

STATUTORY RULES OF NORTHERN IRELAND

2003 No. 366

AGRICULTURE

**The Fishing Vessel (Decommissioning) Scheme
(Northern Ireland) 2003**

Made - - - - - 31st July 2003

Coming into operation 31st July 2003

The Department of Agriculture and Rural Development, in exercise of the powers conferred on it by Article 17(1), (2) and (3) of the Agriculture and Fisheries (Financial Assistance) (Northern Ireland) Order 1987(a) and of every other power enabling it in that behalf, and with the approval of the Department of Finance and Personnel, hereby makes the following Scheme:

Citation and commencement

1. This Scheme may be cited as the Fishing Vessel (Decommissioning) Scheme (Northern Ireland) 2003 and shall come into operation on 31st July 2003.

Interpretation

2. In this Scheme –

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

“the appropriate decommissioning date” has the meaning assigned to it in paragraph 7(3);

“approval” means approval granted under Article 5(4);

“authorised officer” means any officer authorised in writing by the Department for the purposes of this Scheme;

“Council Regulation 1260/99” means Council Regulation (EC) No. 1260/99 of 21 June 1999 laying down general provisions on the Structural Funds(b);

“Council Regulation 2792/99” means Council Regulation (EC) No. 2792/1999 of 17th December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector(c) corrected by Corrigenda, O.J. No. L83, 4.4.00 and O.J. No. L2, 5.1.01 and amended by Council Regulation (EC) No. 1451/2001 of 28th June 2001(d) Council Regulation (EC) No. 179/2002 of 28th January 2002(e) and Council Regulation 2369/2002(f);

(a) S.I. 1987/166 (N.I. 1)

(b) O.J. No. L161, 26.6.99, p. 1

(c) O.J. No. L337, 30.12.99, p. 10

(d) O.J. No. L198, 21.7.01, p. 9

(e) O.J. No. L31, 1.2.02, p. 5

(f) O.J. No. L31, 1.2.02, p. 49

“Council Regulation 2370/02” means Council Regulation (EC) No. 2370/2002 of 20th December 2002 establishing an emergency Community measure for scrapping fishing vessels(a);

“decommissioning” has the meaning assigned to it in Article 8(4);

“fishing trips” means time spent by a vessel –

(a) steaming between port and fishing ground and between one fishing ground and another or;

(b) engaged in fishing for profit,

and for this purpose “fishing for profit” means fishing with a view to securing a financial return deriving from sale of the sea fish landed;

“grant” means a grant under this Scheme;

“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;

“member” in the expression “member State”, refers to membership of the European Community;

“the register” means the register of vessels established under section 8 of the Merchant Shipping Act 1995(b);

“the relevant amount” means such amount as the Department may determine is available for the payment of grant in respect of the decision to invite applications under Article 4(1); and

“VCU” means Vessel Capacity Unit, which is a measure of UK fishing vessel capacity as defined by the formula $(L \times B + 0.45 \times P)$ where: –

L is the length of the vessel measured in metres

B is the breadth of the vessel measured in metres

P is the engine power of the vessel expressed in kilowatts.

Decommissioning grants

3.—(1) Subject to paragraph (2), any person who owns a registered vessel –

(a) which is at least 10 metres in length;

(b) in respect of which there is a relevant licence;

(c) which whilst registered has spent at least 75 days at sea on fishing trips in each of the years 2001 and 2002;

(d) which, in the case of a vessel over 12 metres in registered length had, on the date of application, either a valid vessel certificate under the provisions of the Fishing Vessels (Safety Provisions) Rules 1975(c) or a letter confirming the completion of a satisfactory survey issued by the Secretary of State for Transport;

(e) which is a Northern Ireland based vessel;

(f) which is over 10 years age; and

(g) landed in total at least 3 tonnes of cod caught in the Irish Sea, North Sea and West of Scotland in each of the calendar years 2001 and 2002,

may make an application to the Department in respect of that vessel.

(2) Notwithstanding paragraph (1), the Department may reject an application in respect of a vessel which in its opinion is not fit for undertaking fishing trips.

(a) O.J. No. L358, 31.12.02, p. 57

(b) 1995 c. 21

(c) S.I. 1975/330, amended by S.I. 1975/471, 1976/432, 1977/313, 498, 1978/1598, 1873, 1981/1342 (revoked by 1998/3243), 1998/928, 2647, 1999/2998, 3210 and 2001/9 and by the Fisheries Act 1981, Schedule 3, paragraph 8(3). The 1975 Rules now have effect as if made under section 90, 121 and 122 of, and paragraph 7 of Schedule 14 to, the Merchant Shipping Act 1995 (c. 21)

(3) For the purposes of this Article –

“cod” means the species *Gadus morhua*;

“Irish Sea” means the sea area ICES Statistical Division VIIa as described in the Schedule;

“North Sea” means the sea area ICES Statistical Sub Area IV as described in the Schedule;

“Northern Ireland based vessel” means a vessel the port of administration of which is throughout the period from 1st January 2003 until the date of decommissioning relating to the vessel, both dates inclusive, a port in Northern Ireland;

“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(a) is issued;

“relevant licence” means a licence granted under Section 4 of the Sea Fish (Conservation) Act 1967 and categorised as a Category A licence other than a Category A (Pelagic Purser), Category A (Pelagic Freezer) and Category A (Pelagic Trawler) licence; and

“West of Scotland” means the sea area ICES Statistical Sub Area VI as described in the Schedule.

Applications

4.—(1) The Department shall publish in such manner as it considers appropriate a notice inviting, and specifying the closing date for applications.

(2) An application made in pursuance of a notice published under paragraph (1) shall be in writing, shall be made in such form and manner, shall include such information and undertakings and shall be delivered to such address as the Department may specify in the notice or from time to time require.

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

(4) An application shall be in respect of one vessel only and shall include a bid stating the amount of grant for which the applicant offers to –

- (a) decommission the vessel;
- (b) surrender all licences and claims to licences in respect of the vessel in accordance with the requirements of Article 9(1)(a); and
- (c) remove the vessel from the register.

(5) No more than one application in pursuance of a notice published under paragraph (1) may be made in respect of any vessel.

(6) Where an application in respect of a vessel has been approved no further application may be made in respect of that vessel.

Consideration of applications

5.—(1) As soon as reasonably practicable after the date specified as the closing date for applications in a notice published under Article 4(1) the Department shall subject to the following provisions –

- (a) identify those applications which satisfy the foregoing provisions of the Scheme;
- (b) reject any application which is contrary to Article 7 of Council Regulation 2792/99 as read with Council Regulation 2370/02;
- (c) divide the bid indicated in each application by the number of VCUs of the vessel concerned;
- (d) in the case of an application in respect of a vessel which has spent more time fishing in both 2001 and 2002 with a demersal trawl, seine or similar towed net with a minimum mesh size of 100 millimetres in the codend and extension piece if fitted, reduce the calculation referred to in sub-paragraph (c) above by 20%; and

(a) 1967 (c. 84)

(e) place each application in rank beginning with the lowest and moving to the highest according to the result of the calculation referred to in sub-paragraph (c) and as necessary adjusted by sub-paragraph (d).

(2) The Department may reject an application if it considers the amount of the bid in the application to be unreasonable, having regard to the relevant amount.

(3) The Department shall reject an application if it has reasonable grounds for suspecting that there has been any fixing or adjustment of the amount of a bid by, under or in accordance with any agreement (whether legally binding or not) or arrangement with another person.

(4) Subject to paragraphs (2) and (3), the Department shall approve applications by proceeding through the rank referred to in sub-paragraph 1(e) from the application incorporating the lowest amount bid per VCU towards the application incorporating the highest amount bid per VCU until the relevant amount is reached.

(5) Where as a result of the procedure referred to in paragraph (4) there are two or more identical bids per VCU which are higher than the amount of any other bid which has been approved, and the relevant amount is insufficient to fund grants in respect of all of them, in deciding which application or applications to approve the Department may take into account the amount of cod caught by each of the vessels concerned during the calendar years 2001 and 2002 with a view to giving preference to vessels that caught more in these years.

(6) For the purposes of this Article –

“codend” means the rearmost part of a net being made up of one or more panels (pieces of netting) of the same mesh size attached to one another along their sides in the long axis of the net;

“extension piece” means an extension piece located immediately in front of the codend and excludes the tapered part of the net.

Approval of applications

6.—(1) Subject to the provisions of this Scheme, the Department may at any time –

- (a) determine conditions to which an approval shall be subject; and
- (b) amend such conditions.

(2) Without prejudice to the generality of paragraph (1), any person whose application has been approved may be required by the Department to provide, or arrange for the provision of, such undertakings as the Department may consider appropriate in the case.

(3) The Department shall in writing –

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

(4) The Department shall publish in such manner as it considers appropriate a notice identifying the vessels to which applications selected for approval relate.

(5) Subject to paragraph (6), the Department may revoke an approval where it has reasonable grounds for suspecting that there has been any fixing or adjustment of the amount of a bid by, under or in accordance with any agreement (whether legally binding or not) or arrangement with another person.

(6) Article 15(3) shall apply to revocation under paragraph (5) as it applies to revocation under Article 15.

Eligibility and claims for payment of grant

7.—(1) Subject to paragraph (2) and Article 15, applicants whose applications have been approved shall be eligible for payment of grant in accordance with Article 11.

(2) No grant shall be paid to an applicant in respect of any vessel unless –

- (a) a claim form in respect of that application, signed by the applicant, has been lodged with the Department on or before the appropriate decommissioning date; and

(b) the Department is satisfied that the requirements set out in Articles 8 and 9 have been complied with.

(3) In this Scheme “the appropriate decommissioning date” means such date as the Department may from time to time determine for the purposes of Article 8(3).

(4) The Department shall publish a notice specifying the appropriate decommissioning date in such manner as it considers appropriate.

(5) A claim form submitted in pursuance of a notice published under sub-paragraph (4) shall be in writing, shall be made in such form and manner, shall include such information and declarations and shall be delivered to such address as the Department may specify in the notice or from time to time require and (without prejudice to the generality of the foregoing) shall include declarations that –

- (a) the vessel has been decommissioned in accordance with the requirements of Article 8;
- (b) all licences and claims to licences have been surrendered in accordance with the requirements of Article 9(1)(a); and
- (c) the vessel has been removed from the register.

(6) An applicant shall furnish all such further information in support of the claim form as the Department may specify in the notice or from time to time require.

(7) The Department may revoke an approval in respect of which no claim has been lodged on or before the appropriate decommissioning date.

Decommissioning of the vessel

8.—(1) At least two weeks prior to the decommissioning of any vessel the applicant shall notify the Department in writing of the intended date and place of decommissioning (which shall be within a member State) and the proposed method of decommissioning.

(2) The vessel shall not be decommissioned until the method of decommissioning notified under paragraph (1) has been approved by the Department.

(3) The vessel shall be decommissioned –

- (a) before the appropriate decommissioning date; and
- (b) in accordance with –
 - (i) the method of decommissioning which has been approved by the Department under sub-paragraph (2); or
 - (ii) in exceptional circumstances and with the consent of the Department (which may be given before or after the decommissioning), any other method of decommissioning which accords with sub-paragraph (4).

(4) In this Scheme “decommissioning”, in relation to a vessel, means the permanent withdrawal of that vessel from operation within the sea fish industry of the European Community by any means within the provisions of Article 7 of Council Regulation 2792/1999.

Surrender of licences and removal from the register

9.—(1) The applicant shall before the appropriate decommissioning date –

- (a) surrender the licence referred to in Article 3(1)(b), and all current licences in respect of the vessel granted, whether under Section 4 of the Sea Fish (Conservation) Act 1967 or otherwise, and any claims to any new licences arising from such licences, to the person who granted such licences and in the case of any licences granted by a person other than by the Department furnish to the Department evidence that all such licences have been so surrendered; and
- (b) take all necessary steps to ensure that the vessel is removed from the register and furnish to the Department evidence that it has been so removed.

(2) In sub-paragraph (1)(a) “licences”, in relation to licences granted otherwise than under Section 4 of the Sea Fish (Conservation) Act 1967, includes any written authorisation, consent or permit.

Substantial damage or destruction of vessel

10.—(1) In the event of the substantial damage or destruction of the vessel to which an application which has been approved relates –

- (a) the applicant shall forthwith in writing notify and provide full details to the Department of the damage or destruction;
- (b) the applicant shall, with the notice referred to in sub-paragraph (a), furnish the Department with information concerning –
 - (i) any policy of insurance in respect of the vessel which was in force at the time of that event; and
 - (ii) any criminal or civil proceedings which to the knowledge of the applicant are contemplated or in progress in respect of the event;
- (c) the applicant shall provide the Department with such further information as it may require concerning the incident, the insurance arrangements relating to the vessel and any such criminal or civil proceedings;
- (d) the applicant shall if requested by the Department provide it with written authority authorising contact with the insurers of the vessel; and
- (e) the applicant shall notify the Department of any amount received under such policy of insurance, or by way of compensation or damages, as a result of the event.

(2) Paragraph (1) shall apply regardless of whether or not the method of decommissioning the vessel had been approved under Article 8(2) before the event occurred.

Amount of grant

11. Subject to any modification required by Council Regulation 2792/99 as read with Council Regulation 2370/2002, the amount of grant which an applicant who is eligible for payment of grant under Article 7 shall be paid shall be the amount of the bid made by him in his application.

Method of payment

12.—(1) Payments by way of grant may be made by the Department at such time, or by such instalments at such intervals or times, as it may determine.

- (2) The Department may decline to make payment of grant to any person other than –
- (a) the applicant;
 - (b) a bank or building society nominated by the applicant; or
 - (c) a person to whom the applicant has assigned the grant.

Assistance to authorised officers

13. Any applicant or any employee or agent of any applicant shall give to an authorised officer such assistance as the officer may reasonably request to exercise the power conferred on the officer by Article 14.

Powers of authorised officers

14.—(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 Article 3 to make the application;
- (b) the application should be selected under Article 5 for approval;
- (c) Articles 8 to 10 and 13, any relevant conditions and any undertakings given by the applicant or a third party in pursuance of this Scheme have been complied with;
- (d) the decommissioning of the vessel is being, or has been, carried out;
- (e) any amount of grant is recoverable in accordance with Article 15;

(f) an offence under Article 17(4) of the Agriculture and Fisheries (Financial Assistance) (Northern Ireland) Order 1987 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 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 Article 13 shall apply in relation to such other person when acting under the instructions of the officer as if they were authorised officers.

(6) An authorised officer may –

(a) require any applicant or an employee or agent of the applicant to produce any relevant documents and to supply such additional information in possession of the person or under their control relating to an application as the officer may reasonably request;

(b) inspect any such documents and, where any such documents are 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 those documents;

(c) require that copies of, or extracts from, any relevant documents 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 or which the Department may be required to make available to the Commission pursuant to Article 38(6) of Council Regulation 1260/99 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) In this Scheme –

“premises” includes any vessel or other vehicle; and

“relevant documents” means any documents relating to a vessel in respect of which an application has been made;

“relevant premises” means the vessel in respect of which an application has been made and any premises in which relevant documents are retained or in which an authorised officer has reasonable grounds to believe such documents may be retained.

Reduction, withholding and recovery of grant

15.—(1) If at any time after the Department has approved an application in respect of any vessel it appears to it that –

(a) any of the conditions under Article 6(1) or any undertakings under Article 6(2), relating to that approval have been breached or have not been complied with; or

(b) without prejudice to the generality of sub-paragraph (a), that any of the circumstances specified in paragraph (2) exist or have occurred,

it 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 by way of grant has been made, may recover on demand, as a civil debt, an amount equal to the whole or any part of the payment which has been so made.

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

(a) the application or any part of it was not an application which the applicant was entitled under Article 3 to make;

(b) the applicant or an employee or agent of an applicant –

- (i) has failed to comply with any requirement imposed under Articles 8, 9, 10 or 13;
 - (ii) has intentionally obstructed any officer in the exercise of the powers of the officer under Article 14; or
 - (iii) 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; or
 - (c) there has been any fixing or adjustment of the amount of the bid indicated in the application by, under or in accordance with any agreement (whether legally binding or not) or arrangement with another person;
 - (d) there has been damage or destruction of the vessel resulting in the payment to any person of any amount under a policy of insurance or by way of compensation or damages (regardless of whether or not the method of decommissioning the vessel had been approved under Article 8(2) before such damage or destruction occurred).
- (3) Before revoking an approval or reducing or withholding any grant or making a demand by virtue of paragraph (1), the Department 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 Department consider reasonable;
 - (c) consider such representations.

Interest

16.—(1) Where the Department intends to recover on demand payment by way of grant in whole or in part in accordance with Article 15, it 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 Department 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 evidence of those matters.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 31st July 2003.

(L.S.)

L. McKibben

A Senior Officer of the Department of Agriculture and Rural Development

The Department of Finance and Personnel hereby approves the foregoing Scheme.

Sealed with the Official Seal of the Department of Finance and Personnel on 31st July 2003.

(L.S.)

R. Scott

A Senior Officer of the Department of Finance and Personnel

SCHEDULE

Article 3(3)

ICES SEA AREAS

ICES Statistical Division VIIa (Irish Sea)

The waters bounded by a line beginning at a point on the west coast of Scotland in 55°00' north latitude; thence due west to the coast of Northern Ireland; thence in a southerly direction along the coasts of Northern Ireland and the Republic of Ireland to a point on the south-east coast of the Republic of Ireland in 52°00' north latitude; thence due east to the coast of Wales; thence in a north-easterly and northerly direction along the coast of Wales, England and Scotland to the point of beginning.

ICES Statistical Sub-Area IV (North Sea)

The waters bounded by a line beginning at a point on the coast of Norway in 62°00' north latitude; thence due west to 4°00' west longitude; thence due south to the coast of Scotland; thence in an easterly and southerly direction along the coasts of Scotland and England to a point in 51°00' north latitude; thence due east to the coast of France; thence in a north-easterly direction along the coasts of France, Belgium, the Netherlands and the Federal Republic of Germany to the western terminus of its boundary with Denmark; thence along the west coast of Jutland to Thyboron; thence in a southerly and easterly direction along the south coast of the Limfjord to Egensekloster Point; thence across the eastern entrance of the Limfjord to Hals; thence in a westerly direction along the north coast of Limfjord to the southernmost point of Agger Tange; thence in a northerly direction along the west coast of Jutland to a point in 57°00' north latitude; thence due west to 8°00' east longitude; thence due north to 57°30' north latitude; thence due west to 7°00' east longitude; thence due north to the coast of Norway; thence in a north-westerly direction along the coast of Norway to the point of beginning.

ICES Statistical Sub-Area VI (West of Scotland)

The waters bounded by a line beginning at a point on the north coast of Scotland in 4°00' west longitude; thence due north to 60°30' north latitude; thence due west to 5°00' west longitude; thence due south to 60°00' north latitude; thence due west to 18°00' west longitude; thence due south to 54°30' north latitude; thence due east to the coast of the Republic of Ireland; thence in a northerly and easterly direction along the coast of the Republic of Ireland and of Northern Ireland to a point on the east coast of Northern Ireland in 55°00' north latitude; thence due east to the coast of Scotland; thence in a northerly direction along the west coast of Scotland to the point of beginning.

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme provides for the making of grants by the Department of Agriculture and Rural Development, in respect of the decommissioning of fishing vessels.

Applications for grant will be considered in respect of vessels meeting the requirements set out in Article 3 of the Scheme. These include a requirement that to be eligible a vessel must be at least 10 metres in length and licensed with a Category A licence, other than a Category A (Pelagic Purser), a Category A (Pelagic Freezer) or a Category A (Pelagic Trawler) licence. The vessel must be a “Northern Ireland based vessel” as defined in Article 3(5).

Articles 4 to 6 of the Scheme lay down a procedure for the making, consideration and approval of applications. Applications must be in respect of one vessel only and include a bid by the applicant for the amount of grant for which the applicant offers to decommission and de-register the vessel and surrender all licences and claims to licences in respect of the vessel. Bids will be selected for approval in accordance with Article 5. The Department can determine conditions to which an approval is subject and may require certain undertakings (Articles 6(1) and (2)).

The Department is empowered from time to time to determine a date (“the appropriate decommissioning date”) by which a claim for grant in respect of an approved application must be lodged. In order for grant to be payable the Department must be satisfied that decommissioning (by a method having the prior approval of the Department) has taken place, that the vessel has been deregistered and licences and claims to licences have been surrendered (Articles 7, 8 and 9). In the event of substantial damage or destruction of the vessel the applicant is required to provide the Department with certain information (Article 10).

The amount of grant in respect of an approved application is the amount of the bid subject to any modification in the amount required by Council Regulation 2792/99 as read with Council Regulation 2370/2002 (Article 11) and provision is made concerning the method of payment of grant (Article 12). Applicants are required, on request, to give assistance to authorised officers of the Department, who are given powers of entry and inspection for specified purposes (Articles 13 to 14), and provision is made for the reduction, withholding and recovery of grant in certain circumstances and for the payment of interest on grant recovered (Articles 15 and 16).

Section 17(4) of the Agriculture and Fisheries (Financial Assistance) (Northern Ireland) Order 1987 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.

This Scheme is made by virtue of Article 7 of Council Regulation (EC) No. 2792/99 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products (O.J. No. L337, 30.12.99, p. 10), as corrected by Corrigenda, O.J. No. L83, 04.04.00, p. 35 and O.J. No. L2, 05.01.01, p. 41 and as read with Council Regulation (EC) No 2341/2002 (O.J. No L356, 31.12.02, p. 12).

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