STATUTORY INSTRUMENTS

1983 No. 257

SEA FISHERIES

The Sea Fishing (Enforcement of Miscellaneous Community Quota Measures) Order 1983

Made - - - -	*25th February* 1983
Laid before Parliament	*8th March* 1983
Coming into Operation	*9th March* 1983

The Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with sea fishing in Scotland, Wales and Northern Ireland, in exercise of the powers conferred on them by section 30(2) of the Fisheries Act 1981 (**a**), and of all other powers enabling them in that behalf, hereby make the following order:—

Title and commencement

1. This order may be cited as the Sea Fishing (Enforcement of Miscellaneous Community Quota Measures) Order 1983 and shall come into operation on 9th March 1983.

Interpretation

2. In this order—

"Council Regulation 172/83" means Council Regulation (EEC) No 172/83 fixing for certain fish stocks and groups of fish stocks occurring in the Community's fishing zone, total allowable catches for 1982, the share of these catches available to the Community, the allocation of that share between the Member States and the conditions under which the total allowable catches may be fished (**b**);

"Council Regulation 198/83" means Council Regulation (EEC) No 198/83 on fishing activities in waters under the sovereignty or jurisdiction of the Member States, adopted provisionally pending the fixing of TACs and quotas for 1983 (**c**).

Offences and penalties

3.—(1) Where there is, in respect of—

(a) any fishing boat which is in any waters adjacent to the United Kingdom and within British fishery limits; or

(b) any British fishing boat registered in the United Kingdom wherever it may be;

a contravention of, or failure to comply with, article 1 of Council Regulation 198/83 as read with any provision of Council Regulation 172/83 specified in column 1 of the Schedule to this order, the master, the owner and the charterer (if any) shall each be guilty of an offence and liable—

(**a**) 1981 c.29. (**b**) OJ No L24, 27.1.83, p.30. (**c**) OJ No L25, 27.1.83, p.32.

(i) on summary conviction to a fine not exceeding the maximum specified in column 3 of that Schedule opposite the reference to that provision in column 1; or

(ii) on conviction on indictment to a fine.

(2) Subject to the following provisions of this article, the court by which a person is convicted of an offence under paragraph (1) above may—

(a) in the case of an offence founded on a contravention of, or failure to comply with, article 1 of Council Regulation 198/83 as read with the second subparagraph of article 8(1), the second sentence of article 8(2)(b)(i) or article 8(2)(b)(ii) of Council Regulation 172/83, order the forfeiture of any fish in respect of which the offence was committed;

(b) in the case of an offence founded on a contravention of, or failure to comply with, article 1 of Council Regulation 198/83 as read with article 4, 6, 7, the first subparagraph of article 8(1), article 8(2)(a), the first sentence of article 8(2)(b)(i), article 8(3), (6), (7) or (8) or article 9(2) of Council Regulation 172/83, order the forfeiture of any fish in respect of which the offence was committed and of any net or other fishing gear used in committing the offence or used on the fishing boat in catching any fish landed in contravention of article 4, the first subparagraph of article 8(1) or article 8(3) of Council Regulation 172/83.

(3) Any person guilty of an offence under paragraph (1) above shall, subject to paragraph (5) below, 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) above in respect of an offence if, under paragraph (2) above, the court orders the forfeiture of the fish in respect of which the offence was committed; and where a fine is imposed under paragraph (3) above in respect of any offence, the court shall not have power under paragraph (2) above to order the forfeiture of the fish in respect of which the offence was committed.

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

Enforcement

4.—(1) Any British sea-fishery officer may seize—

(a) any fish in respect of which an offence founded on a contravention of, or failure to comply with, article 1 of Council Regulation 198/83 as read with any provision of Council Regulation 172/83 specified in column 1 of the Schedule to this order has been or is being committed;

(b) any net or other fishing gear in respect of which an offence founded on a contravention of, or failure to comply with, article 1 of Council Regulation 198/83 as read with article 6, 7, 8(2)(a), the first sentence of article 8(2)(b)(i), article 8(6), (7) or (8) or article 9(2) of Council Regulation 172/83 has been or is being committed;

(c) any net or other fishing gear used in catching any fish landed in contravention of article 1 of Council Regulation 198/83 as read with article 4, the first subparagraph of article 8(1) or article 8(3) of Council Regulation 172/83.

(2) The provisions of section 15(2A) of the Sea Fish (Conservation) Act 1967 (**a**) (powers of British sea-fishery officers for enforcement of that Act) shall have effect in relation to the enforcement of this order as they have effect in relation to the enforcement of that Act.

(3) The provisions of section 8(2) to (4) of the Sea Fisheries Act 1968 (**b**) (general powers of British sea-fishery officers) shall have effect in relation to this order as they have effect in relation to an order made under section 5 of that Act or section 2 of the Fishery Limits Act 1976 (**c**) , and for the purpose of the enforcement of this order, there are hereby conferred on every British sea-fishery officer in relation to any fishing boat in any waters adjacent to the United Kingdom and within British fishery limits, and any British fishing boat registered in the United Kingdom wherever it may be, all the powers of a British sea-fishery officer under those subsections.

(4) Any person who on any fishing boat within British fishery limits or on any premises (other than a dwelling-house) within the United Kingdom—

(a) fails without reasonable excuse to comply with any requirement imposed, or to answer any question (other than a question tending to show that he has committed any criminal offence) asked, by a British sea-fishery officer under the powers conferred on him by virtue of paragraph (1), (2) or (3) above;

(b) prevents, or attempts to prevent, any other person from complying with any such requirement or answering any such question; or

(c) assaults any such officer while exercising any of the powers conferred on him by virtue of paragraph (1), (2) or (3) above or wilfully obstructs any such officer in the exercise of any of those powers;

shall be guilty of an offence and liable—

(i) on summary conviction to a fine not exceeding £5,000; or

(ii) on conviction on indictment to a fine.

(5) A British sea-fishery officer shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by virtue of paragraph (1), (2) or (3) above 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.

Provisions as to offences and proceedings

5.—(1) Where any offence under article 3(1) of this order committed by a body corporate is proved to have been committed with the consent or approval of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Proceedings for an offence under the provisions of this order may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

(**a**) 1967 c.84; subsection (2A) was inserted by the Fisheries Act 1981, section 25(2).
(**b**) 1968 c.77; subsection (3) was amended by the Fisheries Act 1981, section 26(2) and subsection (4) by section 26(3) of that Act.
(**c**) 1976 c.86.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 22nd February 1983.

(L.S.)

Peter Walker,
Minister of Agriculture, Fisheries and Food.

23rd February 1983.

George Younger,
Secretary of State for Scotland.

24th February 1983.

James Prior,
Secretary of State for Northern Ireland.

25th February 1983.

Nicholas Edwards,
Secretary of State for Wales.

SCHEDULE

Article 3(1)

PENALTIES

Column 1 Provision of Council Regulation 172/83	Column 2 Subject Matter	Column 3 Maximum Penalty
1. Article 4, in so far as it relates to retaining on board	Provision applying on exhaustion of quota allocated to a Member State	£5,000
2. Article 4, in so far as it relates to landing	Provision applying on exhaustion of quota allocated to a Member State	£1,000
3. Article 6	Special provision on by-catches of halibut	£5,000
4. Article 7, in so far as it relates to waters outside British fishery limits	Prohibition on fishing for mackerel in specified waters off north of Scotland	£50,000
5. Article 8(1), first subparagraph	Special provision on landing by-catches of herring when total allowable catch for herring is nil	£1,000
6. Article 8(1), second subparagraph	Prohibition on sorting herring by-catches when total allowable catch for herring is nil	£5,000
7. Article 8(2)(a) or 8(2)(b)(i), first sentence	Special provisions on by-catches of herring when there is a positive total allowable catch for herring	£5,000
8. Article 8(2)(b)(i), second sentence	Prohibition on sorting herring by-catches when there is a positive total allowable catch for herring	£5,000
9. Article 8(2)(b)(ii)	Restrictions on use of grading equipment for herring	£5,000
10. Article 8(3)	Prohibition on landing sorted by-catches of herring after exhaustion of quota	£1,000
11. Article 8(6), (7), or (8), in so far as those paragraphs relate to waters outside British fishery limits	Prohibitions on fishing for herring in specified waters in Irish Sea	£50,000
12. Article 9(2), in so far as it relates to waters outside British fishery limits	Prohibitions on fishing for sprat in specified waters off west coast of Denmark	£50,000

EXPLANATORY NOTE

(*This Note is not part of the Order.*)

This order makes provision for the enforcement of article 1 of Council Regulation (EEC) No 198/83 (OJ No L25, 27.1.83, p.32) as read with certain of the enforceable Community restrictions or other obligations relating to sea fishing set out in Council Regulation (EEC) No 172/83 (OJ No L24, 27.1.83, p.30).

Article 1 of Council Regulation 198/83 requires vessels flying the flag of a Member State to observe the provisions of Council Regulation 172/83. The relevant provisions of Council Regulation 172/83—

(a) require catches of species for which quotas are fixed to be retained on board or landed only within those quotas (article 4);

(b) impose limitations on by-catches of halibut (article 6);

(c) prohibit fishing for mackerel in specified waters off the north of Scotland between specified dates (article 7);

(d) impose limitations on by-catches of herring, prohibit sorting of herring by-catches on board a vessel or on landing and restrict the use of grading equipment for herring on board fishing vessels (article 8(1) and (2));

(e) prohibit the landing of sorted by-catches of herring after exhaustion of the quota (article 8(3));

(f) prohibit fishing for herring in specified waters in the Irish Sea between specified dates, and restrict fishing in the Irish Sea (article 8(6) to (8));

(g) prohibit fishing for sprat in specified waters off the west coast of Denmark between specified dates (article 9).

For the purpose of enforcing these provisions the order confers on British sea-fishery officers powers to enter at all reasonable times premises other than dwelling houses, to go on board fishing boats, to examine documents and to seize fish and fishing gear.

Provision is also made for the prosecution of offenders and for the punishment of anyone found guilty of obstructing or assaulting a British sea-fishery officer. The maximum penalties specified for such offences, and for offences relating to the provisions of article 1 of Council Regulation 198/83 as read with the provisions of Council Regulation 172/83 listed above (ranging from £1,000 to £50,000 on summary conviction), correspond to the penalties imposed for equivalent offences by virtue of the Sea Fish (Conservation) Act 1967 and the Sea Fisheries Act 1968, both as amended by the Fisheries Act 1981.

SI 1983/257
ISBN 0-11-036257-8

