STATUTORY RULES OF NORTHERN IRELAND

2005 No. 452

AGRICULTURE

The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Northern Ireland) Order 2005

Made - - - -	*13th October 2005*
Coming into operation	*14th November 2005*

The Department of Agriculture and Rural Development, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(**1**), and now vested in it(**2**) and every other power enabling it in that behalf, makes the following Order:

PART 1

GENERAL

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Northern Ireland) Order 2005 and shall come into operation on 14th November 2005.

(2) Subject to paragraph (3), this Order shall not form part of the law of Scotland or England or apply in Wales.

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

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**4**) shall apply to this order as it applies to an Act of the Northern Ireland assembly.

(2) In this Order—

(**1**) 1981 c. 29
(**2**) S.I. 2002 No. 790
(**3**) Section 30(2A) was inserted by S.I. 1999/1820, Schedule 2, paragraph 68(5)(a)
(**4**) 1954 c. 33 (NI)

"Northern Ireland fishing boat" means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995(**5**) and whose entry in the register specifies a port in Northern Ireland as the port to which the boat is to be treated as belonging;

"British fishing boat" means a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995 or is owned wholly by persons qualified to own British ships for the purpose of that part of the Merchant Shipping Act 1995;

"Community fishing boat" 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" 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 specified provision in this Order, proceedings in respect of which may be taken in Northern Ireland by virtue of section 30(2A) of the Fisheries Act 1981;

"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;

"Northern Ireland zone" has the same meaning as in the Northern Ireland Act 1998(**6**);

"person in charge", 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;

"Regulation 2847/93" means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy(**7**) as amended by Council Regulation (EC) No. 2870/95(**8**), Council Decision (EC) No. 95/528(**9**), Council Regulation (EC) No. 2489/96(**10**), Council Regulation (EC) No. 686/97(**11**), Council Regulation (EC) No. 2205/97(**12**), Council Regulation (EC) No. 2635/97(**13**), Council Regulation (EC) No. 2846/98(**14**), Council Regulation (EC) No. 806/2003(**15**) and Council Regulation (EC) No. 1954/2003(**16**);

"required information" means the information set out in Article 5(1) of the Commission Regulation;

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

"Commission Regulation" means Commission Regulation (EC) No. 2244/2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems(**17**);

"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 and includes a receiving vessel within the meaning of Commission Regulation 2847/93.

(**5**) 1995 c. 21
(**6**) 1998 c. 47
(**7**) O.J. No. L261, 20.10.93, p. 1
(**8**) O.J. No. L301, 14.12.95, p. 1
(**9**) O.J. No. L301, 14.12.95, p. 35
(**10**) O.J. No. L338, 28.12.96, p. 12
(**11**) O.J. No. L102, 19.4.97, p. 1
(**12**) O.J. No. L304, 7.11.97, p. 1
(**13**) O.J. No. L356, 31.12.97, p. 14
(**14**) O.J. No. L358, 31.12.98, p. 5
(**15**) O.J. No. L122, 16.5.03, p. 1
(**16**) O.J. No. L289, 7.11.03, p. 1
(**17**) O.J. No. L333, 20.12.03, p. 17

(3) 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 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.

Application

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

PART 2

PROVISIONS RELATING TO NORTHERN IRELAND FISHING BOATS, AND BRITISH AND COMMUNITY FISHING BOATS WITHIN THE NORTHERN IRELAND ZONE

Application of Part 2

4. Articles 5 to 9 apply to—

(a) a Northern Ireland fishing boat;

(b) a British fishing boat within the Northern Ireland zone;

(c) a Community fishing boat within the Northern Ireland zone.

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 in contravention of Article 4 of the Commission Regulation 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 the 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 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 shall not be 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 THE NORTHERN IRELAND ZONE

Application of Part 3

10. Articles 11 to 14 apply to third country fishing boats within the Northern Ireland zone.

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 fails to comply with Article 17 of the Commission Regulation 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 being 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 the statutory maximum, and

(b) on conviction on indictment to a fine.