STATUTORY INSTRUMENTS

1999 No. 425

SEA FISHERIES

The Third Country Fishing (Enforcement) Order 1999

Made - - - -	*23rd February 1999*
Laid before Parliament	*24th February 1999*
Coming into force	*18th March 1999*

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 and commencement

1. This Order may be cited as the Third Country Fishing (Enforcement) Order 1999 and shall come into force on 18th March 1999.

Interpretation

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

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

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

(b) any photograph;

(c) any disk, tape, sound track or other device in which sounds or other data are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(d) 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.

Offences

3. Where 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, the owner and the charterer (if any) of that boat shall each be guilty of an offence.

(a) 1981 c. 29; see section 30(3) for the definitions of "enforceable Community restriction", "enforceable Community obligation" and "the Ministers".

Penalties

4.—(1) A person guilty of an offence under article 3 of this Order founded on a contravention of, or failure to comply with, a relevant Community provision, shall be liable–

(a) on summary conviction to a fine not exceeding the amount specified in the appropriate entry in column 4 of the Schedule to this Order; or

(b) on conviction on indictment to a fine.

(2) A person guilty of an offence under article 3 of this Order founded on a contravention of, or failure to comply with–

(a) a relevant Community provision to which paragraph (3) below applies shall also be liable–

(i) to the forfeiture of any net or other fishing gear in respect of which the offence was committed, or which was used in committing the offence, or which was used for catching any fish in respect of which the offence was committed; and

(ii) to the forfeiture of any fish in respect of which the offence was committed, or, on summary conviction only, to a fine not exceeding the value of any fish in respect of which the offence was committed; or

(b) a relevant Community provision to which paragraph (4) below applies 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.

(3) This paragraph applies to Articles 1, 2(1), 3(1) and 4 of the Council Regulation referred to in paragraph 1 of the Schedule to this Order and Articles 1, 2(1) and 3(1) of the Council Regulation referred to in paragraph 2 of the Schedule to this Order.

(4) This paragraph applies to Article 2(2) of the Council Regulation referred to in paragraph 1 of the Schedule to this Order and Article 2(2) of the Council Regulation referred to in paragraph 2 of the Schedule to this Order.

Recovery of fines

5.—(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 3 or 10 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 3 or 10 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

(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 and stay of execution 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.

(a) 1980 c. 43; section 78 was amended by the Criminal Justice Act 1982 (c. 48), sections 37 and 46.
(b) S.I. 1981/1675 (NI 26).

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

6.—(1) For the purpose of enforcing the provisions of article 3 of this Order a British sea-fishery officer may exercise the powers conferred by paragraphs (2) to (4) of this article in relation to any fishing boat to which a relevant Community provision applies, which is within British fishery limits.

(2) He may go on board the boat, with or without persons assigned to assist him in his duties, and may require the boat to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, the boat.

(3) He may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to him to be necessary for the purpose mentioned in paragraph (1) of this article and, in particular–

(a) may search for fish or fishing gear on the boat and may examine any fish on the boat and the equipment of the boat, including the fishing gear, and require persons on board the boat to do anything which appears to him 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 his custody or possession;

(c) for the purpose of ascertaining whether an offence has been committed under article 3 of this Order, may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search including rendering all documents on the boat's computer systems into a visible and legible form;

(d) inspect and take copies of any such document produced to him or found on board and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away; and

(e) where the boat is one in relation to which he has reason to suspect that such an offence has been committed, may seize and detain any such document produced to him 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 (e) above shall permit any document required by law to be carried on board the boat to be seized and detained except while the boat is detained in a port.

(4) Where it appears to a British sea-fishery officer that an offence under article 3 of this Order has at any time been committed, he may–

(a) require the master of the boat in relation to which the offence took place to take, or may himself take, the boat and its crew to the port which appears to him 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 he shall serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea-fishery officer.

Powers of British sea-fishery officers on land

7.—(1) For the purpose of enforcing the provisions of article 3 of this Order, 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 sea fish;

(b) take with him such other persons as appear to him to be necessary and any equipment or materials;

(c) examine any fish on the premises and require persons on the premises to do anything which appears to him to be necessary for facilitating the examination;

(d) carry out at such premises such other inspections or tests as may reasonably be necessary.

(e) require any person not to remove or cause to be removed any fish from such premises for such a period as may be reasonably necessary for the purposes of establishing whether an offence under article 3 of this Order has at any time been committed;

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

(g) for the purpose of ascertaining whether any person on the premises has committed an offence under article 3 of this Order, search the premises for any such document and may require any person on the premises to do anything which appears to him to be necessary for facilitating the search including rendering all documents on computer systems into a visible and legible form;

(h) inspect and take copies of any such document produced to him or found on the premises and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away; and

(i) if he has reason to suspect that such an offence has been committed, seize and detain any such document produced to him 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) above shall apply *mutatis mutandis* in relation to any land used in connection with any of the activities described in paragraph (1) above, or in respect of any vehicle which a British sea-fishery officer has reasonable cause to believe is being used to transport fisheries products, as they apply in relation to premises and, in the case of a vehicle, shall include power to require the vehicle to stop at any time and, if necessary, direct the vehicle to some other place to facilitate the inspection.

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

8.—(1) Any British sea-fishery officer may seize–

(a) any fish (including any receptacle which contains the fish) and any net or other fishing gear in respect of which he has reasonable grounds to suspect that an offence under article 3 of this Order founded on a contravention of, or failure to comply with, a relevant Community provision to which paragraph (2) below applies has been committed;

(b) any fish (including any receptacle which contains the fish) in respect of which he has reasonable grounds to suspect that an offence under article 3 of this Order founded on a contravention of, or failure to comply with, a relevant Community provision to which paragraph (3) below applies has been committed.

(2) This paragraph applies to Articles 1, 2(1), 3(1) and 4 of the Council Regulation referred to in paragraph 1 of the Schedule to this Order and Articles 1, 2(1) and 3(1) of the Council Regulation referred to in paragraph 2 of the Schedule to this Order.

(3) This paragraph applies to Article 2(2) of the Council Regulation referred to in paragraph 1 of the Schedule to this Order and Article 2(2) of the Council Regulation referred to in paragraph 2 of the Schedule to this Order.

Protection of officers

9. An officer or a person assisting him by virtue of article 6(2) or 7(1)(b) of this Order shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by articles 6 to 8 of this Order if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

Obstruction of officers

10. Any person who–

(a) fails without reasonable excuse to comply with any requirement imposed by a British sea-fishery officer under the powers conferred on British sea-fishery officers by articles 6 and 7 of this Order; or

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

(c) assaults an officer who is exercising any of the powers conferred on British sea-fishery officers by articles 6 to 8 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 the statutory maximum; or

(ii) on conviction on indictment to a fine.

Proceedings

11. 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.

Admissibility in evidence of logbooks and other documents

12. Any logbook or other document kept on board or held in pursuance of a relevant Community provision shall, in any proceedings for an offence under this Order–

(a) in England, Wales or Northern Ireland, be evidence of the matters stated therein; and

(b) in Scotland, be received in evidence without being produced or sworn to by any witness and shall be sufficient evidence of the matters stated therein.

Revocation

13. The Third Country Fishing (Enforcement) Order 1998**(a)** is hereby revoked.

Elliot Morley
Parliamentary Secretary,
22nd February 1999 Ministry of Agriculture, Fisheries and Food

Calum MacDonald
23rd February 1999 Parliamentary Under Secretary of State, Scottish Office

Signed by authority of the Secretary of State for Wales

Jon Owen Jones
22nd February 1999 Parliamentary Under Secretary of State, Welsh Office

Marjorie Mowlam
21st February 1999 Secretary of State for Northern Ireland

(a) S.I. 1998/269

SCHEDULE

Articles 2(1) and 4

RELEVANT COMMUNITY PROVISIONS AND MAXIMUM FINES ON SUMMARY CONVICTION (APART FROM FINES RELATED TO VALUE OF FISH)

Column 1 *Regulation of the European Community*	*Column 2* *Provision*	*Column 3* *Subject matter*	*Column 4* *Maximum fine on summary conviction*
1. Council Regulation (EC) No. 50/1999 laying down, for 1999, certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Norway**(a)**	Article 1	Requirement in relation to vessels flying the flag of Norway to fish only for the species of fish, and within the geographical zones and quantitative limits, specified in Article 1 of, and Annexes I and IA to, the Regulation	£50,000
	Article 2(1)	Requirement in relation to vessels fishing pursuant to Article 1 to comply with Community conservation and control measures and all other Community provisions governing fishing in the zones concerned	£50,000
	Article 2(2)	Keeping of logbook in compliance with Annex II to the Regulation	£50,000
	Article 2(3)	Transmission of information in compliance with Annex III to the Regulation	The statutory maximum
	Article 2(4)	Keeping on board of certified document specifying calibration of sea water tanks	The statutory maximum
	Article 2(5)	Marking on vessels of registration letters and numbers	The statutory maximum
	Article 3(1)	Holding of licence and special fishing permit and observance of conditions thereof	£50,000
	Article 4	Restriction on methods of fishing for blue ling, ling and tusk in certain areas	The statutory maximum
2. Council Regulation (EC) No. 52/1999 laying down, for 1999, certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of the Faroe Islands**(b)**	Article 1	Requirement in relation to vessels flying the flag of the Faroe Islands to fish only for the species of fish, and within the geographical zones and quantitative limits, specified in Article 1 of, and Annex I to, the Regulation	£50,000
	Article 2(1)	Requirement in relation to vessels fishing pursuant to Article 1 to comply with Community conservation and control measures and all other Community provisions governing fishing in the zones concerned	£50,000

(a) OJ No. L13, 18.1.99, p. 59.
(b) OJ No. L13, 18.1.99, p. 71.

Article 2(2)	Keeping of logbook in compliance with Annex II to the Regulation	£50,000
Article 2(3)	Transmission of information in compliance with Annex III to the Regulation	The statutory maximum
Article 2(4)	Keeping on board of certified document specifying calibration of sea water tanks	The statutory maximum
Article 2(5)	Marking on vessels of registration letters and numbers	The statutory maximum
Article 3(1)	Holding of licence and special fishing permit and observance of conditions thereof	£50,000

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the enforcement of certain enforceable Community restrictions and other obligations relating to sea fishing set out in Council Regulation (EC) No. 50/1999 (OJ No. L13, 18.1.99, p. 59) and Council Regulation (EC) No. 52/1999 (OJ No. L13, 18.1.99, p. 71) ("the Community Regulations"). The Community Regulations respectively authorise fishing by vessels of Norway and the Faroe Islands for specified descriptions of fish in certain specified areas within member States' fishery limits in 1999 and contain requirements concerning fishing quotas and authorised zones, methods of fishing, the holding of licences and observance of licence conditions, the keeping of log books, the making of radio reports and similar matters.

The Order 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 (article 3 and the Schedule to the Order).

The offences created by the Order are triable summarily or on indictment. On conviction on indictment, the master, owner and charterer (if any) of an offending vessel will be liable to an unlimited fine. On summary conviction, the master, owner and charterer (if any) will be liable to a fine not exceeding the amount specified in relation to the offence in column 4 of the Schedule (see article 4(1)). The level of the maximum summary fine in respect of offences relating to fishing without or in excess of quota, or in unauthorised waters, methods of fishing, the keeping of logbooks and the observance of licence conditions is £50,000. The level of the maximum summary fine for all the other offences specified in the Schedule is the statutory maximum penalty (which is currently £5,000).

In certain cases the master, owner and charterer (if any) of an offending vessel will also be liable to the forfeiture of any fish in respect of which the offence was committed (or, on summary conviction, to a fine not exceeding the value of the fish) and to the forfeiture of nets or other fishing gear (article 4(2) to (4)).

Additionally the Order–

(a) contains provision concerning the recovery of fines (article 5),

(b) confers powers of enforcement on British sea-fishery officers (articles 6 to 8), including provision for their protection (article 9),

(c) provides for the punishment of anyone found guilty of obstructing or assaulting an officer (article 10), and

(d) makes provision for the trial of offences (article 11) and the admissibility of logbooks and other documents (article 12).

The Order revokes the Third Country Fishing (Enforcement) Order 1998 (S.I. 1998/269).

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