SCOTTISH STATUTORY INSTRUMENTS

2001 No. 140

SEA FISHERIES

SEA FISH INDUSTRY

FISH FARMING

The Fisheries and Aquaculture Structures (Grants) (Scotland) Regulations 2001

Made - - - -	*5th April 2001*
Laid before the Scottish Parliament - - - -	*5th April 2001*
Coming into force - -	*12th May 2001*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Fisheries and Aquaculture Structures (Grants) (Scotland) Regulations 2001 and shall come into force on 12th May 2001.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires–

"application" means an application for payment of financial assistance under regulation 3(1) and "applicant" shall be construed accordingly;

"approval" means an approval granted under regulation 5 and includes the terms and conditions subject to which such approval has been given and "approve" and "approved" shall be construed accordingly;

"approved operation" means a relevant operation which the Scottish Ministers have approved;

"authorised officer" means a person authorised in writing to be an officer–

(**1**) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The function conferred upon a Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(a) for the purposes of these Regulations, by the Scottish Ministers; or

(b) for the purposes of exercising any functions which the Authority is required under regulation 11 to exercise, by the Authority,

and includes any duly appointed official of the Commission who accompanies such person;

"the Authority" means the Sea Fish Industry Authority constituted under section 1 of the Fisheries Act 1981(**2**);

"beneficiaries" means applicants whose applications have been approved and a "beneficiary" shall be construed accordingly;

"the Commission" means the Commission of the European Communities;

"Community aid" means aid towards eligible expenditure available from the Financial Instrument for Fisheries Guidance and payable in accordance with the Community structural assistance legislation;

"Community fishing vessel" has the meaning given to it in article 3 of Council Regulation (EEC) No. 3760/92 establishing a Community system for fisheries and aquaculture(**3**);

"the Community structural assistance legislation" means–

(a) Council Regulation 1260/1999;

(b) Council Regulation (EC) No. 1263/1999 on the Financial Instrument for Fisheries Guidance(**4**);

(c) Council Regulation 2792/1999;

(d) Commission Decision (EC) No. 1999/501 of 1st July 1999 fixing an indicative allocation by Member States of the commitment appropriations for Objective 1 of the Structural Funds for the period 2000 to 2006(**5**);

(e) Commission Decision (EC) No. 1999/502 of 1st July 1999 drawing up the list of regions covered by Objective 1 of the Structural Funds for the period 2000 to 2006(**6**);

(f) Commission Regulation (EC) No. 1685/2000 of 28th July 2000 laying down detailed rules for the implementation of Council Regulation (EC) 1260/1999 as regards eligibility of expenditure of operations co financed by the structural funds(**7**);

(g) Commission Decision No. C(2000) 2348 of 8th August 2000 approving the Single Programming Document for Community structural assistance under Objective 1 in the region of Highlands and Islands in the United Kingdom;

(h) Commission Decision No. C(2000) 4298 of 27th December 2000 approving the Single Programming Document for Community structural assistance in the fisheries sector in the United Kingdom in areas outside Objective 1;

(i) Commission Regulation (EC) No. 438/2001 of 2nd March 2001 laying down detailed rules for the implementation of Council Regulation (EC) 1260/1999 regarding the management and control systems for assistance granted under the Structural Funds and regarding the form and content of the accounting information that the Member States must hold at the disposal of the Commission for the purposes of checking Structural Fund accounts (**8**);and

(**2**) 1981 c. 29
(**3**) O.J. No. L 389, 31.12.92. p.1.
(**4**) O.J. No. L 161, 26.6.1999, p.54.
(**5**) O.J. No. L 194, 27.7.1999, p.49.
(**6**) O.J. No. L 194, 27.7.1999, p.53.
(**7**) O.J. No. L 193, 29.7.2000, p.39.
(**8**) O.J. No. L 63, 3.3.2001, p.21.

(j) Commission Regulation (EC) No. 448/2001 of 2nd March 2001 laying down detailed rules for the application of Council Regulation (EC) 1260/1999 regarding the procedure for making financial corrections of assistance granted under the Structural Funds (**9**).

"Council Regulation 1260/1999" means Council Regulation (EC) No. 1260/1999 of 21st June 1999 laying down general provisions on the structural funds(**10**);

"Council Regulation 2792/1999" means Council Regulation (EEC) No. 2792/1999 of 17th December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector(**11**);

"eligible expenditure" means expenditure which is incurred or to be incurred in connection with an approved operation and which the Scottish Ministers have approved for the purpose of receiving financial assistance under regulation 5;

"financial assistance" means any amount by way of grant or Community aid;

"grant" means a grant towards eligible expenditure payable under these Regulations in addition to any Community aid;

"LIBOR", in relation to any particular day of the month, means the rate of interest per centum notified to the Scottish Ministers by the Bank of England on the first working day of that month, rounded if necessary to two decimal places;

"relevant conditions" means any conditions relating to the approval of an application or the making of a payment of any financial assistance which have been notified to a beneficiary under regulations 5(3)(b) or 7;

"relevant documents" means any invoice, account, drawing, plan, technical specification or other document relating to the approved operation;

"relevant equipment" means any plant, machinery or other equipment for which financial assistance has been claimed or paid;

"relevant operation" means an investment, project or action which is eligible for Community aid; and

"works" means any construction, harbour or other building works, whether completed or not, for which financial assistance has been claimed or paid.

(2) Expressions used in these Regulations which appear or are referred to in the Community structural assistance legislation and which are not defined in this regulation have, insofar as the context admits, the same meaning in these Regulations as in that legislation.

(3) Any reference in these Regulations to a numbered regulation shall, unless the context otherwise requires, be construed as a reference to the regulation so numbered in these Regulations.

(4) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(**12**), which has been recorded and is consequently capable of being reproduced.

Financial Assistance

3.—(1) Subject to the provisions of the Community structural assistance legislation and to these Regulations, the Scottish Ministers may pay Community aid and, if they so determine, a grant to any person–

(**9**) O.J. No. L 64, 6.3.2001, p.13.
(**10**) O.J. No. L 161, 26.6.1999, p.1.
(**11**) O.J. No. L 337, 30.12.1999, p.10.
(**12**) 2000 c. 7.

(a) who has applied, in accordance with regulation 4, for the purpose of obtaining such financial assistance, for approval under regulation 5–

(i) of a relevant operation; and

(ii) of expenditure incurred or to be incurred in connection with that operation; and

(b) whose application they have so approved.

(2) In determining under paragraph (1)–

(a) whether to pay a grant in addition to Community aid; and

(b) the amount of any such grant,

the Scottish Ministers shall have regard to the requirements of the Community structural assistance legislation and, in particular the limits on total State financial participation (national, regional and other) as set out in Annex IV to Council Regulation 2792/1999.

Applications

4.—(1) Applications shall be made in such form and manner and at such time, shall include such information and shall be delivered to such address as the Scottish Ministers may from time to time require.

(2) Applicants shall furnish all such further relevant information and documents relating to the application as the Scottish Ministers may require.

Determination of applications

5.—(1) Subject to the Community structural assistance legislation, the Scottish Ministers may–

(a) refuse to approve an application for financial assistance; or

(b) approve it in whole or in part and may do so either unconditionally or subject to such conditions as they may determine.

(2) The Scottish Ministers may at any time vary an approval by amending any conditions to which it has been made subject or by adding conditions.

(3) The Scottish Ministers shall–

(a) notify applicants in writing of their decision in respect of that application;

(b) notify beneficiaries of any conditions to which their approval has been made subject or which have been varied pursuant to this regulation.

(4) Where the Scottish Ministers notify an applicant that they have refused to approve an application or a beneficiary that they have granted an approval subject to conditions or have varied the terms of an existing approval, they shall give such applicant or beneficiary–

(a) written reasons for their decision; and

(b) an opportunity to make representations in relation to that decision within such time as the Scottish Ministers consider reasonable and have notified to the applicant or beneficiary.

(5) The Scottish Ministers shall consider any representations received pursuant to paragraph (4) and shall make a decision which shall either confirm their decision under paragraph (4) or substitute a different decision and they shall notify the applicant or beneficiary in writing accordingly.

Eligibility and claims for payment of financial assistance

6.—(1) Subject to paragraph (2) and to regulation 15, a beneficiary shall be eligible for payment of financial assistance.

(2) No financial assistance shall be paid in respect of an approved application unless the Scottish Ministers have been supplied with–

(a) satisfactory evidence that the amount of expenditure for which financial assistance is claimed has been incurred by the beneficiary, including details of any discount received by the beneficiary; and

(b) satisfactory evidence that the approved operation to which the application relates has been properly executed.

Method of payment of financial assistance

7. Payments by way of financial assistance may be made–

(a) at such time, or by such instalments at such intervals or times; and

(b) subject to such conditions,

as the Scottish Ministers may reasonably determine and any conditions in relation to any payment shall be notified to the beneficiary in writing.

Undertakings

8. A beneficiary shall give to the Scottish Ministers such undertakings as the Scottish Ministers consider appropriate for the purposes of these Regulations.

Information

9.—(1) A beneficiary shall supply the Scottish Ministers with such information in relation to an approved operation as the Scottish Ministers may from time to time reasonably require.

(2) Where the Scottish Ministers require information under paragraph (1), the beneficiary shall supply them with that information within such period as the Scottish Ministers may reasonably determine.

Records

10.—(1) A beneficiary shall–

(a) keep a record of all expenditure incurred in connection with an approved operation; and

(b) during the carrying out of and after completion of the approved operation for the duration of the control period, retain such record together with any relevant documents, except to the extent that an authorised officer has removed and retained any of the same under regulation 13(6).

(2) Subject to paragraph (3), "the control period" is–

(a) the period of six years commencing with the last payment of financial assistance in respect of the approved operation; or

(b) such further period beyond the end of that six year period as has been notified in writing by the Scottish Ministers to the beneficiary at any time before the expiry of that six year period.

(3) In determining in any case the date on which the control period expires, no account shall be taken of any time between the commencement and final determination of any proceedings brought pursuant to regulation 14 for the recovery of any financial assistance paid in respect of that approved operation.