SCOTTISH STATUTORY INSTRUMENTS

2000 No. 20

SEA FISHERIES

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

Made - - - -	*31st January 2000*
Laid before the Scottish Parliament - - - -	*31st January 2000*
Coming into force - -	*21st February 2000*

The Scottish Ministers, in exercise of the powers conferred upon them by section 30(2) and (3) 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 2000 and shall come into force on 21st February 2000.

(2) This Order extends to Scotland only.

Interpretation

2.—(1) In this Order–

"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 3(4) or (5) of this Order;

(**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).

"relevant British fishing boat" means a fishing boat, other than a Scottish fishing boat, which either is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(**2**) 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(**3**) as amended by Council Regulation (EC) No. 2870/95(**4**), Council Decision (EC) No. 95/528(**5**), Council Regulation (EC) No. 2489/96(**6**), Council Regulation (EC) No. 686/97(**7**), Council Regulation (EC) No. 2205/97(**8**), Council Regulation (EC) No. 2635/97(**9**) and Council Regulation (EC) No. 2846/98(**10**);

"Regulation 1489/97" means Commission Regulation (EC) No. 1489/97 laying down detailed rules for the application of Regulation 2847/93 as regards satellite-based vessel monitoring systems(**11**) as corrected by Commission Regulation (EC) No. 435/98(**12**) and amended by Commission Regulation (EC) No. 831/99(**13**) and Commission Regulation (EC) No. 2445/1999(**14**);

"required information" means–

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

(b) the most recent geographical position of the 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%; and

(c) the date and time of the fixing of that position.

"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 the Scotland Act 1998(**15**).

(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

(**2**) 1995 c. 21.
(**3**) O.J. No. L261, 20.10.93, p.1.
(**4**) O.J. No. L301, 14.12.95, p.1.
(**5**) O.J. No. L301, 14.12.95, p.35.
(**6**) O.J. No. L338, 28.12.96, p.12.
(**7**) O.J. No. L102, 19.4.97, p.1.
(**8**) O.J. No. L304, 7.11.97, p.1.
(**9**) O.J. No. L356, 31.12.97, p.14.
(**10**) O.J. No. L358, 31.12.98, p.5.
(**11**) O.J. No. L 202, 30.7.97, p.18.
(**12**) O.J. No. L054, 25.2.98, p.5.
(**13**) O.J. No. L105, 22.4.99, p.20.
(**14**) O.J. No. L298, 19.11.99, p.5.
(**15**) 1998 c. 46; see section 126 and the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).

(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.

Satellite tracking of Scottish and relevant British fishing boats

3.—(1) Subject to paragraph (2) this article applies to–

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

(b) a relevant British fishing boat which is within the Scottish zone,

which measures more than 20 metres between perpendiculars or more than 24 metres in overall length.

(2) This article does not apply to such a fishing boat which–

(a) operates exclusively within 12 nautical miles of the baselines from which the territorial sea of the United Kingdom is measured, or

(b) which never spends more than 24 hours at sea taken from the time of departure to the time of return to port.

(3) A satellite tracking device shall–

(a) be installed; and

(b) be maintained fully operational,

on a vessel to which this article applies.

(4) Such a satellite tracking device shall transmit the required information–

(a) where the satellite tracking device is capable of being polled, at least every two hours unless otherwise specified in Annex I to Regulation 1489/97; or

(b) where the satellite tracking device is not capable of being polled, hourly in the form prescribed by Annex II to Council Regulation 1489/97,

to a Fisheries Monitoring Centre.

(5) The satellite tracking device shall transmit the date and time of entry into and exit from–

(a) the fishing area referred to in Annex I to Council Regulation (EC) No. 685/95(**a**), and

(b) waters under the sovereignty or control of a country other than a member state.

Satellite tracking of other fishing boats

4.—(1) Subject to paragraph (2) below this article applies to any fishing boat other than one to which article 3 above applies and which–

(a) measures more than 20 metres between perpendiculars or more than 24 metres in overall length, and

(b) is within the Scottish zone.

(2) This article does not apply to such a fishing boat which–

(a) operates exclusively within the territorial sea of the state in which it is registered or whose flag it flies, or

(b) which never spends more than 24 hours at sea taken from the time of departure to the time of return to port.

(3) A satellite tracking device shall–

(a) be installed, and

(b) be maintained fully operational,

on a vessel to which this article applies.

Offences

5.—(1) Subject to paragraph (2) below, where there is a contravention of, or failure to comply with–

(a) any provision of article 3 or 4 above, or

(b) Article 6.1 or 6.2 of Regulation 1489/97,

the owner, the charterer (if any) and the master is guilty of an offence.

(2) It is a defence to a contravention of, or failure to comply with, article 3(3)(b), (4) or (5) and article 4(3)(b) for the owner, the charterer (if any) or the master of the boat to prove that he has complied with Article 6.1 and 6.2 of Regulation 1489/97.

(3) Any person who in any way–

(a) changes, substitutes or replicates the identification of a satellite tracking device installed on a fishing boat to which this Order applies; or

(b) removes the satellite tracking device from such a boat,

without the prior authorisation of the Scottish Ministers is guilty of an offence.

(4) Any person who, in relation to a fishing boat to which this Order applies–

(a) delays or otherwise interferes with the transmission of required information by a satellite tracking device;

(b) interferes with the ability of the satellite tracking device to be polled; or

(c) knowingly transmits or furnishes false required information,

is guilty of an offence.

Penalties

6.—(1) A person guilty of an offence under article 5(1) in respect of a contravention of, or failure to comply with, article 3(3)(b) or (4) or article 4(3)(b) of this Order or Article 6.1 or 6.2 of Regulation 1489/97 is liable–

(a) on summary conviction to a fine not exceeding the statutory maximum, and

(b) on conviction on indictment to a fine.

(2) A person guilty of any other offence under article 5 of this Order is liable–

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

(b) on conviction on indictment to a fine.

(3) A person guilty of an offence analogous to an offence referred to in article 5 above contained in an Order made under section 30(2) of the Fisheries Act 1981 which implements Regulation 2847/93 or Regulation 1489/97 and which, by virtue of section 30(2A) of that Act(**16**) may be commenced in any place in the United Kingdom shall be liable to the same penalties as are set out in article 6(1) or (2) above.

Recovery of fines

7.—(1) Without prejudice to section 221 of the Criminal Procedure (Scotland) Act 1995(**17**), where a fine is imposed by a court on the master, owner, charterer or any other person who is

(**16**) 1981 c. 29. Section 30(2A) was inserted by paragraph 68(5)(a) of Schedule 2 to the Scotland Act (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820).
(**17**) 1995 c. 46.