2001 No. 3912

SEA FISHERIES, ENGLAND

SEA FISHERIES, NORTHERN IRELAND

The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2000 Amendment Regulations 2001

Made - - - - -	*19th November 2001*
Laid before Parliament	*11th December 2001*
Coming into force - -	*1st January 2002*

The Secretary of State, being a Minister designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to the common agricultural policy of the European Community, in exercise of the powers conferred upon the Secretary of State by the said section 2(2) and of all other powers enabling the Secretary of State in that behalf, hereby makes the following Regulations:

Title, commencement and saving

1.—(1) These Regulations may be cited as the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2000 Amendment Regulations 2001 and shall come into force on 1st January 2002.

(2) The revocation by regulation 5 of these Regulations of article 4(2) of the Order shall not affect its application in proceedings (whenever occurring) for an offence alleged to have been committed before the coming into force of these Regulations.

Interpretation

2.—(1) In these Regulations "the Order" means the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2000(**c**).

(2) Expressions used in provisions inserted by these Regulations into the Order shall be interpreted in the same way as if they had been so inserted by an order made under section 30(2) of the Fisheries Act 1981(**d**).

Amendment of the Order

3. In article 2(1) (interpretation) of the Order the following sub-paragraph shall be inserted immediately after the definition of "Scottish zone"—

"'weekday' means a day other than a Saturday, Sunday or public holiday".

(**a**) S.I. 1972/1811.
(**b**) 1972 c. 68.
(**c**) S.I. 2000/181.
(**d**) 1981 c. 29; S.I. 2000/181 was made under section 30(2).

4.—(1) Article 3 (satellite tracking of fishing boats) of the Order is amended as follows.

(2) In paragraph (3), sub-paragraph (b) shall be deleted and immediately after sub-paragraph (a) there shall be inserted—

"and

(b) subject to paragraphs (4) and (6), be maintained fully operational,".

(3) For paragraph (4) there shall be substituted the following paragraphs—

"(4) Without limiting the generality of paragraph (3)(b), a satellite tracking device shall not be regarded as fully operational for the purpose of that sub-paragraph during any time when it is failing to operate in accordance with paragraph (5).

(5) A satellite tracking device installed on a fishing boat to which this article applies shall transmit the required information, in the format prescribed by Annex II to Regulation 1489/97, to a Fisheries Monitoring Centre—

(a) where the satellite tracking device is capable of being polled—

(i) at least every two hours; or

(ii) in a case for which a longer maximum interval is specified in Annex I to Regulation 1489/97, at intervals no longer than that maximum; or

(b) where the satellite tracking device is not capable of being polled, at least hourly.

(6) Neither of the following circumstances shall be treated as giving rise to a breach of the requirement in paragraph (3)(b)—

(a) where the device is switched off under the conditions permitted by Annex I to Regulation 1489/97 (stay in port of more than 48 hours, provided the next report is from the same position as the previous one);

(b) where the device is subject to a technical failure or non-function within the meaning of Article 6.2 of Regulation 1489/97 during a time when the fishing boat is either in port or in the course of a fishing trip authorised by that Article.

(7) Throughout any time when—

(a) a relevant British fishing boat or a Scottish fishing boat to which this article applies is not in port, and

(b) the satellite tracking device installed on the boat is failing for any reason to operate in accordance with paragraph (5),

without prejudice to Article 6.1 of Regulation 1489/97 (requirement to communicate information to flag state and, if appropriate, coastal state monitoring centres by other means at least every 24 hours), the required information shall be communicated to the Fisheries Monitoring Centre of the United Kingdom by one of the means specified in that Article at least every two hours.".

5. Article 4(2) (offences) of the Order is revoked.

6. In article 5(1) (penalties) of the Order in place of "or (4)" there is inserted "or (7)".

7.—(1) Article 7 (powers of British sea-fishery officers in relation to fishing boats) of the Order is amended as follows.

(2) In paragraph (1), for "to (4)" there shall be substituted "to (8)".

(3) After paragraph (4) there shall be inserted—

"(5) Where it appears to a British sea-fishery officer that the satellite tracking device on a relevant British fishing boat or a Scottish fishing boat failed, at a time when the boat was not in port, to operate in accordance with article 3(5) of this Order he may, subject to paragraph (7), at any time when the boat is in port serve on the master or the owner a notice under paragraph (6).

(6) The notice referred to in paragraph (5) is a notice which—

(a) requires the boat to be detained in port from the time of service of the notice until the expiry of the specified monitoring period; and

(b) requires that throughout the specified monitoring period the device shall be set (as nearly as its condition allows) so as to transmit the required information to the Fisheries Monitoring Centre of the United Kingdom—

(i) in the case of a device designed to be capable of being polled, at least every two hours; and

(ii) in the case of a device not so designed, at least every hour.

(7) A notice under paragraph (6) shall not be served later than 30 days after the day on which it appears to the British sea-fishery officer that the satellite tracking device last failed to operate in accordance with article 3(5) of this Order.

(8) In this article—

(a) in paragraphs (5) and (7) the reference to article 3(5) of this Order includes a provision to the same effect made by an order which extends to Scotland or applies to fishing boats within the territorial sea adjacent to Wales;

(b) in paragraph (6) "the specified monitoring period" means a period of 24 hours which is specified in the notice (which period shall not begin later than 9.00 a.m. on the weekday next following the day on which the notice is served).".

Elliot Morley
Parliamentary Under Secretary of State,
Department for Environment, Food and Rural Affairs

19th November 2001

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2000 (S.I. 2000/181) ("the Order"), which made provision for the enforcement of European Community legislation requiring satellite monitoring of the position of fishing boats above a certain size (the Community legislation is specified in the Explanatory Note to the Order). The amendments are made in order to improve the effectiveness of the monitoring procedures required by that legislation. Like the Order, the Regulations do not extend to Scotland and do not apply in relation to fishing boats within the territorial sea adjacent to Wales.

The amendments made by these Regulations make two main changes to the Order. Regulation 4 amends article 3 of the Order, which creates obligations relating to the installation and operation of satellite tracking devices, by clarifying the requirement in article 3(3)(b) for the satellite tracking device to be maintained fully operational. In particular the new drafting makes clear that no breach of that requirement occurs either when the satellite tracking device is switched off in port under conditions permitted by the relevant EC legislation or if there is a technical fault or non-function when the boat is in port or when the temporary period for which the relevant EC legislation allows fishing with a defective device has not yet expired. The amendments also add a new requirement that, while a relevant British fishing boat or Scottish fishing boat to which article 3 of the Order applies is at sea, if its tracking device is not working the required positional information must be provided every two hours to the United Kingdom's Fisheries Monitoring Centre by telex, fax, telephone or radio.

The other main change is made by regulation 7, which confers an additional enforcement power on a British sea-fishery officer in a case where there has been a failure of operation of the satellite tracking device on board a British fishing vessel. The officer may serve a notice requiring the boat to remain in port until the expiry of a 24 hour monitoring period, during which the satellite tracking device must be set so as to broadcast the required positional information every two hours (every hour in the case of a device which is not designed to be capable of being polled by the Monitoring Centre).

Other amendments made by the Regulations are consequential. They include the revocation of a defence to certain criminal proceedings which has been made obsolete by the changes made by regulation 4 (see regulations 1(2) and 5).

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