SCOTTISH STATUTORY INSTRUMENTS

2001 No. 332

SEA FISHERIES

SEA FISH INDUSTRY

The Fishing Vessels (Decommissioning) (Scotland) Scheme 2001

Approved by the Scottish Parliament

Made - - - -	*28th June 2001*
Laid before the Scottish Parliament - - - -	*28th June 2001*
Coming into force - -	*29th June 2001*

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 2001 and shall come into force on 29th June 2001.

(2) This Scheme extends to Scotland only.

Interpretation

2.—(1) In this Scheme, unless the context otherwise requires–

"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(3);

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

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

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

(**1**) 1981 c. 29; section 18(1) contains a definition of "the Ministers". Section 15(1) and (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).

"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 21 June 1999 laying down general provisions on the structural funds(**2**);

"Council Regulation 2792/99" means Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector(**3**);

"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) engaged in fishing for profit; or

(b) steaming between port and fishing ground and between one fishing ground and another,

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 to the Ministers 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(**4**) and references to "registered" shall be construed accordingly;

"the relevant amount" means such amount as the Ministers may, before exercising their functions under paragraph 5(2), determine is available in respect of the decision to invite applications under paragraph 4(1);

"relevant conditions" means any conditions relating to the approval of an application which have been notified to the applicant under paragraph 6(3)(b); and

"sea fish" has the same meaning as in Part II of the Act(**5**).

(2) Any reference in this Scheme to a numbered paragraph shall, unless the context otherwise requires, 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 over 10 metres in length;

(b) in respect of which there is a licence to which sub-paragraph (2) applies;

(c) which whilst registered has, during each of the calendar years 1999 and 2000, spent at least the appropriate number of days at sea on fishing trips;

(d) which is at least 10 years old at the date of the application;

(**2**) O.J. No. L 161, 26.06.99, p.1.
(**3**) O.J. No. L 337, 30.12.99, p.10.
(**4**) 1995 c. 21.
(**5**) See section 18(1) of the Act.

(e) which, in the case of a vessel over 12 metres in registered length had, on the date of application, either a valid vessel certificate under the provisions of the Fishing Vessels (Safety Provisions) Rules 1975(**6**) or a letter confirming the completion of a satisfactory survey issued by the Secretary of State for Transport, Local Government and the Regions; and

(f) which is a Scottish based vessel,

may make an application to the Ministers in respect of that vessel.

(2) This sub-paragraph applies to Category A licences excluding Category A (Pelagic Purser), Category A (Pelagic Freezer) and Category A (Pelagic Trawler) licences.

(3) The Ministers shall publish a notice specifying the appropriate number of days in such manner as they consider appropriate.

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

(5) For the purposes of this paragraph–

"the appropriate number of days" means such number of days as the 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(**7**) 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(**8**); and

"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; and

"Scottish based vessel" means a vessel the port of administration of which is, throughout the period from 1st January 2001 until the date of the approval relating to the vessel, both dates inclusive, a port in Scotland.

Applications

4.—(1) The 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 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 Ministers may from time to time determine.

(4) The Ministers shall publish in such manner as they consider appropriate a notice inviting applications and specifying the appropriate closing date.

(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 Ministers may specify in the notice or from time to time require.

(**6**) 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).

(**7**) 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).

(**8**) See Council Regulation (EC) No. 2848/00 (O.J. No. L 334, 15.12.00, p.1) (as corrected by Corrigenda, O.J. No. L 96. 6.4.01, p.30) which for 2001 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.

(6) An applicant shall furnish all such further information relating to the application as the 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 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 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 2792/1999;

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

(d) reject any application to which sub-paragraph (5) applies; and

(e) subject to sub-paragraph (6), place all other applications in rank.

(2) The Ministers may–

(a) select an application for approval according to the rank in which it has been placed under sub-paragraph (1) 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.

(3) In exercising their powers under sub-paragraphs (1)(e) or (2) the 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:

(i) Commission Decision 98/124/EC of 16 December 1997 approving the multiannual guidance programme for the fishing fleet of the United Kingdom for the period from 1 January 1997 to 31 December 2001(**9**);

(ii) Council Decision 97/413/EC relating to the objectives and detailed rules for restructuring the Community fisheries sector over the period 1st January 1997 to 31st December 2001 with a view to achieving a lasting balance between the resources and their exploitation(**10**); and

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

(**9**) O.J. No. L 39, 12.02.98, p.35.
(**10**) O.J. No. L 175, 3.7.97, p.27.

(4) The Ministers shall select for approval the highest ranked application on the reserve list established in accordance with sub-paragraph (2)(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.

(5) 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.

(6) The 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 Ministers shall approve any application which they have selected for approval under paragraph 5(2)(a) or (4).

(2) Subject to the provisions of this Scheme, the Ministers may at any time–

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

(b) amend such conditions.

(3) The 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).

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

(5) The Ministers shall revoke any approval, which the Commission decide is incompatible with the common market having regard to Article 87 of the EC Treaty and, where grant has already been paid in respect of such approval, recover the grant so paid.

(6) Subject to sub-paragraph (7), the Ministers may revoke an approval 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.

(7) Paragraph 16(3) shall apply to revocation under sub-paragraph (6) as it applies to revocation under paragraph 16.

Eligibility and claims for payment of grant

7.—(1) Subject to sub-paragraph (2) and paragraph 16, applicants whose applications have been approved under paragraph 6 shall be eligible for payment of grant in accordance with paragraph 11.

(2) No grant shall be paid to an applicant in respect of any vessel unless–

(a) a claim form in respect of that application, signed by the applicant, has been lodged with the Ministers on or before the appropriate decommissioning date; and

(b) the Ministers are satisfied that the requirements set out in paragraphs 8 and 9 have been complied with.

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