

2011 No. 59

SEA FISHERIES

**The Sea Fishing (EU Recording and Reporting Requirements)
(Scotland) Amendment Order 2011**

Made - - - - - *2nd February 2011*

Laid before the Scottish Parliament *4th February 2011*

Coming into force - - - *7th March 2011*

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, other than in Schedule 2, to Article 62, 63, 66, 67 or 68 of Council Regulation (EC) No. 1224/2009(d) to be construed as a reference to that Article as amended from time to time.

Citation and commencement

1. This Order may be cited as the Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Amendment Order 2011 and comes into force on 7th March 2011.

Amendment of the Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010

2. The Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010(e) is amended in accordance with articles 3 to 7.

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- (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) (“the 1998 Act”). 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 the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), Schedule, Part 1.
- (c) Section 2(2) was amended by the 1998 Act, Schedule 8, paragraph 15(3) (which was amended by the 2006 Act, section 27(4)). Section 2(2) was also amended by the 2006 Act, section 27(1)(a) and the 2008 Act, Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred by virtue of section 53 of the 1998 Act.
- (d) O.J. No. L 343, 22.12.09, p.1. Council Regulation (EC) No. 1224/2009 is referred to as “the Control Regulation” in this Order.
- (e) S.S.I. 2010/334.

Amendment of article 3 (competent authority and methods of reporting)

3. In article 3(2)(b)(ii), for “Article 5(1) and (4) of Regulation 1077/2008” substitute “Articles 63 and 67 of the Control Regulation”(a).

Amendment of article 4 (register of fish buyers and sellers with the prescribed annual financial turnover)

4. In article 4—

- (a) in paragraph (1), after “Article 2(1) of Regulation 1077/2008” insert “(in which references to “EUR 400,000” are to be read as “EUR 200,000” for the purposes of Articles 63 and 67 of the Control Regulation)”; and
- (b) in paragraph (3), for “€400,000” substitute “€200,000”.

Amendment of article 5 (EU recording and reporting requirements)

5. In article 5(3), for “Articles 62 and 66” substitute “Articles 62, 63, 66 and 67”.

Amendment of article 15 (admissibility in evidence of logbooks and other documents)

6. In article 15(1), for sub-paragraphs (d) to (f) substitute—

- “(d) sales note submitted under Article 62, or sent under Article 63, of the Control Regulation;
- (e) declaration submitted under Article 66, or sent under Article 67, of the Control Regulation;
- (f) document drawn up under Article 68 of the Control Regulation; or”.

Amendment of Schedule 1 (EU recording and reporting requirements, contravention of which constitutes an offence)

7. In Schedule 1—

- (a) after entry 1(h) (relating to Article 62(5) of the Control Regulation), insert entry (ha) set out in Part 1 of Schedule 1 to this Order;
- (b) after entry 1(i) (relating to Article 66(1) and (3) of the Control Regulation), insert entries (j) and (k) set out in Part 2 of Schedule 1 to this Order;
- (c) omit entries 2(a) and (b) (relating to Article 5(1) and (4) of Regulation 1077/2008); and
- (d) omit entry 3(d) (relating to Article 13 of Regulation 2847/93).

Amendment of other sea fishing Orders

8. The amendments specified in Schedule 2 have effect.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
2nd February 2011

(a) Although Article 5(1) and (4) of Commission Regulation (EC) No. 1077/2008 (O.J. No. L 295, 4.11.08, p.3) is still in force, it is effectively superseded by Articles 63 and 67 of Council Regulation (EC) No. 1224/2009 (O.J. No. L 343, 22.12.09, p.1) (“the Control Regulation”). Regulation 1077/2008 is due to be repealed in early 2011 by a Commission Regulation laying down detailed rules for the implementation of the Control Regulation.

SCHEDULE 1

Article 7

Entries to be inserted into Schedule 1 to the Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010

PART 1

<i>Column 1</i> Provision	<i>Column 2</i> Detailed Rules	<i>Column 3</i> Subject Matter	<i>Column 4</i> Persons liable
1. The Control Regulation			
“(ha) Article 63(1), as read with Article 64 and subject to Article 65(2).		<p>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 €200,000 or more—</p> <p>Requirement to: (a) record sales note data by electronic means, and (b) send that data by electronic means to the competent authority of the Member State where the first sale takes place within 24 hours of the first sale.</p>	<p>The registered buyer, the registered auction or other authorised body or person responsible for the first sale of the fishery products.</p> <p style="text-align: right;">”</p>

PART 2

Column 1 Provision	Column 2 Detailed Rules	Column 3 Subject Matter	Column 4 Persons liable
1. The Control Regulation			
“(j) Article 67(1).		<p>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 €200,000 or more, and where fisheries products are intended for sale at a later stage—</p> <p>Requirement to: (a) record take-over declaration data by electronic means, and (b) send that data by electronic means to the competent authority of the Member State where the take-over takes place within 24 hours of landing.</p>	<p>The registered buyer, the registered auction or other authorised body or person responsible for the first sale of the fisheries products.</p>

<p>“(k) Article 68(1), (3), (5) and (7), subject to Article 68(2) and (8).</p>	<p>In relation to fisheries products that are landed in the EU (either unprocessed or having been processed on board), for which neither a sales note nor a take-over declaration has been submitted in accordance with Article 62, 63, 66 or 67 of the Control Regulation, and which are transported to a place other than that of landing—</p> <p>Requirement to: (a) draw up a transport document; (b) ensure that it accompanies the fisheries products until the first sale; (c) submit the transport document to the competent authority of the Member State where the landing takes place and, where the products are transported to a different Member State, submit a copy of the transport document to the competent authority of the Member State where the first marketing is declared to take place, both within 48 hours of loading the fisheries products, and (d) prove at all times by documentary evidence that a sales transaction has taken place, in cases where fisheries products have been declared as sold in a sales note and are transported to a location other than the place of landing.</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>
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SCHEDULE 2

Article 8

Amendment of other sea fishing Orders

The Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010

1.—(1) The Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010(a) is amended as follows.

(2) In article 12 (admissibility in evidence of logbooks and other documents), for paragraph (1)(d) to (f) substitute—

- “(d) sales note submitted under Article 62, or sent under Article 63, of Regulation 1224/2009;
- (e) declaration submitted under Article 66, or sent under Article 67, of Regulation 1224/2009;
- (f) document drawn up under Article 68 of Regulation 1224/2009; or”.

The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2010

2.—(1) The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2010(b) is amended as follows.

(2) In article 2 (interpretation)—

(a) in paragraph (1)—

- (i) omit the definition of “Regulation 23/2010”; and
- (ii) after the definition of “Regulation 237/2010” insert—

““Regulation 57/2011” means Council Regulation (EU) No. 57/2011 of 18 January 2011 fixing for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters(c);”; and

(b) in the following provisions, for “23/2010” substitute “57/2011”—

- (i) paragraph (1), in the definitions of “cod recovery zone”, “equivalent provision” and “regulated gear”; and
- (ii) paragraph (4).

(3) In article 14 (admissibility in evidence of logbooks and other documents), for paragraph (1)(d) to (f) substitute—

- “(d) sales note submitted under Article 62, or sent under Article 63, of the Control Regulation;
- (e) declaration submitted under Article 66, or sent under Article 67, of the Control Regulation;
- (f) document drawn up under Article 68 of the Control Regulation; or”.

(a) S.S.I. 2010/100.

(b) S.S.I. 2010/238.

(c) O.J. No. L 24, 27.1.11, p.1.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010 (“the principal Order”).

The principal Order enforces certain EU obligations contained in Council Regulations (EEC) No. 2847/93 (“Regulation 2847/93”)(a), (EC) No. 1006/2008(b) and (EC) No. 1224/2009 (“the Control Regulation”)(c) and Commission Regulations (EC) No. 1077/2008 (“Regulation 1077/2008”)(d) and (EU) No. 201/2010(e). These require the recording and reporting of information relating to fishing activity undertaken in EU waters, or by EU fishing boats, and the landing and first sale of fishery products in the EU.

This Order amends the principal Order so as to enforce the following provisions of the Control Regulation, which came into force on 1st January 2011—

- (a) Articles 63 and 67, which replace Article 5(1) and (4) of Regulation 1077/2008 and require registered fish buyers and sellers with an annual financial turnover in first sales of fishery products of €200,000 or more (previously €400,000 or more) to record and report sales note and take-over declaration data electronically; and
- (b) Article 68, which replaces and largely re-enacts Article 13 of Regulation 2847/93 to require transporters of fishery products to draw up and submit a transport document in certain circumstances.

This Order amends the following provisions of the principal Order—

- (a) articles 3(2)(b)(ii) and 15(1)(d) to (f) (relating to methods of reporting data and the admissibility in evidence of logbooks and other documents respectively), to replace references to Article 5(1) and (4) of Regulation 1077/2008 and Article 13 of Regulation 2847/93 with references to Articles 63, 67 and 68 of the Control Regulation respectively (articles 3 and 6 of this Order);
- (b) articles 4(1) and (3) and 5(3) (relating to the financial threshold for the requirement to record and report sales note and take-over declaration data electronically), to revise the prescribed annual financial turnover (defined in the principal Order) to €200,000 or more, and to specify how that threshold is calculated, for the purposes of Articles 63 and 67 of the Control Regulation (articles 4 and 5 of this Order); and
- (c) Schedule 1 (specifying those EU recording and reporting requirements, contravention of which constitutes an offence), to omit entries 2(a) and (b) and 3(d) (relating to Article 5(1) and (4) of Regulation 1077/2008 and Article 13 of Regulation 2847/93 respectively) and to make it an offence to contravene Article 63, 67 or 68 of the Control Regulation (punishable by a fine on conviction on indictment, and by a maximum fine of £50,000 on summary conviction) (article 7 of, and Schedule 1 to, this Order).

This Order also amends the Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010 (“S.S.I. 2010/100”) and the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2010 (“S.S.I. 2010/238”) so as to—

- (a) update references in article 12(1) of S.S.I. 2010/100 and article 14(1) of S.S.I. 2010/238 (relating to the admissibility in evidence of logbooks and other documents) in consequence of Article 5(1) and (4) of Regulation 1077/2008 and Article 13 of Regulation 2847/93 being replaced by Articles 63, 67 and 68 of the Control Regulation respectively (article 8 of, and paragraphs 1(2) and 2(3) of Schedule 2 to, this Order); and

(a) O.J. No. L 261, 20.10.93, p.1.
(b) O.J. No. L 286, 29.10.08, p.33.
(c) O.J. No. L 343, 22.12.09, p.1.
(d) O.J. No. L 295, 4.11.08, p.3.
(e) O.J. No. L 61, 11.3.10, p.10.

- (b) update references to EU legislation in article 2(1) and (4) of S.S.I. 2010/238 in consequence of the provisions in Annex IIA to Council Regulation (EU) No. 23/2010^(a) being replaced by, and re-enacted in, Annex IIA to Council Regulation (EU) No. 57/2011^(b) (article 8 of, and paragraph 2(2) of Schedule 2 to, this Order).

No Business and Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the cost of business.

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^(a) O.J. No. L 21, 26.1.10, p.1 (subsequently re-numbered as Council Regulation (EU) No. 53/2010).
^(b) O.J. No. L 24, 27.1.11, p.1.