

Statutory Instrument 2003 No. 1535

The Sea Fishing (Restriction on Days at Sea) (No. 2) Order 2003

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STATUTORY INSTRUMENTS

2003 No. 1535

SEA FISHERIES, ENGLAND AND WALES

The Sea Fishing (Restriction on Days at Sea) (No. 2) Order 2003

<i>Made</i>	<i>10th June 2003</i>
<i>Laid before Parliament</i>	<i>13th June 2003</i>
<i>Coming into force</i>	<i>7th July 2003</i>

The Secretary of State for Environment, Food and Rural Affairs and the Secretaries of State respectively concerned with sea fishing in Scotland, Wales

and Northern Ireland, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981[1], and now vested in them[2], make the following Order:

Title, commencement, extent and application

1. - (1) This Order may be cited as the Sea Fishing (Restriction on Days at Sea) (No. 2) Order 2003 and shall come into force on 7th July 2003.

(2) Subject to paragraph (3), this Order shall not form part of the law of Scotland or Northern Ireland.

(3) Nothing in paragraph (2) shall be treated as prejudicing in the rest of the United Kingdom the effect of section 30(2A) of the Fisheries Act 1981 in relation to, or for purposes incidental to, any provision which creates an offence.

(4) This Order does not apply to any fishing boat which is less than 10 metres in overall length within the meaning of paragraph 1 of Annex XVII.

Interpretation

2. - (1) In this Order -

"Annex XVII" means Annex XVII to Council Regulation (EC) No. 2341/2002 fixing for 2003 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 catch limitations are required[3] as amended by Council Regulation (EC) No. 671/2003[4];

"British fishing boat" means a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995[5] or is owned wholly by persons qualified to own British ships for the purposes of that part of that Act;

"the Commission Decision" means Commission Decision 2003/185/EC on the allocation of additional days absent from port to Member States in accordance with Annex XVII of Council Regulation (EC) No. 2341/2002[6];

"equivalent provision" means any provision in any other order made for the purposes of implementing Annex XVII, extending to any part of the United Kingdom which has equivalent effect to a specified provision in this Order, proceedings in respect of which may be taken in England and Wales by virtue of section 30(2A) of the Fisheries Act 1981;

"fishing boat" includes any vessel to which Annex XVII applies;

"foreign fishing boat" means a fishing boat which is not a British fishing boat but to which Annex XVII applies;

"Northern Ireland fishing boat" means a fishing boat 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 Northern Ireland as the port to which the vessel is to be treated as belonging;

"Northern Ireland zone" has the same meaning as in the Northern Ireland Act 1998[7];

"Regulation 2807/83" means Commission Regulation (EEC) No. 2807/83 laying down detailed rules for recording information on Member States' catches of fish^[8] as last amended by Commission Regulation (EC) No. 1965/2001 of 8th October 2001^[9];

"Regulation 2847/93" means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the Common Fisheries Policy^[10] as last amended by Council Regulation (EC) No. 2846/98^[11];

"relevant British fishing boat" means a British fishing boat which is neither a Scottish fishing boat nor a Northern Ireland fishing boat;

"Scottish fishing boat" means a fishing boat 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;

"Scottish zone" has the same meaning as in the Scotland Act 1998^[12];

"unused days" at any time within a period identified in article 3(2), means the number of days in that period calculated in accordance with article 3, in which a fishing boat is permitted to be absent from port in any of the areas specified in paragraph 2 of Annex XVII while carrying any type of gear specified in paragraph 4 of Annex XVII, minus the number of days in that period in which it has been so absent while carrying that type of gear.

(2) In this Order -

(a) the term "within relevant British fishery limits" does not include the Scottish zone or the Northern Ireland zone;

(b) "logbook" means the same as in Article 6 of Regulation 2847/93 as amplified by Regulation 2807/83, and, for the purposes of any provision of this Order other than article 11, any reference to a document or logbook includes any -

(i) map, plan, graph or drawing;

(ii) photograph;

(iii) data, howsoever reproduced, communicated via a satellite-based vessel monitoring system established under Article 3(1) of Regulation 2847/93;

(iv) 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; and

(v) 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; and

(c) a day absent from port shall be calculated in accordance with paragraph 3(b) of Annex XVII.

(3) Any information provided to any authority for the purposes of any provision of this Order shall be treated as also provided for the purposes of any equivalent provision.

Absences from port etc.

3. - (1) Subject to article 4, a person in charge of a relevant British fishing boat which, before the end of the period specified in paragraph 1 (duration of controls) of Annex XVII, either -

(a) contravenes -

(i) the relevant prohibition in paragraph 6(a) (absences from port),
or

(ii) paragraph 7 (single type of gear), 8 (use of gear in different areas) or 9 (use of gears in given periods),

of Annex XVII, or

(b) is absent from port in excess of the number of days permitted to it by the following provisions of this article,

is guilty of an offence.

(2) In this Order, the person in charge of a relevant British fishing boat is its owner, master or charterer (if any), and the number of days permitted to such a boat for any period identified below is the basic number, that is to say -

(a) for December 2003, whichever is the greater of -

(i) the number indicated in the remainder of paragraph 6(a) of Annex XVII; and

(ii) any other number of days granted in writing to the boat for December 2003 by the Secretary of State in accordance with paragraph 6(e) of Annex XVII,

as read with paragraph 5(b), 5(c), 9 and 13 of Annex XVII, which is applicable to the boat in accordance with any fishing gear it carries while absent from port, and

(b) in application of paragraph 11(a) (aggregation of periods) of Annex XVII, for the period beginning when this Order comes into force and ending on 31st July 2003, and each successive period of two months, the former of which starts on 1st August 2003 and the latter of which ends on 30th November 2003, whichever is the greater of -

(i) double the number indicated in the remainder of paragraph 6(a) of Annex XVII; and

(ii) any other number of days granted in writing to the boat for the

period in question by the Secretary of State in accordance with paragraph 6(e) of Annex XVII,

as read with paragraph 5(b), 5(c), 9 and 13 of Annex XVII, which is applicable to the boat in accordance with any fishing gear it carries while absent from port,

cumulatively adjusted in accordance with the following provisions of this article.

(3) In relation to any relevant British fishing boat and in respect of any type of fishing gear it may carry, there is -

(a) added to the basic number for any period, the maximum number of additional days (if any) that the United Kingdom may allocate in accordance with the Commission Decision, and

(b) subtracted from the basic number for the period which begins when this Order comes into force and ends on 31st July 2003, such number of days (if any) as it has been absent from port carrying that gear in the period starting on 1st June 2003 and ending immediately before the coming into force of this Order.

(4) Where a number of days is transferred from one period to the next in accordance with article 5, that number is -

(a) deducted from the basic number for the initial period, and

(b) added to the basic number for the next period.

(5) Where a number of days is transferred in the same period from a donor to a recipient in accordance with article 6, that number is -

(a) deducted from the basic number for the donor for that period, and

(b) added to the basic number for the recipient for that period.

(6) Where during any period fishing gear is affixed to two or more fishing boats there shall be deducted from the basic number for each such boat that is a relevant British fishing boat in relation to that gear and that period a number of days equal to the number when it was absent from port but the gear was being carried by any other such boat.

(7) Where during any period a relevant British fishing boat has purported to transfer days relating to fishing gear in accordance with article 6 in excess of its unused days, there shall be deducted from its basic number relating to that gear for the next period a number equal to the number of days in that excess.

(8) Where during any period a relevant British fishing boat has been absent from port carrying fishing gear in excess of the days permitted to it by this

article, there shall be deducted from its basic number relating to that gear for the next period a number equal to the number of days in that excess unless, in consequence of the operation of article 4, the absence in question would not be an offence.

(9) In any proceedings for an offence under paragraph 3(1)(b) of this article, it shall be a defence for a person to show that the number of days of absence from port carrying any type of fishing gear comprising the offence was no greater than the number of days of absence carrying that gear purportedly but not validly transferred to him under article 6 and -

(a) he did not know, and

(b) it was reasonable for him not to suspect,

that the donor was not entitled to transfer them.

(10) In this article, the relevant prohibition in paragraph 6(a) of Annex XVII is the prohibition on absence from port carrying the gear defined in paragraph 4(b) of Annex XVII in the area defined in paragraph 2(a) of Annex XVII, and the remainder of paragraph 6(a) of Annex XVII is paragraph 6(a) save as covered by the relevant prohibition.

Exception in relation to absences from ports etc.

4. - (1) A person shall not be guilty of an offence under article 3(1) in respect of an activity relating to a boat in a period specified in article 3(2)(b) if -

(a) the identification of the activity as an offence depends on the application of paragraph 9 of Annex XVII to the period,

(b) the boat has not been the subject of any adjustment in respect of the period under article 3(4) or (5), and

(c) the activity would not have comprised an offence if, instead of paragraph 11(a) of the Annex being applied to the period -

(i) the period had been divided into two separate month periods, and

(ii) the number applied to December 2003 by article 3(2)(a) had applied to each such period.

Transfer of days from one period to another

5. - (1) Transfer of unused days by any relevant British fishing boat from one period to the next for the purposes of paragraph 10(a) of Annex XVII is permitted and shall have effect, to the extent specified in paragraph (2).

(2) The number of days transferred in relation to the boat for any type of fishing gear from one period to the next is the maximum number of unused days which may be permitted to be so transferred for that gear under paragraph 10(a) of Annex XVII, rounded down to the nearest whole number.

Transfer of days from one boat to another

6. - (1) Transfer of unused days within the same period from one British fishing boat ("the donor") to another ("the recipient") for the purposes of paragraph 10(b)(i) and 10(b)(ii) of Annex XVII, where either the donor or the recipient is, or each is, a relevant British fishing boat, is permitted, subject to paragraphs (3) and (4) of this article, to the extent specified in a notification of transfer sent under paragraph (2) of this article or under any equivalent provision.

(2) Where the donor is a relevant British fishing boat, a written notification of transfer must be signed by the donor's owner (or, as the case may be, each part owner), sent to the Department for Environment, Food and Rural Affairs before the end of the period in question, and contain all of the following particulars:

- (a) name and PLN and RSS numbers of the donor;
- (b) period to which the transfer relates;
- (c) name and PLN and RSS numbers of each recipient;
- (d) number of days transferred to each recipient and the number of such days which may be transferred for use with the gear specified in paragraph 4(a) of Annex XVII;
- (e) a declaration to the effect that the donor is entitled to make the transfer and to transfer the number of days referred to in sub-paragraph (d); and
- (f) the date of signature.

(3) A transfer is not permitted if -

- (a) within the same period, the donor has already purported to transfer any number of days to a recipient;
- (b) the donor has been withdrawn or is required to be withdrawn from operation within the sea fish industry of the European Community in consequence of measures taken pursuant to Article 7(3) of Council Regulation (EC) No. 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector^[13] as last amended by Council Regulation (EC) No. 2369/2002^[14] (or pursuant to that Article of that Regulation in its original or a previously amended form); or
- (c) the donor has not, within the same period, fished with the type of fishing gear to which the purported transfer relates in any of the areas defined in paragraph 2 of Annex XVII under authority of, and in accordance with, a licence issued under section 4 of the Sea Fish (Conservation) Act 1967^[15].

(4) The number of days transferred for any type of fishing gear in a specified period is whichever is the smaller of:

(a) the number of days specified for that transfer in relation to that type of fishing gear in the notification; and

(b) the maximum number of unused days which may be permitted to be so transferred for that gear under paragraph 10(b), 10(c) and 12 of Annex XVII as read with the provisions of this Order.

(5) A person who makes a false statement in a notification under paragraph (2) of this article is guilty of an offence.

(6) Paragraph (3)(c) of this article shall not prevent a transfer if the Secretary of State certifies that -

(a) the donor has been unable to fish during the period in question because it has sunk or suffered severe damage; and

(b) the donor's owner intends and expects to fish with the donor or its direct replacement before the end of 2003.

(7) The Secretary of State shall provide the certification referred to in paragraph (6) where the donor's owner has provided her with sufficient evidence to enable her to verify the facts in the certification.

(8) For the purpose of this article -

(a) "name", in relation to a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995, means its registered name as referred to in regulation 30 of the Merchant Shipping (Registration of Ships) Regulations 1993^[16]; and

(b) the requirement for a notification to contain PLN and RSS numbers applies only in relation to a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995, and those numbers are respectively its port number and its official number within the meaning of regulation 31 of the Merchant Shipping (Registration of Ships) Regulations 1993.

Amendment of the Sea Fishing (Enforcement of Community Control Measures) Order 2000 pursuant to paragraph 14 of Annex XVII

7. Insofar as it extends to England and Wales, the Sea Fishing (Enforcement of Community Control Measures) Order 2000^[17] is amended by the insertion, at the end of the definition of "Annex XVII" in article 2(1), of the words, "as amended by Council Regulation (EC) No. 671/2003".

Landing of cod

8. - (1) The competent authority for the purposes of paragraph 15 of Annex XVII (advance notice of landing of cod in excess of 1 tonne) is the authority responsible for the control of sea fisheries in the country in which the landing is to take place.

(2) For landings in the United Kingdom the ports, and where applicable the landing locations within them, designated for the purposes of paragraph 16 of Annex XVII (landing of cod in excess of 2 tonnes) are listed in the Schedule.

(3) Where there is, in respect of -

(a) a relevant British fishing boat, or

(b) a Scottish fishing boat, a Northern Ireland fishing boat or a foreign fishing boat landing in England and Wales,

a failure to comply with, or with a requirement given under, paragraph 15 of Annex XVII, the master, his representative, the owner and the charterer (if any) are guilty of an offence.

(4) A person in charge of -

(a) a relevant British fishing boat which lands cod, or

(b) a foreign fishing boat which lands cod in England and Wales,

pursuant to a contravention of paragraph 16 of Annex XVII, as read (so far as concerns landing in the United Kingdom) with paragraph (2) of this article, is guilty of an offence.

Mixing of species

9. A person in charge of -

(a) a relevant British fishing boat, or

(b) a Scottish fishing boat, a Northern Ireland fishing boat or a foreign fishing boat within relevant British fishery limits,

which retains species in contravention of paragraph 19 of Annex XVII (retention on board of cod and other species in same containers), is guilty of an offence.

Transportation of cod

10. Where any quantities of cod are transported in contravention of paragraph 22 of Annex XVII (transportation of cod to be accompanied by a landing declaration), the owner and hirer of, and the person responsible for, the vehicle used to transport the cod is guilty of an offence.

Maintenance of logbooks

11. - (1) An entry shall be made in the logbook of any relevant British fishing boat which is absent from port carrying any of the gear specified in paragraph 4 of Annex XVII but not fishing as specified in Article 6 of Regulation 2847/93, in respect of each particular which would be required to be entered by that Article (as amplified by Regulation 2807/83) were the boat so fishing, and such an entry shall state the type of fishing gear carried.

(2) Such an entry shall be made -

(a) daily, by not later than midnight at the end of each day;

(b) at the time of arrival in port; and

(c) at the time of any inspection at sea;

and the requirements of those Regulations for handing over and dispatch of logbook entries shall apply to the entries required by this article as they apply to other entries.

(3) Where a relevant British fishing boat is absent from port and paragraph (1) requires a logbook entry to be made in respect of that absence, such logbook entries shall be handed over and dispatched as if a landing were made at the time of the boat's arrival in port.

(4) Where there is, in respect of a relevant British fishing boat, a failure to make an entry required by this article, or to comply with requirements for handing over and dispatch referred to in this article, the person in charge of that fishing boat is guilty of an offence.

Penalties

12. - (1) A person guilty in England and Wales of an offence under article 3(1), 6(5), 8, 9, 10 or 11 of this Order, or under any equivalent provision shall be liable -

(a) on summary conviction to a fine not exceeding £50,000;

(b) on conviction on indictment to a fine.

(2) The court by or before which a person is convicted of an offence under article 3(1), 8 or 9 of this Order or under any equivalent provision may order the forfeiture of:

(a) any fish in respect of which the offence was committed; and

(b) any fishing gear used in the course of, or in activities leading to, the commission of the offence.

(3) Any person found guilty of an offence under article 3(1), 8 or 9 of this Order or under any equivalent provision shall 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 such an offence if, under paragraph (2), the court orders the forfeiture of the fish in respect of which that offence was committed; and where a fine is imposed under paragraph (3) in respect of any offence, the court shall not have power under paragraph (2) to order the forfeiture of the fish in respect of which the offence was committed.

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

Recovery of fines

13. - (1) Where a fine is imposed by a magistrates' court in England and Wales on the master, owner or charterer, of a fishing boat who is convicted by the court of an offence under this Order or any equivalent provision, the court may -

(a) issue a warrant of distress against the boat involved in the commission of the offence and its fishing 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^[18] (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.

(3) Where, in relation to a fine in respect of an offence under this Order or any equivalent provision, an order under legislation extending to Scotland or Northern Ireland, reciprocally replicating the effect of an order under section 90 of the Magistrates' Courts Act 1980 (transfer of fines to Scotland and Northern Ireland) specifies a petty sessions area in England and Wales, the preceding provisions of 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

14. - (1) For the purpose of enforcing articles 3 to 9 and 11 of this Order or any equivalent provisions, or to facilitate the cross-checking provided for in paragraph 20 of Annex XVII, any British sea-fishery officer may exercise the powers conferred by this article in relation to -

(a) any relevant British fishing boat wherever it may be; or

(b) any other fishing boat which is within relevant 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 under this Order or any equivalent provisions 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 him to be necessary for facilitating the search;

(d) may inspect and take copies of any such document produced to him 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 he has reason to suspect that an offence under this Order or any equivalent provisions 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 (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 an offence under article 3(1), 8, 9 or 11 of this Order or any equivalent provisions 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 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

15. - (1) For the purpose of enforcing articles 3 to 11 of this Order or any equivalent provisions, or to facilitate the cross-checking provided for in paragraph 20 of Annex XVII, 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 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 this Order or any equivalent provisions 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 fish or to the entry to, or exit from, any port or harbour by any fishing vessel;
- (g) for the purpose of ascertaining whether any person on the premises has committed an offence under this Order or any equivalent provisions, search the premises for any such document and require any person on the premises to do anything which appears to him 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 he has a reason to suspect that an offence under this Order or any equivalent provisions 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 also apply 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 England and Wales 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 any premises and that their inspection is likely to disclose evidence of the commission of an offence under this Order or any equivalent provisions; 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, 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 such persons as appear to him to be necessary.

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

16. - (1) This article applies -

(a) in England and Wales,

(b) to any relevant British fishing boat wherever it may be, and

(c) to any other British or any foreign fishing boat which is within relevant British fishery limits.

(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 he has reasonable grounds to suspect that an offence under article 3(1), 8, 9 or 10, or under any equivalent provision, has been committed; and

(b) any fishing gear which he has reasonable grounds to suspect has been used in the course of, or in activities leading to, the commission of such an offence.

Protection of officers

17. An officer or a person assisting him by virtue of article 14(2) or 15(1) (b), or authorisation under article 15(3), 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 14 and 15 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

18. - (1) 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 14 and 15 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 by articles 14 to 16 of this Order or intentionally obstructs any such officer in the exercise of any of those powers,

is guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable -

(a) on summary conviction to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment to a fine.

Provisions as to offences

19. - (1) Where any offence under article 3(1), 6(5), 8, 9, 10 or 11 of this Order or any equivalent provision 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, he 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), 6(5), 8, 9, 10 or 11 of this Order or any equivalent provision 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, he 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), 6(5), 8, 9, 10 or 11 of this Order or any equivalent provision 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, he 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

20. - (1) Any -

(a) logbook kept under Article 6, 17(2) or 28c;

(b) declaration submitted under Article 8(1), 17(2) or 28f;

(c) effort report completed under Article 19b and 19c;

(d) document drawn up under Article 9, 11, 12 or 13; or

(e) document containing required information received by a fisheries monitoring centre established under Article 3(7),

of Regulation 2847/93 shall, in any proceedings in England and Wales for an

offence under this Order or any equivalent provision, be evidence of the matters stated therein and so shall any additional entry in a logbook made pursuant to this Order or any equivalent provision.

(2) For the purpose of paragraph (1), "required information" 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.

Revocation of the Sea Fishing (Restriction on Days at Sea) Order 2003

21. The Sea Fishing (Restriction on Days at Sea) Order 2003[[19](#)] is revoked.

Elliot Morley

Parliamentary Under Secretary of State Department for Environment, Food and Rural Affairs

9th June 2003

Helen Liddell

Secretary of State for Scotland

9th June 2003

Peter Hain

Secretary of State for Wales

5th June 2003

Paul Murphy

Secretary of State for Northern Ireland

10th June 2003

SCHEDULE

Article 8(2)

LIST OF PORTS (AND WHERE APPLICABLE LOCATIONS WITHIN THE PORT) IN THE UNITED KINGDOM AT WHICH ALL LANDINGS OF COD IN EXCESS OF 2 TONNES MUST TAKE PLACE

<i>Port</i>	<i>Location within port (where applicable)</i>
	ENGLAND AND WALES
North Shields	
Hartlepool	Fish quay in Victoria Dock
Whitby	Fish quay
Scarborough	West Pier
Humberside (Hull and Grimsby)	Hull - North side of Albert Dock and William Wright Dock Grimsby - Fish Dock, Market Quay
Lowestoft	Waveney Dock
Ramsgate	Harbour
Shoreham	Within the confines of the harbour
Plymouth	Sutton Harbour, New Fish Market
Brixham	
Newlyn	
Padstow	
Milford Haven	
Holyhead	Fish Dock
Whitehaven	North Harbour on the Old North Wall Quay next to the Ice Plant and on the North Wall Quay next to the Fish Handling Facility building
Fleetwood	Wyre Fish Dock
	SCOTLAND
Eyemouth	
Pittenweem	
Aberdeen	Palmerston Quay and Commercial Quay
Peterhead	Peterhead Harbour excluding Peterhead Bay Harbour
Fraserburgh	
Buckie	
Lerwick	All piers, quays and docks within harbour limits excluding those in Dales Voe
Scalloway	
Kirkwall	
Scrabster	

Kinlochbervie	All quays lying to the North of the ice factory quay.
Lochinver	
Ullapool	
Stornoway	
Portree	
Mallaig	
Oban	
Campbeltown	
Troon	
	NORTHERN IRELAND
Ardglass	
Portavogie	
Kilkeel	
Bangor	

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the enforcement in England and Wales of the provisions of Annex XVII ("the Annex") to Council Regulation (EC) No. 2341/2002 (OJ No. L356, 31.12.2002, p. 12) fixing for certain fish stocks and groups of fish stocks the fishing opportunities in Community waters for 2003 as amended by Council Regulation (EC) No. 671/2003 (OJ No. L97, 15.4.2003, p. 11) and amplified by Commission Decision 2003/185/EC (OJ No. L71, 15.3.2003, p. 28). It revokes and replaces the Sea Fishing (Restriction on Days at Sea) Order 2003 (S.I. 2003/229).

It applies certain amendments to the Annex such as a change in the definition of a day absent from port (paragraph 3), increased number of days for vessels carrying certain fishing gear (paragraph 6(e)), more flexibility in the number of fishing gears that a vessel may simultaneously carry (paragraph 7(b)), provision that certain days should not be counted as days absent from port (paragraphs 5(b), 5(c), and 13), and changes to the rules on the transfer of days from one vessel to another (paragraph 10(b) and 10(c)).

The Order contains provisions relating to the calculation of the number of days on which a vessel may be absent from port for the purposes of the Annex (article 2(2)(c) and 3(2)-(8)) and the transfer of days from one period to another (article 5) and from one vessel to another (article 6). It also differs from the previous Order by making provisions for transfer by one vessel to another following sinking of, or severe damage to, the donor vessel (article 6(6) and (7)).

The Order creates offences in respect of breaches, by a person in charge of a

relevant British fishing boat (as defined in the Order), of the provisions of paragraphs 6(a) (absence from port in excess of number of permitted days), 7 (use of single type of gear), 8 (use of gear in different areas) and 9 (use of gears in given periods) of the Annex (article 3(1)), as qualified by a defence for unwitting recipients of excess days (article 3(9)). An offence is not committed where a boat would not have exceeded its permitted days under the Annex if the management periods were one month, rather than two months in length (article 4).

The Order also creates offences in respect of breaches of other provisions of the Annex (articles 8, 9 and 10) relating to landing cod without advance notice (paragraph 15) or at an unauthorised location (paragraph 16), mixing of cod and other species on board (paragraph 19) or transportation of cod on land without an accompanying landing declaration (paragraph 22). It also imposes additional requirements relating to logbooks (article 11). Failure to comply with those requirements is an offence, as is the making of a false statement by any person in a notification under article 6(2) (article 6(5)). The amendment of the Sea Fishing (Enforcement of Community Control Measures) 2000 (S.I. 2000/51) is brought up to date, insofar as it extends to England and Wales, in pursuance of paragraph 14 of the Annex (article 7).

The Order provides that a person guilty of an offence under it other than an offence under article 18(1) is liable, on summary conviction, to a fine not exceeding £50,000 and on conviction on indictment to a fine. Further fines up to and including the value of any fish caught in committing the offence are permitted and the court may also order the seizure of fish caught or equipment used in, or in activities leading to, the commission of the offence (article 12).

The Order also provides for the recovery of fines imposed, or treated as imposed, by a magistrates' court in England or Wales (article 13).

For the purposes of enforcing provisions of the Annex the Order confers on British sea-fishery officers the powers to enter premises, to go on board fishing boats, to stop and search vehicles transporting fish, to examine fish, to require the production of documents, to search for and seize documents, to take a boat to the nearest convenient port and to seize fish and fishing gear (articles 14, 15 and 16). Protection of such officers from liability is set out in article 17, and impeding them is an offence under article 18, with a fine of up to the statutory maximum on summary conviction and a fine on conviction on indictment. Articles 19 and 20 deal with corporate and equivalent offences and admissibility of documents in evidence.

Notes:

[1] 1981 c. 29. See section 30(3) for the definition of "the Ministers", as modified by Schedule 2, paragraph 68(5) of the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820).[back](#)

[2] Article 3(1) of, and Schedule 1 to, 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 the Scottish Ministers, in relation to: British fishing boats (other than Scottish ones) within the Scottish zone; and Scottish fishing boats within British fishery limits but outside the Scottish zone. By virtue of article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under section

30(2) of the 1981 Act were transferred to the National Assembly in so far as exercisable in relation to Wales (defined in section 155(1) of the Government of Wales Act 1998 (c. 38) as including "the sea adjacent to Wales out as far as the seaward boundary of the territorial sea"); in respect of waters beyond Wales these functions remain exercisable by the Ministers. The Government of Wales Act 1998, Schedule 3, paragraph 5 provides that any power of a Minister of the Crown transferred to the Assembly by virtue of S.I. 1999/672 should continue to be exercisable by the Minister who, but for that transfer, would have continued to hold that power for the purpose of implementing any Community obligation. By virtue of article 2(1) of the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812), any remaining functions of the Secretaries of State for Scotland and Wales under section 30(2) of the 1981 Act were transferred to the Minister of Agriculture, Fisheries and Food. Article 3 provides that this shall not apply to any function exercisable by those Secretaries of State in relation to any function which is exercisable by them by paragraph 5 of Schedule 3 to the Government of Wales Act 1998. The functions of the Minister of Agriculture, Fisheries and Food and one or more named Secretaries of State (however described) acting jointly were transferred to the Secretary of State for Environment, Food and Rural Affairs and the one or more Secretaries of State acting jointly by virtue of article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794). The Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790) Schedule 2, paragraph 3 provides that the function in section 30(2) of the 1981 Act is to be exercisable concurrently by the Department for Agriculture and Rural Development insofar as it relates to sea fishing within the Northern Ireland zone and to Northern Ireland fishing boats outside that zone.[back](#)

[3] OJ No. L356, 31.12.2002, p. 12.[back](#)

[4] OJ No. L97, 15.4.2003, p. 11.[back](#)

[5] 1995 c. 21.[back](#)

[6] OJ No. L71, 15.3.2003, p. 28.[back](#)

[7] 1998 c. 47.[back](#)

[8] OJ No. L276, 10.10.1983, p. 1.[back](#)

[9] OJ No. L268, 9. 10. 2001, p. 23.[back](#)

[10] OJ No. L261, 20.10.1993, p. 1.[back](#)

[11] OJ No. L358, 31.12.1998, p. 5.[back](#)

[12] 1998 c. 46; see section 126 and the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).[back](#)

[13] OJ No. L337, 30.12.99, p. 10.[back](#)

[14] OJ No. L358, 31.12.02, p. 49.[back](#)

[15] 1967 c. 84. Section 4 was amended by section 3 of the Fishery Limits Act 1976 (c. 86), section 20 of the Fisheries Act 1981 (c. 29), section 1 of the Sea Fish (Conservation) Act 1992 (c. 60) and article 4 of, and Schedule 2 to, the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820).[back](#)

[16] S.I. 1993/3138; the relevant amending instrument is 1999/3206.[back](#)

[17] S.I. 2000/51.[back](#)

[18] 1980, c. 43. Section 78 was amended by Criminal Justice Act 1982 (c. 48), sections 37 and 46, and section 90 was amended by the Criminal Justice and Public Order Act 1994 (c. 33), section 47(2).[back](#)

[19] S.I. 2003/229.[back](#)

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