

2009 No. 177

AGRICULTURE

**The Sea Fish Industry (Harbour, Landing and Light Dues)
Scheme (Northern Ireland) 2009**

Made - - - - - *27th April 2009*

Coming into operation - *28th April 2009*

Approved by resolution of the Assembly on 16th June 2009

The Department of Agriculture and Rural Development makes the following Scheme, in exercise of the powers conferred by section 15 of the Fisheries Act 1981(a) and now vested in it(b), and with the approval of the Department of Finance and Personnel.

Title, commencement and application

1.—(1) This Scheme may be cited as the Sea Fish Industry (Harbour, Landing and Light Dues) Scheme (Northern Ireland) 2009 and shall come into operation on 28th April 2009.

(2) This Scheme shall apply in relation to Northern Ireland.

Interpretation

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

(2) In this Scheme—

“application” means an application under Article 4(1) or (2);

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

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

“harbour” means any person, persons, port authority, harbour authority, or other body responsible for the management of ports or harbours located in the United Kingdom and entitled to charge for the provision of harbour services;

“harbour dues” means charges made by a harbour in the United Kingdom in relation to berthing a Northern Ireland fishing boat at that harbour during the period 1st January 2008 to 31st December 2008 (both dates inclusive);

“landing dues” means charges made by a harbour in the United Kingdom in relation to landing fish from a Northern Ireland fishing boat at that harbour during the period 1st January 2008 to 31st December 2008 (both dates inclusive);

(a) 1981 c.29

(b) S.I. 2002/790 Article 3(2) and Schedule 2

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

“light dues” means charges made by the Department of Transport for the operation of the General Lighthouse Authorities (Trinity House, The Northern Lighthouse Board and The Commissioners for Irish Lights), for the use of navigational aids, during the period 1st April 2008 to 31st March 2009 (both dates inclusive);

“Northern Ireland fishing boat” means a fishing boat which—

- (a) is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(a),
- (b) or—
 - (i) is owned wholly or partly by persons qualified to own British ships for the purposes of that Part of that Act, but
 - (ii) is not a boat which counts as a British ship for the purposes of that Act solely as a result of the application of section 1(1)(c) of that Act to it by virtue of registration under the law of any of the Channel Islands or of the Isle of Man,

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

“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(b) is issued;

“relevant person”, in relation to a fishing boat, means its owner, charterer (if any), or master or the representative of any of them; and

“undertakings in the fisheries sector” has the same meaning as in Commission Regulation (EC) 875/2007(c).

(3) Any obligation of the Department to publish material under this Scheme means an obligation to make it available in a manner in which the Department consider that the material is reasonably likely to be seen by those to whom this Scheme may apply, and publication in anticipation of this Scheme shall be treated for the purposes of this Scheme as having been carried out under it.

Invitations for applications

3.—(1) The Department shall from time to time publish in accordance with this Scheme an invitation for applications for grant in respect of—

- (a) harbour dues and landing dues; and
- (b) light dues.

(2) Each invitation published under paragraph (1)(a) shall relate to such period in the year 2008 as the Department may determine.

(3) The Department shall exercise its powers under paragraphs (1)(a) and (2) so as to ensure that invitations published under paragraph (1)(a) when taken together, relate to the whole of the year 2008.

(4) Each invitation published under paragraph (1)(b) shall relate to such period in the year 1 April 2008 to 31 March 2009 (both dates inclusive) as the Department may determine.

(5) The Department shall exercise its powers under paragraphs (1)(b) and (4) so as to ensure that invitations published under paragraph (1)(b), when taken together, relate to the whole of the year from 1 April 2008 to 31 March 2009 (both dates inclusive).

Applications

4.—(1) In response to an invitation published under Article 3(1)(a), any person who, as owner, charterer or master or the representative of any of them of a fishing boat becomes liable to pay during the period to which the invitation relates any harbour or landing dues in respect of that boat may apply for a grant for the expense of that payment.

(a) 1995 c.21

(b) 1967 c.84 *see also* S.I. 2002/790 Article 3(1) and Schedule 1

(c) O.J. No. L193, 25.7.2007, p.6

(2) In response to an invitation published under Article 3(1)(b), any person who, as owner, charterer or master or the representative of any of them of a Northern Ireland fishing boat, becomes liable to pay during the period to which the invitation relates any light dues in respect of that boat may apply for a grant for the expense of that payment.

(3) An application must be received by the Department on or before the closing date specified in the invitation in question unless the Department is satisfied that—

- (a) the particular circumstances of the applicant render it unreasonable to expect his application to be lodged by the closing date; and
- (b) the date on which the application is received is as early as, in the circumstances, can reasonably be expected.

(4) The closing date specified in each invitation published under Article 3(1) shall not be before the expiry of 3 weeks after the end of the period to which the invitation in question relates.

(5) The Department shall specify in each invitation published under Article 3(1) the information required by it for the purposes of any application made in response to the invitation and the person making that application shall furnish all such information with the application.

(6) The Department shall not accept any application relating to a fishing boat if it considers that the port of administration for the fishing boat has been changed for the primary purposes of eligibility for grant under this Scheme.

Payment of grant

5.—(1) Where, in response to an invitation published under Article 3(1), the Department has received an application, the Department shall determine whether it satisfies the conditions under Article 4 and if it does, shall pay to the applicant an amount equal to any harbour, landing or light dues that became payable by that person during the period to which the invitation in question relates.

(2) The Department may make any grant under paragraph (1) subject to such conditions as it may determine.

(3) The Department shall notify each applicant in writing of—

- (a) any decision made by the Department in respect of his application; and
- (b) if the decision is to pay grant, the amount of that grant and any conditions to which it is to be made subject under paragraph (2).

De-minimis aid

6.—(1) Any payments of grant under this Scheme shall be deemed to be de-minimis aid payable to undertakings in the fisheries sector under Commission Regulation (EC) 875/2007.

(2) Any payment of de-minimis aid made in respect of an undertaking under this Scheme may not, when added to other de-minimis payments made in respect of the same undertaking over a three year period, exceed the aid payment ceilings set in the Regulation referred to in paragraph (1).

Assistance to authorised officers

7. 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 8.

Powers of authorised officers

8.—(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 Article for the purpose of ascertaining whether and to what extent—

- (a) a person is eligible to make an application under Article 3;
- (b) conditions under Articles 5(2) have been complied with; and
- (c) an offence under section 17 of the Fisheries Act 1981 has been, or is being, committed.

(2) Subject to paragraph (3) an authorised officer may enter upon any relevant premises.

(3) The power conferred by 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 Article may be accompanied by such other persons as the officer considers necessary, and paragraphs (2), (4), (6) and (7) shall apply in relation to such other persons when acting under the instructions of the officer as if they were authorised officers.

(6) An authorised officer may—

- (a) require any person who is an applicant or is an employee or agent of an applicant to produce any relevant documents and to supply such additional information in possession of the person or under his control relating to the application as the officer may reasonably request;
- (b) inspect any such documents and, where such documents are kept by means of a computer, have access to, and inspect and check the operation of, any computer and associated apparatus or material which has been used in connection with those documents; and
- (c) require that copies of, or extracts from, any relevant documents be produced.

(7) An authorised officer shall not be liable to civil or criminal proceedings for anything done in purported exercise of the powers conferred on the officer by this Scheme if the court hearing such proceedings is satisfied that—

- (a) the act was done in good faith;
- (b) there were reasonable grounds for doing it; and
- (c) it was done with reasonable skill and care.

(8) In this Article—

“premises” includes any fishing boat or other vehicle;

“relevant documents” means any documents relating to the fishing boat in respect of which an application has been made; and

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

Withholding and recovery

9.—(1) If it appears to the Department that any relevant person has in respect of a fishing boat—

- (a) not complied with any of the conditions imposed on him under Article 5(2);
- (b) (i) knowingly furnished information or produced a document in purported compliance with any provision of this Scheme which is false in a material particular, or
- (ii) recklessly furnished information or produced a document in purported compliance with any provision of this Scheme which is false in material particular, or
- (c) has failed, or his employee or agent has failed, to comply with Article 7,

the Department may withhold any grant otherwise payable under this Scheme in relation to that boat or, where such grant has already been paid, may recover on demand from him or any other relevant person an amount equal to the whole or any part of any such payment.

(2) Before exercising its powers under paragraph (1) in relation to any relevant person the Department shall—

- (a) give the relevant person a written explanation of the reasons for the action proposed to be taken;
- (b) afford the person the opportunity to make written representations within a reasonable time specified by the Department; and
- (c) consider the representations and notify the result to the applicant.

Interest

10.—(1) Where the Department decides to recover on demand an amount in accordance with Article 9(1), it may also recover interest 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 Department recovers it.

(2) In this Article “LIBOR”, in relation to any day, means the sterling three month London interbank 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 in 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 27th April 2009



Liam 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 27th April 2009



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 payments to the sea fishing industry for harbour berthing dues, fish landing dues and light dues paid by all fishing boats administered by DARD during 2008.

Articles 3 and 4 give details of the method for applying for funding under the Scheme. Article 5 provides for the Department to determine applications against conditions and notify successful applicants. Article 6 states that aid provided under this Scheme shall be treated as de-minimis aid under Commission Regulation (EC) 875/2007. Article 7 requires applicants, their employees or agents to assist authorised officers of the Department and Article 8 sets out the powers of authorised officers. Article 9 deals with powers for withholding and recovery of grant in certain circumstances. Article 10 gives details of the method for charging interest on grant that is recovered.

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