

2013 No. 215

SEA FISHERIES

**The Sea Fish Industry (Harbour and Landing Dues) Scheme
(Northern Ireland) 2013**

Made - - - - *30th August 2013*

Coming into operation - *2nd September 2013*

Approved by resolution of the Assembly on 21st October 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).

Title and commencement

1. This Scheme may be cited as the Sea Fish Industry (Harbour and Landing Dues) Scheme (Northern Ireland) 2013 and comes into operation on 2nd September 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—

“applicant”, except in relation to an application for review under paragraph 7, means a person making an application for a grant under paragraph 4(1), and “application” is to be construed accordingly;

“the Commission Regulation” means Commission Regulation (EC) No 875/2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the fisheries sector(f);

“days at sea” means days present in a geographical area subject to a fishing effort regime;

“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 (g) which—

(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, 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) O.J. No L193, 25.7.2007, p.6. Articles 87 and 88 of the EC Treaty are now Articles 107 and 108 of the Treaty on the Functioning of the European Union.

(g) S.I. 2002/790.

- (a) has its port of administration in Northern Ireland;
- (b) is under 27 metres' length overall; and
- (c) has spent 25 days at sea or more during the period 1st January 2013 to 31st July 2013 (both dates inclusive);

“grant” means a grant in respect of harbour dues or landing dues payable under this Scheme;

“harbour authority” means a person or body of persons responsible for the management of a port or harbour in the United Kingdom and entitled to make charges in respect of fishing boats entering the port or harbour or using facilities therein;

“harbour dues” means charges made by a harbour authority in respect of the berthing of a Northern Ireland fishing boat;

“landing dues” means charges made by a harbour authority in respect of the landing of fish from a Northern Ireland fishing boat;

“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 (a); and

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

(3) For the purposes of the definition of “days at sea” “days present in a geographical area” has the same meaning as in Article 26(6) of Council Regulation (EC) 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy(c).

Invitations for applications

3.—(1) The Department may invite applications for a grant in accordance with the following provisions of this paragraph.

(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) A notice shall specify –

- (a) the details of conditions of eligibility for, and payment of, a grant;
- (b) the closing date for making an application;
- (c) the information which an applicant is required to provide in support of the application.

Applications

4.—(1) Subject to the provisions of the Commission Regulation, the owner or charterer of an eligible Northern Ireland fishing boat may, in response to a notice published under paragraph 3(2), apply to the Department for a grant towards the payment of harbour dues or landing dues (or both) incurred in respect of that fishing boat during the period specified in the notice and for which that person is liable.

(2) An application shall be in writing and be made to the Department on or before the closing date specified in the notice published under paragraph 3(2).

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

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

(b) 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.

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

- (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 received is as early as can reasonably be expected in those circumstances.

(4) The Department shall reject an application in respect of a fishing boat 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 purposes of ensuring that the fishing boat is an eligible Northern Ireland fishing boat for the purposes of this Scheme.

Payment of grant

5.—(1) Where the Department has received an application the Department shall determine whether it –

- (a) satisfies the conditions in the notice published under paragraph 3(2);
- (b) provides the information required in the notice published under paragraph 3(2),
- (c) and if it does the Department may, subject to paragraphs 6 and 8, pay a grant to the applicant of an amount not exceeding 70 per cent of the applicant's liability for any harbour dues or landing dues in respect of the period specified in the notice published under paragraph 3(2).

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

(3) The Department shall notify the applicant in writing of its decision to approve or reject an application and –

- (a) if an application is rejected, the reasons for the rejection and the right of review under paragraph 7; and
- (b) if an application is approved, the amount of the grant to be paid and any conditions to which it is to be made subject, as determined by the Department under sub-paragraph (2).

De-minimis aid

6. The Department shall not pay any grant unless the requirements of the Commission Regulation, in particular as to the limits on the amount of *de-minimis* aid set out in Articles 3 and 4, have been, and are complied with.

Review of decision

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

- (a) the applicant whose application has been rejected; or
- (b) any other person who is eligible under paragraph 4(1) 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 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 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—
- (i) confirm the decision; or
 - (ii) 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 paragraph 5, of its decision under sub-paragraph (6) and the reasons for it.

(8) In sub-paragraph (5) “eligible person” means any person, other than the applicant for a review, who is eligible under paragraph 4(1) to make an application in respect of the fishing boat.

Withholding and recovery

8.—(1) This paragraph applies where, having approved an application (either under paragraph 5 or following a successful review under paragraph 7), it appears to the Department that—

- (a) the applicant was not eligible to make the application;
- (b) any condition notified to the applicant under paragraph 5(3)(b) has not been complied with;
- (c) the requirements of the Commission Regulation have not been complied with; or
- (d) 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) Where this paragraph applies, subject to sub-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 paragraph 5(1); or
- (c) where any payment of grant has already been made under paragraph 5(1), recover on demand from the applicant an amount equal to the whole or any part of such payment.

(3) Before exercising the power under sub-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 paragraph 8(1), it may also recover interest on that amount at the 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 Department recovers it.

(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 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.

Revocation

10. The Sea Fish Industry (Harbour, Landing and Light Dues) Scheme (Northern Ireland) 2009(a) is revoked.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 30th August 2013



Ian Humes
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 30th August 2013



John McKibbin
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 of grant to the sea fishing industry for harbour dues and landing dues in respect of Northern Ireland fishing boats administered by the Department of Agriculture and Rural Development. Fishing boats of 27 metres and over in overall length and boats that fished for less than 25 days between 1 January 2013 and 31 July 2013 are not eligible for a grant.

Paragraph 3 provides for the Department to publish a notice inviting applications for a grant. Paragraph 4 specifies who may apply for a grant under the Scheme and the form and manner of making an application. Paragraph 5 provides for the Department to, approve or reject applications, make payments of grant, determine conditions to apply to a grant payment and advise applicants of its decision regarding payment.

Paragraph 6 requires the Department not to pay grant under the Scheme unless the requirements of Commission Regulation (EC) 875/2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the fisheries sector have been complied with.

Paragraph 7 provides for a review of a decision by the Department to reject an application, Paragraph 8 provides for the withholding and recovery of grant in certain circumstances and Paragraph 9 provides for the recovery of interest on grant that is recovered.

Paragraph 10 revokes the Sea Fish Industry (Harbour, Landing and Light Dues) Scheme (Northern Ireland) 2009.

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