

2004 No. 3226

SEA FISHERIES, ENGLAND

**The Sea Fishing (Enforcement of Community Satellite
Monitoring Measures) Order 2004**

Made - - - - - *7th December 2004*

Laid before Parliament - - - *8th December 2004*

Coming into force - - - *1st January 2005*

The Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(a), and now vested in them (b), make the following Order:

PART 1
GENERAL

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2004 and shall come into force on 1st January 2005.

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

(3) Nothing in paragraph (2) shall be treated as prejudicing the effect of section 30(2A) of the Fisheries Act 1981(c) in relation to, or for purposes incidental to, any provision in this Order which creates an offence.

(a) 1981 c. 29. See section 30(3) for the definition of “the Ministers”, as modified by Schedule 2, paragraph 68(5) of the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820).

(b) Article 3(1) of, and Schedule 1 to, the Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592) provide for the functions exercisable under section 30(2) of the 1981 Act to be exercised by the Ministers, concurrently with the Scottish Ministers, in relation to: British fishing boats (other than Scottish ones) within the Scottish zone; and Scottish fishing boats within British fishery limits but outside the Scottish zone. 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 (defined in section 155(1) of the Government of Wales Act 1998 (c.38) as including “the sea adjacent to Wales out as far as the seaward boundary of the territorial sea”). By virtue of article 2(1) of the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812), remaining functions of the Secretaries of State for Scotland and Wales under section 30(2) of the 1981 Act relevant to this Order were transferred to the Minister of Agriculture, Fisheries and Food. The functions of the Minister of Agriculture, Fisheries and Food and one or more named Secretaries of State (however described) acting jointly were transferred to the Secretary of State for Environment, Food and Rural Affairs and the one or more Secretaries of State acting jointly by virtue of article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).

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

Interpretation

2.—(1) In this Order—

“British fishing boat” means a fishing boat which 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 the Act;

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

“Community fishing boat” means a fishing boat flying the flag of, and registered in, a Member State of the European Community other than the United Kingdom;

“equivalent provision” means any provision in any other Order made for the purposes of making provision for the administration and enforcement of the Commission Regulation, extending to any part of the United Kingdom, which has equivalent effect to a provision in this Order, proceedings in respect of which may be taken in England by virtue of section 30(2A) of the Fisheries Act 1981;

“Fisheries Monitoring Centre” means a Fisheries Monitoring Centre established under Article 3(7) of Council Regulation 2847/93;

“Northern Irish fishing boat” means a fishing boat 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 Northern Ireland as the port to which the boat is to be treated as belonging;

“Northern Ireland zone” has the same meaning as in section 98 of the Northern Ireland Act 1998 **(c)**;

“person in charge”, in relation to a fishing boat, means the owner, master or charterer, if any, of the fishing boat or the agent of any of them;

“Council Regulation 2847/93” means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy **(d)** as amended by Council Regulation (EC) No. 2870/95 **(e)**, Council Decision (EC) No. 95/528 **(f)**, Council Regulation (EC) No. 2489/96 **(g)**, Council Regulation (EC) No. 686/97 **(h)**, Council Regulation (EC) No. 2205/97 **(i)**, Council Regulation (EC) No. 2635/97 **(j)**, Council Regulation (EC) No. 2846/98 **(k)**, Council Regulation (EC) No. 806/2003 **(l)** and Council Regulation (EC) No. 1954/2003 **(m)**;

“relevant British fishing boat” means a British fishing boat other than a Scottish or Northern Irish fishing boat;

“required information” means the information set out in Article 5(1) of the Commission Regulation.

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

“Scottish fishing boat” means a British fishing boat 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 boat is treated as belonging;

(a) 1995 c. 21.

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

(c) 1998 c.47.

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

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

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

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

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

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

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

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

(l) O.J. No. L122, 16.5.03, p.1.

(m) O.J. No. L289, 7.11.03, p.1.

“Scottish zone” has the same meaning as in section 126(1) of the Scotland Act 1998 (a);

“third country fishing boat” means a fishing vessel flying the flag of, and registered in, a state other than a Member State of the European Communities and includes a receiving vessel within the meaning of Council Regulation 2847/93.

“Wales” has the same meaning as in section 155 of the Government of Wales Act 1998 (b).

(2) The term “within relevant British Fishery Limits” does not include—

- (a) the Scottish zone;
- (b) the territorial sea adjacent to Wales;
- (c) the territorial sea adjacent to the Isle of Man;
- (d) the territorial sea adjacent to Jersey; or
- (e) seas within British Fishery Limits adjacent to Guernsey, as defined by section 8 of the Fishery Limits Act 1976 (c).

(3) Any reference to a logbook, declaration or document or any required information includes, in addition to a logbook, declaration or document or required information in writing—

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disk, tape, sound track or other device in which sounds or other data (not being visual aids) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (d) any film (including microfilm), negative, tape, disk or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.

Application

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

PART 2

PROVISIONS RELATING TO RELEVANT BRITISH FISHING BOATS AND BRITISH AND COMMUNITY FISHING BOATS WITHIN RELEVANT BRITISH FISHERY LIMITS

Application of Part 2

4. Articles 5 to 9 apply to—

- (a) relevant British fishing boats;
- (b) British fishing boats within relevant British Fishery Limits; and
- (c) Community fishing boats within relevant British Fishery Limits.

(a) 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).

(b) 1998 c.38.

(c) 1976 c.86.

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 shall not be guilty of an offence.

(4) A person in charge of a fishing boat in respect of which there is a contravention of Article 6(3) of the Commission Regulation is guilty of an offence.

Technical failure or non-functioning of the satellite-tracking device

9.—(1) A person in charge of a fishing boat in respect of which, in the event of a technical failure or non-functioning of the satellite-tracking device, there is a failure to communicate information in compliance with Article 11(1) of the Commission Regulation is guilty of an offence.

(2) A person in charge of a fishing boat which leaves port in contravention of Article 11(2) of the Commission Regulation is guilty of an offence.

(3) The competent authority under Article 11(2) of the Commission Regulation is a British sea-fishery officer.

PART 3

PROVISIONS RELATING TO THIRD COUNTRY FISHING BOATS WITHIN RELEVANT BRITISH FISHERY LIMITS

Application of Part 3

10. Articles 11 to 14 apply to third country fishing boats within relevant British Fishery Limits.

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.—(1) 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 (a) shall 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 or section 222 of the Criminal Procedure (Scotland) Act 1995 (both of which deal with transfer of fines from one jurisdiction to another) specifies a petty sessions area in England, this article shall apply as if the fine were imposed by a court within that petty sessions area or petty sessions district.

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 relevant British fishing boat;
- (b) a British fishing boat within relevant British Fishery Limits;
- (c) a Community fishing boat within relevant British Fishery Limits; or
- (d) a third country fishing boat within relevant British Fishery Limits.

(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.

(a) 1980 c. 43. Section 78 was amended by the Criminal Justice Act 1982 (c.48), sections 37 and 46, and section 90 was amended by the Criminal Justice and Public Order Act 1994 (c.33), section 47(2).

(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 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 Regulationor 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 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

18. A British sea-fishery officer or a person assisting such an officer by virtue of article 17(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 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, 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

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 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.

PART 7
REVOCATION

Revocation

22. The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2000 (a) in so far as it extends to England is hereby revoked.

7th December 2004

Ben Bradshaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

6th December 2004

Ian Pearson
Parliamentary Under Secretary of State
Northern Ireland Office

(a) S.I. 2000/181, amended by S.I. 2001/3912.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the enforcement in England 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 of the Order 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 relevant British fishery limits. They 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) Order 2000 as it extends to England.

A Regulatory Impact Assessment in relation to this Order has been prepared and placed in the library of each House of Parliament. Copies can be obtained from Defra, Fisheries Division IV, Room 313, Whitehall Place East, London, SW1A 2HH.

2004 No. 3226

SEA FISHERIES, ENGLAND

**The Sea Fishing (Enforcement of Community Satellite
Monitoring Measures) Order 2004**

£3.00

© Crown copyright 2004

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E1647 12/2004 141647T 19585

ISBN 0-11-050876-9



9 780110 508764