SCOTTISH STATUTORY INSTRUMENTS

2003 No. 87

SEA FISHERIES

SEA FISH INDUSTRY

The Fishing Vessels (Decommissioning) (Scotland) Scheme 2003

Approved by the Scottish Parliament

Made - - - -	*13th February 2003*
Laid before the Scottish Parliament - - - -	*14th February 2003*
Coming into force - -	*17th February 2003*

The Scottish Ministers in exercise of the powers conferred by section 15(1) and (2) of the Fisheries Act 1981(**1**) and of all other powers enabling them in that behalf, hereby make the following Scheme:

Citation, commencement and extent

1.—(1) This Scheme may be cited as the Fishing Vessels (Decommissioning) (Scotland) Scheme 2003 and shall come into force on 17th February 2003.

Subject to paragraph (3), this Scheme extends to Scotland and the Scottish zone.

Insofar as it extends beyond Scotland and the Scottish zone, it does so only as a matter of Scots law.

Interpretation

2.—(1) In this Scheme–

"the Act" means the Fisheries Act 1981;

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

"the appropriate closing date" has the meaning assigned to it in paragraph 4(3);

"the appropriate decommissioning date" has the meaning assigned to it in paragraph 7(4);

"approval" means approval granted under paragraph 6 of this Scheme;

(**1**) 1981 c. 29. See section 18(1) of the Fisheries Act 1981 for a definition of "the Ministers" relevant for the purposes of this Scheme. Sections 15(2) and 18(1) were amended by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I.1999/1820) Schedule 2, paragraph 68(1), (2) and (3) and have effect in relation to Scotland as modified by section 18A inserted by that Order, Schedule 2, paragraph 68(4).

"authorised officer" means any officer authorised in writing by the Scottish Ministers for the purposes of this Scheme;

"the Commission" means the Commission of the European Community;

"the Community waters" means the sea falling under the sovereignty or within the jurisdiction of the member States;

"Council Regulation 1260/99" means Council Regulation (EC) No. 1260/1999 of 21st June 1999 laying down general provisions on the structural funds(**2**) as amended by Council Regulation (EC) No. 1447/2001 of 28th June 2001(**3**);

"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(**4**) as corrected by Corrigenda O.J. No. L 83, 4.4.00, p.35 and O.J. No. L 2, 5.1.01, p.41 and amended by Council Regulation (EC) No. 1451/2001 of 28th June 2001(**5**), Council Regulation (EC) No. 179/2002 of 28th January 2002(**6**) and Council Regulation (EC) No. 2369/2002 of 20th December 2002(**7**);

"Council Regulation 2370/02" means Council Regulation (EC) No. 2370/2002 of 20th December 2002 establishing an emergency Community measure for scrapping fishing vessels(**8**);

"day" means all or any part of a period of 24 consecutive hours beginning at midnight;

"decommissioning" has the meaning assigned to it in paragraph 8(4) and "decommission", "decommissioned" and "decommissioning grant" shall be construed accordingly;

"EC Treaty" means the Treaty establishing the European Community;

"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 decommissioning 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(**9**) and references to "registered" shall be construed accordingly;

"the relevant amount" means such amount as the Scottish Ministers may from time to time determine;

"relevant conditions" means any conditions relating to the approval of an application which have been notified to the applicant under paragraph 6(4)(b);

(**2**) O.J. No. L 161, 26.6.99, p.1.
(**3**) O.J. No. L 198, 21.7.01, p.1.
(**4**) O.J. No. L 337, 30.12.99, p.10.
(**5**) O.J. No. L 198, 21.7.01, p.9.
(**6**) O.J. No. L 31, 1.2.02, p.5.
(**7**) O.J. No. L 31, 12.02, p.49.
(**8**) O.J. No. L 358, 31.12.02, p.57.
(**9**) 1995 c. 21.

"Scotland" and "the Scottish zone" have the same meaning as in section 126(1) of the Scotland Act 1998(**10**).

(2) Any reference in this Scheme to a numbered paragraph shall be construed as a reference to the paragraph so numbered in this Scheme.

Decommissioning grants

3.—(1) 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, during the relevant period, spent at least the appropriate number of days at sea on fishing trips;

(d) which, in the case of a vessel over 12 metres in registered length, has, on the date of application, either a valid vessel certificate under the provisions of the Fishing Vessels (Safety Provisions) Rules 1975(**11**) or a letter confirming the completion of a satisfactory survey issued by the Secretary of State for Transport; and

(e) which is a Scottish based vessel,

may make an application to the Scottish Ministers for a grant in respect of that vessel.

(2) The Scottish Ministers shall publish a notice specifying the relevant period and the appropriate number of days in such manner as they consider appropriate.

(3) Notwithstanding sub-paragraph (1), the Scottish Ministers may reject an application in respect of a vessel which in their opinion is not fit for undertaking fishing trips.

(4) For the purposes of this paragraph–

"the appropriate number of days" means such number of days as the Scottish Ministers may from time to time determine;

"Category A licence" means a licence granted in respect of a vessel under section 4 of the Sea Fish (Conservation) Act 1967(**12**) which authorises fishing in all or any part of the Community waters for all or any of the species of sea fish for which the United Kingdom has a share of the Community total allowable catch(**13**);

"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 is issued;

"relevant licence" means a Category A licence, other than a Category A (Pelagic Purser), Category A (Pelagic Freezer) and Category A (Pelagic Trawler) licence;

"the relevant period" means such period as the Scottish Ministers may from time to time determine; and

"Scottish based vessel" means a vessel, the port of administration of which is, throughout the period from 1st January 2003 until the date of the application relating to the vessel, both dates inclusive, a port in Scotland.

(**10**) 1998 c. 46.

(**11**) S.I. 1975/330, amended by S.I. 1975/471, 1976/432, 1977/313, 498, 1978/1598, 1873, 1981/567, 1991/1342 (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).

(**12**) 1967 c. 84; section 4 was amended by the Fishery Limits Act 1976 (c. 86), section 3, the Fisheries Act 1981 (c. 29), section 20 and the Sea Fish (Conservation) Act 1992 (c. 60), section 1 and has effect in relation to Scotland as modified by section 22A inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999, Schedule 2, paragraph 43(13).

(**13**) See Council Regulation (EC) No. 2341/02 (O.J. No. L 356, 31.12.02, p.12) which for 2003 fixes the total allowable catches (TACs) for certain fish stock and groups of fish stock and specifies the allocation of the share of the TACs available to each member State.

Applications

4.—(1) The Scottish Ministers may from time to time invite applications and where they do so the following provisions of this paragraph shall apply.

(2) Without prejudice to the other provisions of this Scheme, an application must be lodged with the Scottish Ministers on or before the appropriate closing date in order to be considered for approval.

(3) In this Scheme "the appropriate closing date" means such date as the Scottish Ministers may from time to time determine.

(4) The Scottish Ministers shall publish in such manner as they consider appropriate a notice inviting applications and specifying the appropriate closing date and in that notice may intimate such other matters as they consider it is appropriate for them to have regard to, for the purposes of paragraphs 5(1)(e), (2) or (3).

(5) An application made 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 undertakings and shall be delivered to such address as the Scottish Ministers may specify in the notice or from time to time require.

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

(7) 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 paragraph 9(1)(a); and

(c) remove the vessel from the register.

(8) No more than one application in pursuance of a notice published under sub paragraph (4) may be made in respect of any vessel.

(9) Where an application in respect of a vessel has been approved by the Scottish Ministers under paragraph 6, no further application may be made in respect of that vessel.

Consideration of applications

5.—(1) As soon as reasonably practicable after the appropriate closing date the Scottish Ministers shall–

(a) identify those applications made in pursuance of the notice published under paragraph 4(4) which satisfy the foregoing provisions of this Scheme;

(b) reject any application contrary to Article 7 of Council Regulation 2792/99 as read with Council Regulation 2370/02;

(c) reject any application they consider to be unreasonable, unnecessary or unwarranted;

(d) reject any application to which sub-paragraph (6) applies; and

(e) subject to sub-paragraph (7), place all other applications in rank.

(2) The Scottish Ministers may additionally consider any application made in respect of a vessel which is less than 10 years old at the date of application but the amount of the bid shall be no more than that provided for a 10 year old vessel under Article 7 of Council Regulation 2792/99 as read with Council Regulation 2370/02, increased by 1.5% per year under 10 years.

(3) The Scottish Ministers may–

(a) select an application for approval according to the rank in which it has been placed under sub-paragraph (1), as read with sub-paragraph (2), provided that approval of that

application, together with any application higher in rank, will not result in the total of the bids relating to those applications exceeding the relevant amount; and

(b) where selection of an application would have that result, place the application on a reserve list in the same rank.

(4) In exercising their powers under sub-paragraphs (1)(e), (2) or (3) the Scottish Ministers shall have regard to–

(a) the benefit likely to be derived from, and value for money represented by, the bid;

(b) the extent to which approval of the application would contribute towards fulfilment of the obligations of the United Kingdom deriving from Annex XVII of Council Regulation (EC) 2341/2002(**14**); and

(c) such other matters as they have intimated in the notice inviting applications published pursuant to paragraph 4(4).

(5) The Scottish Ministers shall select for approval the highest ranked application on the reserve list established in accordance with sub-paragraph (3)(b) where–

(a) any amount remaining available after deduction from the relevant amount of the total of the bids for which approval has been granted; and

(b) any amount of grant unclaimed by the appropriate decommissioning date or thereafter withheld or recovered under this Scheme in relation to any approval,

together, are sufficient for the approval of that application without exceeding the relevant amount.

(6) This paragraph applies to any application which the Commission decide is incompatible with the common market having regard to Article 87 of the EC Treaty.

(7) The Scottish Ministers may reject an application where they have 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.

Approval of applications

6.—(1) The Scottish Ministers shall approve any application which they have selected for approval under paragraph 5(3)(a) or (5).

(2) Subject to the provisions of this Scheme, the Scottish Ministers may–

(a) determine conditions to which an approval given under this paragraph shall be subject; and

(b) at any time amend such conditions.

(3) Without prejudice to the generality of sub-paragraph (2), conditions may be determined which require the applicant to provide such undertakings as the Scottish Ministers may consider appropriate to the application or which require the applicant to procure such undertakings by third parties as the Scottish Ministers may consider appropriate to the application and as are capable of legal enforcement by the Scottish Ministers directly against the person who gave them.

(4) The Scottish Ministers shall in writing–

(a) notify applicants of the result of their applications; and

(b) notify applicants whose applications they have approved under this paragraph of any conditions which they have determined or amended under sub paragraph (2).

(5) The Scottish Ministers shall publish in such manner as they consider appropriate a notice identifying the vessels to which applications selected for approval relate.

(**14**) O.J. No. L 356, 31.12.02, p.12.