

Scottish Statutory Instrument 2000 No. 20

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

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SCOTTISH STATUTORY INSTRUMENTS

2000 No. 20

SEA FISHERIES

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

<i>Made</i>	<i>31st January 2000</i>
<i>Laid before the Scottish Parliament</i>	<i>31st January 2000</i>
<i>Coming into force</i>	<i>21st February 2000</i>

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;

"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**
- (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 convicted by it of an offence under this Order or of the kind referred to in article 6(3) above, 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 (a) 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 of the kind referred to in article 6(3) above, a transfer of fine order under section 222 of the Criminal Procedure (Scotland) Act 1995, section 90 of the Magistrates' Courts Act 1980^[18] or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981^[19] 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

8. - (1) For the purpose of enforcing this Order or a relevant provision of an Order of the kind referred to in article 6(3) above a British sea-fishery officer may exercise in relation to-

(a) any Scottish fishing boat wherever it may be, or

(b) any other fishing boat which is within the Scottish zone,

the powers conferred by paragraphs (2) to (4) of this article.

(2) He may go on board the boat, with or without persons assigned to assist him in his duties, and may require the boat to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, the boat.

(3) He may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to him to be necessary for the purpose mentioned in paragraph (1) of this article 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 him 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 his custody or possession;

(c) for the purpose of ascertaining whether an offence under this Order or of the kind referred to in article 6(3) above 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 him to be necessary for facilitating the search;

(d) inspect, take copies of and retain in his possession while he completes any search, examination and inspection provided for under this article, any such document produced to him or found on board;

(e) without prejudice to sub-paragraphs (c) and (d) above, 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; and

(f) where the boat is one in relation to which he has reason to suspect that an offence under this Order or of the kind referred to in article 6(3) above has been committed, may seize and detain any such document produced to him or on board for the purpose of enabling the document to be used as evidence in proceedings for the offence.

(4) Where it appears to a British sea-fishery officer that an offence under this Order or of the kind referred to in article 6(3) above has at any time been committed, he 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

9. A British sea-fishery officer or a person assisting him by virtue of article 8(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 on him by virtue of article 8 of this Order if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

Obstruction etc

10. 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 him by virtue of article 8 of this Order;

(b) without reasonable excuse prevents any other person from complying with any such requirement; or

(c) obstructs any such officer who is exercising any of those powers,

shall be guilty of an offence, and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.

Provisions as to offences and proceedings

11. - (1) Where any offence under this Order, or of the kind referred to in article 6(3) above, 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, he, 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 of the kind referred to in article 6(3) above, 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, he 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 of the kind referred to in article 6(3) above, 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, he 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

12. 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 of the kind referred to in article 6(3) above, 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.

JOHN HOME ROBERTSON
Authorised to sign by the Scottish Ministers

St Andrew's House, Edinburgh
31st January 2000

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which applies to Scotland only, provides for the enforcement of Articles 3 and 28c of Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy and Commission Regulation (EC) No. 1489/97 laying down detailed rules for the application of Council Regulation (EEC) No. 2847/93 as regards satellite based vessel monitoring systems.

Those Regulations provide for the transmission via satellite of vessel identification and location reports by fishing vessels measuring more than 20 metres between perpendiculars or more than 24 metres in overall length. Articles 3 and 4 impose these obligations upon all relevant fishing vessels.

The Order creates offences in respect of breaches of the provisions (article 5), including breaches of Articles 6.1 and 6.2 of Commission Regulation (EC) No. 1489/97. Articles 6.1 and 6.2 require the "required information" (as defined in article 2(1) of the Order) to be sent to the flag Member State and the appropriate coastal Member State by alternative means, at least every 24 hours, in the event of a technical failure or non function of either a satellite tracking device installed on a fishing boat or the vessel monitoring system of the flag Member State. Also, in the event of a technical failure or non function of a satellite tracking device the owner is required to have it repaired or replaced within one month or, where such event occurs during a fishing trip that lasts for more than one month, as soon as the fishing boat enters a port. The master of the fishing boat is not authorised to commence a new fishing trip until the satellite tracking device has been repaired or so replaced.

Penalties for contravention of the provisions referred to in article 5 of this Order are set out in article 6 of the Order.

For the purpose of enforcing the Regulations, British sea fishery officers are given powers to board fishing boats, to search, examine and test the equipment of the boat, to require the production of documents and to take the boat to the nearest convenient port (article 8).

Provision is also made for the prosecution of offences of changing the identification of a satellite tracking device installed on a fishing boat or removing the device from the boat without prior authorisation (article 5(2)), interfering with transmissions from the device or knowingly furnishing false information (article 5(3)), and obstruction of British sea fishery officers (article 10). Penalties following conviction are set out in articles 6(2) and 10. The statutory maximum penalty specified in the Order is currently £5,000.

The Order provides powers for the recovery of fines imposed by the sheriff (article 7 of the Order) and for the evidential status of certain documents (article 12).

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, Room 521, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TW.

Notes:

[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).[back](#)

[2] 1995 c.21.[back](#)

[3] O.J. No. L261, 20.10.93, p.1.[back](#)

[4] O.J. No. L301, 14.12.95, p.1.[back](#)

[5] O.J. No. L301, 14.12.95, p.35.[back](#)

[6] O.J. No. L338, 28.12.96, p.12.[back](#)

[7] O.J. No. L102, 19.4.97, p.1.[back](#)

[8] O.J. No. L304, 7.11.97, p.1.[back](#)

[9] O.J. No. L356, 31.12.97, p.14.[back](#)

[10] O.J. No. L358, 31.12.98, p.5.[back](#)

[11] O.J. No. L 202, 30.7.97, p.18.[back](#)

[12] O.J. No. L054, 25.2.98, p.5.[back](#)

[13] O.J. No. L105, 22.4.99, p.20.[back](#)

[14] O.J. No. L298, 19.11.99, p.5.[back](#)

[15] 1998 c.46; see section 126 and the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).[back](#)

[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).[back](#)

[17] 1995 c.46.[back](#)

[18] 1980 c.43.[back](#)

[19] S.I. 1981/1675 (N.I. 26)[back](#)

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