

Statutory Instrument 2000 No. 976 (W. 46)

The Sea Fishing (Enforcement of Measures for the Recovery of the Stock of Cod)(Irish Sea) (Wales) Order 2000

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STATUTORY INSTRUMENTS

2000 No. 976 (W. 46)

SEA FISHERIES, WALES

The Sea Fishing (Enforcement of Measures for the Recovery of the Stock of Cod) (Irish Sea) (Wales) Order 2000

<i>Made</i>	<i>17th March 2000</i>
<i>Coming into force</i>	<i>18th March 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 Measures for the Recovery of the Stock of Cod) (Irish Sea) (Wales) Order 2000 and shall come into force on 18th March 2000.

(2) This Order applies to Wales only.

Interpretation

2. - (1) In this Order -

"British fishing boat" ("cwch pysgota Prydeinig") means a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995[3] or is owned wholly by persons qualified to own British ships for the purposes of that part of that Act;

"the Community provisions" ("y darpariaethau Cymunedol") mean:

(a) the prohibition contained in Article 1.1 of the Commission Regulation, as read with Article 1.2 and 1.3 of that Regulation, and

(b) the requirement contained in Article 4(4)(b) of Regulation 850/98, as read with articles 4(5)(a) and 5 and Annex I of that Regulation, in so far (only) as that requirement has been given extended effect by virtue of Article 2 of the Commission Regulation;

"the Commission Regulation" ("Rheoliad y Comisiwn") means Commission Regulation (EC) No. 304/2000 establishing measures for the recovery of the stock of cod in the Irish Sea (ICES Division VIIa)[4];

"fishing boat" ("cwch pysgota") includes a receiving vessel and a third country vessel, in each case within the meaning of Regulation 2847/93;

"local fisheries committee" ("pwyllgor pysgodfeydd lleol") means a local fisheries committee constituted by an order made, or having effect as if made, under section 1 of the Sea Fisheries Regulation Act 1966[5];

"Regulation 2847/93" ("Rheoliad 2847/93") means Council Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy[6];

"Regulation 850/98" ("Rheoliad 850/98") means Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms[7];

"relevant British fishing boat" ("cwch pysgota Prydeinig perthnasol") means a British fishing boat which is not a Scottish fishing boat;

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

(a) article 3 of this Order, or

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

"specified area" ("ardal benodedig") means that part of the area defined in Article 1.1 of the Commission Regulation, within the territorial sea adjacent to Wales[8];

"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.

"Wales" ("Cymru") is to be interpreted in accordance with section 155(1) and (2) of the Government of Wales Act 1998[9].

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

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

(ii) any photograph;

(iii) any data, howsoever reproduced, communicated via a satellite-vessel monitoring system established under article 3.1 of Regulation 2847/ 93;

(iv) 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

(v) 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 reference in this Order to a Community instrument is a reference to that instrument and any amendment of such instrument in force on the date this Order is made.

Offences

3. - Where there is, in respect of

(a) any fishing boat within the specified area; or

(b) the entry into any part of the specified area by any fishing boat,

a contravention of, or failure to comply with any of the Community provisions, the master, the owner and the charterer (if any) shall each be guilty of an offence.

Penalties

4. - (1) A person guilty of an offence under article 3 of this Order, or under any equivalent provision in any other order extending to any part of the United Kingdom proceedings in respect of which were 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 statutory maximum;

(b) on conviction on indictment to a fine.

(2) Subject to the following provisions of this article, the court by or before which a person is convicted of a relevant offence, may order the forfeiture of any fish in respect of which the offence was committed and of any net or other fishing gear used in committing the offence.

(3) Any person found guilty of a relevant offence shall, subject to paragraph (5), be liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.

(4) A person shall not be liable to a fine under paragraph (3) in respect of a relevant

offence if, under paragraph (2), the court orders the forfeiture of the fish in respect of which the offence was committed; and where a fine is imposed under paragraph (3) in respect of any relevant offence, the court shall not have power under paragraph (2) to order the forfeiture of the fish in respect of which the relevant offence was committed.

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

Recovery of fines

5. - (1) Where a fine is imposed by a magistrates court on the master, owner or charterer, or a member of the crew, of a fishing boat who is convicted by the court of a relevant offence or an offence under article 10 of this Order, the court may -

(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; and

(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[10] (postponement of issue of, and defects in, warrants of distress) shall apply to a warrant of distress issued under this article 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[11] or section 222 of the Criminal Procedure (Scotland) Act 1995[12] 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 of this Order, or any equivalent provision in any other order extending to any part of the United Kingdom made for the purposes of implementing the Community provisions, any British sea-fishery officer may exercise in relation to:

(a) any relevant British fishing boat which is within the territorial sea adjacent to Wales; or

(b) any other fishing boat which is within the specified area,

the powers conferred by paragraphs (2) to (4) of this article.

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

(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 the 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 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 purposes 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;**
- (d) may inspect and take copies of any such document produced to the 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 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) 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 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 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 the 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 purposes of enforcing the provisions of article 3 of this Order, or any equivalent provision in any other order extending to any part of the United Kingdom made for the purposes of implementing the Community provisions, 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 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 fish;

(g) for the purposes 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;

(h) inspect and take copies of any such document produced to him or found on the premises;

(i) 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

(j) if the 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 purposes 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 fish or 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 a justice of the peace on sworn information in writing is satisfied -

(a) that there is reasonable ground to believe that any documents or other items which a British sea-fishery officer has power under this article to inspect are on the 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; 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 his 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. - (1) This article applies-

(a) in Wales, and

(b) to any relevant British fishing boat within the territorial sea adjacent to Wales, and

(c) to any other fishing boat which is in the specified area.

(2) Where this article applies, any British sea-fishery officer may seize -

(a) any fish (including any receptacle which contains the fish) in respect of which the officer has reasonable grounds to suspect that a relevant offence 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.

Powers of other officers

9. - For the purpose of enforcing article 3 of this Order, or any equivalent provision in any other order extending to any part of the United Kingdom made for the purposes of implementing the Community provisions, any fishery officer of a local fisheries committee may, within the district of the committee, go on board any British fishing boat or enter any premises (other than a dwelling) used for carrying on any business in connection with the treatment, storage or sale of fish, may search for and examine any fish and any nets or other fishing gear in any place whether on board a fishing boat or elsewhere, and whether in a receptacle or not, and may seize any fish, net or other fishing gear in respect of which the officer has reasonable grounds to suspect that a relevant offence has been committed.

Protection of officers

10. An officer or a person assisting him or her 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 or her by articles 6 to 9 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

11. 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, 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 him or her by articles 6 to 9 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

12. - (1) Where any offence under article 3 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 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 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.

Proceedings

13. - (1) A local fisheries committee in Wales may take proceedings in respect of any offence occurring within the district of the committee under article 3 of this Order.

(2) For the purpose of paragraph (1) of this article the district of a local fisheries committee shall be deemed to extend throughout the area of any council in Wales liable to pay, or contribute to the payment of, the expenses of the committee, except that the powers conferred by that paragraph on any fishery officer of a local fisheries committee shall not be exercisable in respect of any matter arising within the limits of any market under the control of the council of any district.

Admissibility in evidence of logbooks and other documents

14. - (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 for a relevant offence, be evidence of the matters stated therein.**

(2) For the purpose of paragraph (1), "required information" ("gwybodaeth a fynnwyd") shall mean-

- (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.

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

17th March 2000

EXPLANATORY NOTE

(This note does not form part of the Orde.)

The Order makes provision for the enforcement of restrictions concerning the conservation of fishery resources through measures for the recovery of the stock of cod in that part of the Irish Sea (ICES Division VIIa) which lies within the territorial sea adjacent to Wales. The restrictions are contained in Article 1, as read with Articles 1.2 and 1.3 of Commission Regulation (EC) No.304/2000 (OJ No. L35, 10.2.2000, p.10) ("the Commission Regulation").

Article 1 of the Commission Regulation prohibits, during the period 14 February 2000 to 30 April 2000, the use of specified types of nets and fishing gear within a specified geographical area of the Irish Sea.

The Order also makes provision for the enforcement of a requirement in relation to the percentage composition of catches of target species taken by different ranges of mesh sizes which is contained in Article 4(4)(b) of Council Regulation (EC) No. 850/98, for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms, as read with Article 2 of the Commission Regulation. Article 2 of the Commission Regulation disappplies transitional measures for 2000 laid down in footnote 6 of Annex I of Council Regulation 850/98, which might otherwise allow a high number of target species to be taken as by-catch in the Irish Sea.

Article 3 of the Order creates offences in respect of breaches of Article 1 of the Commission Regulation or Article 4(4)(b) of Council Regulation 850/98. Penalties, which may include the forfeiture of fish, nets and other fishing gear, are specified for such offences (article 4).

The Order confers powers of enforcement on British sea-fishery officers in relation to fishing boats and on land and in relation to the seizure of fish and fishing gear (articles 6, 7 and 8) as well as on other officers in relation to nets and fishing gear (article 9). Provision is made for the punishment of anyone found guilty of obstructing or assaulting an officer (article 11).

Provision is also made for the prosecution of offenders and for proceedings by local fisheries committees (article 13). The statutory maximum penalty specified in the Order is currently £5,000.

The Order provides powers for the recovery of fines imposed by a magistrates court (article 5).

Articles 10, 12 and 14 contain ancillary provisions.

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 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 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] 1995, c.21.back

[4] OJ No. L35, 10.02.2000, p.10.back

[5] 1966, c.38, section 1 was repealed in part by the Local Government Act 1972 (c.70), section 272(1) and Schedule 30; and substituted in part by the Local Government Act 1985 (c.51), section 16 and Schedule 8, paragraph 19.back

[6] OJ No. L125, 27.4.98, p.1, as last amended by Council regulation (EC) No. 2723/99 (OJ No. L328, 22.12.99, p.9).back

[7] OJ No. L125, 27.4.98, p.1, as last amended by Council regulation (EC) No. 2723/99 (OJ No. L328, 22.12.99, p.9).back

[8] The territorial sea adjacent to Wales is determined in accordance with the provisions of section 1 of the Territorial Sea Act 1987 (c.47) and with any provisions made, or having effect as if made, under that section. The boundary between those parts of the sea within the Severn and Dee Estuaries which are to be treated as being territorial seas adjacent to Wales, and those which are not, is determined in accordance with article 6 and Schedule 3 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).back

[9] 1998, c.38back

[10] 1980, c.43; the maximum fines in section 78 were converted to levels on the standard scale by sections 37 and 46 of the Criminal Justice Act 1982 (c.48).back

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

[12] 1995, c.46.back

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