1990 No. 138

SEA FISHERIES
COMMUNITY RESTRICTIONS

The Third Country Fishing (Enforcement) Order 1990

Made - - - -	*31st January 1990*
Laid before Parliament	*1st February 1990*
Coming into force	*2nd February 1990*

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) and (3) of the Fisheries Act 1981(a) and of all other powers enabling them in that behalf, hereby make the following Order:—

Title, commencement and interpretation

1.—(1) This Order may be cited as the Third Country Fishing (Enforcement) Order 1990 and shall come into force on 2nd February 1990.

(2) In this Order, "relevant Community provision" means any provision of a Regulation of the European Communities referred to in column 1 of the Schedule to this Order which is specified in column 2 thereof opposite the reference to that Regulation.

Offences and penalties

2. If there is, in respect of any fishing boat to which a relevant Community provision applies, a contravention of, or failure to comply with, that provision within British fishery limits, the master of that boat shall be guilty of an offence and liable—

(a) on summary conviction to a fine not exceeding the amount specified in column 4 of the Schedule to this Order opposite the reference to that provision in column 2; or

(b) on conviction on indictment to a fine.

Recovery of fines

3.—(1) Where a fine is imposed by a magistrates' court in England and Wales or Northern Ireland on the master or a member of the crew of a fishing boat who is convicted by the court of an offence under article 2 or 5 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 or a member of the crew of a fishing boat who is convicted by the sheriff of an offence under article 2 or 5 of this Order, the sheriff may—

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

(a) 1981 c.29.

(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) Articles 114(2) and 154 of the Magistrates' Courts (Northern Ireland) Order 1981(b) (postponement of issue of certain warrants and objections as to want of form or variance between complaint etc and evidence adduced) shall apply to a warrant of distress issued under this article in Northern Ireland as it applies to a warrant referred to in those articles.

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

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

(a) may go on board any fishing boat to which a relevant Community provision applies and which is within British fishery limits;

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

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

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

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

(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 of this Order has been committed within British fishery limits 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 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.

Obstruction of officers

5. Any person who, on any fishing boat which is within British fishery limits and to which a relevant Community provision applies—

(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 4 of this Order;

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

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

(c) assaults an officer who is exercising any of the powers conferred on him by article 4 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

6. 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 4 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.

Proceedings

7. 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.

Revocation

8. The Third Country Fishing (Enforcement) Order 1989**(a)** is hereby revoked.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 30th January 1990.

L.S.

John Selwyn Gummer
Minister of Agriculture, Fisheries and Food

24th January 1990

Sanderson of Bowden
Minister of State, Scottish Office

25th January 1990

Peter Walker
Secretary of State for Wales

31st January 1990

Peter Brooke
Secretary of State for Northern Ireland

(a) S.I. 1989/217.

SCHEDULE

Articles 1(2) and 2

PENALTIES

Column 1	Column 2	Column 3	Column 4
Regulation of the European Communities	*Provision*	*Subject Matter*	*Maximum fine on summary conviction*
1. Council Regulation (EEC) No. 4048/89 laying down for 1990 certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Norway(a).	Article 2(2)	Keeping of logbook	£2,000
	Article 2(3)	Transmission of information	£2,000
	Article 2(4)	Keeping on board of certified document specifying calibration of sea-water tanks	£2,000
	Article 2(5)	Marking on vessels of registration letters and numbers	£2,000
	Article 3(1)	Holding on board of licence and observance of conditions thereof	£5,000
	Article 5	Restriction on methods of fishing for blue ling, ling and tusk in certain areas	£5,000
2. Council Regulation (EEC) No. 4050/89 laying down for 1990 certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Sweden(b).	Article 2(2)	Keeping of logbook	£2,000
	Article 2(3)	Transmission of information	£2,000
	Article 2(4)	Keeping on board of certified document specifying calibration of sea-water tanks	£2,000
	Article 2(5)	Marking on vessels of registration letters and numbers	£2,000
	Article 3(1)	Holding on board of copies of Annexes to the Regulation and compliance with conditions thereof	£5,000
3. Council Regulation (EEC) No. 4052/89 laying down for 1990 certain measures for the conservation and management of fishery resources applicable to vessels registered in the Faroe Islands(c).	Article 2(2)	Keeping of logbook	£2,000
	Article 2(3)	Transmission of information	£2,000
	Article 2(4)	Keeping on board of certified document specifying calibration of sea-water tanks	£2,000
	Article 2(5)	Marking on vessels of registration letters and numbers	£2,000
	Article 3(1)	Holding on board of licence and observance of conditions thereof	£5,000

(a) OJ No. L 389, 30.12.89, p.36.
(b) OJ No. L 389, 30.12.89, p.46.
(c) OJ No. L 389, 30.12.89, p.55.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which replaces and revokes the Third Country Fishing (Enforcement) Order 1989, makes breaches of specified articles of the Community Regulations set out in column 1 of the Schedule to the Order offences for the purposes of United Kingdom law where they occur within British fishery limits.

The Community Regulations authorise fishing in certain specified areas within member States' fishery limits for specified descriptions of fish by vessels of third countries, namely, Norway, Sweden, and the Faroe Islands. The offences arise out of breaches of the provisions of the Community Regulations concerning methods of fishing, the holding on board of licences and observance of the conditions thereof, the keeping of log books, the making of radio reports and similar matters; all are triable summarily or on indictment. On summary conviction, the master of an offending vessel will be liable to a fine not exceeding the sum specified in relation to the offence in column 4 of the Schedule to the Order and, on conviction on indictment, to a fine (article 2).

The Order confers powers of enforcement on British sea-fishery officers (article 4). Provision is made for the punishment of anyone found guilty of obstructing or assaulting an officer (article 5).