STATUTORY RULES OF NORTHERN IRELAND

2004 No. 255

FISHERIES

Foyle Area (Control of Drift and Draft Net Fishing) Regulations 2004

Made - - - -	*19th May 2004*
Coming into operation	*1st July 2004*

The Foyle, Carlingford and Irish Lights Commission, in exercise of its powers under section 13(1) (amended by section 34(3) of the British-Irish Agreement Act 1999(**1**) and section 5(1) of the British-Irish Agreement (Amendment) Act 2002) and 14 of the Foyle Fisheries Act 1952 which stand transferred to it under section 34(1) of the British-Irish Agreement Act 1999, and in exercise of the powers conferred by section 13(1) and 14 of the Foyle Fisheries Act (Northern Ireland) 1952(**2**) and now vested in it(**3**) and of every other power enabling it in that behalf, with the approval of the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland, under the agreement made between those Governments on 19th November 2002(**4**) and section 5(1) of the British-Irish Agreement (Amendment) Act 2002, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Foyle Area (Control of Drift and Draft Net Fishing) Regulations 2004 and shall come into operation on 1st July 2004.

Interpretation

2. In these Regulations –

"applicant" means an individual who makes a licence application;

"crew member" means an individual whose name and address are included in an application for a licence in pursuance of regulation 4(1)(a) of the 2001 Regulations or are supplied to the Commission pursuant to regulation 4(7) of those Regulations;

"datum years" means the 3 calendar years immediately preceding the calendar year in respect of which the licence application is made;

(**1**) Legislation of the Republic of Ireland
(**2**) 1952 c. 5 (N.I) as amended by S.I.1999/859
(**3**) By S.I. 1999/859 Article 21(1)
(**4**) Cm 5708

"draft net fishing" means fishing lawfully using a draft net in the Foyle Area under the authority of a licence issued under the 2001 Regulations;

"drift net fishing" means fishing lawfully using a drift net in the Foyle Area under the authority of a licence issued under the 2001 Regulations;

"first datum year" means the calendar year immediately preceding the calendar year in respect of which the licence application is made;

"Fisheries Acts" means the Foyle Fisheries Acts 1952 to 1983(**5**), the Foyle Fisheries Act (Northern Ireland) 1952, the Fisheries Acts 1959-1991 and the Fisheries Act (Northern Ireland) 1966(**6**);

"licence" means a licence for drift or draft net fishing;

"licence application" means an application to the Commission for a licence;

"season" means the period or cumulation of periods in any calendar year when it is lawful to be engaged in draft net fishing or drift net fishing in the waters described individually in column 1 of the Schedule;

"second datum year" means the calendar year immediately preceding the first datum year;

"senior helper" means an individual nominated by a licensee in pursuance of regulation 4(1)(c) of the 2001 Regulations;

"single parent" means the parent in a household which does not include that parent's spouse;

"the 2001 Regulations" means the Foyle and Carlingford Area (Licensing of Fishing Engines) Regulations 2001(**7**); and

"third datum year" means the calendar year immediately preceding the second datum year.

Restriction on the number of drift net licences and draft net licences

3.—(1) Subject to paragraphs (2) and (3), the number of licences which the Commission may issue in any year under the 2001 Regulations in respect of any of the waters as described in column 1 of the Schedule shall not exceed the number specified in column 2 of the Schedule opposite the related description of the waters in column 1.

(2) Where in any year an applicant who held a licence in the previous year is declared to be disqualified from holding a licence in accordance with section 75 of the Foyle Fisheries Act 1952 or section 74 of the Foyle Fisheries Act (Northern Ireland) 1952 and the applicant is qualified and otherwise would be entitled to a licence in accordance with these Regulations then in the event that –

(a) the period of disqualification will not expire before the end of the season the Commission shall correspondingly reduce the number of licences granted in that year in the appropriate waters specified in column 2 of the Schedule; or

(b) the period of disqualification will expire before the end of the season the Commission shall retain the number of licences granted in that year in the appropriate waters specified in column 2 of the Schedule to enable it to grant him a licence for the remainder of the season.

(3) Where a licensee who is a single parent dies and at the date of death, has a child under the age of 18 years who could apply for and use a licence when he attains the age of 18 years and (but for the fact that the deceased licensee was a single parent) could become eligible to qualify under regulation 4(6) for the allocation of a licence the Commission shall, during the period before the child attains the age of 18 years, correspondingly reduce the number of licences in the appropriate waters specified in column 2 of the Schedule provided the deceased licensee had held a licence in each of the 3 years prior to his death and did not permit any fishing to take place in his absence

(**5**) Legislation of the Republic of Ireland
(**6**) 1966 c. 17 (N.I.)
(**7**) S.R. 2001 No. 397 as amended by S.R. 2003 No. 114 and S.R. 2003 No. 524

during any or any part of a season or seasons in these years under the authority of his licence except when he obtained the authorisation of the Commission to have his senior helper act in his absence as provided in regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981(**8**).

Manner of allocation of drift net licence and draft net licence

4.—(1) Where the number of licence applications in any year in respect of any of the waters described in column 1 of the Schedule exceeds the number specified in column 2 of the Schedule opposite the related description of the waters in column 1 the licences shall be allocated to applicants who are qualified, in accordance with the subsequent provisions of this regulation and regulations 5 and 6.

(2) The Commission shall firstly allocate licences to each applicant who –

(a) held a licence in each of the datum years to fish in the waters in respect of which the licence application is made; and

(b) did not permit any fishing to take place in his absence in any of these years under the authority of his licence other than for a temporary period not exceeding two days in each of the datum years and where fishing occurred in his absence authorisation permitting his senior helper to act in his absence had been obtained from the Commission as provided for in regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981.

(3) If, having allocated licences to applicants who are qualified in accordance with paragraph (2), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who meets the requirement of paragraph (2)(a) but does not meet the requirements of paragraph (2)(b) and whose failure to meet the requirements of paragraph (2)(b) was due to –

(a) the inability of the applicant to be present during the fishing operations in any or any part of a season or seasons in the datum years due to temporary illness or injury or other reasons (except chronic illness or infirmity or old age) outside the control of the applicant and he obtained the authorisation of the Commission to have his senior helper act in his absence as provided for in regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981; or

(b) the applicant being the spouse of a deceased licensee and who –

(i) has held a licence each year since the date of the licensee's death;

(ii) has a child of the deceased licensee under the age of 18 years who could apply for and use a licence when he attains the age of 18 years; and

(iii) before permitting any fishing to take place in her absence under the authority of her licence obtained the authorisation of the Commission to have her senior helper act in her absence, as provided for in regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981.

(4) If, having allocated licences to applicants qualified in accordance with paragraph (3), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who is a child, having attained the age of 18 years, of a deceased licensee who died since the beginning of the first datum year or a licensee who has indicated to the Commission that he has retired from drift net fishing or draft net fishing and has given the Commission a written commitment that he will not be applying for a licence in any future year and where –

(a) the applicant has been the senior helper of the deceased or retired licensee in each datum year since he attained the age of 18 years;

(**8**) S.R. 1981 No. 169; relevant amending statutory rule is S.R. 1985 No. 342

(b) the deceased or retired licensee did not permit any fishing to take place in his absence under the authority of his licence during any of the datum years except when he obtained the authorisation of the Commission to have his senior helper act in his absence for a season or any part of a season, as provided for in regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981, due to temporary illness or injury or other reasons (except chronic illness or infirmity or old age) outside the control of the deceased or retired licensee; and

(c) the deceased or retired licensee held a licence in each of the datum years.

(5) If, having allocated licences to applicants in accordance with paragraph (4), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who is the spouse of a licensee who died since the beginning of the first datum year who –

(a) did not permit any fishing to take place in his absence under the authority of his licence during any of the datum years except when he obtained the authorisation of the Commission to have his senior helper act in his absence for a season or any part of a season as provided for in regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981, due to temporary illness or injury or other reasons (except chronic illness or infirmity or old age) outside the control of the deceased licensee; and

(b) held a licence in each of the datum years;

and the applicant –

(c) undertakes to the Commission that she will use the licence and not apply for the authorisation of the Commission to have her senior helper act in her absence for the season or any part of the season as provided for in regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981 except when she is unable to be present during all or any of the fishing operations during the season due to temporary illness or injury or other reasons (except chronic illness or infirmity or old age) outside her control; or

(d) has a child of the deceased licensee under the age of 18 years who could apply for and use a licence when he attains the age of 18 years.

(6) If, having allocated licences to applicants who are qualified in accordance with paragraph (5), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who is a child, having attained the age of 18 years, of a deceased licensee where the deceased licensee's spouse –

(a) has held a licence each year since the date of the licensee's death;

(b) during the datum years has not contravened regulation 14A of the Foyle Area (Control of Netting) Regulations 1981; and

(c) has not applied for a licence in the current year and has given the Commission a written commitment that she will not be applying for a licence in any future year;

and where either the deceased licensee or his spouse held a licence in each of the datum years and the applicant is the only child of the deceased licensee who makes an application.

(7) If, having allocated licences to applicants who are qualified in accordance with paragraph (6), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who is a child, having attained the age of 18 years, of a deceased licensee who at the time of his death was a single parent and where the applicant is the only child of the deceased licensee who makes an application provided the deceased licensee had held a licence in each of the 3 years prior to his death and did not permit any fishing to take place in his absence during any or any part of a season or seasons in these years under the authority of his licence except when he obtained the authorisation of the Commission to have his senior helper act in his absence as provided for in regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981.

(8) If, having allocated licences to applicants who are qualified in accordance with paragraph (7) any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who –

(a) (i) held a licence in 2 of the 3 datum years to fish in the waters in respect of which the licence application is made; and

(ii) did not permit any fishing to take place in his absence in either of those years under the authority of his licence other than a temporary period not exceeding two days in each of those years and where fishing occurred in his absence authorisation permitting his senior helper to act in his absence had been obtained from the Commission as provided for in regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981; or

(b) held a licence in each of the datum years to fish in the waters in respect of which the licence application is made but in one of the datum years either –

(i) obtained the authorisation of the Commission to have his senior helper act in his absence for the season or any part of the season, as provided for in regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981, and the inability of the applicant to be present was not due to temporary illness or injury or other reasons (except chronic illness or infirmity or old age) outside the control of the applicant; or

(ii) otherwise permitted fishing to take place in his absence under the authority of his licence in contravention of regulation 14A of the Foyle Area (Control of Netting) Regulations 1981.

(9) If, having allocated licences to applicants who are qualified in accordance with paragraph (8) any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who meets the requirement of paragraph (8)(a)(i) but does not meet the requirements of paragraph (8)(a)(ii) and whose failure to meet the requirements of paragraph (8)(a)(ii) was due to –

(a) the inability of the applicant to be present during all the fishing operations in any or any part of the season or seasons in either or both of the datum years due to temporary illness or injury or other reasons (except chronic illness or infirmity or old age) outside the control of the applicant and he obtained the authorisation of the Commission to have his senior helper act in his absence, as provided for in regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981; or

(b) the applicant being the spouse of a deceased licensee and who –

(i) has held a licence each year since the date of the licensee's death;

(ii) has a child of the deceased licensee under the age of 18 years who could apply for and use a licence when he attains the age of 18 years; and

(iii) before permitting any fishing to take place in her absence under the authority of her licence obtained the authority of the Commission to have her nominated helper act in her absence, as provided for in regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981.

(10) If, having allocated licences to applicants who are qualified in accordance with paragraph (9), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who –

(a) (i) held a licence in 1 of the 3 datum years to fish in the waters in respect of which the licence application is made; and

(ii) did not permit any fishing to take place in his absence in that year under the authority of his licence other than for a temporary period not exceeding two days and where fishing occurred in his absence authorisation permitting his senior helper