SCOTTISH STATUTORY INSTRUMENTS

2001 No. 448

SEA FISHERIES

The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Scotland) Order 2000 Amendment Regulations 2001

Made - - - -	*28th November 2001*
Laid before the Scottish Parliament - - - -	*3rd December 2001*
Coming into force - -	*1st January 2002*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972[F1] and of all other powers enabling them in that behalf, hereby make the following Regulations:

F1 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), **Schedule 8**, paragraph 15(3). The function conferred upon a Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

Citation and commencement

1. These Regulations may be cited as the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Scotland) Order 2000 Amendment Regulations 2001 and shall come into force on 1st January 2002.

Interpretation

2.—(1) In these Regulations "the Order" means the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Scotland) Order 2000 [F2].

(2) Expressions used in provisions inserted by these Regulations into the Order shall be interpreted in the same way as if they had been so inserted by an order made under section 30(2) of the Fisheries Act 1981 [F3].

F2 S.S.I. 2000/20.

F3 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 1988 (Modification

of Functions) Order 1999 (S.I. 1999/1756), **articles 3**, 5 and 6. 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).

Amendment of the Order

3. The Order is amended in accordance with the following regulations.

4. In article 2(1) (interpretation) in the definition of "polled" omit "(4) or".

5. In article 3 (satellite tracking of Scottish and relevant British fishing boats)–

(a) in paragraph (3), for sub-paragraph (b) there is substituted–

"(b) subject to paragraphs (4) and (6) below, be maintained fully operational,";

(b) for paragraphs (4) and (5) there are substituted the following paragraphs:–

"(4) Without limiting the generality of paragraph (3)(b) above, a satellite tracking device shall not be regarded as fully operational for the purposes of that paragraph during any time when it is failing to operate in accordance with paragraph (5) below.

(5) A satellite tracking device installed on a fishing boat to which this article applies shall transmit the required information, in the format prescribed by Annex II to Regulation 1489/97, to a Fisheries Monitoring Centre–

(a) where the satellite tracking device is capable of being polled–

(i) at least every two hours; or

(ii) in a case for which a longer maximum interval is specified in Annex I to Regulation 1489/97, at intervals no longer than that maximum; or

(b) where the satellite tracking device is not capable of being polled, at least hourly.

(6) Neither of the following circumstances shall be treated as giving rise to a breach of the requirement in paragraph (3)(b) above–

(a) where the device is switched off under the conditions permitted by Annex I to Regulation 1489/97 (stay in port of more than 48 hours, provided the next report is from the same position as the previous one);

(b) where the device is subject to a technical failure or non-function within the meaning of Article 6.2 of Regulation 1489/97 during a time when the fishing boat is either in port or in the course of a fishing trip authorised by that Article.

(7) Throughout any time when–

(a) a Scottish fishing boat or a relevant British fishing boat to which this article applies is not in port; and

(b) the satellite tracking device installed on the boat is failing for any reason to operate in accordance with paragraph (5) above,

the required information shall be communicated to the Fisheries Monitoring Centre of the United Kingdom by one of the means specified in 6.1 of Regulation 1489/97 Article at least every two hours.

(8) Paragraph (7) above is without prejudice to Article 6.1 of Regulation 1489/97 (requirement to communicate information to flag state and, if appropriate, coastal state monitoring centres by other means at least every 24 hours).".

6.—(1) In article 5 (offences)–

(a) in paragraph (1), omit "Subject to paragraph (2) below,";

(b) paragraph (2) is omitted.

(2) The revocation by regulation 6(1) of these Regulations of article 5(2) of the Order shall not affect its application for the purposes of proceedings (whenever occurring) in relation to an offence alleged to have been committed before 1st January 2002.

7. In article 6(1) (penalties) for "or (4)" there is substituted " or (7) ".

8. In article 7(1)(a) (recovery of fines) for "sub-paragraph (a)" there is substituted " sub-paragraph (b) ".

9. In article 8 (powers of British sea-fishery officers in relation to fishing boats)–

(a) in paragraph (1), for "to (4)" there is substituted " to (8) ";

(b) after paragraph (4) there is inserted–

"(5) Where it appears to a British sea-fishery officer that the satellite tracking device on a Scottish fishing boat or a relevant British fishing boat failed, at a time when the boat was not in port, to operate in accordance with article 3(5) above that officer may, subject to paragraph (7) below, at any time when the boat is in port serve on the master or the owner a notice.

(6) The notice referred to in paragraph (5) above is a notice which–

(a) requires the boat to be detained in port from the time of service of the notice until the expiry of the specified monitoring period; and

(b) requires that during the specified monitoring period the device shall be set (as nearly as its condition allows) so as to transmit the required information to the Fisheries Monitoring Centre of the United Kingdom–

(i) in the case of a device designed to be capable of being polled, at least every two hours; and

(ii) in the case of a device not so designed, at least every hour.

(7) A notice under paragraph (5) above shall not be served later than 30 days after the day on which it appears to the British sea-fishery officer that the satellite tracking device last failed to operate in accordance with article 3(5) above.

(8) In this article–

(a) in paragraphs (5) and (7) above the reference to article 3(5) above includes a provision to the same effect made by an order which applies to England and Wales or to Northern Ireland;

(b) in paragraph (6) above "the specified monitoring period" means a period of 24 hours which is specified in the notice (which period shall not begin later than 9.00 a.m. on the weekday next following the day on which the notice is served);

(c) "weekday" means a day other than a Saturday, Sunday or public holiday.".