WELSH STATUTORY INSTRUMENTS

2006 No. 2798 (W.237)

SEA FISHERIES, WALES

The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2006

Made - - - -	*18 October 2006*
Coming into force - -	*20 October 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:

PART 1

GENERAL

Title, application and commencement

1.—(1) The title of this Order is the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2006 and it comes into force on 20 October 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(**2**) in relation to, or for purposes incidental to, any provision in this Order which creates an offence.

Interpretation

2.—(1) In this Order—

"British fishing boat" ("*cwch pysgota Prydeinig*") means a fishing boat which 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 the Act;

(**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 in so far as exercisable in relation to Wales.
(**2**) Section 30(2A) was inserted by S.I. 1999/1820, article 4 and Schedule 2, Part 1, paragraph 68(1) and (5)(a).
(**3**) 1995 c. 21.

"Commission Regulation" ("*Rheoliad y Comisiwn*") means Commission Regulation (EC) No. 2244/2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems(**4**);

"Community fishing boat" ("*cwch pysgota Cymunedol*") means a fishing boat flying the flag of, and registered in, a Member State of the European Community other than the United Kingdom;

"equivalent provision" ("*darpariaeth gyfatebol*") means any provision in any other Order made for the purposes of making provision for the administration and enforcement of the Commission Regulation, extending 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;

"Fisheries Monitoring Centre" ("*Canolfan Monitro Pysgodfeydd*") means a Fisheries Monitoring Centre established under Article 3(7) of Council Regulation 2847/93;

"National Assembly" ("*Cynulliad Cenedlaethol*") means the National Assembly for Wales;

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

"Council Regulation 2847/93" ("*Rheoliad y Cyngor 2847/93*") means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy(**5**) as amended by Council Regulation (EC) No. 2870/95(**6**), Council Decision (EC) No. 95/528(**7**), Council Regulation (EC) No. 2489/96(**8**), Council Regulation (EC) No. 686/97(**9**), Council Regulation (EC) No. 2205/97(**10**), Council Regulation (EC) No. 2635/97(**11**), Council Regulation (EC) No. 2846/98(**12**)), Council Regulation (EC) No. 806/2003(**13**), Council Regulation (EC) No.1954/2003(**14**) and Council Regulation (EC) No.768/2005(**15**);

"required information" ("*yr wybodaeth sy'n ofynnol*") means the information set out in Article 5(1) of the Commission Regulation;

"satellite-tracking device" ("*dyfais olrhain drwy loeren*") means a device which sends the required information by way of satellite and land earth station to a Fisheries Monitoring Centre;

"third country fishing boat" ("*cwch pysgota trydedd gwlad*") means a fishing vessel flying the flag of, and registered in, a state other than a Member State of the European Communities and includes a receiving vessel within the meaning of Council Regulation 2847/93; and

"Wales" ("*Cymru*") has the same meaning as in section 155(1) and (2) of the Government of Wales Act 1998(**16**).

(2) Any reference to 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, drawing or diary;

(b) any photograph;

(**4**) O.J. No. L333, 20.12.03, p.17.
(**5**) O.J. No. L261, 20.10.93, p.1.
(**6**) O.J. No. L301, 14.12.95, p.1.
(**7**) O.J. No. L301, 14.12.95, p.35.
(**8**) O.J. No. L338, 28.12.96, p.12.
(**9**) O.J. No. L102, 19.4.97, p.1.
(**10**) O.J. No. L304, 7.11.97, p.1.
(**11**) O.J. No. L356, 31.12.97, p.14.
(**12**) O.J. No. L358, 31.12.98, p.5.
(**13**) O.J. No. L122, 16.5.03, p.1.
(**14**) O.J. No. L289, 7.11.03, p.1.
(**15**) O.J. No. L128, 21.5.05, p.1.
(**16**) 1998 c. 38.

(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.

Application

3. This Order only applies to fishing boats to which the Commission Regulation applies.

PART 2

PROVISIONS RELATING TO BRITISH FISHING BOATS AND COMMUNITY FISHING BOATS WITHIN WALES

Application of Part 2

4. Articles 5 to 9 apply to—

(a) British fishing boats within Wales; and

(b) Community fishing boats within Wales.

Installation of a satellite-tracking device

5.—(1) A person in charge of a fishing boat which has a satellite-tracking device installed for the purposes of the Commission Regulation which is capable of being manually overridden is guilty of an offence.

(2) A person in charge of a fishing boat which has a satellite-tracking device installed for the purposes of the Commission Regulation which permits the input or output of false positions is guilty of an offence.

(3) A person in charge of a fishing boat which leaves port without an operational satellite-tracking device installed on board is guilty of an offence.

Prohibition against switching off a satellite-tracking device whilst in port without prior notification

6. A person in charge of a fishing boat on which a satellite-tracking device is switched off other than in accordance with Article 8(3) of the Commission Regulation is guilty of an offence.

Transmission of required information

7.—(1) A person in charge of a fishing boat, the satellite-tracking device on which fails to transmit data in compliance with Article 5(1) of the Commission Regulation on an hourly basis, is guilty of an offence except where—

(a) the satellite-tracking device is transmitting data in compliance with Article 5(1) of the Commission Regulation on a two hourly basis and the Fisheries Monitoring Centre of the flag state can, in accordance with Article 8(2) of the Commission Regulation, poll the actual position of the fishing boat, or

(b) the satellite-tracking device has been switched off in compliance with Article 8(3) of the Commission Regulation, or

(c) data is being communicated in compliance with Article 11(1) of the Commission Regulation.

Responsibilities relating to the satellite-tracking device

8.—(1) Subject to compliance with Article 8(3) of the Commission Regulation, a person in charge of a fishing boat in respect of which there is a failure to comply with Article 6(1) of the Commission Regulation, is guilty of an offence.

(2) Subject to paragraph (3) a person in charge of a fishing boat in respect of which there is a failure to comply with Articles 6(2) (a), (b), (c) or (d) of the Commission Regulation, as read with Article 11(4) of that Regulation, is guilty of an offence.

(3) A person in charge of a fishing boat in respect of which there is a failure to comply with Article 6(2)(d) of the Commission Regulation where the derogation in Article 12(1) of that Regulation applies is not guilty of an offence.

(4) A person in charge of a fishing boat in respect of which there is a contravention of Article 6(3) of the Commission Regulation is guilty of an offence.

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

9.—(1) A person in charge of a fishing boat in respect of which, in the event of a technical failure or non-functioning of the satellite-tracking device, there is a failure to communicate information in compliance with Article 11(1) of the Commission Regulation is guilty of an offence.

(2) A person in charge of a fishing boat which leaves port in contravention of Article 11(2) of the Commission Regulation is guilty of an offence.

(3) The competent authority under Article 11(2) of the Commission Regulation is a British sea-fishery officer.

PART 3

PROVISIONS RELATING TO THIRD COUNTRY FISHING BOATS WITHIN WALES

Application of Part 3

10. Articles 11 to 14 apply to third country fishing boats within Wales.

Installation of a satellite-tracking device

11.—(1) A person in charge of a fishing boat which has a satellite-tracking device installed for the purposes of the Commission Regulation which is capable of being manually overridden is guilty of an offence.

(2) A person in charge of a fishing boat which has a satellite-tracking device installed for the purposes of the Commission Regulation which permits the input or output of false positions is guilty of an offence.

(3) A person in charge of a fishing boat which does not have an operational satellite-tracking device installed on board is guilty of an offence.

Transmission of required information

12. A person in charge of a fishing boat the satellite-tracking device on which fails to transmit data to the Fisheries Monitoring Centre of the flag state in compliance with Articles 18 and 20 of the Commission Regulation is guilty of an offence.

Responsibilities relating to the satellite-tracking device

13.—(1) A person in charge of a fishing boat in respect of which there is a failure to comply with Article 19(1) of the Commission Regulation is guilty of an offence.

(2) A person in charge of a fishing boat in respect of which there is a failure to comply with Article 19(2) of the Commission Regulation is guilty of an offence.

(3) A person in charge of a fishing boat in respect of which there is a contravention of Article 19(3) of the Commission Regulation is guilty of an offence.

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

14.—(1) A person in charge of a fishing boat in respect of which, in the event of a technical failure or non-functioning of the satellite-tracking device, there is a failure to communicate information in compliance with Articles 23(1) and 23(2) of the Commission Regulation is guilty of an offence.

(2) A person in charge of a fishing boat which leaves port in contravention of Article 23(3) of the Commission Regulation is guilty of an offence.

(3) The competent authority under Article 23(3) of the Commission Regulation is a British sea-fishery officer.

PART 4

PENALTIES AND RECOVERY OF FINES

Penalties

15. A person found guilty of an offence under articles 5, 6, 7, 8, 9, 11, 12, 13 or 14 of this Order or under any equivalent provision is liable—

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

(b) on conviction on indictment to a fine.

Recovery of fines

16.—(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 such 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.