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WELSH STATUTORY INSTRUMENTS

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**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<sup>(1)</sup>, 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<sup>(2)</sup> 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<sup>(3)</sup> or is owned wholly by persons qualified to own British ships for the purposes of that part of the Act;

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(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<sup>(4)</sup>;

“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<sup>(5)</sup> as amended by Council Regulation (EC) No. 2870/95<sup>(6)</sup>, Council Decision (EC) No. 95/528<sup>(7)</sup>, Council Regulation (EC) No. 2489/96<sup>(8)</sup>, Council Regulation (EC) No. 686/97<sup>(9)</sup>, Council Regulation (EC) No. 2205/97<sup>(10)</sup>, Council Regulation (EC) No. 2635/97<sup>(11)</sup>, Council Regulation (EC) No. 2846/98<sup>(12)</sup>, Council Regulation (EC) No. 806/2003<sup>(13)</sup>, Council Regulation (EC) No. 1954/2003<sup>(14)</sup> and Council Regulation (EC) No. 768/2005<sup>(15)</sup>;

“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<sup>(16)</sup>.

(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;

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(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.

(2) Sections 77(1) and 78 of the Magistrates' Courts Act 1980<sup>(17)</sup> apply to a warrant of distress issued under this article as they apply to a warrant of distress issued under Part III of that Act.

(3) Where, in relation to a fine in respect of an offence under this Order or any equivalent provision, an order under article 95 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(18)</sup> or section 222 of the Criminal Procedure (Scotland) Act 1995<sup>(19)</sup> (both of which deal with transfer of fines from one jurisdiction to another) specifies a local justice area in Wales, this article applies as if the fine were imposed by a court within that local justice area.

## PART 5

### POWERS AND PROTECTION OF BRITISH SEA FISHERY OFFICERS

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

**17.**—(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) a British fishing boat within Wales;
- (b) a Community fishing boat within Wales; or
- (c) a third country fishing boat within Wales.

(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;
- (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 or inspection provided for under this article, any such document produced to the officer or found on board;
- (e) may require the master or any person for the time being in charge of the boat to render any such document 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

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(17) 1980 c. 43. Section 78 was amended by the Criminal Justice Act 1982 (c. 48), sections 37 and 46, and the Courts Act 2003 (c. 39), section 109(1) and Schedule 8 paragraph 219(a).

(18) S.I. 1981/1675 (NI 26).

(19) 1995 c. 46.

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—

(i) whether the satellite-tracking device has been tampered with, or

(ii) whether any other equipment on board is interfering with the transmission of the information set out in Article 5(1) of the Commission Regulation

or for the purpose of examining, testing, repairing or replacing such equipment.

(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 the officer may take, the boat and its crew to the port which appears to the officer 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 the officer must 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**

**18.** A British sea-fishery officer or a person assisting such an officer by virtue of article 17(2) of this Order will not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred by virtue of article 17 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**

**19.—(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 17 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 17(2) or any person authorised by such an officer under article 17(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.

## PART 6

### MISCELLANEOUS AND SUPPLEMENTAL

#### Provisions as to offences and proceedings

**20.**—(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 approval 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, is 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, is 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, is guilty of the offence and liable to be proceeded against and punished accordingly.

#### Admissibility in evidence of logbooks and other documents

**21.** 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 Council Regulation 2847/93 and any required information received by a Fisheries Monitoring Centre may, 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 will be sufficient evidence of the matters stated therein or appearing therefrom.

## PART 7

### REVOCATION

#### Revocation

**22.**—(1) The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2000(**20**) is revoked.

(2) The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2000 Amendment Regulations 2002(**21**) are revoked.

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(20) S.I. 2000/1078 (W.71).

(21) S.I. 2002/677 (W.74).



Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(22).

18 October 2006

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order provides for the enforcement in Wales of Commission Regulation (EC) 2244/2003 (OJ No L333, 20.12.03, p.17) laying down detailed provisions regarding satellite-based Vessel Monitoring Systems (“the Commission Regulation”).

Articles 5 to 9 apply to British and European Community fishing boats within Wales and create offences for contravening requirements relating to : the installation of a satellite-tracking device (article 5); the switching off of a satellite-tracking device in port without prior notification (article 6); the information to be transmitted by the satellite-tracking device (article 7); the responsibilities relating to a satellite-tracking device (article 8) and the technical failure or non-functioning of a satellite-tracking device (article 9).

Articles 11 to 14 apply to third country fishing boats within Wales and create offences for contravening requirements relating to : the installation of a satellite-tracking device (article 11); the information to be transmitted by the satellite-tracking device (article 12); the responsibilities relating to the satellite-tracking device (article 13) and the technical failure or non-functioning of the satellite tracking device (article 14).

The Order provides that the person guilty of an offence under it, other than an offence under article 19, is liable, on summary conviction, to a fine not exceeding £50,000, or on conviction on indictment, to a fine. The Order also provides for the recovery of fines imposed, or treated as imposed, by a magistrates' court (article 16).

For the purposes of enforcing the Commission Regulation the Order confers on British sea-fishery officers the powers to: board fishing boats; test any equipment on board; require the production of documentation relating to the boat, equipment, or fishing or ancillary operations; search the boat; remove the satellite-tracking device or any other equipment on the boat; and take the boat to the nearest convenient port and detain the boat (article 17). Protection of such officers from liability is provided for in article 18. Failing to comply with requirements imposed by officers or obstructing them in the exercise of their powers is an offence under article 19, carrying liability to a fine up to the statutory maximum on summary conviction or a fine on conviction on indictment. Articles 20 and 21 deal with corporate and equivalent offences and admissibility of documents in evidence.

Article 22 revokes the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2000 and the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2000 Amendment Regulations 2002.

A Regulatory Appraisal in relation to this Order has been prepared and placed in the library of the National Assembly for Wales. Copies can be obtained from Fisheries Branch, National Assembly for Wales, Cathays Park, Cardiff, CF10 3NQ.