

Statutory Instrument 2000 No. 1096 (W. 74)

The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Wales) Order 2000

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STATUTORY INSTRUMENTS

2000 No. 1096 (W. 74)

SEA FISHERIES, WALES

The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Wales) Order 2000

<i>Made</i>	<i>10th April 2000</i>
<i>Coming into force</i>	<i>11th April 2000</i>

In exercise of the powers conferred by section 30(2) of the Fisheries Act 1981[1], which are now vested in it, the National Assembly for Wales[2] hereby makes the following Order:

Title, commencement and application

1. - (1) This Order may be cited as the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Wales) Order 2000 and shall come into force on 11th April 2000.

(2) This Order applies to Wales and the territorial sea adjacent to Wales.

Interpretation

2. -

(1) In this Order -

"the Council Regulation" (*"Rheoliad y Cyngor"*) means Council Regulation (EC) No. 2742/1999[3] fixing for 2000 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 limitations in catch are required and amending Regulation (EC) No. 66/98;

"Council Regulation 2847/93" (*"Rheoliad y Cyngor 2847/93"*) means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy[4] as amended by Council Regulation (EC) No. 2870/95[5], Council Decision (EC) No. 95/528[6], Council Regulation (EC) No. 2489/96[7], Council Regulation (EC) No. 686/97[8], Council Regulation (EC) No. 2205/97[9], Council Regulation (EC) No. 2635/97[10] and Council Regulation (EC) No. 2846/98[11];

"relevant British fishing boat" (*"cwch pysgota Prydeinig perthnasol"*) means a fishing boat, other than a Scottish fishing boat, which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995[12] or is owned wholly by persons qualified to own British ships for the purposes of that Part of that Act;

"relevant offence" (*"tramgwydd perthnasol"*) means an offence under:

(a) article 3 of this Order; or

(b) any provision in an order extending to any other part of the United Kingdom made for the purposes of implementing a specified Community provision, being a provision in respect of which, by virtue of section 30(2A) of the Fisheries Act 1981[13], proceedings may be commenced in any place in the United Kingdom;

"Scottish fishing boat" (*"cwch pysgota Albanaidd"*) 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;

"specified Community provision" (*"darpariaeth Gymunedol benodedig"*) means a provision of the Council Regulation specified in column 1 of Schedules 1 and 2 to this Order as read with any qualifying words relating to that provision in that column;

"the territorial sea adjacent to Wales" (*"y môr tiriogaethol cyfagos at Gymru"*) shall be interpreted in accordance with article 6 and Schedule 3 of the National Assembly for Wales (Transfer of Functions) Order 1999[14];

(2) In this Order -

(a) any reference to a Community instrument is a reference to that instrument as amended on the date this Order is made;

(b) any reference to a logbook, declaration or document includes, in addition to a logbook, declaration or document in writing -

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

(ii) any photograph;

(iii) 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;

(iv) 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; and

(v) any data, howsoever reproduced, communicated via a satellite-based vessel monitoring system established under Article 3.1 of Council Regulation 2847/93.

(3) Column 2 of Schedules 1 and 2 (which provide in relation to each specified Community provision an indication of the subject matter of the provision) shall not be read as limiting the scope of any specified Community provision and shall be disregarded in relation to any question arising as to the construction of this Order.

(4) For the purpose of the prohibition contained in paragraph 2 of Annex IV to the Council Regulation:

(a) the harbours at which a fishing boat may land a catch of fish containing unsorted herring are those within Wales or within the territorial sea adjacent to Wales whose sampling systems a British sea-fishery officer at that harbour decides are adequate for landing such a catch;

(b) in making such a decision, a British sea-fishery officer shall have regard to the overall size and characteristics of a catch;

(c) a British sea-fishery officer may only make such a decision following an application by the master of a fishing boat to a British sea-fishery officer at that harbour before the landing of a catch; and

(d) a British sea-fishery officer shall notify the master of a fishing boat of any such decision.

Offences

3. - (1) Where there is, in respect of any fishing boat within the territorial sea adjacent to Wales a contravention of, or failure to comply with, any specified Community provision in column 1 of Schedule 1 to this Order, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(2) Where there is, in respect of any fishing boat within the territorial sea adjacent to Wales, being a fishing boat to which any specified Community provision in column 1 of Schedule 2 to this Order applies, a contravention of, or failure to comply with, any such specified Community provision, the master, the owner and the charterer (if any) shall each be guilty of an offence.

Penalties

4. - (1) A person found guilty of an offence under article 3(1) of this Order, or under any equivalent provision in an order extending to any other part of the United Kingdom proceedings in respect of which have been brought in Wales by virtue of section 30(2A) of the Fisheries Act 1981, shall be liable -

(a) on summary conviction, to a fine not exceeding the amount specified in

column 3 of Schedule 1 to this Order in relation to the specified Community provision, the contravention of, or failure to comply with which, founded the offence; and

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

(2) A person found guilty of an offence under article 3(2) of this Order, or under any equivalent provision in an order extending to any other part of the United Kingdom proceedings in respect of which have been brought in Wales by virtue of section 30(2A) of the Fisheries Act 1981, shall be liable -

(a) on summary conviction, to a fine not exceeding the amount specified in column 3 of Schedule 2 to this Order in relation to the specified Community provision, the contravention of, or failure to comply with which, founded the offence; and

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

Recovery of fines

5. - (1) Where a fine is imposed by a magistrates' court in Wales on a master, owner, charterer (if any), or any other person who is convicted by the court of a relevant offence or an offence under article 10, the court may for the purposes of recovering the fine -

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

(b) order such boat and its gear and catch 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) Sections 77(1) and 78 of the Magistrates' Courts Act 1980^[15] (postponement of issue of, and defects in, warrants of distress) shall apply to a warrant of distress issued under this article in Wales as they apply to a warrant of distress issued under Part III of that Act.

(3) Where in relation to a fine in respect of a relevant offence a transfer of fine order under section 90 of the Magistrates' Courts Act 1980, Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981^[16] or section 222 of the Criminal Procedure (Scotland) Act 1995^[17] specifies a petty sessions area in Wales this article shall apply as if the fine were imposed by a court within that petty sessions area.

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

6. - (1) For the purpose of enforcing article 3(1) of this Order, or any equivalent provision in an order extending to any other part of the United Kingdom made for the purposes of implementing a specified Community provision, a British sea-fishery officer may exercise within the territorial sea adjacent to Wales the powers conferred by paragraphs (3) to (5) of this article.

(2) For the purpose of enforcing the provisions of article 3(2) of this Order, or any equivalent provision in an order extending to any other part of the United Kingdom made for the purposes of implementing a specified Community provision, a British

sea-fishery officer may exercise the powers conferred by paragraphs (3) to (5) of this article in relation to any fishing boat within the territorial sea adjacent to Wales, being a fishing boat to which a specified Community provision applies.

(3) The officer may go on board the boat, with or without persons assigned to assist in his or her 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.

(4) 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 the officer to be necessary for the purposes mentioned in paragraph (1) or (2) 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 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 that person's custody or possession;

(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 the officer 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 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 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 (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.

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

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

(b) detain or require the master to detain the boat in port;

and where such an officer detains or requires the detention of a boat the 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

7. - (1) For the purpose of enforcing the provisions of article 3(1) or 3(2) of this Order, or any equivalent provisions in an order extending to any other part of the United Kingdom made for the purposes of implementing any specified Community provision, any British sea-fishery officer may in Wales -

- (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 or her such other persons as appear to the officer 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 the 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 fish 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 his or her 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 a relevant offence, search the premises for any such document and may require any person on the premises to do anything which appears to the officer 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 her 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 the officer has reason to suspect that a relevant offence has been committed, seize and detain any such document produced to him or her 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 with necessary modifications 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.

(3) If in Wales a justice of the peace on sworn information in writing is satisfied -

- (a) that there is reasonable ground to believe that any document or other item**

which a British sea-fishery officer has power under this article to inspect is on any premises and that its 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; or

(ii) that an application for admission or the giving of such notice would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await the occupier's return,

the justice may by warrant signed by him or her, and valid for one month, authorise a British sea-fishery officer to enter the premises, if need be by reasonable force, and take with him or her such persons as appear to the officer to be necessary.

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

8. In Wales, and in the territorial sea adjacent to Wales, any British sea fishery officer, may, in relation to any fishing boat, seize -

(a) any fish (including any receptacle which contains the fish) in respect of which he or she has reasonable grounds to suspect that a relevant offence has been committed; and

(b) any net or other fishing gear which he or she has reasonable grounds to suspect has been used in the course of the commission of a relevant offence.

Protection of officers

9. An officer or a person assisting an officer by virtue of article 6(3) 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 or her by article 6, 7 or 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 article 6, 7 or 8 of this Order;

(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 article 6, 7 or 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.**

Provisions as to offences and proceedings

11. - (1) Where any offence under article 3(1) of this Order committed by a body corporate 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, that person, as well as the body corporate, shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where any offence under article 3(1) of this Order committed by 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 partner, that person, as well as the partnership, shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where any offence under article 3(1) of 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

12. - (1) Any -

- (a) logbook kept under Article 6 or 17.2 of Council Regulation 2847/93;**
- (b) declaration submitted under Article 8.1, 12 or 17.2 of Council Regulation 2847/93;**
- (c) document drawn up under Article 9 or 13 of Council Regulation 2847 /93;**
- (d) effort report completed under Article 19b or 19c of Council Regulation 2847/93; and**
- (e) document containing required information received by a fisheries monitoring centre established under Article 3.7 of Council Regulation 2847/93,**

shall, in any proceedings in Wales for a relevant offence, be evidence of the matters stated therein.

(2) For the purposes of paragraph (1) of this article, "required information" shall mean data relating to -

- (a) a fishing boat's identification;**
- (b) the most recent geographical position of the fishing boat expressed in degrees and minutes of longitude and latitude; and**

(c) the date and time of the fixing of that position, as communicated via a satellite-based vessel monitoring system established under Article 3.1 of Council Regulation 2847/93.

(3) Any logbook or other document kept on board or held in pursuance of a specified Community provision shall, in any proceedings for an offence under article 3(2) of this Order, or under any equivalent provision in an order extending to any other part of the United Kingdom, be evidence of the matters stated therein.

Revocation

13. The Sea Fishing (Enforcement of Community Quota Measures) Order 1999[18] and the Third Country Fishing (Enforcement) Order 1999[19] are hereby revoked insofar as they apply to Wales.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998.

D. Elis Thomas
The Presiding Officer of the National Assembly

10th April 2000

SCHEDULE 1

Article 4(1)

SPECIFIED COMMUNITY PROVISIONS APPLICABLE TO COMMUNITY VESSELS AND MAXIMUM FINES ON SUMMARY CONVICTION

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provision of the Council Regulation</i>	<i>Subject matter summary</i>	<i>Maximum fine on conviction</i>
1. Article 6.1, in so far as that paragraph relates to retaining on board or landing.	Prohibitions on retaining on board or landing catches from stocks for which total allowable catches or quotas are fixed and have been exhausted.	£50,000.
2. Article 6.1, in so far as that paragraph relates to catch composition or sorting.	Prohibitions in certain circumstances on retaining on board or landing catches having a certain composition or which have been sorted.	The statutory maximum.
3. Article 6.2.	Prohibition on landing catches which are unsorted and contain herring when the catch limitations set out in Annex II to the Council Regulation have been exhausted.	£50,000

4. Article 8 and Annex IV paragraphs 2 and 6.	Prohibition on landing catches containing unsorted herring in harbours where adequate sampling systems are not in place[20].	The statutory maximum.
	Prohibition on offering for sale for human consumption herring caught in the areas specified in Annex IV paragraph 6 by vessels carrying towed nets of a minimum mesh size of less than 32mm and landed.	

SCHEDULE 2

Article 4(2)

SPECIFIED COMMUNITY PROVISIONS APPLICABLE TO COMMUNITY VESSELS AND MAXIMUM FINES ON SUMMARY CONVICTION

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provision of the Council Regulation</i>	<i>Subject matter</i>	<i>Maximum fine on summary conviction</i>
1. Article 10.	Requirement in relation to vessels flying the flag of Norway or the Faroe Islands to fish within the quota limits contained in Annex I to, and within the geographical zone set out in Article 11(i) of, the Council Regulation.	£50,000.
2. Article 13.1.	Requirement in relation to vessels flying the flag of Norway (other than those of less than 200 GT) or the Faroe Islands to hold licence and special fishing permit and observance of conditions thereof.	£50,000.
3. Article 13.2.	Requirement in relation to vessels flying the flag of Norway to keep on board licences and special fishing permits.	The statutory maximum.
4. Article 14.1.	Requirement in relation to vessels flying the flag of Norway or the Faroe Islands to comply with the conservation and control measures and all other provisions governing fishing by Community vessels in the zones concerned, including those measures and provisions referred to in Article 14.1.	£50,000.
5. Article 14.2.	Requirement in relation to vessels flying the flag of Norway or the Faroe Islands to keep a logbook in compliance with Annex VII to the Council Regulation.	£50,000.
6. Article 14.3.	Requirement in relation to vessels flying the flag of Norway (other than those fishing in ICES division IIIa) or the Faroe Islands to transmit information in compliance with Annex VIII to the Council Regulation.	The statutory maximum.

EXPLANATORY NOTE

(This note does not form part of the Order)

This Order makes provision for the enforcement within Wales and the territorial sea adjacent to Wales of certain enforceable Community restrictions and other obligations relating to sea fishing by both Community and third country vessels set out in Council Regulation (EC) No. 2742/1999 (OJ No. L341, 31.12.99, p.1) ("the Council Regulation").

The Council Regulation fixes total allowable catches and Member States' quotas for 2000 and lays down certain conditions under which they may be fished.

It also authorises fishing by vessels of Norway and the Faroe Islands for specified descriptions of fish in certain specified areas within Member States' fishery limits in 2000 and imposes 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 reports and similar matters.

Article 3 of the Order creates offences in respect of breaches of the provisions of the Council Regulation referred to in column 1 (and briefly described in column 2) of Schedules 1 (for Community vessels) and 2 (for third country vessels) to the Order. Penalties are specified for such offences (article 4). The statutory maximum penalty specified in the Schedules is currently £5,000. Provision is made for the recovery of fines (article 5).

The Order confers powers of enforcement on British sea-fishery officers in relation to certain fishing boats within the territorial sea adjacent to Wales and on land in Wales in relation to the seizure of fish and fishing gear (articles 6, 7 and 8). Provision is made for the punishment of anyone found guilty of assaulting or obstructing an officer (article 10).

The Order revokes the Sea Fishing (Enforcement of Community Quota Measures) Order 1999 (S.I.1999/424) and the Third Country Fishing (Enforcement) Order 1999 (S.I. 1999/425) insofar as they apply to Wales.

Notes:

[1] 1981 c.29; see section 30(3) for the definitions of "enforceable Community restriction" ("cyfyngiad Cymunedol gorfodadwy"), "enforceable Community obligation" ("rhwymedigaeth Gymunedol orfodadwy") and "the Ministers", ("y Gweinidogion") as modified by Schedule 2, paragraph 68(5) of the Scotland Act 1998 (Consequential Modifications)(No.2)Order 1999 (S.I. 1999/1820). Article 3(1) and Schedule 1 of the Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592) provide for the functions exercisable under section 30(2) of the 1981 Act to be exercised by the Ministers, concurrently with Scottish Ministers, in relation to: relevant British fishing boats within the Scottish zone; and Scottish fishing boats within British fishery limits but outside the Scottish zone (for "the Scottish zone" see section 126 of the Scotland Act 1998 (c.46) and the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126)).[back](#)

[2] By virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), the functions of the Minister of Agriculture Fisheries and Food, and the Secretaries of State respectively concerned with sea fishing in Wales, Scotland and Northern Ireland under section 30(2) of the Fisheries Act 1981 (c.29) were, so far as they were exercisable in relation to Wales, transferred to the National Assembly for Wales.[back](#)

[3] OJ No. L341, 31.12.99, p.1.[back](#)

[4] OJ No. L261, 20.10.93.[back](#)

[5] OJ No. L301, 14.12.95, p.1.[back](#)

[6] OJ No. L301, 14.12.95, p.35.[back](#)

[7] OJ No. L338, 28.12.96, p.12.[back](#)

[8] OJ No. L102, 19.4.97, p.1.[back](#)

[9] OJ No. L304, 7.11.97, p.1.[back](#)

[10] OJ No. L356, 31.12.97, p.14.[back](#)

[11] OJ No. L358, 31.12.98, p.5[back](#)

[12] 1995, c.21.[back](#)

[13] Inserted by the Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999 (S.I. 1999/1820.[back](#)

[14] S.I. 1999/672.[back](#)

[15] 1980, c.43.[back](#)

[16] S.I. 1981/1675 (N.I. 26).[back](#)

[17] 1995, c.46.[back](#)

[18] S.I. 1999/ 424.[back](#)

[19] S.I. 1999/ 425.[back](#)

[20] That is, any harbour other than a harbour to which article 2(4) refers.[back](#)

Cymraeg (Welsh)

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