STATUTORY RULES OF NORTHERN IRELAND

2002 No. 6

FISHERIES

Fisheries and Aquaculture Structures (Grants) Regulations (Northern Ireland) 2002

Made - - - -	*10th January 2002*
Coming into operation	*25th February 2002*

The Department of Agriculture and Rural Development and the Department of Culture, Arts and Leisure being Departments designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to the common agricultural policy of the European Community, acting jointly in exercise of the powers conferred on them by the said section 2(2) and of every other power enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These regulations may be cited as the Fisheries and Aquaculture Structures (Grants) Regulations (Northern Ireland) 2002 and shall come into operation on 25th February 2002.

Interpretation

2.—(1) In these Regulations—

"application" means an application as described in regulation 3(1);

"approval" means an approval granted under regulation 5 and includes the terms and conditions subject to which such approval has been given;

"approved operation" means a relevant operation which the Department has approved under regulation 5;

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

(a) for the purpose of these Regulations, by the Department, or

(b) for the purposes of exercising any functions required by the Department of Agriculture and Rural Development under regulation 11 to be exercised by it, by the Authority, and includes any duly appointed official of the Commission who accompanies such an authorised officer;

"the Authority" means the Sea Fish Industry Authority;

(**1**) S.I.2000/2812
(**2**) 1972 c. 68

"beneficiaries" means applicants whose applications have been approved;

"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 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 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 State 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 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 (2001) 637 of 22nd March 2001 approving the operational programme forming part of the Community Support Framework for Community structural assistance in the region of Northern Ireland qualifying for transitional support under Objective 1 in the United Kingdom;

(h) Commission Regulation EC 448/2001 of 2nd March 2001 laying down detailed rules for the application of Council Regulation (EC) No. 1260/1999 regarding the procedure for making financial corrections of assistance granted under the Structural Funds(**8**);

(i) Commission Regulation (EC) No. 438/2001 laying down detailed rules for the application of Council Regulation (EC) No. 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 Funds accounts(**9**);

"Council Regulation 1260/1999" means Council Regulation (EC) No. 1260/1999 laying down general provisions on the Structural Funds(**10**);

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

"the Department" means—

(a) in the case of a relevant operation which is an investment, project or action in respect of aquaculture in inland waters, the Department of Culture, Arts and Leisure;

(**3**) O.J. No. L389, 31.12.92, p. 1
(**4**) O.J. No. L161, 26.6.1999, p. 54
(**5**) O.J. No. L194, 27.7.1999, p. 49
(**6**) O.J. No. L194, 27.7.2000, p. 53
(**7**) O.J. No. L193, 29.7.2000, p. 39
(**8**) O.J. No. L64, 6.3.2001, p. 13
(**9**) O.J. No. L63, 3.3.2001, p. 21
(**10**) O.J. No. L161, 26.6.1999, p. 1
(**11**) O.J. No. L337, 30.12.1999, p. 10

(b) in the case of all other relevant operations, the Department of Agriculture and Rural Development;

"eligible expenditure" means expenditure which is incurred or to be incurred in connection with an approved operation and which the Department has 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 Department by the Bank of England on the first working day of that month, rounded if necessary to two decimal points;

"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 regulation 5(3)(*b*) or 7;

"relevant documents" means any invoice, amount, 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;

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

(2) Other expressions used in these Regulations have, insofar as the context admits, the same meanings as in the Community legislation.

(3) Any reference in these Regulations to the doing of anything which under any regulation is required to be or may be done or evidenced in writing or otherwise using a document, notice or instrument shall, be regarded as including by electronic means where arrangements have been made by the Department to enable or provide for electronic means to be used.

(4) The Interpretation Act (Northern Ireland) 1954(**12**), except section 20(2) and (3), shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Financial Assistance

3.—(1) Subject to the provisions of the Community legislation and these Regulations the Department may pay Community aid and, if it so determines, a grant to any person—

(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 it has 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 it may make,

(**12**) 1954 c. 33 (N.I.)

the Department shall have regard to the requirements of the Community 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 at such address as the Department may from time to time require.

(2) Without prejudice to paragraph (1) the Department may from time to time specify categories of relevant operation in respect of which applications may be made.

(3) Applicants shall furnish all such further information and documents relating to the application as the Department may require.

Approval of applications

5.—(1) Subject to the Community legislation the Department may—

(a) refuse to approve an application for the purpose of the receipt of financial assistance; or

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

(2) The Department may, from time to time vary an approval by amending any conditions to which it has been made subject or by adding conditions.

(3) The Department shall—

(a) notify applicants in writing of the result of their applications;

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

(4) Where the Department notifies an applicant that it has refused to approve an application or a beneficiary that it has granted an approval subject to conditions, or has varied the terms of an existing approval, it shall give such applicant or beneficiary—

(a) written reasons for its decision; and

(b) an opportunity to make representations in relation thereto within such time as the Department considers reasonable and has notified to the applicant or beneficiary.

(5) Where the Department has received any representations in accordance with paragraph (4) it shall consider them and may confirm its decision or substitute a different decision and the decision so confirmed or substituted shall be final and it shall notify the applicant or beneficiary in writing accordingly.

(6) If no representations, pursuant to paragraph (4), are received within the time notified to the applicant or beneficiary under that paragraph, the original decision as notified under paragraph (3) shall remain in effect.

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) Financial assistance shall not be paid in respect of an approved application unless the Department has been supplied with—

(a) satisfactory evidence that the amount of expenditure for which financial assistance is claimed has been incurred including details of any discount received by the applicant; 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 installments at such intervals or times; and

(b) subject to such conditions,

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

Undertakings

8. A beneficiary may be required by the Department to give such undertakings as it considers appropriate to the case.

Information

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

(2) Where the Department requires such information, the beneficiary shall supply the Department with it within such period as the Department 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 the approved operation, on completion of the approved operation and thereafter 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(5)

(2) For the purposes of this regulation the "control period" means in relation to an approved operation—

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

(b) that six year period plus such further period as has been notified by the Department to the recipient of financial assistance at any time before the expiry of that initial six year period,

but in determining in either case the date on which the control period shall come to an end no account shall be taken of any time between the commencement and final determination or settlement of any proceedings brought under regulation 15 for the recovery of any financial assistance paid in respect of that approved operation.

Exercise of functions by the Sea Fish Industry Authority

11.—(1) Without prejudice to section 2(5) of the Fisheries Act 1981(**13**) or to its ability to exercise any functions under these Regulations itself, the Department of Agriculture and Rural Development may, from time to time, require the Authority to exercise any of that Department's functions under, these Regulations either generally or in relation to financial assistance in connection with particular

(**13**) 1981 c. 29