

2013 No. 212

SEA FISHERIES

**The Fishing Boats (Satellite-Tracking Devices) Scheme
(Northern Ireland) 2013**

Made - - - - - *13th August 2013*

Coming into operation - *27th August 2013*

Approved by resolution of the Assembly on 5th November 2013

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

Citation and commencement

1. This Scheme may be cited as the Fishing Boats (Satellite-Tracking Devices) Scheme (Northern Ireland) 2013 and comes into operation on 27th August 2013.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**e**) 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 Article 6, means an application for a grant and “applicant” is to be construed accordingly;

“authorised provider” means the supplier and installer of satellite-tracking devices authorised by the Department and specified in a notice under Article 4(2);

“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 (**f**) which—

(a) has its port of administration in Northern Ireland; and

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

(a) The function of the Treasury to approve a Scheme under section 15 of the Fisheries Act 1981 is, by virtue of article 3(2) of, and paragraph 2(7)(a) of Schedule 2 to, the Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790) exercisable by the Department of Finance and Personnel where the Scheme is made by the Department of Agriculture and Rural Development.

(b) 1981 c.29.

(c) S.I. 2002/790.

(d) S.I. 2002/790, article 3(2) and Schedule 2, paragraph 2(2).

(e) 1954 c.33 (N.I.).

(f) S.I. 2002/790

“the Commission Regulation” means Commission Implementing Regulation (EU) No 404/2011 laying down detailed rules for the implementation of the Council Regulation (a);

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

“grant” means a grant under this Scheme;

“length overall”, in relation to a fishing boat, means the length of the boat measured in accordance with Article 2(1) of Council Regulation (EEC) No 2930/86 defining characteristics for fishing vessels (c);

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

“relevant condition” means a condition attached to the approval of an application which has been notified to the applicant under Article 5(1)(c) or, following a successful review, under Article 6; and

“satellite-tracking device” has the same meaning as in Article 2(9) of the Commission Regulation.

Persons eligible to apply for grant

3. A person is eligible to make an application to the Department in respect of an eligible Northern Ireland fishing boat if that person —

- (a) is –
 - (i) the owner or charterer of the fishing boat; or
 - (ii) a representative of the owner or charterer of the fishing boat; and
- (b) satisfies any other eligibility criteria specified in a notice published under Article 4(2).

Applications

4.—(1) The Department may from time to time invite applications in accordance with the following provisions of this Article.

(2) The Department shall publish a notice inviting applications in a manner that will ensure it is reasonably likely to be seen by persons eligible to apply for a grant.

(3) The notice shall specify—

- (a) the persons eligible to apply for a grant;
- (b) any other eligibility criteria for the purposes of Article 3(b);
- (c) the requirements as to the form and manner of making an application;
- (d) any information or documents which an applicant is required to provide in support of an application;
- (e) the closing date for making an application;
- (f) the address to which an application shall be made;
- (g) the authorised provider; and
- (h) any other information the Department considers relevant to an application.

(4) An application shall be in writing and shall—

(a) O.J. No L 112, 30.04.2011, p.1, as corrected by Corrigendum O.J. L 328, 10.12.2011, p.58.

(b) O.J. No L 343, 22.12.2009, p.1.

(c) O.J. No L 274, 25.09.1986, p.1.

(d) 1967 c.84. Section 4 was substituted by the Fishery Limits Act 1976 (c.86), section 3, and relevant amendments have been made by the Fisheries Act 1981 (c.29), section 20, the Sea Fish (Conservation) Act 1992 (c.60), section 1, and S.I. 1999/1820, article 4.

- (a) be made in the form and manner;
 - (b) include the information and be accompanied by the supporting documents; and
 - (c) be made to the Department by the closing date,
- specified in the notice published under paragraph (2).
- (5) 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.
- (6) Before determining an application the Department may require the applicant to provide further information relevant to the application.

Determination of applications

5.—(1) As soon as reasonably practicable after the closing date specified in the notice published under Article 4(2), or after the provision of any further information required under Article 4(6), 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 paragraph (1)(b); or
 - (ii) if an application is rejected, the reasons for the rejection and the right of review under Article 6.
- (2) The Department shall reject an application in respect of a fishing boat—
- (a) if it is satisfied 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; or
 - (b) if a payment has already been made under this Scheme in respect of the installation of a satellite-tracking device on the fishing boat.

Review of decision

6.—(1) Where the Department rejects an application under Article 5, a person may apply to the Department for a review of the decision in accordance with this Article if that person is—

- (a) the applicant whose application has been rejected; or
 - (b) any other person who is eligible under Article 3 to make an application in respect of the fishing boat specified in the application that has been rejected.
- (2) An application for review shall be made to the Department no later than 3 months from the date of the 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 for review is made;
 - (b) the decision of the Department in respect of which the application for review is made and its date; and
 - (c) full particulars of the grounds upon which the review of the decision is sought.

(4) Where an application for review is made under this Article 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 or an eligible person (whether or not that document or evidence was available at the time of the decision);
- (b) invite the applicant or eligible person to provide such further information relevant to the review as it considers appropriate; and
- (c) give the applicant or eligible person 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; or
- (b) substitute for it a new decision.

(7) As soon as reasonably practicable after reviewing the decision, the Department shall notify in writing the person applying for the review and, if different, the person whose application was rejected under Article 5, of its decision under paragraph (6) and the reasons for it.

(8) In paragraph (5) “eligible person” means any person, other than the applicant for a review, who is eligible under Article 3 to make an application in respect of the fishing boat.

Payment of grant

7.—(1) Subject to the following provisions of this Article and Article 8, where the Department approves an application (either under Article 5 or following a successful review under Article 6), the Department shall pay to the authorised provider or the applicant a sum equal to the cost, agreed between the Department and the authorised provider, of—

- (a) the purchase of a satellite-tracking device from the authorised provider;
- (b) the purchase of a three-year warranty in respect of the satellite-tracking device from the authorised provider; and
- (c) the installation of that device by the authorised provider.

(2) The cost of installation specified in paragraph (1)(c) does not include any cost wholly or partly incurred in respect of the concealment of the satellite-tracking device, its associated cables and wires, or any other associated materials or equipment for cosmetic purposes.

(3) But no grant, nor any part of it, shall be paid in respect of any fishing boat unless the Department is satisfied that -

- (a) the satellite-tracking device installed on board the fishing boat by the authorised provider complies with the requirements of the Council Regulation and the Commission Regulation; and
- (b) any relevant condition has been complied with.

Withholding and recovery of grant

8.—(1) This Article applies where, having approved an application in respect of a fishing boat (either under Article 5 or following a successful review under Article 6), it appears to the Department that—

- (a) the applicant was not eligible to make the application;
- (b) any relevant condition has been breached or has not been complied with; or
- (c) the applicant knowingly or recklessly provided materially false or misleading information or any document which is false in a material particular in relation to the application.

(2) Subject to paragraph (3), the Department may –

- (a) revoke the approval of an application;
- (b) withhold the payment of any grant, or any part of it, to be made under Article 7(1); or

- (c) where any payment of grant has already been made under Article 7(1), 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 authorised provider.
- (3) Before exercising the power under paragraph (2) the Department shall—
 - (a) give the applicant a written explanation of the reasons for the proposed action;
 - (b) afford the applicant the opportunity to make written representations within a reasonable time specified by the Department; and
 - (c) consider any such representations made.

Interest

9.—(1) Where the Department recovers on demand an amount in accordance with Article 8, it may also recover interest on that amount at a rate of 1% above the LIBOR calculated on a daily basis 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 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.

(3) In this Article “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.

Revocation

10. The Fishing Boats (Satellite-Tracking Devices) Scheme (Northern Ireland) 2004(a) is revoked.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 13th August 2013



Ian Humes

A senior officer of the Department of Agriculture and Rural Development

The Department of Finance and Personnel approve this Scheme

Sealed with the Official Seal of the Department of Finance and Personnel on 13th August 2013



John McKibben

A senior officer of the Department of Finance and Personnel

(a) S.R. 2004 No. 387

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme makes provision for the payment of grants towards the cost of the purchase of satellite-tracking devices together with a 3-year warranty and their installation on board Northern Ireland sea fishing boats over 12 metres in length.

Article 9 of Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy requires a satellite-tracking device to be installed on board all fishing vessels of 12 metres' length overall or more.

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

Article 3 describes the persons who are eligible to apply for a grant.

Article 4 provides that the Department of Agriculture and Rural Development may invite applications for a grant and sets out the requirements in respect of such invitations, the procedure for making an application for a grant, and specifies the circumstances in which applications may be accepted by the Department after the closing date for making applications.

Article 5 sets out the procedure for the Department to approve or reject applications.

Article 6 provides for the review of a decision to reject an application.

Article 7 provides for the payment of grants, including the amount of a grant, what it shall pay for, and the conditions which must be satisfied before the Department may make payment of a grant.

Article 8 provides for the withholding of payment of a grant or any part of it and the recovery of payment of a grant or part of a payment by the Department in certain cases.

Article 9 provides for the recovery of interest on amounts recovered under Article 8.

Article 10 revokes The Fishing Boats (Satellite-Tracking Devices) Scheme (Northern Ireland) 2004.

Section 17 of the Fisheries Act 1981 provides for offences in relation to the production of false information or documents in purported compliance with any requirement imposed by a 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 a Scheme.

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

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