

2003 No. 116

SEA FISHERIES

SEA FISH INDUSTRY

**The Sea Fishing (Transitional Support) (Scotland) (No. 2)
Scheme 2003**

Approved by the Scottish Parliament

Made 26th February 2003

Laid before the Scottish Parliament 26th February 2003

Coming into force 27th February 2003

ARRANGEMENT OF THE SCHEME

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The Scottish Ministers, in exercise of the powers conferred by section 15(1) and (2) of the Fisheries Act 1981(a) 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 Sea Fishing (Transitional Support) (Scotland) (No. 2) Scheme 2003 and shall come into force on 27th February 2003.

(2) Subject to sub-paragraph (3), this Scheme extends to Scotland and the Scottish zone.

(3) Insofar as it extends beyond Scotland and the Scottish zone, it does so only as a matter of Scots law.

Interpretation

2. In this Scheme—

“application” means an application for grant under this Scheme and “applicant” shall be construed accordingly;

“the appropriate closing date” means such date as the Scottish Ministers may from time to time determine;

“approval” means approval granted under paragraph 6 of this Scheme;

“authorised officer” means any officer authorised in writing by the Scottish Ministers for the purposes of this Scheme;

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

“registered vessel” means a vessel which is registered in the register established under section 8 of the Merchant Shipping Act 1995(b);

“relevant conditions” means any conditions relating to the approval of an application which have been notified to the applicant under paragraph 6(4)(b);

“Scotland” and “the Scottish zone” have the same meaning as in section 126(1) of the Scotland Act 1998(c);

“Scottish based vessel” means a vessel the port of administration of which is, throughout the period from 1st January 2003 until the date of the application relating to the vessel, both dates inclusive, a port in Scotland.

Transitional support grant

3. Any person who owns a registered vessel which—

(a) is a Scottish based vessel;

(b) is at least 10 metres overall in length;

(c) 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(d) or a letter confirming the completion of a satisfactory survey issued by the Secretary of State for Transport;

(d) meets such other eligibility criteria as the Scottish Ministers may determine and, if so determined, shall publish in the notice referred to in paragraph 4(3)(b),

may make an application to the Scottish Ministers for a grant in respect of that vessel.

(a) 1981 c.29. See section 18(1) for a definition of “the Ministers” relevant for the purposes of this Scheme. Sections 15(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 has effect in relation to Scotland as modified by section 18A inserted by that Order, Schedule 2, paragraph 68(4).

(b) 1995 c.21.

(c) 1998 c.46.

(d) S.I. 1975/330, amended by S.I. 1975/471, 1976/432, 1977/313 and 498, 1978/1598 and 1873, 1981/567, 1991/1342 (revoked by 1998/3243), 1998/928 and 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).

Applications

4.—(1) The Scottish 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 Scottish Ministers on or before the appropriate closing date in order to be considered for approval.

(3) The Scottish Ministers shall publish in such manner as they consider appropriate a notice—

- (a) inviting applications;
- (b) specifying other eligibility criteria for the purposes of paragraph 3(d); and
- (c) specifying the appropriate closing date.

(4) An application made in pursuance of a notice published under sub-paragraph (3) 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 Scottish Ministers may specify in the notice or from time to time require.

(5) An applicant shall furnish all such further information relating to the application as the Scottish Ministers may specify in the notice or from time to time require.

Consideration of applications

5.—(1) As soon as reasonably practicable after the appropriate closing date the Scottish Ministers shall—

- (a) reject any application they consider to be unreasonable, unnecessary or unwarranted;
 - (b) identify and select for approval those applications made in pursuance of the notice published under paragraph 4(3) which satisfy the foregoing provisions of this Scheme.
- (2) Before rejecting an application under sub-paragraph (1)(a) the Scottish Ministers shall—
- (a) give the applicant a written explanation of the reasons for the step proposed to be taken;
 - (b) afford the applicant the opportunity of making written representations within such time as the Scottish Ministers consider reasonable; and
 - (c) consider any such representations.

Approval of applications

6.—(1) The Scottish Ministers shall approve any application which they have selected for approval under paragraph 5(1)(b).

- (2) Subject to the provisions of this Scheme, the Scottish Ministers may—
- (a) determine conditions to which an approval given under this paragraph shall be subject; and
 - (b) at any time amend such conditions.

(3) Without prejudice to the generality of sub-paragraph (2), conditions may be determined which require the applicant to provide such undertakings as the Scottish Ministers may consider appropriate to the application.

- (4) The Scottish 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).

Rate of payment

7.—(1) The Scottish Ministers shall pay such grants at such rates and for such periods as they may from time to time determine, to applicants whose applications they have approved under paragraph 6.

- (2) In determining such grants, the Scottish Ministers shall have regard to—
- (a) the historic activity of the vessel in respect of which the application was made;
 - (b) the capacity of that vessel; and

- (c) the application of Annex XVII of Council Regulation (EC) No 2341/2002 in relation to that vessel^(a).

(3) In this paragraph—

“capacity” means the capacity of the vessel measured in gross tonnage, vessel capacity units, or its engine power (expressed in kilowatts);

“fishing trips” means time spent by a vessel—

- (a) steaming between port and fishing ground and between one fishing ground and another;
- (b) engaged in fishing for profit,

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;

“historic activity” means any or all of the following:—

- (a) the time spent at sea by a vessel on fishing trips or such part of that time as the Scottish Ministers may from time to time determine;
- (b) the gear deployed by a vessel on fishing trips during such period as the Scottish Ministers may from time to time determine;
- (c) the recorded landings of sea fish in respect of a vessel during such period as the Scottish Ministers may from time to time determine;

“recorded landings” means the information recorded, in relation to the quantities of species caught, in landing declarations submitted in compliance with Article 8.1 of Regulation 2847/93^(b); and

“vessel capacity units” means—

$$(L \times B) + (P \times 0.45)$$

where—

L is the length of the vessel in metres;

B is the breadth of the vessel in metres; and

P is the recorded engine power of the vessel expressed in kilowatts.

Method of payment

8. Payments by way of grant may be made by the Scottish Ministers at such time, or by such instalments at such intervals or times, as they may determine.

Assistance to authorised officers

9. Any applicant or any employee or agent of any applicant shall give to an authorised officer such assistance as the officer may reasonably request in order to exercise the powers conferred on the officer by paragraph 10.

Powers of authorised officers

10.—(1) An authorised officer at all reasonable hours and on producing, if required to do so, some duly authenticated document showing the authority of the officer, may exercise the powers specified in this paragraph for the purpose of ascertaining whether and to what extent—

- (a) a person is entitled under paragraph 3 to make the application;
- (b) the application should be selected under paragraph 5 for approval;
- (c) any relevant conditions have been complied with;
- (d) any amount of grant is recoverable in accordance with paragraph 11;
- (e) an offence under section 17 of the Fisheries Act 1981^(c) has been or is being committed.

(a) O.J. No. L 356, 31.12.02, p.12.

(b) O.J. No. L 261, 20.10.93, p.1 as amended by Council Regulation (EC) No. 2870/95, O.J. No. L 301, 14.12.95, p.1, Council Decision (EC) No. 95/528, O.J. No. L 301, 14.12.95, p.35, Council Regulation (EC) No. 2489/96, O.J. No. L 338, 28.12.96, p.12, Council Regulation (EC) No. 686/97, O.J. No. L 102, 19.4.97, p.1, Council Regulation (EC) No. 2205/97, O.J. No. L 304, 7.11.97, p.1, Council Regulation (EC) No. 2635/97, O.J. No. L 356, 31.12.97, p.14 and Council Regulation (EC) No. 2846/98, O.J. No. L 358, 31.12.98, p.5.

(c) 1981 c.29.

(2) Subject to sub-paragraph (3), an authorised officer may enter upon any premises which are, or which such officer has reasonable cause to believe are, relevant premises.

(3) The power conferred by sub-paragraph (2) may be exercised in relation to premises used as a dwelling house only where reasonable notice of the intended exercise of the power has been given to all residents of that dwelling house.

(4) Any authorised officer who has entered any premises in accordance with sub-paragraph (2) may inspect those premises, and any document on those premises which is or which such officer has reasonable cause to believe is, a relevant document.

(5) An authorised officer entering premises by virtue of this paragraph may be accompanied by such other person as the officer considers necessary and sub-paragraphs (2), (4), (6) and (7) and paragraph 9 shall apply in relation to such other person when acting under the instructions of the officer as if that person was an authorised officer.

(6) An authorised officer may—

- (a) require any applicant or an employee or agent of the applicant to produce any relevant document and to supply such additional information in possession of the person or under the control of that person relating to an application as the officer may reasonably request;
- (b) inspect any document and, where any such document is kept by means of a computer, have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with that document;
- (c) require that copies of, or extracts from, any relevant document be produced.

(7) An authorised officer shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on the officer by this Scheme if the court hearing such proceedings is satisfied that—

- (a) the act was done in good faith;
- (b) that there were reasonable grounds for doing it; and
- (c) that it was done with reasonable skill and care.

(8) In this paragraph—

“premises” includes any vessel or other vehicle;

“relevant document” means any document relating to the vessel in respect of which an application has been made; and

“relevant premises” includes the vessel in respect of which an application has been made and any premises in which a relevant document is retained or in which an authorised officer has reasonable grounds to believe such a document may be retained.

Reduction, withholding and recovery of grant

11.—(1) If at any time after the Scottish Ministers have approved an application in respect of any vessel it appears to them—

- (a) that any of the relevant conditions have been breached or have not been complied with; or
- (b) without prejudice to the generality of paragraph (a), that any of the circumstances specified in sub-paragraph (2) exist or have occurred,

they may revoke the approval of such application or withhold the grant or any part of the grant in respect of the application and, where any payment by way of grant has been made, may recover on demand as a debt an amount equal to the whole or any part of the payment which has been so made.

(2) For the purposes of sub-paragraph (1)(b), the circumstances are that—

- (a) the application or any part of it was not an application which the applicant was entitled under paragraph 3 to make;
- (b) the applicant or an employee or agent of an applicant—
 - (i) has intentionally obstructed any officer in the exercise of the powers of the officer under paragraph 10; or
 - (ii) has given information on any matter relevant to the giving of the approval or the making of a payment relevant to the approval which is false or misleading in a material respect; or

- (c) there has been damage or destruction of the vessel resulting in the payment to any person of any amount under a policy of insurance or by way of compensation or damages.
- (3) Before revoking an approval or reducing or withholding any grant or making a demand by virtue of sub-paragraph (1), the Scottish Ministers shall—
- (a) give the applicant a written explanation of the reasons for the step proposed to be taken;
 - (b) afford the applicant the opportunity of making written representations within such time as the Scottish Ministers consider reasonable; and
 - (c) consider any such representations.

Interest

12.—(1) Where the Scottish Ministers intend to recover on demand payment by way of grant in whole or in part in accordance with paragraph 11, they may, in addition, recover interest on that amount at a rate of 1% above LIBOR calculated on a daily basis for the period from the date of payment until the date of recovery.

(2) In any proceedings for recovery under this Scheme, a certificate issued by the Scottish Ministers showing the rate or rates of interest, the amount of such interest recoverable and the period for which interest is calculated shall, unless the contrary is shown, be conclusive of those matters.

Amendment of the Fishing Vessels (Decommissioning) (Scotland) Scheme 2003

13. For paragraph 11 of the Fishing Vessels (Decommissioning) (Scotland) Scheme 2003(a) there is substituted—

“**11.**—(1) Subject to any modification required by Council Regulation 2792/99(b) or any deduction required under sub-paragraph (2), the amount of grant which applicants who are eligible for payment of grant shall be paid shall be the amount of the bid made by such applicants in their applications.

(2) There shall be deducted from the grant a sum equal to any payment made in relation to the vessel under the Sea Fishing (Transitional Support) (Scotland) Scheme 2003.”.

Revocation

14. The Sea Fishing (Transitional Support) (Scotland) Scheme 2003(c) is hereby revoked.

ROSS FINNIE
A member of the Scottish Executive

St Andrew's House,
Edinburgh
26th February 2003

(a) S.S.I. 2003/87.

(b) O.J. No. L 337, 30.12.99, p.10 as corrected by corrigenda O.J. No. L 83, 4.4.00, p.35 and O.J. No. L 2, 5.1.01, p.41 and amended by Council Regulation (EC) No. 1451/2001, O.J. No. L 198, 21.7.01, p.9, Council Regulation (EC) No. 179/2002, O.J. No. L 31, 1.2.02, p.25, and Council Regulation (EC) No. 2369/2002, O.J. No. L 358, 31.12.02, p.49.

(c) S.S.I. 2003/92.

EXPLANATORY NOTE

(This Note is not part of the Scheme)

This Scheme provides for the making of grants by the Scottish Ministers, in respect of the expenses of certain vessels engaged in sea fishing.

Applications for grant will be considered in respect of vessels meeting the requirements set out in paragraph 3 of the Scheme. These include a requirement that to be eligible a vessel must be a Scottish based vessel and be at least 10 metres in overall length. The Scottish Ministers may specify other eligibility criteria in a notice which requires to be published (paragraph 3).

The Scheme lays down a procedure for the making, consideration and approval of applications (paragraphs 4 to 6). The Scottish Ministers can determine conditions to which an approval is subject (paragraph 6(2) and (3)). The Scheme makes provision in relation to the rate and method of payment of grant (paragraphs 7 and 8).

Applicants are required, on request, to give assistance to authorised officers of the Scottish Ministers, who are given powers of entry and inspection for specified purposes (paragraphs 9 and 10), and provision is made for the reduction, withholding and recovery of grant in certain circumstances and for the payment of interest on grant recovered (paragraphs 11 and 12).

The Scheme amends the Fishing Vessels (Decommissioning) (Scotland) Scheme 2003 to provide that any grant to be paid in respect of a vessel under that Scheme will be reduced by the amount of any grant paid in respect of that vessel under this Scheme (paragraph 13).

This Scheme revokes the Sea Fishing (Transitional Support) (Scotland) Scheme 2003 which contained typographical errors (paragraph 14).

Section 17 of the Fisheries Act 1981 creates offences in respect of the production of false statements or documents in purported compliance with any requirement imposed by the Scheme and wilful refusal to supply information, make returns or produce documents when required to do so by or under the Scheme.

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**The Sea Fishing (Transitional Support) (Scotland) (No 2)
Scheme 2003**

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