

Statutory Instrument 2001 No. 959

The Sea Fish (Conservation) (Channel Islands) (Amendment) Order 2001

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STATUTORY INSTRUMENTS

2001 No. 959

SEA FISHERIES

The Sea Fish (Conservation) (Channel Islands) (Amendment) Order 2001

Made
Coming into force

14th March 2001
3rd April 2001

At the Court at Buckingham Palace, the 14th day of March 2001

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 24(2) and (3) of the Sea Fish (Conservation) Act 1967^[1], section 21(1)(a) of the Sea Fisheries Act 1968^[2] and section 11(3)(a) of the Fishery Limits Act 1976^[3] is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows: -

1. This Order may be cited as the Sea Fish (Conservation) (Channel Islands) (Amendment) Order 2001 and shall come into force on 3rd April 2001.

2. The Sea Fish (Conservation) (Channel Islands) Order 1981^[4] shall be amended in accordance with the provisions of the Schedule to this Order.

3. - (1) Any order, prohibition, restriction or exemption made, imposed or given effect to under or by virtue of the Sea Fish (Conservation) Act 1967, as extended to Guernsey, before the coming into force of this Order -

(a) shall not be invalidated or cease to have effect in consequence of the amendments and modifications made by this Order; and

(b) if in force at the time when this Order comes into force, shall be treated as if made, imposed or given effect to under or by virtue of that Act (as extended to Guernsey) as amended and modified by this Order, in so far as that may be necessary for continuing its effect after that time.

(2) In relation to any time which falls after the coming into force of this Order, any reference (express or implied) in any Act, subordinate legislation or other document to a provision of the Sea Fish (Conservation) Act 1967 as extended to Guernsey shall, except where the context otherwise requires, be construed as or as including a reference to that provision as amended or modified by virtue of this Order.

A.K. Galloway
Clerk of the Privy Council

SCHEDULE
Article 2

AMENDMENTS TO THE SEA FISH (CONSERVATION) (CHANNEL ISLANDS)
ORDER 1981

1. - (1) In article 3, there shall be inserted, at the beginning, "(1)".

(2) In paragraph (1) of article 3, as so amended, for the words "the Channel Islands" there shall be substituted "Jersey".

(3) After article 3(1) as so amended, there shall be inserted the following paragraph:

" (2) The following provisions of the Sea Fish (Conservation) Act 1967 shall extend to Guernsey subject to the exceptions, adaptations and modifications specified in the Schedule to this Order: -

- (a) section 1 (as substituted by section 19(1) of the Fisheries Act 1981 and amended by Schedule 6 to the Merchant Shipping Act 1988[5]) (size limits etc. for fish);
- (b) section 3 (as amended by section 9 of and Schedule 2 to the Fishery Limits Act 1976) (regulation of nets and other fishing gear);
- (c) section 4 (as substituted by section 3 of the Fishery Limits Act 1976 and amended by section 20 of the Fisheries Act 1981 and section 1 of the Sea Fish (Conservation) Act 1992) (licensing of fishing boats);
- (d) section 4A (as inserted by section 21(1) of the Fisheries Act 1981 and amended by section 3 of the Sea Fish (Conservation) Act 1992 (licensing of trans-shipment of fish);
- (e) section 4B and section 4C (both as inserted by section 4 of the Sea Fish (Conservation) Act 1992) (supplementary provisions to sections 4 and 4A);
- (f) section 5 (as amended by section 22 of the Fisheries Act 1981) (power to restrict fishing for sea fish);
- (g) the following ancillary provisions
 - (i) section 9 (as amended by sections 19, 21 and 46 of the Fisheries Act 1981) (exemptions for operations for scientific and other purposes);
 - (ii) section 11 (as amended by section 24 of the Fisheries Act 1981 and section 5 of the Sea Fish (Conservation) Act 1992) (penalties for offences);
 - (iii) section 14 (as substituted by section 29 of the Fisheries Act 1981) (jurisdiction of court to try offences);
 - (iv) section 15 (as amended by section 22 of and Schedule 1 to the Sea Fisheries Act 1968, section 9 of and Schedule 2 to the Fishery Limits Act 1976, section 25 of the Fisheries Act 1981 and section 6 of the Sea Fish (Conservation) Act 1992) (powers of British sea fishery officers for enforcement of Act)."

2. In article 4 -

(a) in paragraph (1) for the words "the Channel Islands" there shall be substituted "Jersey"; and

(b) after article 4(1) as so amended, there shall be inserted the following paragraph: -

" (1A) In the aforesaid Act as extended to Guernsey, the following expressions have the meanings hereafter assigned to them, except as specifically provided or where the context otherwise requires:

"British fishing boat", except in section 1, means a fishing boat which is -

(a) registered in the United Kingdom under Part II of the Merchant Shipping Act 1995[6],

(b) registered in accordance with the laws of any of the Channel Islands or the Isle of Man,

(c) exempted from registration by regulations under section 373 of the Merchant Shipping Act 1894[7], or

(d) British owned;

"British owned" means owned by a person who is (within the meaning of the Merchant Shipping Act 1894 as it has effect in Guernsey) a person qualified to own a British ship or owned by two or more persons any one of whom is a person so qualified;

"British sea-fishery officer" means any person who by virtue of section 7 of the Sea Fisheries Act 1968[8] is a British sea-fishery officer;

"fishing boat" means a vessel of whatever size, and in whatever way propelled which is for the time being employed in sea fishing;

"foreign fishing boat" means a fishing boat other than a British fishing boat;

"master" includes, in relation to any vessel, the person for the time being in command or charge of the vessel;

"migratory trout" means trout which migrate to or from the sea;

"the Ministers" means the Minister of Agriculture, Fisheries and Food and the Secretary of State concerned with the sea fish industry in Northern Ireland;

"salmon" includes any fish of the salmon species;

"sea fish" means fish, whether fresh or cured, of any kind found in the sea, including shellfish, and any parts of any such fish but does not include salmon or migratory trout;

"shellfish" includes crustaceans and molluscs of any kind and any spat or spawn of shellfish;

"statutory maximum" means the prescribed sum within the meaning of section 32 of the Magistrates' Court Act 1980[9];

"vessel" includes any ship or boat or any other description of vessel used in navigation."

3. For Part I of the Schedule to the Sea Fish (Conservation) (Channel Islands) Order 1981 there shall be substituted the following Part:

" PART I -

GUERNSEY

1. Unless the context otherwise requires any reference in this Part to the Sea Fish (Conservation) Act 1967 or any provision thereof or to any other enactment shall be construed as a reference to that Act, provision or enactment, as the case may be, as it has effect in Guernsey.

2. Unless the context otherwise requires, any reference in the Sea Fish (Conservation) Act 1967 to British fishery limits adjacent to Guernsey shall be construed as a reference to that part of those limits not exceeding 12 international nautical miles of 1852 metres from the baselines from which the breadth of the territorial sea adjacent to Guernsey is measured, but not extending beyond a line every point of which is equidistant from the nearest points of such baselines and the corresponding baselines adjacent to Jersey and, save as provided by virtue of paragraphs 5, 6 and 13 below, any such reference shall be taken to exclude territorial

waters.

3. In section 1 -

(a) subsections (1), (2), (4), (5) and (7) shall be omitted;

(b) for subsection (3) there shall be substituted the following subsection:

" (3) Subject to the provisions of this section, sea fish of any description which are of less than the minimum size prescribed in relation to sea fish of that description by an order of the Ministers under this subsection as it has effect in the law of England and Wales (whether made before or after the coming into force of the Sea Fish (Conservation) (Channel Islands) (Amendment) Order 2001) -

(a) shall not be carried, whether within or outside British fishery limits, on a British fishing boat registered in Guernsey, and

(b) in the case of a British fishing boat not so registered, shall not be carried in British fishery limits adjacent to Guernsey;

and where such an order prohibits the carrying by any foreign fishing boat of sea fish of any description prescribed by the order which are of less than the minimum size so prescribed in relation to sea fish of that description, such sea fish shall not be carried by such a fishing boat within British fishery limits adjacent to Guernsey.";

(c) for subsection (6) there shall be substituted the following subsection:

" (6) Any exemption from a prohibition which is conferred by an order of the Ministers made under subsection (3), as it has effect in the law of England and Wales, shall have like effect in relation to the like prohibition imposed by virtue of that subsection as extended to Guernsey.";

(d) for subsection (9) there shall be substituted the following subsections:

" (9) In this section "British fishing boat" means a fishing boat which is -

(a) registered in the United Kingdom under Part II of the Merchant Shipping Act 1995,

(b) registered in accordance with the laws of any of the Channel Islands or the Isle of Man,

(c) exempted from registration by regulations under section 373 of the Merchant Shipping Act 1894, or

(d) owned wholly by a person who is (within the meaning of the Merchant Shipping Act 1894 as it has effect in Guernsey) a person qualified to own a British ship;

and "foreign fishing boat" means any fishing boat other than a British fishing boat.

(10) The prohibitions imposed by subsection (3) above shall not have effect until the order referred to in that subsection which relates to the prohibitions in question has been registered in the Royal Court of Guernsey.".

4. In section 3 -

(a) in subsection (1) -

(i) after "securing that" there shall be inserted "(except in territorial waters adjacent to Guernsey)", and

(ii) for "the United Kingdom" there shall be substituted "Guernsey";

(b) for subsection (2) there shall be substituted the following subsection:

" (2) An order under this section may be made so as to extend to nets or other fishing gear carried within British fishery limits adjacent to Guernsey by fishing boats registered outside Guernsey or not registered in any country."; and

(c) for subsection (7) there shall be substituted the following subsections:

" (7) In this section "Act" includes any enactment in force in Guernsey or any part thereof.

(8) Any order made under this section shall not have effect until registered in the Royal Court of Guernsey."

5. In section 4 -

(a) for subsection (1) there shall be substituted the following subsection:

" (1) the Ministers may by order provide -

(a) that in any specified area within British fishery limits adjacent to Guernsey (including territorial waters) fishing by fishing boats (whether British or foreign) is prohibited unless authorised by a licence granted by the States of Guernsey Sea Fisheries Committee (hereafter in this Act called "the Committee") and for the time being in force:

(b) that in any area specified in the order (being outside the waters referred to in paragraph (a) above) fishing by British fishing boats registered in Guernsey is prohibited unless so authorised.";

(b) for subsection (4) there shall be substituted the following subsections:

" (4) The Committee may by order prescribe charges for the granting of a licence by the Committee under this section and may prescribe different charges in relation to different classes of licence, but the amount of such charges shall not exceed the maximum among any charges that are from time to time specified in any order made under this section as it has effect in relation to England.

(4A) Every order made by the Committee under subsection (4) above shall be laid before a meeting of the States of Guernsey as soon as may be after the making thereof and if, at that meeting or at the next subsequent meeting, the States resolve that the order be annulled the order shall cease to have effect but without prejudice to anything previously done thereunder or to the making by the Committee of a new order.

(4B) Any power conferred by subsection (4) above shall be construed as including a power exercisable in the like manner to vary or revoke the order.";

(c) in subsection (6) -

(i) for "the Minister granting the licence" there shall be substituted "the Committee";

(ii) the words ", subject to subsection 6B," shall be inserted before "conditions which do not relate directly to fishing";

(iii) the word "or" at the end of paragraph (b) shall be omitted; and

(iv) paragraph (c) shall be omitted;

(d) for subsection (6B) there shall be substituted the following subsection:

" (6B) The power arising under subsection (6) for a licence granted under this section to be made subject to conditions which do not relate directly to fishing shall not apply in the case of vessels of an overall length of 10 metres or less until such day as may be appointed by order made by the Committee.";

(e) subsections (6C) and (6D) shall be omitted;

(f) in subsection (7), for "Minister granting a licence under this section" there shall be substituted "Committee";

(g) for subsection (8) there shall be substituted the following subsection:

" (8) The licensing powers conferred on the Committee under this section may be exercised, in consultation with the Ministers, so as to limit the number of fishing boats, or of any class of fishing boats, engaged in fishing in any area, or in fishing in any area for any description of fish, to such extent as appears to the Ministers and the Committee to be necessary or expedient for the regulation of sea fishing.";

(h) in subsection (9), for "Minister who granted the licence" there shall be substituted "Committee";

(i) in subsection (10), for "Minister who granted it" there shall be substituted "Committee";

(j) for subsections (11) and (12) there shall be substituted the following subsections:

" (11) "Sea fish" in this section means fish, whether fresh or cured, of any kind found in the sea, including shellfish, and any parts of such fish.

(12) Any order of the Ministers made under this section shall not have effect until registered in the Royal Court of Guernsey."

6. In section 4A -

(a) in subsection (1) -

(i) after "fishery limits" there shall be inserted "adjacent to Guernsey (including territorial waters)", and

(ii) for "one of the Ministers" there shall be substituted "the Committee and for the time being in force";

(b) for subsection (4) there shall be substituted the following subsections:

" (4) The Committee may by order prescribe charges for the granting of a licence by the Committee under this section and may prescribe different charges in relation to different classes of licence, but the amount of such charges shall not exceed the maximum among any charges that are from time to time specified in any order made under this section as it has effect in relation to England.

(4A) Every order made by the Committee under subsection (4) above shall be laid before a meeting of the States of Guernsey as soon as may be after the making thereof and if, at that meeting or at the next subsequent meeting, the States resolve that the order be annulled the order shall cease to have effect but without prejudice to anything previously done thereunder or to the making by the Committee of a new order.

(4B) Any power conferred by subsection (4) above shall be construed as including a power exercisable in the like manner to vary or revoke the order.";

(c) in subsection (6), for "Minister granting the licence" there shall be substituted "Committee";

(d) in subsection (7), for "Minister granting a licence under this section" there shall be substituted "Committee"; and for "him" and "he" there shall be substituted "it";

(e) for subsection (9) there shall be substituted the following subsection:

" (9) The licensing powers conferred on the Committee by this section may be exercised, in consultation with the Ministers, so as to limit the number of vessels or of any description of vessel (including vessels or any description of vessel registered in a specified country) engaged in receiving fish to such an extent as appears to the Ministers and the Committee to be necessary or expedient for the regulation of trans-shipment.";

(f) in subsection (10)(b) and (11), for "Minister who granted it" there shall be substituted "Committee", and

(g) for subsection (12) there shall be substituted the following subsections:

" (12) "Sea fish" in this section means fish, whether fresh or cured, of any kind found in the sea, including shellfish, and any parts of such fish.

(13) Any order of the Ministers made under this section shall not have effect until registered in the Royal Court of Guernsey.".

7. In section 4B -

(a) in subsection (1) for "The Ministers" there shall be substituted "The Committee"; and

(b) for subsection (4) there shall be substituted the following subsection:

" (4) The power to make regulations includes power to vary or revoke such regulations by subsequent regulations.".

8. In section 4C -

- (a) in subsection (1) the words "except proceedings in Scotland" shall be omitted; and
- (b) subsections (2), (3) and (4) shall be omitted.

9. In section 5 -

- (a) for subsection (8) there shall be substituted the following subsection -

" (8) An order under this section relating to an area outside British fishery limits adjacent to Guernsey shall not apply to a fishing boat other than a British fishing boat registered in Guernsey, but an order under this section relating to an area within those limits may apply to any fishing boat."; and

- (b) after subsection (8) there shall be inserted the following subsections:

" (9) In this section "sea fish" means fish, whether fresh or cured, or any kind found in the sea, including shell fish, and any parts of such fish.

(10) An order made under this section shall not have effect until registered in the Royal Court of Guernsey."

10. In section 9 -

- (a) subsection (1) shall be omitted;
- (b) in subsections (2), (3) and (4), for "one of the Ministers" there shall be substituted "the Committee";
- (c) in subsection (5), "6 and 8" and "or landing" shall be omitted;
- (d) in subsection (6), "(1)," shall be omitted, and
- (e) in subsection (7) there shall be added at the end "and "enactment" includes any enactment in force in Guernsey or any part thereof".

11. In section 11 -

- (a) any reference to any provision of section 2, 6 or 7 shall be omitted; and
- (b) for paragraph (c) of subsection (1) the following paragraph shall be substituted:

" (c) in the case of an offence under section 1, 4(7) or (7A), or 4A(7) or (8) on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine."

12. In section 14 -

- (a) for "6, 7, 15 or 16" there shall be substituted "or 15", and
- (b) for "the United Kingdom" there shall be substituted "Guernsey".

13. In section 15 -

- (a) subsection (2)(d) shall be omitted;
- (b) in subsection (3) -
- (i) for "the United Kingdom" in both places there shall be substituted "Guernsey";
- (ii) after "British fishery limits" there shall be inserted "(including territorial waters)",
and
- (iii) for "1 to 7" there shall be substituted "1, 3, 4, 4A or 5"."

EXPLANATORY NOTE

(This note is not part of the Order)

This Order further amends the Sea Fish (Conservation) (Channel Islands) Order 1981 ("the 1981 Order", S.I. 1981/737) (as previously amended by the Sea Fish (Conservation) (Amendment) Order 1989 (S.I. 1989/2411)), to the extent that it relates to the Bailiwick of Guernsey. In particular, it extends to the Bailiwick of Guernsey certain of the amendments made to the Sea Fish (Conservation) Act 1967 ("the 1967 Act") by the Sea Fish (Conservation) Act 1992. It also amends section 4(1) and 4A(1) of the 1967 Act, as extended to Guernsey, so as to enable the power of Ministers to make an order prohibiting fishing without a licence to be exercised in relation to specified areas within territorial waters.

This Order substitutes a new Part for Part I of the Schedule to the 1981 Order, for ease of reference, but the only other changes made are minor drafting improvements and alterations to references to Great Britain made necessary by the devolution of certain fisheries functions to Scotland and Wales. Article 3 of this Order contains transitional savings.

Notes:

[1] 1967 c. 84, including that section as extended by section 46(7) of the Fisheries Act 1981 (c. 29) and section 12(2) of the Sea Fish (Conservation) Act 1992 (c. 60).[back](#)

[2] 1968 c. 77.[back](#)

[3] 1976 c. 86.[back](#)

[4] S.I. 1981/737 as amended by S.I. 1989/2411.[back](#)

[5] 1988 c. 12.[back](#)

[6] 1995 c. 21.[back](#)

[7] 1894 c. 60.[back](#)

[8] The States of Guernsey Civil Service Board are enabled to appoint British Sea Fisheries Officers in relation to Guernsey pursuant to section 7 of the Sea Fisheries Act 1968 by virtue of article 3(2) of and paragraph 4(b) of Part II of the Schedule to the Sea Fisheries (Channel Islands) Order 1973 (S.I. 1973/1319 as amended by S.I. 1989/2412).[back](#)

[9] 1980 c. 43. Section 32 of the Magistrates' Courts Act 1980 was extended to Guernsey under the Criminal Justice Act 1982 (Guernsey) Order 1992 (S.I. 1992/3202).[back](#)