
STATUTORY RULES OF NORTHERN IRELAND

2004 No. 255

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

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;
- (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 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 2 of the 3 datum years to fish in the waters in respect of which the licence application is made but in one of those 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; or
 - (c) 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 two of the datum years either –
 - (i) obtained the authorisation of the Commission to have his senior helper act in his absence for the seasons or any part or parts of the seasons, 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.
- (11) If, having allocated licences to applicants who are qualified in accordance with paragraph (10), 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 (10)(a)(i) but does not meet the requirements of paragraph (10)(a)(ii) and whose failure to meet the requirements of paragraph (10)(a)(ii) was due to –
- (a) the inability of the applicant to be present during all the fishing operations in the season or any part of the season in the datum year 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 by regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981.

(12) (a) If, having allocated licences to applicants who are qualified in accordance with paragraph (11), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who as a senior helper or crew member was engaged in drift net fishing or draft net fishing in at least one of the datum years.

(b) When allocating licences in accordance with this paragraph the Commission shall decide on the priority of allocation having regard to –

(i) the number of datum years in which the applicant has been a senior helper or crew member;

(ii) the number of years subsequent to 1985 in which the applicant has been a senior helper or crew member for a previous licence holder and the said licence holder has held a licence during the datum years, died since the beginning of the first datum year or has not applied for a licence in the current year and has given the Commission a written commitment that he will not be applying for a licence in any future year, does not have a child who could qualify for a licence in accordance with paragraph (4), (6) or (7), and does not have a spouse who could qualify for a licence in accordance with paragraph (5);

(iii) the number of years since the applicant first made an application for a licence but for the purposes of this paragraph all such applications made earlier than 1980 shall be considered as applications first made in 1980;

(iv) the extent to which the applicant has already incurred expenditure on a boat, nets and other equipment which can be lawfully used for drift net fishing or draft net fishing; and

(v) any conviction under the Fisheries Acts in respect of an offence committed since the beginning of the first datum year.

(c) The applicant shall provide the Commission with such documentary evidence as to the date when he first made application for a licence as may be required by the Commission.

(d) The applicant shall provide the Commission with such documentary evidence as to his expenditure on a boat, nets or equipment required for drift net fishing or draft net fishing as may be required by the Commission.

(13) If, having allocated licences to applicants who are qualified in accordance with paragraph (12), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to any other applicants who are not qualified under the preceding provisions of this regulation and for the purposes of regulation 6 all such applicants shall have equal entitlement to be granted a licence.