

**2011 No. 25**

**SEA FISHERIES**

**The Fishing Boats (Electronic Transmission of Fishing Activities Data) Scheme (Northern Ireland) 2011**

*Made - - - - 3rd February 2011*

*Coming into operation - 4th February 2011*

*Approved by resolution of the Assembly on 21 March 2011*

The Department of Agriculture and Rural Development, with the approval of the Department of Finance and Personnel, makes the following Scheme in exercise of the powers conferred by section 15(1) and (2) of the Fisheries Act 1981(a) as read with paragraph 2(1) of Schedule 2 to the Sea Fisheries (Northern Ireland) Order 2002(b), and now vested in it(c).

**Citation and commencement**

1. This Scheme may be cited as the Fishing Boats (Electronic Transmission of Fishing Activities Data) Scheme (Northern Ireland) 2011 and comes into operation on 4th February 2011.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954(d) applies to this Scheme as it applies to an Act of the Assembly.

(2) In this Scheme—

“application”, except in relation to an application for review under paragraph 8, means an application for a grant and “applicant” is to be construed accordingly;

“approved software” means software specified in the list published by the Department under paragraph 3(1);

“the Department” means the Department of Agriculture and Rural Development;

“eligible Northern Ireland fishing boat” means a Northern Ireland fishing boat within the meaning of article 2(2) of the Sea Fisheries (Northern Ireland) Order 2002 (e) which—

(a) has its port of administration in Northern Ireland at the date of application; and

(b) is of 12 metres length overall or more;

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(a) 1981 c.29  
(b) S.I. 2002/790  
(c) S.I. 2002/790, article 3(2) and Schedule 2, paragraph 2(2)  
(d) 1954 c.33(NI)  
(e) S.I. 2002/790

“the Control Regulation” means Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy(a);

“fishing activities data” means the fishing logbook data, transshipment declaration data and landing declaration data required under Articles 15, 22 and 24 of the Control Regulation to be recorded and transmitted by electronic means;

“grant” means a grant under this Scheme;

“length overall” has the same meaning as in Council Regulation (EEC) No. 2930/86 defining characteristics for fishing vessels (b);

“port of administration” means the port from which the licence granted in respect of a fishing boat under section 4 of the Sea Fish (Conservation) Act 1967 (c) is issued;

“relevant condition” means any condition relating to the approval of an application which has been notified to the applicant under paragraph 7(1)(c); and

“supplier” means a supplier specified in the list published by the Department under paragraph 3(1) in respect of approved software.

### **Approved software**

3.—(1) The Department shall publish a list specifying—

- (a) software that is capable of—
  - (i) electronically recording fishing activities data; and
  - (ii) electronically transmitting fishing activities data in the required format; and
- (b) the suppliers of the software.

(2) The list shall be published in a manner that will ensure it is reasonably likely to be seen by persons eligible to apply for a grant under paragraph 5(1).

(3) In sub-paragraph (1)(a) “required format” means a format determined and published by the Department for the purpose of Articles 15, 22 and 24 of the Control Regulation.

### **Invitation to apply for grant**

4.—(1) The Department shall from time to time publish an invitation for applications.

(2) An invitation shall be published in a manner that will ensure it is reasonably likely to be seen by persons eligible to apply for a grant under paragraph 5(1).

(3) An invitation shall contain—

- (a) details of approved software and suppliers;
- (b) details of eligible fishing boats and persons eligible to apply for a grant;
- (c) requirements as to the form and manner of making an application;
- (d) any requirements for providing documents in support of the application; and
- (e) the closing date for making an application.

### **Persons eligible to apply for grant**

5.—(1) A person may apply to the Department for a grant to contribute to the cost of purchase or supply of approved software for use on an eligible Northern Ireland fishing boat if the person—

- (a) is the master, owner or charterer of the fishing boat; and

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(a) O.J. No L343,22.12.2009, p.1.  
(b) O.J. No L 274, 25.09.1986, p.1  
(c) 1967 c.84

(b) has purchased from a supplier, or has commissioned a supplier to supply, approved software for use on that boat.

(2) In sub-paragraph (1)(a) “master” includes the person for the time being in charge of the fishing boat.

### **Applications**

6.—(1) An application shall be in writing and shall,

- (a) be made in the form and manner;
- (b) be accompanied by the supporting documents; and
- (c) be made to the Department by the closing date,

specified in the invitation published under paragraph 4(1).

(2) But the Department may accept an application received after the closing date if it is satisfied that—

- (a) the particular circumstances of the applicant render it unreasonable to expect the application to have been made by the closing date; and
- (b) the date on which the application was made is as early as can reasonably be expected in those circumstances.

(3) The Department, before determining any application, may require the applicant to provide additional information.

### **Determination of applications**

7.—(1) As soon as reasonably practicable after the closing date specified in the invitation published under paragraph 4(1), or after the provision of any additional information required under paragraph 6(3), the Department shall—

- (a) approve or reject an application;
- (b) if an application is approved, determine the conditions, if any, for payment of the grant or of any part of it; and
- (c) notify the applicant in writing of its decision and —
  - (i) if an application is approved, the amount of the grant to be paid and any conditions which it has determined under sub-paragraph (1)(b); or
  - (ii) if an application is rejected, the reasons for the rejection and the right of review under paragraph 8.

(2) The Department shall reject an application in respect of a fishing boat if it is of the opinion that the port of administration of the fishing boat has been changed to a port in Northern Ireland for the primary purpose of ensuring that the fishing boat is an eligible Northern Ireland fishing boat for the purposes of this Scheme.

### **Review of decision**

8.—(1) A person may apply to the Department for the review of a decision by the Department to reject an application under paragraph 7(1)(a) in accordance with this paragraph.

(2) An application for review shall be made to the Department no later than 3 months from the date of notification of the decision to be reviewed.

(3) An application for review shall be in writing and shall specify—

- (a) the name and address of the applicant and, if that person is not the person notified of the decision by the Department, the interest of that person in the decision in respect of which the application is made;
- (b) the decision of the Department in respect of which the application for review is made and its date;

- (c) full particulars of the grounds upon which the review of the decision is sought; and
  - (d) the change sought to the decision.
- (4) Where an application for review is made under this paragraph, the Department shall review the decision which is specified in it.
- (5) In reviewing a decision the Department may—
- (a) consider any document or other evidence produced by the applicant (whether or not that document or evidence was available at the time of the decision);
  - (b) invite the applicant to provide such further information relevant to the review as it considers appropriate; and
  - (c) give the applicant an opportunity to give evidence and to make representations in person or through a representative.
- (6) Following a review of the decision the Department may—
- (a) confirm the decision;
  - (b) amend or alter the decision in any respect which it considers appropriate; or
  - (c) revoke the decision in its entirety and substitute a new decision.
- (7) As soon as reasonably practicable after reviewing the decision, the Department shall notify the applicant in writing of its decision under sub-paragraph (6) and the reasons for it.

### **Payment of grant**

- 9.—(1) The Department may make payment of a grant to the applicant or to the supplier.
- (2) The Department shall make payment of one grant only in respect of any eligible Northern Ireland fishing boat.
- (3) The Department shall not make payment of a grant, or of any part of it, to an applicant or supplier unless it is satisfied that,
- (a) the supplier has supplied the applicant with the approved software; and
  - (b) any relevant condition for payment of the grant, or of any part of it, has been complied with.

### **Amount of grant**

10. The amount of the grant—
- (a) shall not exceed the cost of purchase or supply of the approved software; and
  - (b) may be such lesser amount as is determined by the Department.

### **Withholding and recovery of grant**

- 11.—(1) If it appears to the Department that an applicant has in respect of a fishing boat,
- (a) not complied with any relevant condition;
  - (b) knowingly furnished information or produced a document in purported compliance with any provision of this Scheme which is false in a material particular; or
  - (c) recklessly furnished information or produced a document in purported compliance with any provision of this Scheme which is false in a material particular,
- the Department may withhold payment of a grant or any part of a grant in respect of that boat and, where any payment of grant has already been made, may recover on demand from the applicant an amount equal to the whole or any part of such payment irrespective of whether the payment was made to the applicant or to the supplier.
- (2) Before exercising the power under sub-paragraph (1) in relation to an applicant the Department shall—
- (a) give the applicant a written explanation of the reasons for the action proposed to be taken;

- (b) afford the applicant the opportunity to make written representations within a reasonable time specified by the Department;
- (c) consider any such representations; and
- (d) notify the applicant in writing of its decision.

**Interest**

12.—(1) Where the Department decides to recover on demand an amount in accordance with paragraph 11(1), interest may also be recovered on that amount on a daily basis at the rate of 1% above the LIBOR for the period beginning with the day following that on which the amount was paid and ending on the day on which the amount is recovered.

(2) In this paragraph “LIBOR”, in relation to any day, means the sterling three-month London inter-bank offered rate in force for that day rounded if necessary to two decimal places.

(3) In any proceedings for recovery under this Scheme, a certificate issued by the Department stating the LIBOR applicable for any day specified in the certificate is conclusive evidence of the LIBOR in question if the certificate also states that the Bank of England notified the Department of the LIBOR in question.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 3rd February 2011.



*Liam McKibben*

A senior officer of the Department of Agriculture and Rural Development

The Department of Finance and Personnel approves this Scheme.

Sealed with the Official Seal of the Department of Finance and Personnel on 3rd February 2011



*J M V Layberry*

A senior officer of the Department of Finance and Personnel

**EXPLANATORY NOTE**

*(This note is not part of the Scheme)*

This Scheme makes provision for the payment of grants in respect of eligible Northern Ireland sea fishing boats as a contribution towards the cost of purchase or supply of approved computer software to facilitate the recording and transmission of fishing logbook data, transshipment declaration data, and landing declaration data, electronically in accordance with Articles 15, 22 and 24 of Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

Funds for the payment of grants under this Scheme are provided for under Council Regulation (EC) No. 861/2006 and Commission Regulation (EC) No. 391/2007.

Paragraph 3 requires the Department to publish a list of approved software and the suppliers of the software.

Paragraph 4 requires the Department to publish invitations to apply for grant and the conditions for making applications.

Paragraph 5 describes the persons who are eligible to apply for a grant.

Paragraph 6 deals with applications for grant and specifies the circumstances under which applications may be accepted after the closing date for receipt of applications.

Paragraph 7 sets out the procedure for the Department to approve or reject applications.

Paragraph 8 provides for the review of a decision to reject an application.

Paragraph 9 deals with conditions for payment of a grant and paragraph 10 specifies restrictions on the amount of grant to be paid.

Paragraph 11 describes conditions under which the Department may withhold a grant or any part of it and, where payment of grant has already been made, recover from the applicant an amount equal to the grant paid.

Paragraph 12 provides for the charging of interest on grant that is to be recovered.

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 any Scheme made under Part II of the Fisheries Act 1981 and wilful refusal to supply information, make returns or produce documents when required to do so by or under the Scheme.

No regulatory impact assessment has been prepared for this rule as it has no direct impact on the costs of businesses, charities or the voluntary sector.

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