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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2024 No.**

**The Sea Fisheries (Remote Electronic Monitoring and Regulation of Scallop Fishing) (Scotland) Regulations 2024**

**PART 2**

Remote electronic monitoring for fishing boats deploying scallop dredges

**Interpretation of Part 2**

**4.** In this Part—

“fishing trip” means any voyage of a relevant scallop boat during which a relevant scallop dredge operation is conducted and—

- (a) for a relevant Scottish scallop boat, a fishing trip starts when the boat leaves a port and ends on arrival in a port,
- (b) for any other relevant scallop boat, a fishing trip—
  - (i) starts when the boat—
    - (aa) leaves a port in Scotland, or
    - (bb) enters the Scottish zone, and
  - (ii) ends—
    - (aa) on arrival in a port in Scotland, or
    - (bb) when the boat leaves the Scottish zone,

“relevant scallop boat” means—

- (a) any fishing boat which deploys scallop dredges in the Scottish zone, and
- (b) any Scottish fishing boat which deploys scallop dredges outwith the Scottish zone,

“relevant scallop dredge operation” means—

- (a) where any fishing boat deploys scallop dredges in the Scottish zone,
- (b) where any Scottish fishing boat deploys scallop dredges outwith the Scottish zone,

“relevant Scottish scallop boat” means any relevant scallop boat which is a Scottish fishing boat,

“scallop” means a bivalve mollusc of the *Pectinidae* family, and

“scallop dredge” means an appliance with a rigid framed mouth which is towed through the water and is manufactured, adapted, used or intended for use for the purpose of fishing for scallops.

**Requirement to install a functioning REM system and related duties**

**5.—(1)** An REM system which complies with the technical specifications specified by the Scottish Ministers under regulation 6(1) must be installed on board any relevant scallop boat.

(2) The master, the owner and the charterer (if any) of a relevant scallop boat must ensure that the REM system installed on board that boat is fully functional for the duration of any fishing trip.

(3) But paragraph (2) does not apply in the event of a technical failure or malfunction of an REM system—

- (a) which occurs during a fishing trip for which the Scottish Ministers have given prior written consent under paragraphs (3) or (4)(a) of regulation 8,
- (b) of the sort described in regulations 9 and 10, provided that the applicable processes set out in those regulations are complied with.

(4) The master, the owner and the charterer (if any) of a relevant scallop boat must take all reasonable steps to arrange and maintain access for the Scottish Ministers to the data storage system owned, operated or hosted by or on behalf of the manufacturer of the REM system and the companion software to the REM system.

(5) The owner and the charterer (if any) of a relevant scallop boat must pay in full any costs, charges and fees arising from or in connection with arranging and maintaining access for the Scottish Ministers to the data storage system and the companion software to the REM system in accordance with paragraph (4).

#### **Technical specifications for REM systems**

6.—(1) The Scottish Ministers may from time to time specify in a document published for the purposes of this Part the technical specifications for REM systems for relevant scallop boats.

(2) The Scottish Ministers may, if they are satisfied that there is reasonable cause to do so, serve a written notice on any one or more of the master, the owner and the charterer (if any) of a relevant scallop boat exempting an REM system installed on board that boat from any technical specification concerning automatic transmission of video recording data specified under paragraph (1).

(3) A written notice served under paragraph (2)—

- (a) may only relate to the relevant scallop boat and fishing trip specified in it, and
- (b) may be subject to conditions.

#### **Duties to retain and make accessible REM system data**

7.—(1) The master, the owner and the charterer (if any) of a relevant scallop boat must take all reasonable steps to ensure that all data recorded in relation to a fishing trip by an REM system installed on board the boat are—

- (a) retained and stored throughout the 1 year period on at least one of—
  - (i) the data storage system owned, operated or hosted by or on behalf of the manufacturer of the REM system, or
  - (ii) the control box or storage box of the REM system, and
- (b) made accessible to the Scottish Ministers on request during the 1 year period, including at such storage location for such period of time, and by using such means of transmitting the requested data, as the Scottish Ministers may specify.

(2) The Scottish Ministers may serve a written notice on any one or more of the master, the owner and the charterer (if any) of a relevant scallop boat which exempts data specified in the notice from one or more of the duties in paragraph (1) with effect from the date specified in the notice.

(3) In paragraph (1), the “1 year period” means the period of 1 year beginning with—

- (a) for REM data being stored on the data storage system, whichever is the later of—
  - (i) the time at which the data are recorded, or

- (ii) the time at which automatic transmission of that data to that system is successfully completed in accordance with the technical specifications specified by the Scottish Ministers under regulation 6(1),
- (b) for REM data being stored on the control box or storage box of the REM system, the time at which the data are recorded.

### **Requirements to submit specified information and undergo a remote inspection following a first installation or replacement of an REM system**

8.—(1) The Scottish Ministers may from time to time specify for the purposes of this regulation information and documentation, including drawings, plans and schematics, which must be submitted in writing to the Scottish Ministers following a relevant event.

(2) Before a relevant scallop boat undertakes the first fishing trip following a relevant event—

- (a) any information and documentation specified under paragraph (1) must be submitted to the Scottish Ministers in writing, and
- (b) the REM system installed on board the boat must undergo a remote inspection.

(3) A relevant scallop boat must not undertake the first fishing trip following a relevant event unless—

- (a) following a remote inspection, the Scottish Ministers have given prior written consent for the boat to undertake the first fishing trip (the “system test trip”), and
- (b) the system test trip is undertaken under the remote supervision of the Scottish Ministers for the purpose of assessing whether the REM system is fully functioning to the satisfaction of the Scottish Ministers.

(4) Where, following a system test trip undertaken in accordance with paragraph (3), the REM system installed on board a relevant scallop boat is not fully functioning to the satisfaction of the Scottish Ministers, the boat must not undertake any further fishing trip unless—

- (a) the Scottish Ministers have given their prior written consent to that fishing trip, or
- (b) the REM system is fully functioning to the satisfaction of the Scottish Ministers.

(5) Where any information or documentation submitted to the Scottish Ministers in accordance with paragraph (2)(a) changes in any respect after it has been submitted, then an updated version of that information or documentation must be submitted to the Scottish Ministers in writing no later than the end of the period of 7 working days beginning with the day after the day on which the change occurs.

(6) In this regulation, “relevant event” means either of the following—

- (a) the first installation of an REM system on board a relevant scallop boat, where this occurs on or after the date this regulation enters into force,
- (b) the replacement of an REM system installed on board a relevant scallop boat, where this occurs on or after the date this regulation enters into force.

### **Technical failure or non-functioning of REM systems**

9.—(1) This regulation applies in the event of a technical failure or non-functioning of the REM system installed on board a relevant scallop boat.

(2) But this regulation does not apply to—

- (a) a fishing trip which is a system test trip in terms of regulation 8(3),
- (b) a fishing trip undertaken with the prior written consent of the Scottish Ministers under regulation 8(4)(a),

(c) a technical failure or non-functioning of a winch sensor to which regulation 10 applies.

(3) Paragraph (4) applies in the event of a technical failure or non-functioning of the REM system installed on board a relevant scallop boat which occurs before the boat starts a fishing trip.

(4) Where this paragraph applies, the boat must not leave the port or, as the case may be, enter the Scottish zone for the purpose of undertaking the first fishing trip after the technical failure or non-functioning until the REM system is fully functioning to the satisfaction of the Scottish Ministers.

(5) In the event that a technical failure or non-functioning of the REM system installed on board a relevant scallop boat occurs during a fishing trip (the “first breakdown”), paragraphs (6) to (8) apply.

(6) The master of the relevant scallop boat or their representative must notify the Scottish Ministers of the technical failure or non-functioning immediately after its detection.

(7) Following the end of the fishing trip during which the first breakdown occurred—

- (a) a relevant Scottish scallop boat must not leave a port for the purpose of undertaking the first fishing trip after the first breakdown,
- (b) any other relevant scallop boat must not leave a port in Scotland or, as the case may be, enter the Scottish zone for the purpose of undertaking the first fishing trip after the first breakdown,

unless the conditions in paragraph (8) are met.

(8) For the purposes of paragraph (7), the conditions are that—

- (a) the REM system installed on board the relevant scallop boat has undergone a remote inspection, and
- (b) following a remote inspection, the REM system is fully functioning to the satisfaction of the Scottish Ministers.

(9) In the event that a technical failure or non-functioning of the REM system installed on board a relevant scallop boat occurs during the first fishing trip following a fishing trip during which a first breakdown occurred (the “second breakdown”), paragraphs (10) to (13) apply.

(10) The master of the relevant scallop boat or their representative must notify the Scottish Ministers of the technical failure or non-functioning immediately after its detection.

(11) The relevant scallop boat must cease any relevant scallop dredge operation immediately after a notification is made under paragraph (10).

(12) Following the end of the fishing trip during which the second breakdown occurred—

- (a) a relevant Scottish scallop boat must not leave a port for the purpose of undertaking the first fishing trip after the second breakdown,
- (b) any other relevant scallop boat must not leave a port in Scotland or, as the case may be, enter the Scottish zone for the purpose of undertaking the first fishing trip after the second breakdown,

unless the conditions in paragraph (13) are met.

(13) For the purposes of paragraph (12), the conditions are that—

- (a) the REM system installed on board the relevant scallop boat has undergone a remote inspection, and
- (b) following a remote inspection, the REM system is fully functioning to the satisfaction of the Scottish Ministers.

### **Technical failure or non-functioning of a winch sensor forming part of an REM system**

**10.—**(1) This regulation applies in the event of a technical failure or non-functioning of a winch sensor forming part of the REM system installed on board a relevant scallop boat.

- (2) But this regulation does not apply to a—
- (a) a fishing trip which is a system test trip in terms of regulation 8(3),
  - (b) a fishing trip undertaken with the prior written consent of the Scottish Ministers under regulation 8(4)(a).
- (3) The master of the relevant scallop boat or their representative must notify the Scottish Ministers of the technical failure or non-functioning of the winch sensor immediately after its detection.
- (4) The master of the relevant scallop boat must ensure that the winch sensor is repaired so that it is fully functioning to the satisfaction of the Scottish Ministers by the end of the 28 day period.
- (5) During the 28 day period—
- (a) a relevant Scottish scallop boat may leave a port for the purpose of undertaking a fishing trip,
  - (b) any other relevant scallop boat may leave a port in Scotland or, as the case may be, enter the Scottish zone for the purpose of undertaking a fishing trip,
  - (c) a relevant scallop boat may continue a fishing trip which started before the 28 day period began,  
despite the winch sensor not being fully functional, where the condition in paragraph (6) is met.
- (6) The condition is that the digital cameras and vessel positioning system device forming part of the REM system installed on board the relevant scallop boat are fully functioning throughout the duration of the fishing trip.
- (7) Following the end of the 28 day period—
- (a) a relevant Scottish scallop boat must not leave a port for the purpose of undertaking the first fishing trip after the end of the 28 day period,
  - (b) any other relevant scallop boat must not leave a port in Scotland or, as the case may be, enter the Scottish zone for the purpose of undertaking the first fishing trip after the end of the 28 day period,  
unless the winch sensor is fully functioning to the satisfaction of the Scottish Ministers.
- (8) In this regulation, “28 day period” means the period of 28 days beginning with whichever is the earlier of—
- (a) the time at which a technical failure or malfunction of a winch sensor is notified to the Scottish Ministers in accordance with paragraph (3), or
  - (b) the time at which the Scottish Ministers notify the owner of a relevant scallop boat of a technical failure or malfunction of a winch sensor.

### **Prohibitions on interfering with REM systems**

- 11.** A person must not, in relation to an REM system installed on board a relevant scallop boat, in any way—
- (a) alter, at any time before automatic transmission in accordance with the technical specifications specified by the Scottish Ministers under regulation 6(1), the data recorded by the REM system,
  - (b) alter, at any time before being made accessible to the Scottish Ministers in fulfilment of a request made under regulation 7(1)(b), the data recorded by the REM system,
  - (c) obstruct or block—
    - (i) the field of view of the digital cameras, or

- (ii) the functioning of the winch sensors, of the REM system during a fishing trip,
- (d) interrupt any power supply to the REM system otherwise than for the purpose of repairing or replacing that system,
- (e) remove the REM system otherwise than for the purpose of repairing or replacing that system,
- (f) destroy, damage, render inoperative or otherwise interfere with the REM system otherwise than for the purpose of repairing or replacing that system,
- (g) communicate a false geographical position for a relevant scallop boat.

### Offences, penalties and jurisdiction

12.—(1) The master, the owner and the charterer (if any) of a relevant scallop boat each commit an offence if any of the requirements of regulations 5(1) to (4) and 7 to 10 are contravened.

(2) The owner and the charterer (if any) of a relevant scallop boat each commit an offence if any of the requirements of regulation 5(5) are contravened.

(3) If any person contravenes regulation 11, that person, along with the master, the owner and the charterer (if any) each commit an offence.

(4) But no offence is committed—

- (a) in relation to a particular requirement, if the Scottish Ministers serve on the master, the owner or the charterer (if any) of a relevant scallop boat a written notice under this Part exempting, as the case may be, the REM system installed on board that boat, or data recorded by that REM system in relation to a fishing trip, from that requirement,
- (b) in respect of a fishing trip carried out with the prior written consent of the Scottish Ministers under regulation 8,
- (c) in relation to any technical failure or non-functioning of an REM system which occurs during a fishing trip in terms of regulation 9(5) (a first breakdown) and is notified to the Scottish Ministers in accordance with regulation 9(6), or
- (d) in relation to any technical failure or non-functioning of an REM system which occurs during a fishing trip in terms of regulation 9(9) (a second breakdown) where—
  - (i) the technical failure or malfunction is notified to the Scottish Ministers in accordance with regulation 9(10), and
  - (ii) regulation 9(11) is complied with.

(5) Section 12 of the Sea Fish (Conservation) Act 1967 (offences by directors, partners, etc)(1) applies to offences under this Part as it applies to offences under any provision of sections 1 to 6 of that Act.

(6) Section 11 of the Sea Fish (Conservation) Act 1967 (penalties for offences)(2) applies to offences under this Part as it applies to offences under section 5(1) of that Act.

(7) Proceedings for an offence under this Part may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Scotland.

(8) In this regulation, “a contravention” includes a failure to comply and “contravene” shall be construed accordingly.

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(1) 1967 c. 84. Section 12 was amended by section 200 of the Marine and Coastal Access Act 2009 (c. 23).

(2) To which relevant amendments were made by paragraph 3(b)(ii), (iv) and (v) of schedule 1 of the Aquaculture and Fisheries (Scotland) Act 2007 (asp 12), paragraph 4 of schedule 15 of the Marine and Coastal Access Act 2009, and paragraph 6(7)(a) (i), (b)(ii) and (vi), and (d) of schedule 4 of the Fisheries Act 2020 (c. 22).

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**Draft Legislation:** This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, The Sea Fisheries (Remote Electronic Monitoring and Regulation of Scallop Fishing) (Scotland) Regulations 2024 ISBN 978-0-11-105992-0

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