

NATIONAL ASSEMBLY FOR WALES

S T A T U T O R Y I N S T R U M E N T S

2006 No. (W.)

SEA FISHERIES, WALES

**The Sea Fishing (Northern Hake
Stock) (Wales) Order 2006**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the administration and enforcement in Wales of the monitoring, inspection and surveillance provisions of Council Regulation (EC) 811/2004 (OJ No L150 30.4.2004, p.1).

The Order contains provisions relating to recording and accounting time spent at sea (article 3), provisions for the notification of entry into port of fishing boats and the landing of northern hake at designated ports (articles 4 and 5), a margin of tolerance relating to the recording of catches of fish in logbooks (article 6), a provision relating to the mixing of species within containers on board fishing vessels (article 7) and procedures for transporting northern hake (article 8).

The Order creates offences in respect of the contravention, by the person in charge of the fishing boat (or the individuals specifically referred to) of provisions of the Regulation. The offences relate to failing to record and account for time in a log book (article 3), failing to provide certain information and/or follow the directions of a British sea-fishery officer when landing at a designated port (article 4), the failure to land in a designated port where more than two tonnes of northern hake are to be landed (article 5), the failure to comply with the 8% tolerance for logbook records relating to catches of fish (article 6), and the mixing of species and transporting of northern hake (articles 7 and 8) in a manner inconsistent with the Regulation.

Articles 9-16 make provisions for enforcement. The Order provides that a person guilty of an offence other than an offence under article 15 is liable, on summary conviction, to a fine not exceeding £50,000 and on conviction on indictment to a fine. Further fines up to and including the value of any fish caught in

committing the offence are permitted and the court may also order the seizure of fish caught or equipment used in, or in activities leading to, the commission of an offence (article 9).

The Order also provides for the recovery of fines imposed, or treated as imposed, by a magistrates' court (article 10).

For the purposes of enforcing the above provisions, the Order confers on British sea-fishery officers the power to enter premises, to go on board fishing boats, to stop and search vehicles transporting fish, to examine fish, to require the production of documents, to search for and seize documents, to take a boat to the nearest convenient port and to seize fish and fishing gear (articles 11-13). Protection of such officers from liability is set out in article 14, and obstructing them is an offence under article 15, with a fine of up to the statutory maximum on summary conviction and a fine on conviction on indictment. Articles 16 and 17 deal with corporate and equivalent offences and admissibility of documents in evidence.

A Regulatory Appraisal in relation to the Annexes and this Order has been prepared and placed in the library of the National Assembly for Wales. Copies can be obtained from Fisheries Branch, National Assembly for Wales, Cathays Park, Cardiff, CF10 3NQ.

2006 No. (W.)

SEA FISHERIES, WALES

**The Sea Fishing (Northern Hake
Stock) (Wales) Order 2006**

Made 2006

Coming into force 7 July 2006

The National Assembly for Wales, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981⁽¹⁾, makes the following Order:

Title, application and commencement

1.—(1) The title of this Order is the Sea Fishing (Northern Hake Stock) (Wales) Order 2006 and it comes into force on 7 July 2006.

(2) This Order applies in relation to Wales.

(3) Nothing in paragraph (2) prejudices the effect of section 30(2A) of the Fisheries Act 1981 in relation to, or for purposes incidental to, any provision which creates an offence.

Interpretation

2.—(1) In this Order—

“equivalent provision” (“*darpariaeth gyfatebol*”) means any provision, in any other Order made for the purposes of implementing Regulation 811/04 in relation to any part of the United Kingdom, which has equivalent effect to a provision in this Order, proceedings in respect of which may be taken in Wales by virtue of section 30(2A) of the Fisheries Act 1981;

“the hake recovery zone” (“*y parth adfer cegdduon*”) means the area defined in Article 1 of Regulation 811/04;

⁽¹⁾ 1981 c. 29. By virtue of article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under section 30(2) of the 1981 Act were transferred to the National Assembly for Wales.

“logbook” (“*llyfr lòg*”) means the same as in Article 6 of Regulation 2847/93 as amplified by Regulation 2807/83, and any reference to a document or logbook includes any—

- (a) map, plan, graph, drawing or diary;
- (b) photograph;
- (c) data, howsoever reproduced, communicated via a satellite-based vessel monitoring system established under Article 3.1 of Regulation 2847/93;
- (d) disk, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced; and
- (e) film (including microfilm), negative, tape, disk or other device in which one or more visual images are recorded so as to be capable of being reproduced;

“northern hake” (“*cegdduon gogleddol*”) means hake taken from the hake recovery zone;

“person in charge” (“*person â gofal*”), in relation to a fishing boat, means the owner, master or charterer, if any, of the fishing boat or the agent or any of them;

“Regulation 2807/83” (“*Rheoliad 2807/83*”) means Council Regulation (EEC) No. 2807/83 laying down detailed rules for recording information on Member States’ catches of fish, as amended at the date this Order is made(1);

“Regulation 2847/93” (“*Rheoliad 2847/93*”) means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the Common Fisheries Policy, as amended at the date this Order is made(2);

“Regulation 811/04” (“*Rheoliad 811/04*”) means Council Regulation (EC) No. 811/2004 establishing measures for the recovery of northern hake stock, as amended at the date this Order is made(3); and

“Wales” (“*Cymru*”) has the same meaning as in section 155(1) and (2) of the Government of Wales Act 1998(4).

(2) Any information provided to any authority for the purposes of any provision of this Order may be

(1) OJ No. L276, 10.10.1983, p.1; the last amending instrument is Commission Regulation (EC) No 1804/2005 (OJ No. L290, 4.11.2005, p.10).

(2) OJ No. L261, 20.10.1993, p.1; the last amending instrument is Council Regulation (EC) No 768/2005 (OJ No. L128, 21.5.2005, p.1).

(3) OJ No. L150, 30.4.2004, p.1. Corrigendum: L185, 27.5.2004, p.1.

(4) 1998 c.38.

treated as also provided for the purposes of any equivalent provision.

(3) Expressions in this Order which are not defined in paragraph (1) above and which appear in Regulation 811/04 have the same meaning in this Order as they have in that Regulation.

Recording and accounting of time spent in the areas

3. The person in charge of a fishing boat who fails to record and account for in their logbook time spent in the hake recovery zone in accordance with Articles 19e and 19k of Regulation 2847/93 as applied by Article 7 of Regulation 811/2004 is guilty of an offence.

Prior Notification

4.—(1) The person in charge of any fishing boat to which Article 8 of Regulation 811/04 applies, which enters a port in Wales without providing the information called for by that Article, is guilty of an offence.

(2) A British sea-fishery officer may, by written or oral direction to the person in charge of any fishing boat to which Article 8(2) of Regulation 811/04 applies and which is landing at a port in Wales, require that the discharge referred to in Article 8(2) of Regulation 811/04 does not commence until authorised by a British sea-fishery officer.

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

(4) The person in charge of any fishing boat to which Article 8(3) of Regulation 811/04 applies who fails to provide information as required by that article is guilty of an offence.

(5) For the purposes of paragraph (1) and (4), the information is to be provided to the National Assembly for Wales.

Landing hake at designated ports

5.—(1) The person in charge of any fishing boat which lands northern hake in Wales in contravention of Article 9 of Regulation 811/04 is guilty of an offence.

(2) If northern hake is first landed from a fishing boat in a port within Wales designated as specified in paragraph (4) and—

- (a) the requirement to weigh a representative sample, as specified in Article 12 of

Regulation 811/04, applies to that landing, and

(b) paragraph (3) does not apply to the landing,

the controller for the purposes of that Article is a British sea-fishery officer.

(3) If northern hake is landed from a fishing boat in a port within Wales designated as specified in paragraph (4) and—

- (a) the requirement to weigh a representative sample, as specified by Article 12 of Regulation 811/04, applies to that landing;
- (b) the fishing boat is party to an arrangement, made among fishing boats using the port, with a person or organisation to act as their controller for the purposes of that Article; and
- (c) details of the arrangement, and the fishing boats which are party to it, have been notified to the National Assembly for Wales,

the controller for the purposes of that Article is that person or organisation.

(4) For landings in Wales, the ports, and where applicable the landing locations within them listed in the UK licence are designated for the purposes of Article 9 of Regulation 811/04.

Recording information on catches of fish

6. The person in charge of a fishing boat in respect of which the 8% margin of tolerance referred to in Article 10 of Regulation 811/04 is exceeded, is guilty of an offence.

Mixing of Species

7. A person in charge of any fishing boat on which northern hake is stowed or retained in contravention of Article 11 of Regulation 811/04, is guilty of an offence.

Transport of hake

8. Where any quantities of northern hake are transported in contravention of Article 12(2) of Regulation 811/04, the owner or hirer of, and the person responsible for, the vehicle used to transport the hake is guilty of an offence.

Penalties and defence

9.—(1) A person guilty of an offence under articles 3, 4, 5, 6, 7 or 8 of this Order or under any equivalent provision will be liable—

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

(b) on conviction on indictment to a fine.

(2) The court by or before which a person is convicted of an offence under article 4, 5, 6, 7 or 8 of this Order or under any equivalent provision may, subject to paragraph (4), also order forfeiture of:

- (a) any fish in respect of which the offence was committed; and
- (b) except in the case of an offence under article 8 or any equivalent provision, any fishing gear used in the course of, or in activities leading to, the commission of the offence.

(3) Any person found guilty of an offence under article 4, 5, 6, 7, or 8 of this Order or under any equivalent provision will, subject to paragraph (4), also be liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.

(4) A person will not be liable to a fine under paragraph (3) in respect of such an offence if, under paragraph (2), the court orders the forfeiture of the fish in respect of which that offence was committed; and where a fine is imposed under paragraph (3) in respect of any offence, the court will not have the power under paragraph (2) to order forfeiture of the fish in respect of the offence was committed.

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

Recovery of fines

10.—(1) Where a fine is imposed by a magistrates' court on a person in charge of a fishing boat who is convicted by the court of an offence under this Order or any equivalent provision, the court may—

- (a) issue a warrant of distress against the boat involved in the commission of the offence and its fishing gear and catch and any property of the person convicted for the purpose of levying the amount of the fine; and
- (b) order the boat and its gear and catch to be detained for a period not exceeding three months from the date of conviction or until the fine is paid or the amount of the fine is levied in pursuance of any such warrant, whichever occurs first.

(2) Sections 77(1) and 78 of the Magistrates Courts Act 1980(1) (postponement of issue of, and defects in, warrants of distress) apply to a warrant of distress

(1) 1980 c. 43. Section 78 was amended by the Criminal Justice Act 1982 (c.48), sections 37 and 46, and the Courts Act 2003 (c.39), section 109(1) and Schedule 8 paragraph 219(a).

issued under this article as they apply to a warrant of distress issued under Part III of that Act.

(3) Where, in relation to a fine in respect of an offence under this Order or any equivalent provision, an order under Article 95 of the Magistrate's Courts (Northern Ireland) Order 1981⁽¹⁾ or section 222 of the Criminal Procedure (Scotland) Act 1995⁽²⁾ (both of which deal with transfer of fines from one jurisdiction to another) specifies a local justice area in Wales, this article applies as if the fine were imposed by a court within that local justice area.

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

11.—(1) For the purpose of enforcing articles 3 to 8 of this Order or any equivalent provisions, or to operate or facilitate the operation of any monitoring deriving from Article 13 of Regulation 811/04, any British sea-fishery officer may exercise the powers conferred by this article in relation to any fishing boat in Wales.

(2) The officer may go on board the boat, with or without persons assigned to assist with his or her duties, and may require the boat to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, the boat.

(3) The 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 the officer to be necessary for the purpose mentioned in paragraph (1) and, in particular—

- (a) may search for fish or fishing gear on the boat and may examine any fish on the boat and the equipment of the boat, including the fishing gear, and require persons on board the boat to do anything which appears to the officer to be necessary for facilitating the examination;
- (b) may require any person on board the boat to produce any document relating to the boat, to any fishing operations or other operations ancillary thereto or to the persons on board which is in that person's custody or possession;
- (c) for the purpose of ascertaining whether an offence under any of those articles or any equivalent provision has been committed, may search the boat for any such document and may require any person on board the boat to do anything which appears to the officer to be necessary for facilitating the search;

⁽¹⁾ S.I. 1981/1675 (NI 26).

⁽²⁾ 1995 c.46.

- (d) may inspect and take copies of any such document produced to the officer or found on board and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away; and
- (e) where the boat is one in relation to which the officer has reason to suspect that an offence under any of those articles or any equivalent provision has been committed, may seize and detain any such document produced to the 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 (e) above 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.

(4) Where it appears to a British sea-fishery officer that an offence under article 3, 6 or 7, or under any equivalent provision, has at any time been committed in respect of a fishing boat, the officer may—

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

and where such an officer detains or requires the detention of the boat the officer will serve on the master a notice in writing stating that the boat is (or is required to be) detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea-fishery officer.

Powers of British sea-fishery officers on land

12.—(1) For the purpose of enforcing articles 3 to 8 of this Order or any equivalent provision, or to operate or facilitate the operation of any monitoring deriving from Article 13 of Regulation 811/04, any British sea-fishery officer may—

- (a) enter and inspect at any reasonable time any premises used for carrying on any business in connection with the operation of fishing boats or activities connected therewith or ancillary thereto or with the treatment, storage or sale of fish;
- (b) take with him or her such other persons as appear to the officer to be necessary and any equipment or materials;
- (c) examine any fish on the premises and require persons on the premises to do anything which

- appears to the officer to be necessary for facilitating the examination;
- (d) carry out at the premises such other inspections or tests as may reasonably be necessary;
 - (e) require any person not to remove or cause to be removed any fish from the premises for such a period as may be reasonably necessary for the purposes of establishing whether an offence under any of those articles or any equivalent provision has at any time been committed;
 - (f) require any person on the premises to produce any documents which are in his or her custody or possession relating to the catching, landing, transportation, trans-shipment, sale or disposal of any fish or to the entry to, or exit from, any port or harbour by any fishing boat;
 - (g) for the purpose of ascertaining whether any person on the premises has committed an offence under any of those articles or any equivalent provision, search the premises for any such document and require any person on the premises to do anything which appears to the officer to be necessary for facilitating the search;
 - (h) inspect and take copies of any such document produced to the officer or found on the premises;
 - (i) require any appropriate or responsible person to render any such document on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away; and
 - (j) if the officer has a reason to suspect that an offence under any of those articles or any equivalent provision has been committed, seize and detain any such document produced to the officer or found on the premises for the purpose of enabling the document to be used as evidence in proceedings for the offence.

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

(3) If a justice of the peace on sworn information in writing is satisfied—

- (a) that there is reasonable ground to believe that any documents or other items which a British sea-fishery officer has power under this article to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under any of those articles or any equivalent provision; and
- (b) either—
 - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant has been given to the occupier; or
 - (ii) that an application for admission or the giving of such notice would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his or her return;

the justice may by warrant signed by him or her, and valid for one month, authorise a British sea-fishery officer to enter the premises, if need be by reasonable force, and take with him or her such persons as appear to the officer to be necessary.

Powers of British sea-fishery officers to seize fish and fishing gear

13. In Wales, any British sea-fishery officer may, in relation to any fishing boat seize—

- (a) any fish (including any receptacle which contains the fish) in respect of which the officer has reasonable grounds to suspect that an offence has been committed; and
- (b) any fishing gear which the officer has reasonable grounds to suspect has been used in the course of, or in activities leading to, the commission of an offence,

under article 4, 5, 6, 7 or 8 or under any equivalent provision.

Protection of British sea-fishery officers

14. A British sea-fishery officer or a person assisting him or her by virtue of article 11(2) or 12(1)(b) or authorisation under article 12(3), is not liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him or her by articles 11 to 13 if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

Obstruction of British sea-fishery officers

15.—(1) Any person who—

- (a) fails without reasonable excuse to comply with any requirement imposed by a British sea-fishery officer under the powers conferred on British sea-fishery officers by articles 11 and 12;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) assaults a person who is exercising any of the powers conferred on him or her by articles 11 to 13 or intentionally obstructs him or her in the exercise of any of those powers,

is guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to a fine.

Provisions as to offences

16.—(1) Where any offence under article 3 to 8 of this Order or any equivalent provision committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, that person as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where any offence under article 3 to 8 of this Order or any equivalent provision committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that person as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where any offence under article 3 to 8 of this Order or any equivalent provision committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, that person as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

Admissibility in evidence of logbooks and other documents

17.—(1) Any—

- (a) logbook kept under Article 6, 17(2) or 28c;
- (b) declaration submitted under Article 8(1), 17(2) or 28f;
- (c) effort report completed under Article 19b and 19c;
- (d) document drawn up under Article 9, 11, 12 or 13; or
- (e) document containing required information received by a fisheries monitoring centre established under Article 3(7),

of Regulation 2847/93 will, in any proceedings for an offence under this Order or any equivalent provision, be evidence of the matters stated therein and so will any additional entry in a logbook made pursuant to this Order or any equivalent provision.

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

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

as communicated via a satellite-based vessel monitoring system established under Article 3(1) of Regulation 2847/93.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(1)

Date

Dafydd Elis Thomas

The Presiding Officer of the National Assembly

(1) 1998 c. 38.