SCOTTISH STATUTORY INSTRUMENTS

2004 No. 392

SEA FISHERIES

The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Scotland) Order 2004

Made - - - -	*13th September 2004*
Laid before the Scottish Parliament - - - -	*14th September 2004*
Coming into force - -	*6th October 2004*

The Scottish Ministers, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(**1**), and of all other powers enabling them in that behalf, hereby make the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Scotland) Order 2004 and shall come into force on 6th October 2004.

(2) Subject to paragraph (3), this Order shall extend to Scotland and the Scottish zone, and insofar as it extends beyond Scotland and the Scottish zone, it does so only as a matter of Scots law.

(3) Nothing in paragraph (2) shall be treated as prejudicing the effect of section 30(2A) of the Fisheries Act 1981(**2**) in relation to, or for purposes incidental to, any provision in this Order which creates an offence.

Interpretation

2.—(1) In this Order–

"Community fishing boat" means a fishing vessel flying the flag of and registered in a Member State of the European Community other than the United Kingdom;

"equivalent provision" means any provision in any other order made under section 30(2) of the Fisheries Act 1981 for the purposes of implementing Regulation 2244/2003, extending to

(**1**) 1981 c. 29; 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 were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46). See section 30(3) of the 1981 Act for definitions of "enforceable Community restriction", "enforceable Community obligation" and "the Ministers". Section 30 has effect in relation to Scotland as modified by section 30(5), inserted by the Scotland Act (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68(5)(b).

(**2**) Section 30(2A) was inserted by S.I. 1999/1820, Schedule 2, paragraph 68(5)(a).

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

"Fisheries Monitoring Centre" means a Fisheries Monitoring Centre established under Article 3(7) of Regulation 2847/93;

"fishing boat" includes a receiving vessel within the meaning of Regulation 2847/93;

"polled" means requested by automatic electronic means by a Fisheries Monitoring Centre to automatically provide to that Centre by way of signal transmitted via satellite the required information at any time other than that required by article 6(2) of this Order;

"relevant British fishing boat" means a fishing vessel, other than a Scottish fishing boat, which either is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(**3**) or is owned wholly by persons qualified to own British ships for the purposes of that Part of that Act;

"Regulation 2847/93" means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy(**4**) as amended by Council Regulation (EC) No. 2870/95(**5**), Council Decision (EC) No. 95/528(**6**), Council Regulation (EC) No. 2489/96(**7**), Council Regulation (EC) No. 686/97(**8**), Council Regulation (EC) No. 2205/97(**9**), Council Regulation (EC) No. 2635/97(**10**) and Council Regulation (EC) No. 2846/98(**11**);

"Regulation 2244/2003" means Commission Regulation (EC) No. 2244/2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems(**12**);

"required information" means–

(a) the name and registration of the fishing boat;

(b) the most recent geographical position of the fishing boat expressed in degrees and minutes of longitude and latitude with a margin of error less than 500 metres and with a confidence interval of 99%;

(c) the date and time (expressed in universal time coordinated (UTC)) of the fixing of that position; and

(d) as from 1st January 2006, the speed and course of the fishing vessel;

"satellite-tracking device" means a device which sends the required information by way of satellite and land earth station to a Fisheries Monitoring Centre;

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

"Scottish zone" has the same meaning as in section 126(1) of the Scotland Act 1998(**13**);

"third country fishing boat" means a fishing vessel flying the flag of and registered in a state other than a Member State of the European Communities.

(**3**) 1995 c. 21.
(**4**) O.J. No. L261, 20.10.93, p.1.
(**5**) O.J. No. L301, 14.12.95, p.1.
(**6**) O.J. No. L301, 14.12.95, p.35.
(**7**) O.J. No. L338, 28.12.96, p.12.
(**8**) O.J. No. L102, 19.4.97, p.1.
(**9**) O.J. No. L304, 7.11.97, p.1.
(**10**) O.J. No. L356, 31.12.97, p.14.
(**11**) O.J. No. L358, 31.12.98, p.5.
(**12**) O.J. No. L333, 20.12.03, p.17.
(**13**) 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).

(2) A logbook, declaration or document or any required information includes, in addition to a logbook, declaration or document or required information in writing–

(a) any map, plan, graph or drawing;

(b) any photograph;

(c) any disk, tape, sound track or other device in which sounds or other data (not being visual aids) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(d) any film (including microfilm), negative, tape, disk or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.

(3) Without limiting the generality of articles 4(2)(b) and 5(2), a satellite-tracking device shall not be regarded as operational for the purposes of those articles during any time when it is failing to operate in accordance with article 6(2) below.

Application of articles 4, 5, 6 and 7

3.—(1) Subject to paragraph (2), articles 4, 5, 6 and 7 of this Order apply to a fishing boat specified in those articles–

(a) where that fishing boat measures more than 18 metres in overall length; and

(b) as from 1st January 2005, where that fishing boat measures more than 15 metres in overall length.

(2) Those articles do not apply to a fishing boat specified in them where that fishing boat is used exclusively for exploitation of aquaculture and operates exclusively inside the baselines from which the territorial sea of the United Kingdom is measured.

Installation and maintenance of a satellite-tracking device

4.—(1) This article applies to–

(a) a Scottish fishing boat, wherever it may be; and

(b) any other fishing boat which is within the Scottish zone.

(2) A satellite-tracking device shall–

(a) be installed; and

(b) be operational at all times,

on a boat to which this article applies.

(3) A satellite-tracking device installed on board a boat to which this article applies shall–

(a) not permit the input or output of false positions; and

(b) not be capable of being manually over-ridden.

Prohibition against leaving port without operational satellite-tracking device on board

5.—(1) This article applies to–

(a) a Scottish fishing boat, wherever it may be; and

(b) (i) a relevant British fishing boat; and

(ii) a Community fishing boat,

which is within the Scottish zone.

(2) Subject to article 7(6), a boat to which this article applies shall not leave a port without an operational satellite-tracking device installed on board.

(3) When a boat to which this article applies is in port the satellite-tracking device installed on board may be switched off only –

(a) if prior notification is given to the relevant Fisheries Monitoring Centre specified in article 8(1); and

(b) on the condition that the required information next transmitted in accordance with article 6(2) is the same as that last transmitted in accordance with article 6(2).

Transmission of required information

6.—(1) This article applies to–

(a) a Scottish fishing boat, wherever it may be; and

(b) any other fishing boat which is within the Scottish zone.

(2) Subject to article 5(3), a satellite-tracking device installed on board a boat to which this article applies shall transmit the required information–

(a) at least once every hour; or

(b) at least once every two hours where the satellite-tracking device is capable of being polled by–

(i) the Fisheries Monitoring Centre of the United Kingdom, in the case of a Scottish fishing boat or relevant British fishing boat; or

(ii) the Fisheries Monitoring Centre of the state of which it flies the flag and in which it is registered, in the case of any other fishing boat.

(3) A Scottish fishing boat or a relevant British fishing boat to which this article applies shall transmit the required information to the Fisheries Monitoring Centre of the United Kingdom.

Technical failure or non-functioning of the satellite-tracking device

7.—(1) This article applies to–

(a) a Scottish fishing boat, wherever it may be; and

(b) any other fishing boat which is within the Scottish zone.

(2) In the event of a technical failure or non-functioning of the satellite-tracking device fitted on board a boat to which this article applies the master or owner of that boat or their representative shall communicate the up-to-date current geographical position of that boat to the relevant Fisheries Monitoring Centre specified in article 8(1).

(3) A–

(a) Scottish fishing boat, relevant British fishing boat or Community fishing boat to which this article applies shall communicate the information specified in paragraph (2) by one of the means specified in Article 11(1) of Regulation 2244/2003;

(b) third country fishing boat to which this article applies shall communicate the information specified in paragraph (2) by one of the means specified in Article 23(1) of Regulation 2244/2003.

(4) The information specified in paragraph (2) shall be communicated–

(a) in respect of a Scottish fishing boat or relevant British fishing boat to which this article applies, every four hours from the earliest of the times specified at sub-paragraphs (a), (b) and (c) of paragraph (5);

(b) in respect of a Community fishing boat to which this article applies, every four hours from the earlier of the times specified at sub-paragraphs (a) and (b) of paragraph (5);

(c) in respect of a third country fishing boat to which this article applies, every two hours and each time the fishing boat moves from one ICES division to another.

(5) The times specified for the purposes of sub-paragraphs (a) and (b) of paragraph (4) are–

(a) the time when the technical failure or non-functioning of the satellite-tracking device was detected;

(b) the time when a person specified in paragraph (2) was informed by a Fisheries Monitoring Centre that the satellite monitoring device installed on board appeared to be defective or not to be functioning; and

(c) the time when a person specified in paragraph (2) was notified by the Fisheries Monitoring Centre of the United Kingdom that the required information had not been received for a period of twelve hours or more.

(6) A boat to which paragraph (2) has applied shall not leave a port unless authorised to do so by a British sea-fishery officer.

(7) In this article–

"ICES division" means a statistical sub-area or division of the International Council for the Exploration of the Sea(**14**);

"technical failure or non-functioning" means that the satellite-tracking device is not operating in accordance with article 6(2).

Fisheries monitoring centres

8.—(1) The Fisheries Monitoring Centres specified for the purposes of articles 5(3)(a) and 7(2) are–

(a) in respect of a fishing boat to which the relevant article applies, to the Fisheries Monitoring Centre of the United Kingdom;

(b) in respect of a Community fishing boat to which the relevant article applies, to the Fisheries Monitoring Centre of the country the flag of which it flies and which it is registered in as well as to the Fisheries Monitoring Centre of the United Kingdom; and

(c) in respect of a Scottish fishing boat in the waters of another Member State, to the Fisheries Monitoring Centre of that Member State, as well as to the Fisheries Monitoring Centre of the United Kingdom.

(2) In this article "another Member State" means a Member State of the European Community other than the United Kingdom.

Offences

9.—(1) Where there is a contravention of, or failure to comply with, any provision of article 4, 5, 6 or 7 the owner, charterer (if any) and the master are each guilty of an offence.

(2) Where any person in any way–

(a) alters the required information that is to be transmitted by a satellite-tracking device installed on board a boat to which any provision of this Order applies;

(b) obstructs any antenna connected to such a satellite-tracking device; or

(c) communicates a false geographical position,

(**14**) Cmnd. 2586.