

Scottish Statutory Instrument 2004 No. 379

The Fishing Vessels (Satellite-tracking Devices) (Scotland) Scheme 2004

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SCOTTISH STATUTORY INSTRUMENTS

2004 No. 379

SEA FISHERIES

SEA FISH INDUSTRY

**The Fishing Vessels (Satellite-tracking Devices) (Scotland) Scheme
2004**

Approved by the Scottish Parliament

<i>Made</i>	<i>7th September 2004</i>
<i>Laid before the Scottish Parliament</i>	<i>7th September 2004</i>
<i>Coming into force</i>	<i>8th September 2004</i>

The Scottish Ministers, in exercise of the powers conferred by section 15(1) and (2) of the Fisheries Act 1981[1] and of all other powers enabling them in that behalf, hereby make the following Scheme:

Citation, commencement and extent

1. - (1) This Scheme may be cited as the Fishing Vessels (Satellite-tracking Devices) (Scotland) Scheme 2004 and shall come into force on 8th September 2004.

(2) Subject to paragraph (3), this Scheme extends to Scotland and the Scottish zone.

(3) Insofar as it extends beyond Scotland and the Scottish zone, it does so only as a matter of Scots law.

Interpretation

2. - (1) In this Scheme-

"application" means an application for grant under this Scheme and "applicant" shall be construed accordingly;

"the appropriate closing date" has the meaning assigned to it in paragraph 4(3);

"approval" means approval granted under paragraph 6 of this Scheme;

"authorised officer" means any officer authorised in writing by the Scottish Ministers for the purposes of this Scheme;

"authorised provider" means the supplier and installer of satellite-tracking devices authorised by the Scottish Ministers and specified in a notice under paragraph 4(4);

"Commission Regulation 2244/2003" means Commission Regulation (EC) No. 2244/2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems[2];

"grant" means grant under this Scheme;

"relevant conditions" means any conditions relating to the approval of an application which have been notified to the applicant under paragraph 6(4)(b);

"satellite-tracking device" means a device which sends the data specified at Article 5(1) of Commission Regulation 2244/2003 by way of satellite and land earth station to a Fisheries Monitoring Centre;

"Scotland" and "the Scottish zone" have the same meaning as in section 126(1) of the Scotland Act 1998[3].

(2) Any reference in this Scheme to a numbered paragraph shall be construed

as a reference to the paragraph so numbered in this Scheme.

Satellite-tracking device grants

3. - (1) Any person who owns a registered vessel which-

- (a) measures more than 15 metres overall in length;
- (b) is a Scottish based fishing vessel; and
- (c) meets such other eligibility criteria as the Scottish Ministers may have determined and published in the notice referred to in paragraph 4(4),

may make an application to the Scottish Ministers in respect of that vessel for a grant equal to the costs specified at sub-paragraph (2).

(2) Subject to sub-paragraph (3), the costs are-

- (a) the cost of purchasing a satellite-tracking device from the authorised provider;
- (b) the cost of purchasing a three year warranty in respect of the satellite-tracking device from the authorised provider; and
- (c) the cost of having the authorised provider install the satellite-tracking device on board the vessel in respect of which the application is made.

(3) The cost specified in sub-paragraph (2)(c) shall not include any cost wholly or partly incurred in respect of the concealment of the satellite-tracking device, its associated cables and wires, or any other associated materials or equipment, for cosmetic purposes.

(4) For the purposes of this paragraph-

"port of administration" means the port from which the licence granted in respect of a vessel under section 4 of the Sea Fish (Conservation) Act 1967^[4] is issued;

"registered" means registered in the register of vessels established under section 8 of the Merchant Shipping Act 1995^[5]; and

"Scottish based fishing vessel" means a fishing vessel, the port of administration of which is, at the date of the application relating to the vessel, a port in Scotland, and which either had such a port of administration at 30th July 2004 or which is deemed by the Scottish Ministers to be eligible to make an application.

Applications

4. - (1) The Scottish Ministers may from time to time invite applications and where they do so the following provisions of this paragraph shall apply.

(2) An application must be lodged with the Scottish Ministers on or before the appropriate closing date in order to be considered for approval except where the Scottish Ministers are satisfied that-

(a) the particular circumstances of the applicant render it unreasonable to expect the applicant's application to have been lodged by the appropriate closing date; and

(b) in those particular circumstances, the date by which the application was lodged is as early as can reasonably be expected.

(3) In this Scheme "the appropriate closing date" means such date as the Scottish Ministers may from time to time determine.

(4) The Scottish Ministers shall publish in such manner as they consider appropriate a notice inviting applications and specifying-

(a) the authorised provider;

(b) the appropriate closing date;

(c) other eligibility criteria for the purposes of paragraph 3(1)(c); and

(d) such other matters as they consider it is appropriate for them to have regard to for the purposes of the Scheme.

(5) An application made in pursuance of a notice published under sub-paragraph (4) shall be in writing and shall-

(a) be made in such form and manner;

(b) include such information and undertakings; and

(c) be delivered to such address,

as the Scottish Ministers may specify in the notice or from time to time require.

(6) An applicant shall furnish all such further information relating to the application as the Scottish Ministers may specify in the notice or from time to time require.

Consideration of applications

5. As soon as reasonably practicable after the appropriate closing date the Scottish Ministers shall-

(a) identify those applications made in pursuance of the notice published under paragraph 4(4) which satisfy the foregoing provisions of this Scheme; and

(b) reject any application they consider to be unreasonable, unnecessary or unwarranted.

Approval of applications

6. - (1) The Scottish Ministers shall approve any application which they

have identified under paragraph 5(a).

(2) Subject to the provisions of this Scheme, the Scottish Ministers may-

- (a) determine conditions to which an approval given under this paragraph shall be subject; and
- (b) at any time amend such conditions.

(3) Without prejudice to the generality of sub-paragraph (2), conditions may be determined which require the applicant to provide such undertakings as the Scottish Ministers may consider appropriate to the application.

(4) The Scottish Ministers shall in writing-

- (a) notify applicants of the result of their applications; and
- (b) notify applicants whose applications they have approved under this paragraph of any conditions which they have determined or amended under sub-paragraph (2).

Eligibility for and payment of grant

7. - (1) Subject to sub-paragraph (2) and paragraph 11, applicants whose applications have been approved under paragraph 6 shall be eligible for payment of grant in accordance with paragraph 8.

(2) No grant shall be paid in respect of any vessel unless the Scottish Ministers are satisfied that-

- (a) the satellite-tracking device installed on board the vessel by the authorised provider complies with the requirements of Commission Regulation No. 2244/2003; and
- (b) any relevant conditions have been complied with.

Method of payment

8. - (1) Payment of grant may be made by the Scottish Ministers at such time, or by such instalments at such intervals or times, as they may determine.

(2) The Scottish Ministers may make payment of grant direct to the authorised provider on behalf of the applicant.

Assistance to authorised officers

9. Any applicant or any employee or agent of any applicant shall give to an authorised officer such assistance as the officer may reasonably request in order to exercise the powers conferred on the officer by paragraph 10.

Powers of authorised officers

10. - (1) An authorised officer at all reasonable hours and on producing, if required to do so, some duly authenticated document showing the authority of the officer, may exercise the powers specified in this paragraph for the purpose of ascertaining whether and to what extent-

- (a) a person is entitled under paragraph 3 to make the application;
- (b) the application should be selected under paragraph 6 for approval;
- (c) any relevant conditions have been complied with;
- (d) paragraph 9 has been complied with;
- (e) the installation of the satellite-tracking device is being, or has been, carried out;
- (f) any amount of grant is recoverable in accordance with paragraph 11;
- (g) an offence under section 17 of the Fisheries Act 1981 has been or is being committed.

(2) Subject to sub-paragraph (3), an authorised officer may enter upon any premises which are, or which such officer has reasonable cause to believe are, relevant premises.

(3) The power conferred by sub-paragraph (2) may be exercised in relation to premises used as a dwelling house only where reasonable notice of the intended exercise of the power has been given to all residents of that dwelling house.

(4) Any authorised officer who has entered any premises in accordance with sub-paragraph (2) may inspect those premises, and any documents on those premises which are or which such officer has reasonable cause to believe are, relevant documents.

(5) An authorised officer entering premises by virtue of this paragraph may be accompanied by such other person as the officer considers necessary and sub-paragraphs (2), (4), (6) and (7) and paragraph 9 shall apply in relation to such other person when acting under the instructions of the officer as if that person was an authorised officer.

(6) An authorised officer may-

- (a) require any applicant or an employee or agent of the applicant to produce any relevant document and to supply such additional information in possession of the person or under the control of that person relating to an application as the officer may reasonably request;
- (b) inspect any such document and, where any such document is kept by means of a computer, have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with that document;
- (c) require that copies of, or extracts from, any relevant document be produced; or
- (d) remove and retain for a reasonable period any such relevant document which the officer has reason to believe may be required as evidence of proceedings under this Scheme and, where any such document is kept by means of computer, require it to be produced in a

form in which it may be taken away and in which it is visible and legible.

(7) An authorised officer shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on the officer by this Scheme if the court hearing such proceedings is satisfied that-

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

(8) In this paragraph-

"premises" includes any vessel or other vehicle; and

"relevant document" means any document relating to the vessel in respect of which an application has been made;

"relevant premises" includes the vessel in respect of which an application has been made and any premises in which a relevant document is retained or in which an authorised officer has reasonable grounds to believe such a document may be retained.

Reduction, withholding and recovery of grant

11. - (1) If at any time after the Scottish Ministers have approved an application in respect of any vessel it appears to them-

- (a) that any relevant conditions have been breached or have not been complied with; or
- (b) without prejudice to the generality of paragraph (a), that any of the circumstances specified in sub-paragraph (2) exist or have occurred,

they may revoke the approval of such application or withhold the grant or any part of the grant in respect of the application and, where any payment of grant has been made, may recover from the applicant on demand an amount equal to the whole or any part of the payment which has been so made, irrespective of whether payment of grant was made to the applicant direct or to the authorised provider on the applicant's behalf by virtue of paragraph 8(2).

(2) For the purposes of sub-paragraph (1)(b), the circumstances are that-

- (a) the application or any part of it was not an application which the applicant was entitled under paragraph 3 to make;
- (b) the applicant or an employee or agent of the applicant-
 - (i) has intentionally obstructed an authorised officer, or person accompanying such an authorised officer under paragraph 10(5), in

the exercise of the powers under paragraph 10; or

(ii) has given information on any matter relevant to the giving of the approval or the making of a payment relevant to the approval which is false or misleading in a material respect.

(3) Before revoking an approval or reducing or withholding any grant or making a demand by virtue of sub-paragraph (1), the Scottish Ministers shall-

(a) give the applicant a written explanation of the reasons for the step proposed to be taken;

(b) afford the applicant the opportunity of making written representations within such time as the Scottish Ministers consider reasonable; and

(c) consider any such representations.

Interest

12. - (1) Where the Scottish Ministers intend to recover on demand payment of grant in whole or in part in accordance with paragraph 11, they may, in addition, recover interest on that amount at a rate of 1% above LIBOR calculated on a daily basis for the period from the date of payment until the date of recovery.

(2) In any proceedings for recovery under this Scheme, a certificate issued by the Scottish Ministers showing the rate or rates of interest, the amount of such interest recoverable and the period for which interest is calculated shall, unless the contrary is shown, be conclusive of those matters.

(3) For the purposes of this paragraph "LIBOR", in relation to any particular day of the month, means the rate of interest per centum notified by the Bank of England on the first working day of the month, rounded if necessary to two decimal places.

ROSS FINNIE

A member of the Scottish Executive

St Andrew's House, Edinburgh

7th September 2004

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme makes provision for the making of grants by the Scottish Ministers in respect of the provision and installation on board fishing boats over 15 metres in length of satellite-tracking devices and the purchase of three year warranties in respect of those satellite-tracking devices.

Satellite-tracking devices are required on board all fishing boats over 15 metres

long as from 1st January 2005 by virtue of Commission Regulation (EC) No. 2244/2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems.

Applications for grant will be considered in respect of vessels meeting the requirements set out in paragraph 3 of the Scheme. These include requirements that the vessels must be more than 15 metres in length and must be a "Scottish based vessel" as defined in paragraph 3(4).

Paragraphs 4 to 6 of the Scheme lay down a procedure for the making, consideration and approval of applications

Paragraph 7 provides that applicants who have had their application approved under paragraph 6 are eligible for payment of grant and sets out the circumstances in which the Scottish Ministers shall not make payment of grant to an applicant whose application has been approved.

Paragraph 8 provides that the Scottish Ministers may make payment of grant by instalment at intervals and times determined by them, and that they may make payment of grant direct to the authorised provider (defined in paragraph 2) on the applicant's behalf.

Paragraph 10 sets out the powers of authorised officers (defined in paragraph 2) and paragraph 9 requires any applicant or any employee or agent of an applicant to give such assistance to an authorised officer as may reasonably be requested.

Paragraph 11 gives the Scottish Ministers power, in certain circumstances, to revoke the approval of an application or to withhold grant, or any part of it and, where any payment of grant has already been made, to recover from the applicant a sum equal to grant paid, irrespective of whether the payment of grant was made to the applicant direct or to the authorised provider on the applicant's behalf.

Paragraph 12 makes provision as to the recovery of interest on sums recovered under paragraph 11.

Section 17 of the Fisheries Act 1981 creates offences in respect of the production of false statements or documents in purported compliance with any requirement imposed by the Scheme and wilful refusal to supply information, make returns or produce documents when required to do so by or under the Scheme.

Notes:

[1] 1981 c.29. See section 18(1) of the Fisheries Act 1981 for a definition of "the Ministers" relevant for the purposes of this Scheme. Sections 15(2) and 18(1) were amended by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820) Schedule 2, paragraph 68(1), (2) and (3) and have effect in relation to Scotland as modified by section 18A inserted by that Order, Schedule 2, paragraph 68(4). [back](#)

[2] O.J. No. L 333, 20.12.03, p.17. [back](#)

[3] 1998 c.46. The sea within the 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).[back](#)

[4] 1967 c.84.[back](#)

[5] 1995 c.21.[back](#)

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