

2010 No. 334

SEA FISHERIES

**The Sea Fishing (EU Recording and Reporting Requirements)
(Scotland) Order 2010**

Made - - - - *16th September 2010*
Laid before the Scottish Parliament *21st September 2010*
Coming into force - - *31st October 2010*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(a) and paragraph 1A of Schedule 2 to the European Communities Act 1972(b) and all other powers enabling them to do so.

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(c) and it appears to the Scottish Ministers that it is expedient for any reference to Council Regulation (EC) No. 1224/2009(d) to be construed as a reference to that Regulation as amended from time to time.

Citation, commencement and extent

1.—(1) This Order may be cited as the Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010 and comes into force on 31st October 2010.

(2) Subject to paragraph (3), this Order extends to Scotland and the Scottish zone only.

(3) Insofar as it extends beyond Scotland and the Scottish zone, it does so only as a matter of Scots law.

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

-
- (a) 1981 c.29 (“the 1981 Act”); relevant modifications are contained in the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748), article 5 and the Scotland Act 1998 (Modification of Functions) Order 1999 (S.I. 1999/1756), articles 3, 5 and 6. The functions of the Secretary of State, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). Definitions of “enforceable Community restriction”, “enforceable Community obligation” and “the Ministers” are contained in section 30(3) of the 1981 Act. Section 30 of the 1981 Act has effect in relation to Scotland as modified by section 30(5) of that Act, inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68(5)(b).
- (b) 1972 (c.68). Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”), section 28 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”).
- (c) Section 2(2) was amended by the Scotland Act 1998, Schedule 8, paragraph 15(3), which was amended by the 2006 Act, section 27(4). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and Part 1 of the Schedule to the 2008 Act.
- (d) O.J. No. L 343, 22.12.09, p.1.
- (e) Section 30(2A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999, Schedule 2, paragraph 68(5)(a).

Interpretation

2.—(1) In this Order—

“British sea-fishery officer” has the same meaning as in section 7 of the Sea Fisheries Act 1968(a);

“Control Regulation” means Council Regulation (EC) No. 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No. 847/96, (EC) No. 2371/2002, (EC) No. 811/2004, (EC) No. 768/2005, (EC) No. 2115/2005, (EC) No. 2166/2005, (EC) No. 388/2006, (EC) No. 509/2007, (EC) No. 676/2007, (EC) No. 1098/2007, (EC) No. 1300/2008, (EC) No. 1342/2008 and repealing Regulations (EEC) No. 2847/93, (EC) No. 1627/94 and (EC) No. 1966/2006(b), as amended from time to time;

“equivalent provision” means any provision in any other Order made under section 30(2) of the Fisheries Act 1981 for the purpose of implementing any EU recording and reporting requirement or EU (third country) recording and reporting requirement—

- (a) which extends to any part of the United Kingdom and has equivalent effect to a provision in this Order; and
- (b) proceedings in respect of which may be commenced in any place in the United Kingdom by virtue of section 30(2A) of the Fisheries Act 1981;

“EU fishing boat” means a Community fishing vessel as defined in Article 3(d) of Council Regulation (EC) No. 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy(c);

“EU recording and reporting requirement” means a provision of the Control Regulation, Regulation 1077/2008 or Regulation 2847/93 specified in column 1 of Schedule 1, as read with any qualifying words relating to the provision in that column and any detailed rules specified in the corresponding entry in column 2 of Schedule 1;

“EU (third country) recording and reporting requirement” means a provision of Regulation 1006/2008 or Regulation 201/2010 specified in column 1 of Schedule 2, as read with any qualifying words relating to the provision in that column and any detailed rules specified in the corresponding entry in column 2 of Schedule 2;

“fishery product” includes fish;

“logbook” has the same meaning as in Article 6 of Regulation 2847/93 (as read with Regulation 2807/83) and for the purposes of this Order, any reference to a logbook, declaration or document includes, in addition to a logbook, declaration or document in writing any—

- (a) map, plan, graph or drawing;
- (b) photograph;
- (c) data, however reproduced, communicated via a satellite-based vessel monitoring system established under Article 9 of the Control Regulation;
- (d) data, however reproduced, communicated to a fisheries monitoring centre established under Article 9(7) of the Control Regulation;
- (e) disk, tape, sound track or other device on 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

(a) 1968 c.77; section 7 is relevantly amended by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999, Schedule 2, paragraph 48(3); the 1981 Act, section 46(2); and the Marine and Coastal Access Act 2009 (c.23), section 239 and Schedule 22, Part 6.

(b) O.J. No. L 343, 22.12.09, p.1. The Control Regulation replaces Regulation 2847/93, although some of its provisions come into force in stages (either on specific dates or pending implementation of EU detailed rules).

(c) O.J. No. L 358, 31.12.02, p.59 as corrected by a Corrigendum published in O.J. No. L 240, 10.7.04, p.17 and as amended by Council Regulation (EC) No. 865/2007, O.J. No. L 192, 24.7.07, p.1 and Council Regulation (EC) No. 1224/2009, O.J. No. L 343, 22.12.09, p.1.

(f) film (including microfilm), negative, tape, disk or other device on which one or more visual images are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced;

“Regulation 2807/83” means Commission Regulation (EEC) No. 2807/83 of 22 September 1983 laying down detailed rules for recording information on Member States’ catches of fish(a);

“Regulation 2847/93” means Council Regulation (EEC) No. 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy(b);

“Regulation 1006/2008” means Council Regulation (EC) No. 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, amending Regulations (EEC) No. 2847/93 and (EC) No. 1627/94 and repealing Regulation (EC) No. 3317/94(c);

“Regulation 1077/2008” means Commission Regulation (EC) No. 1077/2008 of 3 November 2008 laying down detailed rules for the implementation of Council Regulation (EC) No. 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing and repealing Regulation (EC) No. 1566/2007(d);

“Regulation 201/2010” means Commission Regulation (EU) No. 201/2010 of 10 March 2010 laying down detailed rules for the implementation of Council Regulation (EC) No. 1006/2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters(e);

“relevant offence” means an offence under article 4, 5 or 6 of this Order, or under any equivalent provision;

“Scotland” and “the Scottish zone” have the same meaning as in section 126(1) of the Scotland Act 1998(f);

“Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995(g) and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging;

-
- (a) O.J. No. L 276, 10.10.83, p.1 as corrected by a Corrigendum published in O.J. No. L 353, 15.12.83, p.21 and as amended by Act of Accession of Spain and Portugal, O.J. No. L 302, 15.11.85, p.23; Commission Regulation (EEC) No. 473/89, O.J. No. L 53, 25.2.89, p.34; Act of Accession of Austria, Sweden and Finland, O.J. No. C 241, 29.8.94, p.21 (adapted by Council Decision 95/1/EC, Euratom, ECSC, O.J. No. L 1, 1.1.95, p.1); Commission Regulation (EEC) No. 2945/95, O.J. No. L 308, 21.12.95, p.18; Commission Regulation (EC) No. 395/98, O.J. No. L 50, 20.2.98, p.17; Commission Regulation (EC) No. 1488/98, O.J. No. L 196, 14.7.98, p.3; Commission Regulation (EC) No. 2737/1999, O.J. No. L 328, 22.12.99, p.54 (corrected by two Corrigenda, published in O.J. No. L 12, 18.1.00, p.36 and O.J. No. L 29, 4.2.00, p.38); Commission Regulation (EC) No. 1965/2001, O.J. No. L 268, 9.10.01, p.23; Commission Regulation (EC) No. 1804/2005, O.J. No. L 290, 4.11.05, p.10 and Commission Regulation (EC) No. 409/2009, O.J. No. L 123, 19.5.09, p.78.
- (b) O.J. No. L 261, 20.10.93, p.1 as amended by Council Regulation (EC) No. 2870/95, O.J. No. L 301, 14.12.95, p.1; Council Decision 95/528/EC, O.J. No. L 301, 14.12.95, p.35 (corrected by a Corrigendum published in O.J. No. L 302, 15.12.95, p.45); Council Regulation (EC) No. 2489/96, O.J. No. L 338, 28.12.96, p.12; Council Regulation (EC) No. 686/97, O.J. No. L 102, 19.4.97, p.1; Council Regulation (EC) No. 2205/97, O.J. No. L 304, 7.11.97, p.1; Council Regulation (EC) No. 2635/97, O.J. No. L 356, 31.12.97, p.14; Council Regulation (EC) No. 2846/98, O.J. No. L 358, 31.12.98, p.5 (corrected by a Corrigendum published in O.J. No. L 105, 22.4.99, p.32); Council Regulation (EC) No. 806/2003, O.J. No. L 122, 16.5.03, p.1; Council Regulation (EC) No. 1954/2003, O.J. No. L 289, 7.11.03, p.1; Council Regulation (EC) No. 768/2005, O.J. No. L 128, 21.5.05, p.1; Council Regulation (EC) No. 1967/2006, O.J. No. L 409, 30.12.06, p.11 (corrected by a Corrigendum published in O.J. No. L 36, 8.2.07, p.6); Council Regulation (EC) No. 1098/2007, O.J. No. L 248, 22.9.07, p.1; Council Regulation (EC) No. 1005/2008, O.J. No. L 286, 29.10.08, p.1; Council Regulation (EC) No. 1006/2008, O.J. No. L 286, 29.10.08, p.33 and as read with Article 20, and modified by Articles 28 and 29, of Council Regulation (EC) No. 1342/2008, O.J. No. L 348, 24.12.08, p.20. With the exception of certain provisions, including Articles 6, 8, 11 and 13, Regulation 2847/93 has been repealed by Article 122(1) of Council Regulation (EC) No. 1224/2009, O.J. No. L 343, 22.12.09, p.1.
- (c) O.J. No. L 286, 29.10.08, p.33.
- (d) O.J. No. L 295, 4.11.08, p.3 as corrected by a Corrigendum published in O.J. No. L 6, 10.1.09, p.117 and as amended by Commission Regulation (EU) No. 599/2010, O.J. No. L 174, 9.7.10, p.1.
- (e) O.J. No. L 61, 11.3.10, p.10.
- (f) 1998 c.46. The sea within British fishery limits (that is, the limits set by or under section 1 of the Fishery Limits Act 1976 (c.86)) which is adjacent to Scotland is determined by the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).
- (g) 1995 c.21.

“third country fishing boat” means a third country fishing vessel as defined in Article 2(o) of Regulation 1006/2008.

(2) In this Order, any reference to a numbered—

- (a) article is, except where otherwise indicated, a reference to the article so numbered in this Order;
- (b) paragraph is, except where otherwise indicated, a reference to the paragraph so numbered in the article in which it appears in this Order; and
- (c) Schedule is a reference to the Schedule to this Order so numbered.

(3) Column 3 of Schedules 1 and 2 (which provides an indication of the subject matter of each EU recording and reporting requirement and each EU (third country) recording and reporting requirement) is not to be read as limiting the scope of any EU recording and reporting requirement or EU (third country) recording and reporting requirement and is to be disregarded in relation to any question arising as to the construction of this Order.

(4) Any information provided to any authority for the purpose of any provision of this Order is to be treated as also provided for the purpose of any equivalent provision.

(5) Expressions used in this Order that appear in the Control Regulation or Regulations 2847/93, 1006/2008, 1077/2008 and 201/2010, and which are not defined in this Order, have the same meaning in this Order as in those Regulations.

Competent authority and methods of reporting

3.—(1) The Scottish Ministers are the competent authority to which information must be reported for the purpose of any EU recording and reporting requirement or EU (third country) recording and reporting requirement where the information relates to—

- (a) fishing activity or fishing operations undertaken by—
 - (i) Scottish fishing boats wherever they may be; and
 - (ii) any other fishing boat within the Scottish zone; and
- (b) fishery products that are landed, stored, transported or first sold in Scotland.

(2) Where an EU recording and reporting requirement or EU (third country) recording and reporting requirement requires the information specified in paragraph (1) to be—

- (a) submitted in written form, or sent other than by electronic means, that information must be submitted or sent to the Scottish Ministers by such methods as they may from time to time require**(a)**;
- (b) sent by electronic means, that information must be transmitted to the Scottish Ministers—
 - (i) in relation to Scottish fishing boats, and for the purposes of Articles 15, 17, 22 and 24 of the Control Regulation, by an electronic logbook software system of a type approved by the Scottish Ministers**(b)**; and
 - (ii) in relation to registered buyers, registered auctions and other authorised bodies or persons responsible for the first sale of fishery products in Scotland, and for the purposes of Article 5(1) and (4) of Regulation 1077/2008, by an electronic reporting system of a type specified by the Scottish Ministers on the form provided by them for the purposes of article 4.

(a) Details of the methods for submitting information to the Scottish Ministers in written form, and for sending information to the Scottish Ministers other than by electronic means, will be available from 31st October 2010 on the Scottish Government’s (Marine and Fisheries) website which can be accessed via the following web-link: <http://www.scotland.gov.uk/Topics/marine/Sea-Fisheries/Regulation>.

(b) Details of approved electronic logbook software systems (ELSS) are published on the Scottish Government’s (Marine and Fisheries) website and can be accessed via the following web-link: <http://www.scotland.gov.uk/Topics/marine/Sea-Fisheries/Regulation/approveduk>.

Register of fish buyers and sellers with the prescribed annual financial turnover

4.—(1) The Scottish Ministers are the competent authority for the purposes of—

- (a) maintaining a register of registered buyers, registered auctions and other authorised entities or persons responsible for the first sale of fishery products that have the prescribed annual financial turnover; and
- (b) publishing the register on an official website^(a),

pursuant to Article 2(1) of Regulation 1077/2008.

(2) A registered buyer, registered auction or other authorised entity or person responsible for the first sale of fishery products in Scotland must—

- (a) on a form provided by the Scottish Ministers; and
- (b) before 1st October in each calendar year,

inform the Scottish Ministers whether or not it had the prescribed annual financial turnover in the preceding calendar year.

(3) In this article, “the prescribed annual financial turnover” means an annual financial turnover in first sales of fishery products of €400,000 or more, which is calculated for a calendar year using the annual financial turnover for a person for the calendar year and based on the European Central Bank’s official average euro foreign exchange reference rate applicable for that calendar year.

(4) A person is guilty of an offence if that person fails to comply with article 4(2).

(5) A person is guilty of an offence if that person, in purported compliance with article 4(2), knowingly or recklessly provides information which is false in a material particular.

EU recording and reporting requirements

5.—(1) Where there is, in respect of—

- (a) any Scottish fishing boat wherever it may be;
- (b) any EU fishing boat within the Scottish zone;
- (c) the entry into the Scottish zone by any EU fishing boat; or
- (d) any fishery products, premises or vehicle in Scotland,

a contravention of any EU recording and reporting requirement, the persons specified in the corresponding entry in Column 4 of Schedule 1 are each guilty of an offence.

(2) A person is guilty of an offence if that person, in purported compliance with any EU recording and reporting requirement, knowingly or recklessly records or reports information which is false in a material particular where that information is recorded or reported—

- (a) in relation to a Scottish fishing boat; or
- (b) in Scotland or in the Scottish zone.

(3) For the purposes of Articles 62 and 66 of the Control Regulation, the specified annual financial turnover of €200,000 is calculated on the same basis as the prescribed annual financial turnover referred to in article 4(3).

EU (third country) recording and reporting requirements

6.—(1) Where there is, in respect of—

- (a) any third country fishing boat within the Scottish zone; or
- (b) the entry into the Scottish zone by any third country fishing boat,

(a) The register is published on the Scottish Government’s (Marine and Fisheries) website and can be accessed via the following web-link: <http://www.scotland.gov.uk/Topics/marine/Sea-Fisheries/fish-register/online-register>.

a contravention of any EU (third country) recording and reporting requirement, the persons specified in the corresponding entry in column 4 of Schedule 2 are each guilty of an offence.

(2) For the purposes of this article, the reference to “control measures” in Article 22 of Regulation 1006/2008 is to be construed as a reference to the EU recording and reporting requirements specified in entries 1(a) to (e), 2(c) to (g) and 3(a) to (c) in Schedule 1.

(3) The references to “Community fishing vessel” and “flag Member State” in each of the EU recording and reporting requirements mentioned in paragraph (2) are to be construed as references to “third country fishing boat” and “flag State” respectively.

(4) In paragraph (3), “flag State” means the State whose flag a third country fishing boat is entitled to fly or in which a third country fishing boat is registered.

(5) A person is guilty of an offence if that person, in purported compliance with any EU (third country) recording and reporting requirement, knowingly or recklessly records or reports information which is false in a material particular where that information is recorded or reported in Scotland or in the Scottish zone.

Penalties

7.—(1) A person guilty of a relevant offence is liable—

- (a) on summary conviction, to a fine not exceeding £50,000; or
- (b) on conviction on indictment, to a fine.

(2) The court which convicts a person of a relevant offence, other than an offence under article 4(4) or (5), may order the forfeiture of any fish in respect of which the offence was committed.

(3) Subject to the following provisions of this article, any person found guilty of a relevant offence, other than an offence under article 4(4) or (5), is 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 is not liable to a fine under paragraph (3) if, under paragraph (2), the court orders the forfeiture of the fish in respect of which that offence was committed.

(5) The court may not order the forfeiture of any fish under paragraph (2), if a fine is imposed under paragraph (3).

(6) Subject to paragraphs (4) and (5), any fine to which a person is liable under paragraph (3) is in addition to any other penalty (whether pecuniary or otherwise) to which that person is liable in respect of that offence under this article or under an equivalent provision.

Recovery of fines

8.—(1) Without prejudice to section 221 of the Criminal Procedure (Scotland) Act 1995(a), where a court has imposed a fine on any person in respect of an offence under this Order, that court may for the purpose of recovering the fine—

- (a) order any boat involved in the commission of the offence and its gear and catch to be detained for a period not exceeding 3 months from the date—
 - (i) of the conviction or until the fine is paid;
 - (ii) the order is renewed for a further period (not exceeding 3 months); or
 - (iii) on which a warrant is issued under sub-paragraph (b),whichever first occurs; or
- (b) subject to paragraph (2), at any time after the imposition of the fine, issue a warrant for the arrestment and sale of any boat involved in the commission of the offence, its gear and catch.

(a) 1995 c.46; section 221 was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), schedule 5, paragraph 23.

(2) The court must not issue a warrant under paragraph (1)(b) without first affording the owner of the boat, gear or catch liable to be included in the warrant an opportunity to be heard on the issue of such warrant.

(3) A warrant issued under paragraph (1)(b), whatever the amount of the fine imposed, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff in a summary cause.

(4) Where in relation to a fine in respect of an offence under this Order a transfer of fine order under section 222 of the Criminal Procedure (Scotland) Act 1995(a), section 90 of the Magistrates' Courts Act 1980(b) or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(c) specifies a court of summary jurisdiction in Scotland, this article applies as if the fine were a fine imposed by that court.

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

9.—(1) For the purpose of enforcing article 5 or 6, or any equivalent provision, a British sea-fishery officer may exercise the powers conferred by paragraphs (2), (3), (4) and (5) in relation to any—

- (a) Scottish fishing boat wherever it may be; or
- (b) any other fishing boat within the Scottish zone.

(2) A British sea-fishery officer may go on board the boat, with or without persons assigned to assist in the duties of that officer, 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) A British sea-fishery officer may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to that officer to be necessary for the purposes of enforcement referred to in paragraph (1) and, in particular, may—

- (a) search for fishery products or fishing gear on the boat and may examine any such products 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 that officer to be necessary for facilitating the examination;
- (b) require any person on board the boat to produce any document relating to the boat, to any fishing operations ancillary thereto or to the persons on board, which is in the custody or possession of that person;
- (c) for the purpose of ascertaining whether a relevant offence has been committed, search the boat for any such document and may require any person on board the boat to do anything which appears to that officer to be necessary for facilitating the search;
- (d) inspect, take copies of and retain in the possession of that officer while any search, examination or inspection provided for under this article is being carried out, any such document produced to that officer or found on board;
- (e) require the master, or any person for the time being in charge of the boat, to render all such documents on a computer system into visible and legible form and to produce them in a form in which they may be taken away; and
- (f) where the boat is one in relation to which that officer has reason to suspect that a relevant offence has been committed, seize and detain any such document produced to that officer or found on board, for the purpose of enabling the document to be used as evidence in proceedings for the offence,

but nothing in sub-paragraph (f) permits 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.

(a) Section 222 was amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), schedule 1, paragraph 20(3).
(b) 1980 c.43; section 90 was amended by the Criminal Justice and Public Order Act 1994 (c.33), section 47(2) and the Collection of Fines (Final Scheme) Order 2006 (S.I. 2006/1737), article 50.
(c) S.I. 1981/1675 (N.I. 26).

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

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

(5) If such an officer detains or requires the detention of a boat, the officer must serve notice in writing on the master stating that the boat is 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

10.—(1) For the purpose of enforcing article 4, 5 or 6, or any equivalent provision, a 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 any connected or ancillary activities or with the treatment, storage or sale of fishery products;
- (b) take with the officer such other persons as appear to the officer to be necessary and any equipment or materials;
- (c) examine any fishery product on the premises and require persons on the premises to do anything which appears to that officer to be necessary for facilitating the examination;
- (d) carry out at such premises such other inspections or tests as may reasonably be necessary;
- (e) require any person not to remove, or cause to be removed, any fishery product from such premises for such a period as may be reasonably necessary for the purposes of establishing whether a relevant offence has at any time been committed;
- (f) require any person on the premises to produce any documents which are in the custody or possession of that person relating to the catching, landing, transportation, transhipment, sale or disposal of any fishery product;
- (g) for the purpose of ascertaining whether a relevant offence has been committed, search the premises for any such document and may require any person on the premises to do anything which appears to that officer to be necessary for facilitating the search;
- (h) inspect and take copies of any such document produced or found on the premises;
- (i) require any appropriate or responsible person to render any such documents on a computer system into a visible and legible form and to produce them in a form in which they may be taken away; and
- (j) if the officer has reason to suspect that a relevant offence has been committed, seize and detain any such document produced or found on the premises, for the purposes of enabling the document to be used as evidence in proceedings for the offence.

(2) The provisions of paragraph (1) apply in relation to any land used in connection with any of the activities described in paragraph (1)(a), and in respect of any vehicle which a British sea-fishery officer has reasonable cause to believe is being used to transport fishery products, as they apply in relation to premises and, in the case of a vehicle, include the power to require the vehicle to stop at any time and, if necessary, direct the vehicle to some other place to facilitate inspection.

(3) If a sheriff by information on oath is—

- (a) satisfied that there are reasonable grounds 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 a relevant offence; and

- (b) also satisfied 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;
 - (ii) that an application for admission or the giving of such notice would defeat the object of the entry; or
 - (iii) that the premises are unoccupied, or the occupier is temporarily absent, and it would defeat the object of the entry to await the return of the occupier,

the sheriff may by signed warrant, valid for a period of no more than 1 month, authorise a British sea-fishery officer to enter the premises, if need be by using reasonable force, accompanied by such persons as appear to the officer to be necessary.

Power of British sea-fishery officers to seize fish

11. Any British sea-fishery officer may seize—

- (a) in Scotland or in the Scottish zone; or
- (b) on board a Scottish fishing boat wherever it may be,

any fishery product (including any receptacle which contains such product) in respect of which the officer has reasonable grounds to suspect that a relevant offence, other than an offence under article 4(4) or (5), has been committed.

Protection of officers

12. A British sea-fishery officer, or a person assisting such an officer by virtue of article 9(2) or 10(1)(b) or (3), is not liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred by article 9, 10 or 11 if the court is satisfied that—

- (a) the act was done in good faith;
- (b) there were reasonable grounds for doing it; and
- (c) it was done with reasonable skill and care.

Obstruction of officers

13.—(1) A person is guilty of an offence if that person—

- (a) fails without reasonable excuse to comply with any requirement imposed by a British sea-fishery officer under the powers conferred on such officers by article 9 or 10;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with such requirement;
- (c) conceals, tampers with or disposes of evidence relating to an investigation;
- (d) assaults an officer who is exercising any of the powers conferred by this Order; or
- (e) obstructs any such officer in the exercise of the powers conferred by article 9, 10 or 11.

(2) Any 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.

Offences by bodies corporate

14.—(1) Where—

- (a) an offence under this Order has been committed by a body corporate or a Scottish partnership or other unincorporated association; and

- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association, is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner;
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Admissibility in evidence of logbooks and other documents

15.—(1) Any—

- (a) logbook kept under Article 6 of Regulation 2847/93 or sent under Article 15 of the Control Regulation;
- (b) declaration submitted under Article 8(1) of Regulation 2847/93 or sent under Article 24 of the Control Regulation;
- (c) declaration submitted under Article 11 of Regulation 2847/93 or sent under Article 22 of the Control Regulation;
- (d) document drawn up under Article 13 of Regulation 2847/93;
- (e) sales note submitted under Article 62 of the Control Regulation or transmitted under Article 5(1) of Regulation 1077/2008;
- (f) declaration submitted under Article 66 of the Control Regulation or transmitted under Article 5(4) of Regulation 1077/2008; or
- (g) document containing required information received by a fisheries monitoring centre established under Article 9(7) of the Control Regulation,

is, in any proceedings for a relevant offence, to be received in evidence without being produced or sworn to by any witness and is, unless the contrary is shown, conclusive evidence as to the matters stated therein.

(2) For the purpose of paragraph (1)(g), “required information” means data relating to—

- (a) a fishing boat’s identification;
- (b) a fishing boat’s course and speed;
- (c) the most recent geographical position of the fishing boat expressed in degrees and minutes of longitude and latitude; and
- (d) the date and time of the fixing of that position,

as communicated via a satellite-based vessel monitoring system established under Article 9 of the Control Regulation.

Revocations and savings

16.—(1) The following instruments are revoked—

- (a) the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000 (“the 2000 Order”)(a);
- (b) the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Amendment Order 2005(b); and
- (c) the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Amendment Order 2009(c).

(2) Notwithstanding paragraph (1), the instruments referred to in that paragraph continue to have effect for the purposes of any investigation or legal proceedings relating to any acts or omissions which occurred before 31st October 2010 and constitute an offence under the 2000 Order.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
16th September 2010

(a) S.S.I. 2000/7; relevant amending instruments are S.S.I. 2005/552 and 2009/304.
(b) S.S.I. 2005/552.
(c) S.S.I. 2009/304.

SCHEDULE 1

Articles 2(1) and (3), 5(1) and 6(2)

EU RECORDING AND REPORTING REQUIREMENTS, CONTRAVENTION OF WHICH CONSTITUTES AN OFFENCE

Column 1 Provision	Column 2 Detailed Rules	Column 3 Subject Matter	Column 4 Persons liable
<p>1. The Control Regulation</p> <p>(a) Article 15(1) and (2), subject to Article 15(3) and Article 13(1) of Regulation 1006/2008.</p>	<p>Article 6(1), (2) and (5) of Regulation 1077/2008.</p>	<p>In relation to EU fishing boats with an overall length of 12 metres or more—</p> <p>Requirement to: (a) record fishing logbook data by electronic means, and (b) send that data by electronic means to the competent authority of the flag Member State at least once a day and not later than 24:00 hours (even when there are no catches) and, in addition, at the request of the competent authority of the flag Member State, immediately after completion of the last fishing operation, before entering into port, at the time of any inspection at sea, and at the time of events defined in EU legislation or by the flag Member State.</p>	<p>The master, the owner, the charterer (if any) and the agent of any of these persons.</p>
<p>(b) Article 17(1) and (4).</p>	<p>In relation to EU fishing boats with an overall length of 12 metres or more, which fish for stocks that are subject to a multiannual plan and are required to record fishing logbook data by electronic means in accordance with Article 15 of the Control Regulation—</p> <p>Requirement to notify the competent authority of the flag Member State, at least 4 hours before the estimated time of arrival at port, of the following information by electronic means: (a) the external identification number and the name of the fishing boat; (b) the name of the port of destination and the purposes of the call; (c) the dates of the fishing trip and the relevant geographical areas in which the catches were taken; (d) the estimated date and time of arrival at port; (e) the</p>	<p>In relation to EU fishing boats with an overall length of 12 metres or more, which fish for stocks that are subject to a multiannual plan and are required to record fishing logbook data by electronic means in accordance with Article 15 of the Control Regulation—</p> <p>Requirement to notify the competent authority of the flag Member State, at least 4 hours before the estimated time of arrival at port, of the following information by electronic means: (a) the external identification number and the name of the fishing boat; (b) the name of the port of destination and the purposes of the call; (c) the dates of the fishing trip and the relevant geographical areas in which the catches were taken; (d) the estimated date and time of arrival at port; (e) the</p>	<p>The master, the owner, the charterer (if any) and the agent of any of these persons.</p>

Column 1 Provision	Column 2 Detailed Rules	Column 3 Subject Matter	Column 4 Persons liable
(c) Article 18(1).		<p>quantities of each species recorded in the fishing logbook, and (f) the quantities of each species to be landed or transhipped.</p> <p>In relation to EU fishing boats which are not required by Article 15 of the Control Regulation to record fishing logbook data by electronic means and which intend to use port or landing facilities in a coastal Member State other than their flag Member State—</p> <p>Requirement to notify the competent authority of the coastal Member State, at least 4 hours before the estimated time of arrival at port, of the following information: (a) the external identification number and the name of the fishing boat; (b) the name of the port of destination and the purposes of the call; (c) the dates of the fishing trip and the relevant geographical areas in which the catches were taken; (d) the estimated date and time of arrival at port; (e) the quantities of each species recorded in the fishing logbook, and (f) the quantities of each species to be landed or transhipped.</p>	The master, the owner, the charterer (if any) and the agent of any of these persons.
(d) Article 22(1), subject to Article 22(2).	Article 6(2) of Regulation 1077/2008.	<p>In relation to EU fishing boats with an overall length of 12 metres or more—</p> <p>Requirement to: (a) record transhipment declaration data by electronic means, and (b) send that data by electronic means to the competent authority of the flag Member State within 24 hours of completing the transhipment operation.</p>	The master, the owner, the charterer (if any) and the agent of any of these persons.
(e) Article 24(1), subject to Article 24(2).		<p>In relation to EU fishing boats with an overall length of 12 metres or more—</p> <p>Requirement to: (a) record landing declaration data by electronic means, and (b) send that data by electronic means to the competent authority of the flag Member State within 24 hours of landing.</p>	The master, the owner, the charterer (if any) and the agent of any of these persons.
(f) Article 28(1).		In relation to EU fishing boats which are subject to a fishing effort regime and are not equipped with a functioning vessel monitoring system or do not transmit fishing logbook data by electronic means under Article 15 of the Control Regulation—	The master, the owner, the charterer (if any) and the agent of any of these persons.

Column 1 Provision	Column 2 Detailed Rules	Column 3 Subject Matter	Column 4 Persons liable
		Requirement to communicate a fishing effort report by telex, fax, telephone message, e-mail or radio (via an EU-approved radio station) to the competent authority of the flag Member State (and, where appropriate, to the coastal Member State) immediately before each entry into, and exit from, a geographical area subject to that effort regime.	
(g) Article 62(1), as read with Article 64 and subject to Article 65(2).		In relation to registered buyers, registered auctions or other bodies or persons authorised by Member States that are responsible for the first marketing of fisheries products landed in a Member State and have an annual financial turnover in first sales of fisheries products of less than €200,000— Requirement to submit a sales note to the competent authority of the Member State where the first sale takes place within 48 hours of the first sale.	The registered buyer, the registered auction or other authorised body or person responsible for the first sale of the fisheries products.
(h) Article 62(5), as read with Article 64 and subject to Article 65(2).		Where fisheries products are landed outside the EU and the first sale takes place in a third country— Requirement to submit a copy of the sales note (or any equivalent document containing the same level of information) to the competent authority of the flag Member State within 48 hours of the first sale.	The master, the owner, the charterer (if any) and the agent of any of these persons.
(i) Article 66(1) and (3).		In relation to registered buyers, registered auctions or other bodies or persons authorised by Member States that are responsible for the first marketing of fisheries products landed in a Member State and have an annual financial turnover in first sales of fisheries products of less than €200,000, and where fisheries products are intended for sale at a later stage— Requirement to submit a take-over declaration to the competent authority of the Member State where the take-over takes place within 48 hours of landing.	The registered buyer, the registered auction or other authorised body or person responsible for the first sale of the fisheries products.

Column 1 Provision	Column 2 Detailed Rules	Column 3 Subject Matter	Column 4 Persons liable
2. Regulation 1077/2008			
(a) Article 5(1), subject to Article 1(1)(c).		<p>In relation to registered buyers, registered auctions or other entities or persons authorised by Member States that are responsible for the first sale of fishery products and have an annual financial turnover in first sales of fishery products in excess of €400,000—</p> <p>Requirement to transmit information required to be recorded in a sales note by electronic means to the competent authority of the Member State where the first marketing takes place.</p>	The registered buyer, the registered auction or other authorised entity or person responsible for the first sale of the fishery products.
(b) Article 5(4), subject to Article 1(1)(c).		<p>In relation to registered buyers, registered auctions or other entities or persons authorised by Member States that are responsible for the first sale of fishery products and have an annual financial turnover in first sales of fishery products in excess of €400,000, and where fishery products are not offered for sale or are intended for sale at a later stage—</p> <p>Requirement to transmit information required to be recorded in a take-over declaration by electronic means to the competent authority of the Member State where the take-over takes place.</p>	The holder of the take-over declaration.
(c) Article 10(1).		<p>Where an EU fishing boat's electronic recording and reporting system malfunctions—</p> <p>Requirement to communicate logbook, landing declaration and transhipment data to, and in the manner prescribed by, the competent authority of the flag Member State no later than 24:00 hours each day (even when there are no catches) and, in addition, at the request of the competent authority of the flag Member State, immediately after completion of the last fishing operation, before entering into port, at the time of any inspection at sea and at the time of events defined in EU legislation or by the flag Member State.</p>	The master, the owner, the charterer (if any) and the agent of any of these persons.

Column 1 Provision	Column 2 Detailed Rules	Column 3 Subject Matter	Column 4 Persons liable
(d) Article 10(3).		<p>In relation to an EU fishing boat following a technical failure with, or malfunction of, its electronic recording and reporting system—</p> <p>Requirement to remain in port until the system is functioning to the satisfaction of the competent authority of the flag Member State or until it is otherwise authorised to leave port by the competent authority of the flag Member State.</p>	The master, the owner, the charterer (if any) and the agent of any of these persons.
(e) Article 11(3).		<p>In relation to an EU fishing boat which has been notified that its flag Member State has not received electronic transmissions of logbook, transhipment or landing declaration data—</p> <p>Requirement to send such data to the competent authority of the flag Member State immediately on receipt of such notification.</p>	The master, the owner, the charterer (if any) and the agent of any of these persons.
(f) Article 12(3).		<p>In relation to an EU fishing boat which has been notified that a coastal Member State cannot access on-line the boat's electronic logbook or transhipment data—</p> <p>Requirement to send such data, and a copy of the return message issued by the flag Member State under Article 8 of Regulation 1077/2008, to the competent authority of the coastal Member State upon request and by any available electronic means.</p>	The master, the owner, the charterer (if any) and the agent of any of these persons.
(g) Article 12(4), as read with article 12(3).		<p>In relation to an EU fishing boat which cannot provide a copy of a return message in compliance with a coastal Member State's request under Article 12(3) of Regulation 1077/2008—</p> <p>Requirement to stop all fishing activities in the coastal Member State's waters until a copy of the return message or electronic logbook information is provided to the competent authority of the coastal Member State.</p>	The master, the owner, the charterer (if any) and the agent of any of these persons.

Column 1 Provision	Column 2 Detailed Rules	Column 3 Subject Matter	Column 4 Persons liable
3. Regulation 2847/93			
(a) Article 6, subject to Article 15(1), (3) and (5) of the Control Regulation.	Article 1 of, and Annexes I, II, IV, V and VI to, Regulation 2807/83.	In relation to EU fishing boats with an overall length of 10 metres or more— Requirement to: (a) keep a logbook in a computer-readable or paper form and (b) submit it to the competent authority of the flag Member State within 48 hours of landing.	The master, the owner, the charterer (if any) and the agent of any of these persons.
(b) Article 8(1), subject to Articles 15(5) and 24(1), (2) and (5) of the Control Regulation.	Article 2(1) and (3) of, and Annexes I, II, III, IV and V to, Regulation 2807/83.	In relation to EU fishing boats with an overall length of 10 metres or more— Requirement to submit a landing declaration to the competent authority of the flag Member State and a copy of the landing declaration to the competent authority of the Member State where the landing takes place, if different from the flag Member State, after each trip and within 48 hours of landing.	The master, the owner, the charterer (if any) and the agent of any of these persons.
(c) Article 11(1), subject to Articles 15(5) and 22(1) and (2) of the Control Regulation.	Article 2(2) and (3) of, and Annexes I, III, IV and V to, Regulation 2807/83.	In relation to any EU trans-shipment and receiving fishing boats authorised to carry out transshipments in the maritime waters or ports of a Member State— Requirement to comply with the terms and conditions for recording and notifying details of transshipment operations and quantities transhipped and, in particular, to submit: (a) a transshipment declaration to the competent authority of the flag Member State within 48 hours of landing or on entering port, and (b) a copy of the transshipment declaration to the competent authority of the Member State where quantities received by transshipment are landed, if different from the flag Member State, on entering port.	The master, the owner, the charterer (if any) and the agent of any of these persons.

<p>Column 1 Provision</p> <p>(d) Article 13, as read with Article 9(5).</p>	<p>Column 2 Detailed Rules</p>	<p>Column 3 Subject Matter</p> <p>In relation to fisheries products that are landed in, or imported into, the EU (for which neither a sales note nor a take-over declaration has been submitted) and which are transported to a place other than that of landing or import—</p> <p>Requirement to: (a) draw up a transport document; (b) ensure that it accompanies the fisheries products until the first sale; (c) submit a copy of the transport document within 48 hours of landing to the competent authority of the Member State where the landing takes place or, where the products are transported to a different Member State, to the competent authority of the Member State where the first marketing is declared to take place, and (d) if the fisheries products have been declared as sold, to prove at all times by documentary evidence that a sales transaction has taken place.</p>	<p>Column 4 Persons liable</p> <p>The transporter of fisheries products. (“Transporter” means the owner of, the hirer of, and the person responsible for, any vehicle used to transport fisheries products).</p>
---	--	--	--

SCHEDULE 2

Articles 2(1) and (3) and 6(1)

**EU (THIRD COUNTRY) RECORDING AND REPORTING REQUIREMENTS, CONTRAVENTION OF WHICH
CONSTITUTES AN OFFENCE**

Column 1 Provision	Column 2 Detailed Rules	Column 3 Subject Matter	Column 4 Persons Liable
1. Regulation 1006/2008 (a) Article 22.		In relation to third country fishing boats authorised to engage in fishing activities in EU waters— Requirement to comply with the provisions of the Common Fisheries Policy concerning the conservation and control measures and other provisions governing fishing by EU fishing boats in the fishing zone in which they operate.	The master, the owner, the charterer (if any) and the agent of any of these persons.
(b) Article 23(1).	Article 9 of, and Annex III to, Regulation 201/2010.	In relation to third country fishing boats undertaking fishing activities in EU waters— (a) Requirement for fishing boats with an overall length of 24 metres or less to transmit data on fishing activities to the flag State and the European Commission on a weekly basis; or (b) Requirement for fishing boats with an overall length exceeding 24 metres to electronically transmit data on fishing activities to the flag State and the European Commission on a daily basis.	The master, the owner, the charterer (if any) and the agent of any of these persons.

Column 1 Provision	Column 2 Detailed Rules	Column 3 Subject Matter	Column 4 Persons Liable
2. Regulation 201/2010			
(a) Article 8 and Annex II.		In relation to third country fishing boats entitled to undertake fishing activities in EU waters— Requirement to keep a logbook.	The master, the owner, the charterer (if any) and the agent of any of these persons.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order enforces the EU obligations relating to sea fishing contained in—

- (a) Council Regulation (EEC) No. 2847/93 (“Regulation 2847/93”), Articles 6, 8(1), 11(1) and 13;
- (b) Council Regulation (EC) No. 1006/2008, Articles 22 and 23(1);
- (c) Commission Regulation (EC) No. 1077/2008 (“Regulation 1077/2008”), Articles 2(1), 5(1) and (4), 10(1) and (3), 11(3) and 12(3) and (4);
- (d) Council Regulation (EC) No. 1224/2009, Articles 15(1) and (2), 17(1) and (4), 18(1), 22(1), 24(1), 28(1), 62(1) and (5) and 66(1) and (3); and
- (e) Commission Regulation (EU) No. 201/2010, Article 8 and Annex II.

These are requirements to record and report information relating to fishing activity undertaken by EU fishing boats wherever they may be, and by third country fishing boats within EU waters, and to the landing and first sale of fishery products in the EU.

The Order forms part of the law of Scotland only. It applies to: Scottish fishing boats wherever they may be; EU and third country fishing boats within the Scottish zone, and registered buyers and sellers of fishery products in Scotland.

The Order designates the Scottish Ministers as the competent authority to which information must be reported where it relates to fishing activity undertaken by Scottish fishing boats, or in the Scottish zone, or to fishery products landed, stored, transported or first sold in Scotland. It also specifies the methods by which such information must be reported to the Scottish Ministers (article 3).

The Order provides for the Scottish Ministers to maintain, and publish on an official website, a register of all registered buyers and sellers responsible for the first sale of fishery products in Scotland which have the prescribed annual financial turnover (as defined in the Order) for the purposes of Articles 2(1) and 5(1) and (4) of Regulation 1077/2008. It requires registered buyers and sellers to inform the Scottish Ministers annually whether or not they have the prescribed annual financial turnover and makes it an offence to fail to comply with that requirement or to provide materially false information in purported compliance with that requirement (article 4).

The Order makes it an offence to contravene any EU recording and reporting requirement or EU (third country) recording and reporting requirement (as defined in the Order), which are specified in Schedules 1 and 2 respectively, or to record or report materially false information in purported compliance with any requirement (articles 5 and 6).

The Order specifies the penalties for a relevant offence (as defined in the Order) (article 7) and makes provision for the recovery of fines imposed in respect of a relevant offence or an offence under article 13 of the Order (article 8).

For the purpose of enforcing articles 4, 5 and 6 of the Order, or any equivalent provision, the Order confers on British sea-fishery officers powers to: go on board fishing boats; search for and examine fishery products and equipment; require the production of documents; search for and seize documents; take a boat to the nearest convenient port; enter and inspect premises; stop and search vehicles transporting fish, and seize fish (articles 9 to 11).

The Order provides for the protection of British sea-fishery officers in the exercise of their powers under the Order (article 12). It creates offences of, and specifies the penalties for, obstructing such officers (article 13).

The Order makes provision in relation to offences committed by a body corporate, a Scottish partnership or other unincorporated association (article 14) and in relation to the admissibility in evidence of logbooks and other documents (article 15).

The Order revokes the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000 (S.S.I. 2000/7) (“the 2000 Order”) and those instruments amending the 2000 Order (article 16). Articles 4 and 5 of this Order re-enact the following provisions of the 2000 Order: articles 2A and 3(3) and (4), as well as article 3(1) and (2) so far as it applies to Articles 6, 8(1), 11(1) and 13 of Regulation 2847/93 (referred to in entries 2(b), (d), (h) and (j) in the Schedule to the 2000 Order).

The Order makes savings in relation to the 2000 Order and its amending instruments. These provide that, despite the commencement of this Order on 31st October 2010, the 2000 Order and its amending instruments continue to apply for the purposes of any investigation or legal proceedings relating to any acts or omissions which occurred before that date and constitute an offence under the 2000 Order (article 16).

A Regulatory Impact Assessment in relation to this Order has been prepared and placed in the Scottish Parliament Information Centre (“SPICe”). Copies can be obtained from Marine Scotland, 1B South, Victoria Quay, Edinburgh, EH6 6QQ.

© Crown Copyright 2010

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen’s Printer for Scotland.

2010 No. 334

SEA FISHERIES

The Sea Fishing (EU Recording and Reporting Requirements)
(Scotland) Order 2010