

Statutory Instrument 2005 No. 393

The Sea Fishing (Restriction on Days at Sea) Order 2005

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2005 No. 393

SEA FISHERIES, ENGLAND

The Sea Fishing (Restriction on Days at Sea) Order 2005

<i>Made</i>	<i>25th February 2005</i>
<i>Laid before Parliament</i>	<i>25th February 2005</i>
<i>Coming into force</i>	<i>28th February 2005</i>

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The Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in 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:

PART 1

PRELIMINARY

Title, commencement, extent and application

1. - (1) This Order may be cited as the Sea Fishing (Restriction on Days at Sea) Order 2005 and shall come into force on 28th February 2005.

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

(3) Nothing in paragraph (2) shall be treated as prejudicing 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 length as set out in point 1 of Annex IVa and point 1 of Annex IVc.

Interpretation

2. - (1) In this Order -

"Annex IVa" means Annex IVa to Council Regulation (EC) No. 27/2005 fixing for 2005 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];

"Annex IVc" means Annex IVc to Council Regulation (EC) No. 27/2005 fixing for 2005 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;

"the Annex IV year" means the period commencing with the coming into force of this Order and ending with 31st December 2005, and references to things done during the Annex IV year cover things done at any time within it;

"base unit" has the same meaning as in article 3 in relation to cod and article 13 in relation to sole;

"British fishing boat" means a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995[4] or is owned wholly by persons qualified to own British ships for the

purposes of that Part of that Act;

"cod recovery zone" means the geographical area defined in point 2 of Annex IVa;

"day" has the meaning set out in point 3(b) of Annex IVa and point 3(b) of Annex IVc;

"English fishing boat" means a relevant British fishing boat other than a Welsh fishing boat;

"equivalent provision" means any provision, in any other Order made for the purposes of implementing Annex IVa or IVc or Regulation 423/04 in relation to any part of the United Kingdom, which has equivalent effect to a provision in this Order, proceedings in respect of which may be taken in England by virtue of section 30(2A) of the Fisheries Act 1981;

"the first February stage" means the period starting with 1st February 2005 and ending immediately before the date on which this Order comes into force, and "the second February stage" means the remainder of February 2005;

"fishing boat" includes any vessel covered by Annex IVa or Annex IVc;

"foreign fishing boat" means a fishing boat covered by Annex IVa or Annex IVc which is not a British fishing boat;

"management period" means a period established as provided in article 3 or 13;

"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 boat is to be treated as belonging;

"Northern Ireland zone" has the same meaning as in the Northern Ireland Act 1998^[5];

"person in charge", in relation to a fishing boat, means the owner, master or charterer, if any, of the fishing boat or the agent of any of them;

"regulated gear" means any gear within a grouping of fishing gears set out in point 4 of Annex IVa in relation to cod and point 4 of Annex IVc in relation to sole;

"Regulation 2807/83" means Commission Regulation (EEC) No. 2807/83 laying down detailed rules for recording information on Member States' catches of fish, as amended at the date this Order is made^[6];

"Regulation 2847/93" means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the Common Fisheries Policy, as amended at the date this Order is made^[7];

"Regulation 423/04" means Council Regulation (EC) No 423/2004 establishing measures for the recovery of cod stocks^[8];

"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 British 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 boat is to be treated as belonging;

"Scottish zone" has the same meaning as in the Scotland Act 1998^[9];

"sole recovery zone" means the geographical area defined in point 2 to Annex IVc.

"unused days" in relation to any fishing boat, grouping of regulated gear and management period, means in relation to cod the number of days available to the boat carrying the gear in the cod recovery zone during the period before its allocation of days under article 4 is exhausted and in relation to sole the number of days available to the boat carrying the gear in the sole recovery zone during the period before its allocation of days under article 14 is exhausted;

"Wales" has the same meaning as in the Government of Wales Act 1998^[10]; and

"Welsh fishing boat" means a British 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 Wales as the port to which the boat is to be treated as belonging.

(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 other than article 12 and 22, 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 of being reproduced.

(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.

(4) Expressions in this Order which are not defined in paragraph (1) above and which appear in Annex IVa or Annex IVc of Council Regulation (EC) No 27/2005 or Regulation 423/04 have the same meaning in this Order as they respectively do in those Regulations.

PART 2

COD

Establishment of management periods

3. - (1) Management periods for an English fishing boat, as referred to in point 6(b) of Annex IVa, shall be determined and notified by the person in charge of the boat, as follows:

- (a) the base unit for determination of management periods shall be one calendar month;
- (b) each management period may be determined in multiples of the base unit from 1 to 11 calendar months; and
- (c) the determination of each management period must be notified to the Secretary of State for Environment, Food and Rural Affairs at the same time as any notification under article 5;

and they are established by that determination and notification unless point 12 of Annex IVa applies to the boat, in which case they are established by confirmation of that determination and notification by the Secretary of State for Environment, Food and Rural Affairs taking that point into account.

(2) The person in charge of a British fishing boat may aggregate the days allocated for each calendar month as set out in point 6 of Annex IVa for being present within the area and absent from port, within management periods.

(3) Where a management period covers the month of February -

- (a) a notification given to the Secretary of State for Environment, Food and Rural Affairs (whether after or in anticipation of the coming into force of this Order) covering a management period including February 2005 and any grouping of gears for the period shall be treated as meeting the requirement of paragraph (1)(c) but with the management period counting as beginning immediately on the date this Order comes into force and ending as notified; and
- (b) the second February stage counts as one month and shall accordingly be treated as a single base unit.

(4) The person in charge of a British fishing boat which, at any time during the Annex IV year, is absent from port in the cod recovery zone carrying regulated gear for which a management period has not been established as provided in paragraph (1), or any equivalent provision, is guilty of an offence.

Absences from port

4. - (1) A person in charge of a relevant fishing boat carrying regulated gear which, at any time in the Annex IV year, either -

(a) contravenes point 9 of Annex IVa; or

(b) subject to any adjustments made under this article for the purposes of Annex IVa, during a management period is absent from port in the cod recovery zone in excess of the number of days permitted to it under point 6(a) of Annex IVa,

is guilty of an offence.

(2) In addition to the number of days of absence from port permitted under point 6(a) applicable to the relevant fishing boat in accordance with any regulated gear that it carries, for each calendar month the Secretary of State may allocate to the boat -

(a) a proportion of such number of days as may be allocated to the United Kingdom under point 6(c) of Annex IVa; and

(b) further days in accordance with point 6(d), (e) and (f) of Annex IVa.

(3) Where in respect of a management period established for it days have been transferred from one British fishing boat ("the donor") to another British fishing boat ("the recipient") under article 6 for the purposes of point 10 of Annex IVa, the following shall apply-

(a) the donor shall have deducted from its allocation of days such number of days as have been transferred to the recipient; and

(b) the recipient shall have added to its allocation of days such number of days as have been transferred by the donor.

(4) Where on any day during a management period any regulated gear is at any time affixed to both a relevant British fishing boat and one or more other fishing boats whilst they are in the cod recovery zone, that day shall be deducted from each boat's allocation.

(5) Where a relevant British fishing boat was absent from port in the cod recovery zone carrying regulated gear in excess of its allocation of days in respect of a previous management period, there shall be deducted the number of days during which the boat was so absent from the next management period.

(6) Where the management period includes the month of February, any number of days spent absent from port in the cod recovery zone carrying the regulated gear by a relevant British fishing boat in the first February stage shall be deducted from the allocation of days for that month.

(7) Where during the management period, a relevant British fishing boat is absent from port in the circumstances as set out in point 13 of Annex IVa, the person in charge of the relevant British fishing boat shall apply to the Secretary

of State for Environment, Food and Rural Affairs for an adjustment of the allocation of days in respect of those circumstances.

(8) For the purposes of paragraph (2) and (7), where additional days are allocated by the Secretary of State to a relevant fishing boat, the allocation does not have effect until the person in charge of the relevant fishing boat is notified of the allocation by the Secretary of State.

Carriage and operation of fishing gears

5. - (1) The person in charge of a relevant British fishing boat which fishes or deploys regulated gear in contravention of any requirement of point 7 of Annex IVa is guilty of an offence.

(2) Where point 7 of Annex IVa requires notification or prior notice it must, in the case of an English fishing boat, be given to the Secretary of State for Environment, Food and Rural Affairs.

(3) The person in charge of a relevant British fishing boat which carries fishing gear on board in contravention of point 8 or 11 of Annex IVa is guilty of an offence.

Transfer of days from one boat to another

6. - (1) Unused days may be transferred from one British fishing boat ("donor") to another British fishing boat ("recipient") in accordance with point 10 of Annex IVa.

(2) A transfer under paragraph (1) is only effective if, where the donor is an English fishing boat, a written notification of transfer, signed by the donor's owner (or, as the case may be, each part owner), is sent to the Secretary of State for Environment, Food and Rural Affairs before the end of the management period in relation to which the transfer is to take effect, and contains all the following particulars:

- (a) the name and PLN and RSS number of the donor;
- (b) the management period and any grouping of regulated gear to which the transfer relates;
- (c) the name and PLN and RSS number of each recipient;
- (d) the number of days transferred to each recipient;
- (e) a declaration to the effect that the donor is entitled to make the transfer; and
- (f) the date of signature.

(3) A person who makes a false declaration in a notification under paragraph (2) is guilty of an offence.

(4) 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 [[11](#)]; 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.

Transport of cod

7. Where any quantities of cod are transported in contravention of Article 15(2) of Regulation 423/04, the owner or hirer of, and the person responsible for, the vehicle used to transport the cod is guilty of an offence.

Mixing of species

8. A person in charge of -

(a) a relevant British fishing boat, or

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

on which cod is stowed or retained in contravention of Article 14 of Regulation 423/04, is guilty of an offence.

Prior notification of landing, discharge or transhipment

9. - (1) The person in charge of a British or foreign fishing boat to which Article 11 of Regulation 423/04 applies, which enters a port in England without providing the information called for by that Article, is guilty of an offence.

(2) A British sea-fishery officer may, by written or oral direction to the person in charge of a British or foreign fishing boat landing at a port in England, require that the discharge referred to in Article 11(2) of Regulation 423/04 does not commence until authorised by a British sea-fishery officer.

(3) The person in charge of a fishing boat from which a discharge is made in contravention of any requirement under paragraph (2) is guilty of an offence.

(4) The person in charge of a British or foreign fishing boat to which Article 11(3) of Regulation 423/04 applies, who fails to provide information as required by that article, is guilty of an offence.

(5) For the purposes of paragraph (1) and (4), the Secretary of State for Environment, Food and Rural Affairs is the person to whom that information is to be provided.

Landing of cod at a designated port

10. - (1) The person in charge of a British or foreign fishing boat which lands cod in England in contravention of Article 12 of Regulation 423/04 is guilty of an offence.

(2) If, in the circumstances to which Article 15 of Regulation 423/04 applies, cod is first landed from a fishing boat in a port within England designated as specified in paragraph (3), the person in charge of that boat shall ensure that a representative sample, obtained in accordance with that Article, shall be

weighed in the presence of a British sea-fishery officer prior to the cod being offered for first sale, unless the conditions in paragraph 3 are met.

(3) The conditions referred to in paragraph 2 are -

(a) the fishing boat is party to an arrangement made among fishing boats using the port with a person or organisation to act as their controller for the purposes of that point; and

(b) details of the arrangement, and the fishing boats which are party to it, have been notified to the Secretary of State for Environment, Food and Rural Affairs.

(4) For landings in England, the ports, and where applicable the landing locations within them listed in the Schedule are designated for the purposes of Article 12 of Regulation 423/04.

(5) The person in charge of a fishing boat from which cod is offered for first sale in contravention of paragraph 2 is guilty of an offence.

Recording information on catches of fish

11. The person in charge of a relevant British fishing boat or foreign fishing boat in respect of which the 8% margin of tolerance referred to in Article 13 of Regulation 423/04 is exceeded, is guilty of an offence.

Maintenance of logbooks

12. - (1) An entry shall be made in a logbook of any relevant British fishing boat which is absent from port (on a trip which includes any period in the cod recovery zone) carrying regulated gear but not fishing as specified in Article 6 of Regulation 2847/93, in respect of each particular gear 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, but not later than midnight in respect of each day;

(b) at the time of arrival in port;

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

(d) at the time that an effort report is made as required by Article 19e.3 of Regulation 2847/93,

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, the logbook entries shall be handed over and dispatched as if 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.

PART 3

SOLE

Establishment of management periods

13. - (1) Management periods for an English fishing boat, as referred to in point 6(b) of Annex IVc, shall be determined and notified by the person in charge of the boat, as follows:

- (a) the base unit for determination of management periods shall be one calendar month;
- (b) each management period may be determined in multiples of the base unit from 1 to 11 calendar months; and
- (c) the determination of each management period must be notified to the Secretary of State for Environment, Food and Rural Affairs at the same time as any notification under article 15;

and they are established by that determination and notification unless point 11 of Annex IVc applies to the boat, in which case they are established by confirmation of that determination and notification by the Secretary of State for Environment, Food and Rural Affairs taking that point into account.

(2) The person in charge of a British fishing boat may aggregate the days allocated for each calendar month as set out in point 6 of Annex IVc for being present within the area and absent from port, within management periods.

(3) Where a management period covers the month of February -

- (a) a notification given to the Secretary of State for Environment, Food and Rural Affairs (whether after or in anticipation of the coming into force of this Order) covering a management period including February 2005 and any grouping of gears for the period shall be treated as meeting the requirement of paragraph (1)(c) but with the management period counting as beginning immediately on the date this Order comes into force and ending as notified; and
- (b) the second February stage counts as one month and shall accordingly be treated as a single base unit.

(4) The person in charge of a British fishing boat which, at any time during the Annex IV year, is absent from port in the sole recovery zone carrying regulated gear for which a management period has not been established as provided in paragraph (1), or any equivalent provision, is guilty of an offence.

Absences from port

14. - (1) A person in charge of a relevant fishing boat carrying regulated

gear which, at any time in the Annex IV year, either

(a) contravenes point 8 of Annex IVc; or

(b) subject to any adjustments made under this article for the purposes of Annex IVc, during a management period is absent from port in the sole recovery zone in excess of the number of days permitted to it under point 6(a) of Annex IVc,

is guilty of an offence.

(2) In addition to the number of days of absence from port permitted under point 6(a) applicable to the relevant fishing boat in accordance with any regulated gear that it carries, for each calendar month the Secretary of State may allocate to the boat a proportion of such number of days as may be allocated to the United Kingdom under point 6(c) of Annex IVc.

(3) Where in respect of a management period established for it days have been transferred from one British fishing boat ("the donor") to another British fishing boat ("the recipient") under article 16 for the purposes of point 9 of Annex IVc, the following shall apply-

(a) the donor shall have deducted from its allocation of days such number of days as have been transferred to the recipient; and

(b) the recipient shall have added to its allocation of days such number of days as have been transferred by the donor.

(4) Where on any day during a management period any regulated gear is at any time affixed to a relevant British fishing boat and one or more other fishing boats whilst they are in the sole recovery zone that day shall be deducted from each boat's allocation.

(5) Where a relevant British fishing boat was absent from port in the sole recovery zone carrying regulated gear in excess of its allocation of days in respect of a previous management period, there shall be deducted from the next management period the number of days during which the boat was so absent.

(6) Where the management period includes the month of February, any number of days spent absent from port in the sole recovery zone carrying the regulated gear by a relevant British fishing boat in the first February stage shall be deducted from the allocation of days for that month.

(7) Where during the management period a relevant British fishing boat was absent from port in the circumstances as set out in point 12 of Annex IVc, the person in charge of the relevant British fishing boat shall apply to the Secretary of State for Environment, Food and Rural Affairs for an adjustment of the allocation of days in respect of those circumstances.

(8) For the purposes of paragraph (2) and (7), where additional days are allocated by the Secretary of State to a relevant fishing boat, the allocation does not have effect until the person in charge of the relevant fishing boat is notified of the allocation by the Secretary of State.

Carriage and operation of fishing gears

15. - (1) The person in charge of a relevant British fishing boat which fishes or deploys regulated gear in contravention of any requirement of point 7 of Annex IVc is guilty of an offence.

(2) Where point 7 of Annex IVc requires notification or prior notice it must, in the case of an English fishing boat, be given to the Secretary of State for Environment, Food and Rural Affairs.

(3) The person in charge of a relevant British fishing boat which carries fishing gear on board in contravention of point 10 of Annex IVc is guilty of an offence.

Transfer of days from one boat to another

16. - (1) Unused days may be transferred from one British fishing boat ("donor") to another British fishing boat ("recipient") in accordance with point 9 of Annex IVc.

(2) A transfer under paragraph (1) is only effective if, where the donor is an English fishing boat, a written notification of transfer, signed by the donor's owner (or, as the case may be, each part owner), is sent to the Secretary of State for Environment, Food and Rural Affairs before the end of the management period in relation to which the transfer is to take effect, and contains all the following particulars:

- (a) the name and PLN and RSS number of the donor;
- (b) the management period and any grouping of regulated gear to which the transfer relates;
- (c) the name and PLN and RSS number of each recipient;
- (d) the number of days transferred to each recipient;
- (e) a declaration to the effect that the donor is entitled to make the transfer; and
- (f) the date of signature.

(3) A person who makes a false declaration in a notification under paragraph (2) is guilty of an offence.

(4) 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; 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.

Transport of sole

17. Where any quantities of sole are transported, during the Annex IV year, in contravention of point 20 of Annex IVc, the owner or hirer of, and the person responsible for, the vehicle used to transport the sole is guilty of an offence.

Mixing of species

18. A person in charge of-

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

on which quantities of sole greater than 50kg are stowed or retained during the Annex IV year in contravention of point 17 of Annex IVc, is guilty of an offence.

Transshipment or landing relating to third countries

19. - (1) The person in charge of a British or foreign fishing boat to which point 15 of Annex IVc applies, which, during the Annex IV year, fails to provide information as required by that point, is guilty of an offence.

(2) For the purpose of paragraph (1), the Secretary of State for the Environment, Food and Rural Affairs is the person to whom that information is to be provided.

Weighing of sole

20. - (1) The person in charge of a British or foreign fishing boat shall ensure that any quantity of sole exceeding 300kg caught in the sole recovery zone shall be weighed using auction room scales in accordance with point 18 of Annex IVc.

(2) If the person in charge of a British or foreign fishing boat fails to comply with paragraph (1) they shall be guilty of an offence.

Recording information on catches of fish

21. The person in charge of a relevant British fishing boat or foreign fishing boat in respect of which the 8% margin of tolerance referred to in point 16 of Annex IVc is exceeded during the Annex IV year, is guilty of an offence.

Maintenance of logbooks

22. - (1) An entry shall be made in a logbook of any relevant British fishing boat which is absent from port (on a trip which includes any period in the sole recovery zone) carrying regulated gear but not fishing as specified in Article 6 of Regulation 2847/93, in respect of each particular gear 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, but not later than midnight in respect of each day;

(b) at the time of arrival in port;

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

(d) at the time that an effort report is made as required by Article 19e.3 of Regulation 2847/93,

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, the logbook entries shall be handed over and dispatched as if landing were made at the time of the boat's arrival in port.

(4) Where in relation to any time in the Annex IV year 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.

PART 4

ENFORCEMENT

Penalties and defence

23. - (1) A person guilty of an offence under Part 2 or Part 3 of this Order or under any equivalent provision shall be liable -

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

(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, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20 or 21 of this Order or under any equivalent provision may, subject to paragraph (4), also order forfeiture of:

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

(b) except in the case of an offence under article 7 or 17 or any equivalent provision, 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, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20 or 21 of this Order or under any equivalent provision shall, subject to paragraph (4), also 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 the power under paragraph (2) to order forfeiture of the fish in respect of the offence was committed.

(5) In any proceedings for an offence under article 4(1)(b) or 14(1)(b), it shall be a defence for a person to show that the number of days absent 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 that person's fishing boat under article 6 or 16 respectively and that he did not know and had no reasonable cause to suspect that the donor was not entitled to transfer the days.

(6) References in this article to fish in respect of which an offence was committed include fish caught at any time in the period during which the offence was committed.

Recovery of fines

24. - (1) Where a fine is imposed by a magistrates' court on a person in charge 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 the boat and its gear and catch to be detained for a period not exceeding three months from the date of 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^[12] (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 an offence under this Order or any equivalent provision, an order under Article 95 of the Magistrate's Courts (Northern Ireland) Order 1981^[13] or section 222 of the Criminal Procedure (Scotland) Act 1995^[14] (both of which deal with transfer of fines from one jurisdiction to another) specifies a petty sessions area in England, this article shall apply as if the fine were imposed by a court within the petty sessions area.

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

25. - (1) For the purpose of enforcing Part 2 and Part 3 of this Order or any equivalent provisions, or to operate or facilitate the operation of any monitoring deriving from Article 16 of Regulation 423/04 or point 21 of Annex IVc, 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) 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 any of those articles or any equivalent provision 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 and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away; and

(e) where the boat is one in relation to which he has reason to suspect that an offence under any of those articles or any equivalent provision has been committed, may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence;

but nothing in sub-paragraph (e) above shall permit any document required by law to be carried on board the boat to be seized and detained except while the boat is detained in a port.

(4) Where it appears to a British sea-fishery officer that an offence under article 3, 4, 5, 8, 11, 12, 13, 14, 15, 18, 21 or 22, or under any equivalent provision, has at any time been committed in respect of a fishing boat, he may -

(a) require the master of the boat to take, or himself take, the boat and 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 port;

and where such an officer detains or requires the detention of the boat he shall serve on the master a notice in writing stating that the boat is (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

26. - (1) For the purpose of enforcing Part 2 and Part 3 of this Order or any equivalent provisions, or to operate or facilitate the operation of any monitoring deriving from Article 16 of Regulation 423/04 or point 21 of Annex IVc, 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 the 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 the premises for such a period as may be reasonably necessary for the purposes of establishing whether an offence under any of those articles or any equivalent provision 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 boat;
- (g) for the purpose of ascertaining whether any person on the premises has committed an offence under any of those articles or any equivalent provision, 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 any of those articles or any equivalent provision 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) shall also apply in relation to any land used in connection with any of the activities described in paragraph (1)(a), 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 any premises and that their inspection is likely to disclose evidence of the commission of an offence under any of those articles or any equivalent provision; 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

27. - (1) This article applies -

(a) in England,

(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 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 an offence,

under article 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 17, 18, 19, 20 or 21 or under any equivalent provision.

Protection of British sea-fishery officers

28. A British sea-fishery officer or a person assisting him by virtue of article 25(2) or 26(1)(b) or authorisation under article 26(3), 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 25 to 27 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 British sea-fishery officers

29. - (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 25 and 26;

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

(c) assaults a person who is exercising any of the powers conferred on him by articles 25 to 27 or intentionally obstructs him 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

30. - (1) Where any offence under Part 2 or Part 3 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 Part 2 or Part 3 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 Part 2 or Part 3 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

31. - (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 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" means -

- (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.

PART 5

SUPPLEMENTARY

Consequential and connected amendments

32. The Sea Fishing (Enforcement of Community Control Measures) Order 2000[15] is amended, so far as it applies in England, as follows:

(a) in article 2(1)-

(i) for the definition of "Annex V" substitute the following definitions-

" "Annex IVa" means Annex IVa to Council Regulation 27/2005 of 22nd December 2004 fixing for 2005 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;

"Annex IVc" means Annex IVc to Council Regulation 27/2005 of 22nd December 2004 fixing for 2005 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";

(ii) insert the following definition:

" "Regulation 423/04" means Council Regulation (EC) No 423/04 establishing measures for the recovery of cod stocks"; and

(iii) at the end of the definition of "Regulation 2847/93" replace "and as applied by point 13 of Annex V" with "and as applied by Article 9 of Regulation 423/04 and point 13 of Annex IVc";

(b) In article 3, for paragraph (1A) substitute the following paragraph:

" (1A) In relation to any such fishing boat landing at a port designated by article 10(4) of the Sea Fishing (Restriction on Days at Sea) Order 2005, being a boat to which Annex IVa applies, the obligation to submit the logbook referred to in item 2(b) of the Schedule shall be treated for the purposes of paragraph (1) as contravened unless submission is effected, before the landing of any fish, by the handing of the white top copy of each logbook entry to a British sea-fishery officer or the placing of that white top copy in a box in the port marked as provided for that purpose.";

(c) in the Schedule, in column 3 of each entry opposite items 2(l), (m), (n) and (o), for the words "point 13 of Annex V", substitute the words "Article 9 of Regulation 423/04 and point 13 of Annex IVc".

Revocation

33. The Sea Fishing (Restriction on Days at Sea) Order 2004[16] is revoked in so far as it applies in England;

Alun Michael

Minister of State Department for Environment, Food and Rural Affairs

25th February 2005

Ian Pearson

Parliamentary Under Secretary of State, Northern Ireland Office

24th February 2005

SCHEDULE

Article 10(4)

LIST OF PORTS (AND WHERE APPLICABLE LOCATIONS WITHIN THE
PORT) IN ENGLAND AT WHICH ALL LANDINGS OF COD COVERED
BY ARTICLE 12 OF REGULATION 423/04 MUST TAKE PLACE

<i>Port</i>	<i>Location within port (where applicable)</i>
North Shields	
Whitby	Fish quay
Scarborough	West Pier
Humber-side (Hull and Grimsby)	Hull - North side of Albert Dock and William Wright Dock
	Grimsby - Fish Dock, Market Quay
Lowestoft	Waveney Dock
Shoreham	Within the confines of the harbour
Plymouth	Sutton Harbour, New Fish Market
Brixham	
Newlyn	
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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the administration and enforcement in England of the provisions of Annex IVa and IVc ("the Annexes") to Council Regulation (EC) No. 27/2005 (OJ No L12 14.1.2005. p.1) fixing for 2005 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. Further, the Order provides for the enforcement in England of monitoring, inspection and surveillance provisions as set out in Council Regulation (EC) No. 423/2004 (OJ No L70 9.3.2004.p.70) establishing measures for the recovery of cod stocks. Part 2 of the Order relates to Cod and Part 3 to Sole.

The Order contains provisions relating to the establishment and aggregation of management periods (articles 3 and 13 for cod and sole respectively), the number of days which a vessel may be absent from port (articles 4 and 14), the use of regulated fishing gear (articles 5 and 15) and the manner in which days may be transferred between fishing vessels within the same management period (articles 6 and 16).

Further, the Order sets out provisions for the transportation of cod and sole (articles 7 and 17), a provision relating to the mixing of species within containers on board fishing vessels (articles 8 and 18), procedures for the landing of cod in designated and non-designated ports (articles 9 and 10), procedures for transshipment or landing sole in third countries (article 19), a margin of tolerance relating to the recording of catches of fish in logbooks (articles 11 and 21) and provisions relating to the maintenance of logbooks (articles 12 and 22).

The Order creates offences in respect of the contravention, by the person in charge of the relevant fishing boat (or the individuals otherwise specifically referred to) of provisions of the Annexes. The offences relate to absences from port without notified fishing gear (articles 3 and 13) or in excess of the days permitted (articles 4 and 14), failure to use regulated fishing gear in the manner set out in the Annexes (articles 5 and 15), giving false information when attempting to transfer days from one vessel to another (articles 6 and 16), transporting species (articles 7 and 17) or mixing of species (articles 8 and 18) in a manner inconsistent with the Annexes, the landing of cod in designated and non designated ports in contravention of notification and documentary requirements (articles 9 and 10), the transshipment or landing of sole relating to third countries (article 19) and failing to comply with the 8% tolerance for logbook records relating to catches of fish and failure to handover and dispatch logbooks in the manner prescribed (articles 11, 12, 21 and 22).

Part 4 of the Order makes provisions for enforcement. The Order provides that a person guilty of an offence under it other than an offence under article 29 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 23).

The Order also provides for the recovery of fines imposed, or treated as imposed, by a magistrates' court (article 24).

For the purposes of enforcing provisions of the Annexes for which provision is made in Parts 2 and 3 of the Order, 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 25 to 27). Protection of such officers from liability is set out in article 28, and obstructing them is an offence under article 29, with a fine of up to the statutory maximum on summary conviction and a fine on conviction on indictment. Articles 30 and 31 deal with corporate and equivalent offences and admissibility of documents in evidence. Provision for consequential amendment and revocation is made by articles 32 and 33. In addition article 32 includes a provision bringing forward the time for submission of logbook entries for landings in designated ports.

A Regulatory Impact Assessment in relation to the Annexes and this Order has been prepared and placed in the library of each House of Parliament. Copies can be obtained from Defra, Fisheries Division 1, Room 303, 10 Whitehall Place, London SW1A 2HH.

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"). By virtue of article 2(1) of the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812), remaining functions of the Secretaries of State for Scotland and Wales under section 30(2) of the 1981 Act relevant to this Order were transferred to the Minister of Agriculture, Fisheries and Food. 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).[back](#)

[3] OJ No. L12, 14.1.2005, p.1.[back](#)

[4] 1995 c.21.[back](#)

[5] 1998 c.47.[back](#)

[6] OJ No. L276, 10.10.1983, p. 1; the last amending instrument is Commission Regulation (EC) No 1965/2001 (OJ No. L268, 9.10.2001, p. 28).[back](#)

[7] OJ No. L261, 20.10.1993, p. 1; the last amending instrument is Council Regulation (EC) No 806/2003 (OJ No. L122, 16.5.2003, p. 1).[back](#)

[8] OJ No L70, 9.3.2004, p.8.[back](#)

[9] 1998 c.4; see section 126 and the Scottish Adjacent Waters Boundaries Order (S.I. 1999/1126).[back](#)

[10] 1998 c.38; see section 155.[back](#)

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

[12] 1980 c. 43. Section 78 was amended by the 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](#)

[13] S.I. 1981/1675 (NI 26).[back](#)

[14] 1995 c.46.[back](#)

[15] S.I. 2000/51, amended by S.I. 2003/559, 2003/1535 and 2004/38.[back](#)

[16] S.I. 2004/398.[back](#)

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