

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(a), 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(b) 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 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;

(a) 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).

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

“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(a) 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(b) as amended by Council Regulation (EC) No. 2870/95(c), Council Decision (EC) No. 95/528(d), Council Regulation (EC) No. 2489/96(e), Council Regulation (EC) No. 686/97(f), Council Regulation (EC) No. 2205/97(g), Council Regulation (EC) No. 2635/97(h) and Council Regulation (EC) No. 2846/98(i);

“Regulation 2244/2003” means Commission Regulation (EC) No. 2244/2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems(j);

“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(k);

“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.

(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.

(a) 1995 c.21.

(b) O.J. No. L261, 20.10.93, p.1.

(c) O.J. No. L301, 14.12.95, p.1.

(d) O.J. No. L301, 14.12.95, p.35.

(e) O.J. No. L338, 28.12.96, p.12.

(f) O.J. No. L102, 19.4.97, p.1.

(g) O.J. No. L304, 7.11.97, p.1.

(h) O.J. No. L356, 31.12.97, p.14.

(i) O.J. No. L358, 31.12.98, p.5.

(j) O.J. No. L333, 20.12.03, p.17.

(k) 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).

(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(a);

“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,

that person, along with the owner, charterer (if any) and the master of the boat, is guilty of an offence.

(3) Subject to article 12(3)(g), where any person in any way—

- (a) interrupts the power supply of a satellite-tracking device installed on board a boat to which any provision of this Order applies;
- (b) removes such a satellite-tracking device from such a boat; or
- (c) destroys, damages, renders inoperative or otherwise interferes with such a satellite-tracking device,

that person, along with the owner, charterer (if any) and the master of the boat, is guilty of an offence.

Penalties

10. A person guilty of an offence under article 9 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.

(a) Cmnd. 2586.

Recovery of fines

11.—(1) Without prejudice to section 221 of the Criminal Procedure (Scotland) Act 1995^(a), where a court has imposed a fine on the master, owner, charterer or any other person who is convicted by it of an offence under this Order or under any equivalent provision, the court may for the purposes of recovering the fine—

- (a) order any boat involved in the commission of the offence 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, the order is renewed for a further such period or a warrant is issued under sub-paragraph (b) below whichever occurs first; or
- (b) issue a warrant for arrestment and sale of any such boat and its gear and catch.

(2) The court shall not issue a warrant under paragraph (1)(b) above without first affording the owner of the boat, its gear or catch liable to be included in the warrant an opportunity to be heard.

(3) A warrant issued under paragraph (1)(b) above, whatever the amount of the fine imposed, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff in a summary cause.

(4) Where, in relation to a fine in respect of an offence under any equivalent provision, a transfer of fine order under section 222 of the Criminal Procedure (Scotland) Act 1995, section 90 of the Magistrates' Courts Act 1980^(b) or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981^(c) specifies a court of summary jurisdiction in Scotland this article shall apply as if the fine were a fine imposed by that court.

Powers of British sea-fishery officers in relation to fishing boats

12.—(1) For the purpose of enforcing this Order or any equivalent provision a British sea-fishery officer may exercise the powers conferred by this article in relation to—

- (a) any Scottish fishing boat wherever it may be, or
- (b) any other fishing boat which is within the Scottish zone.

(2) The officer may go on board the boat, with or without persons assigned to assist the officer in the duties of that officer, and for that purpose may require the boat to stop and do anything else which will facilitate the boarding of, or the disembarkation from, the boat.

(3) The officer may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to the officer to be necessary for the purpose mentioned in paragraph (1) and, in particular—

- (a) may search for, examine and may test any equipment of the boat, including the satellite-tracking device, and require persons on board the boat to do anything which appears to the officer to be necessary for facilitating the examination and test;
- (b) may require any person on board the boat to produce any document relating to the boat, or the equipment of the boat, to any fishing operations or other operations ancillary thereto or to the persons on board which is in the custody or possession of that person and may take copies of any such document;
- (c) for the purpose of ascertaining whether an offence under this Order or under any equivalent provision has been committed, may search the boat for any such document and may require any person on board the boat to do anything which appears to the officer to be necessary for facilitating the search;
- (d) inspect, take copies of and retain in the possession of the officer while the officer completes any search, examination and inspection provided for under this article, any such document produced to the officer or found on board;

^(a) 1995 c.46.

^(b) 1980 c.43.

^(c) S.I. 1981/1675.

- (e) may require the master or any person for the time being in charge of the boat to render all such documents on a computer system into a visible and legible form in which it may be taken away;
- (f) where the boat is one in relation to which the officer has reason to suspect that an offence under this Order or under any equivalent provision has been committed, may seize and detain any such document produced to the officer or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence; and
- (g) may remove, or authorise in writing any other person to remove, the satellite-tracking device, or any part thereof, and any other equipment on board which the officer considers necessary for the purpose of establishing whether the satellite-tracking device has been tampered with or for the purpose of examining, testing, repairing or replacing same.

(4) Where it appears to a British sea-fishery officer that an offence under this Order or under any equivalent provision has at any time been committed, the officer may—

- (a) require the master of the boat in relation to which the offence took place to take, or may himself take, the boat and its crew to the port which appears to him to be the nearest convenient port; and
- (b) detain or require the master to detain the boat in the port,

and where such an officer detains or requires the detention of a boat he shall serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea-fishery officer.

Protection of officers

13. A British sea-fishery officer or a person assisting such an officer by virtue of article 12(2) of this Order shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred by virtue of article 12 of this Order if the court is satisfied—

- (a) that the act was done in good faith;
- (b) that there were reasonable grounds for doing it; and
- (c) that it was done with reasonable skill and care.

Obstruction etc

14.—(1) Any person who—

- (a) fails without reasonable excuse to comply with any requirement imposed by a British sea-fishery officer under the powers conferred on such an officer by virtue of article 12 of this Order;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) intentionally obstructs any such officer who is exercising any of those powers, any person assisting such an officer by virtue of article 12(2) or any person authorised by such an officer under article 12(3)(g),

is guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to a fine.

Provisions as to offences and proceedings

15.—(1) Where any offence under this Order, or under any equivalent provision, committed by a body corporate is proved to have been committed with the consent or connivance of, or to be

attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where any offence under this Order, or under any equivalent provision, committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner, as well as the partnership, shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where any offence under this Order, or under any equivalent provision, committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association, that officer, as well as the association, shall be guilty of the offence and liable to be proceeded against and punished accordingly.

Admissibility in evidence of logbooks and other documents

16. Any—

- (a) logbook kept under Articles 6, 17(2) or 28c;
- (b) declaration submitted under Articles 8(1), 11, 12, 17(2) or 28f;
- (c) effort report completed under Articles 19b and 19c; or
- (d) document drawn up under Articles 9 or 13,

of Regulation 2847/93 and any required information received by a Fisheries Monitoring Centre shall, in any proceedings for an offence under this Order or under any equivalent provision, be received in evidence without being produced or sworn to by any witness and shall be sufficient evidence of the matters stated therein or appearing therefrom.

Revocations and saving

17. The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Scotland) Order 2000(a) is hereby revoked.

ROSS FINNIE
A member of the Scottish Executive

St Andrew's House,
Edinburgh
13th September 2004

(a) S.S.I. 2000/20.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the enforcement of Commission Regulation (EC) No. 2244/2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems (“Regulation 2244/2003”). The Order applies to Scotland and the Scottish zone, and in so far as it applies beyond Scotland and the Scottish zone, it does so only as a matter of Scots law (article 1).

The Order specifies four categories of boats to which the obligations under Regulation 2244/2003 apply: Scottish fishing boats (as defined in article 2) wherever they may be, and relevant British fishing boats, Community fishing boats and third country fishing boats (as each of those terms is defined in article 2) within the Scottish zone.

Articles 4, 5, 6 and 7 apply only to boats of the categories specified by those articles which measure more than 18 metres in overall length and, as from 1st January 2005, more than 15 metres in overall length (article 3). They do not apply where such a boat falls within the ambit of article 3(2).

All four categories of boats are required to have a satellite-tracking device (“device”) installed on board which does not permit the input or output of false positions; which is not capable of being manually over-ridden; and which shall be operational at all times (article 4).

Scottish fishing boats, wherever they may be, and relevant British and Community fishing boats within the Scottish zone are prohibited from leaving a port without an operational device installed on board. Such devices may be switched off when the boat is in port only if prior notification is given to the relevant Fisheries Monitoring Centre or centres specified in article 8(1) and the required information (as defined in article 2) next transmitted is the same as that last transmitted (article 5).

Article 2 makes provision with regard to the meaning of “operational” for the purposes of articles 4 and 5.

A device on board any of the four categories of boats must transmit the required information at least once every hour, or every two hours if article 6(2)(b)(i) or (ii) is applicable. Scottish fishing boats, wherever they may be, and relevant British fishing boats within the Scottish zone must transmit the required information to the Fisheries Monitoring Centre of the United Kingdom (article 6(3)).

In the event of a technical failure or non-functioning (as defined in article 7(7)) of a device on board any of the four categories of boats, the master or owner of the boat, or their representative, must communicate the up-to-date geographical position of that boat to the relevant Fisheries Monitoring Centre or Centres specified in article 8(1) (article 7). Article 7(3) specifies, by reference to provisions of Regulation 2244/2003, the means of communication that may be used, depending upon the category of boat. Article 7(4) specifies the time from, and the intervals at, which the up-to-date geographical position must be communicated, depending upon the category of boat. A boat to which article 7(2) has applied shall not leave port without authorisation from a British sea-fishery officer to do so (article 7(6)).

Article 9 creates offences in respect of breaches of the provisions of articles 4, 5, 6 and 7. It also creates offences in respect of altering the required information to be transmitted by, obstructing any antenna attached to, or interrupting the power supply to devices installed on board any fishing boat to which any provision of the Order applies; in respect of removing such a device from such a boat; and in respect of destroying, damaging, rendering inoperative or otherwise interfering with such a device.

Penalties for contravention of the offences created by article 9 are set out in article 10. The Order also provides powers for the recovery of fines (article 11) and for the evidential status of certain documents (article 16).

For the purpose of enforcing the Order, British sea-fishery officers are given the powers set out in article 12. Article 14 creates offences in respect of the obstruction of British sea-fishery officers.

Article 17 revokes the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Scotland) Order 2000 (S.S.I. 2000/20).

The Regulatory Impact Assessment in relation to the application of the satellite-based vessel monitoring system to Scottish fishing boats has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Fisheries Protection Agency, Pentland House, 47 Robb's Loan, Edinburgh, EH14 1TW.

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The Sea Fishing (Enforcement of Community Satellite
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