to do anything which appears to the officer to be necessary for facilitating the search; and

(f) may seize and detain any such document produced to him or found on the premises.

(6) A British sea-fishery officer may seize–

(a) any fish in respect of which he has reasonable grounds to suspect that an offence under article 2 of this Order has been committed; and

(b) any net or other fishing gear which he has reasonable grounds to suspect was used for catching any fish in respect of which any such offence has been committed.

Obstruction of officers

6. Any person who–

(a) fails without reasonable excuse to comply with any requirement imposed by a British sea-fishery officer under the powers conferred on British sea-fishery officers by article 5 of this Order;

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

(c) assaults any such officer who is exercising any of the powers conferred on him by article 5 of this Order or intentionally obstructs any such officer in the exercise of any of those powers

shall be guilty of an offence and liable–

(i) on summary conviction to a fine not exceeding £5,000; or

(ii) on conviction on indictment to a fine.

Protection of officers

7. An officer shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by article 5 of this Order if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

Offences by bodies corporate

8. Where an offence under article 2 of this Order committed by a body corporate is proved to have been committed with the consent or approval of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Proceedings

9. Proceedings for an offence under this Order may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 15th February 1987.

L.S.

Michael Jopling
Minister of Agriculture, Fisheries and Food

12th February 1987

John J. Mackay
Parliamentary Under-Secretary of State,
Scottish Office

10th February 1987

Nicholas Edwards
Secretary of State for Wales

13th February 1987

Tom King
Secretary of State for Northern Ireland

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the enforcement of the prohibition on retaining on board or landing more than 30 per cent of sole (*Solea solea*) taken in the North Sea, measured as a percentage by weight of the total catch of fish, crustaceans and molluscs, contained in article 1 of the Regulation adopted by the Commission of the European Communities on 6th February 1987 establishing temporary limits on landings of sole from the North Sea ("the Commission Regulation").

Article 2 of the Order creates offences in respect of breaches of the provisions of article 1 of the Commission Regulation. Penalties, which may include the forfeiture of fish, nets and other fishing gear are specified for such offences (article 3). A provision corresponding to section 12 of the Sea Fisheries Act 1968 (c.77) is made for the enforcement of fines by way of the issue of a warrant of distress (in Scotland a warrant of poinding and sale) and a detaining Order (article 4).

The Order confers powers of enforcement on British sea-fishery officers (article 5), and provision is made for the punishment of anyone found guilty of obstructing or assaulting such an officer (article 6).

The Order ceases to have effect on 16th April 1987 (article 1).