

Scheme made by the Department of Agriculture and Rural Development and laid before the Assembly under Article 17(3) of the Agriculture and Fisheries (Financial Assistance) (NI) Order 1987 for approval of the Assembly before the expiration of 40 days beginning with the date of its coming into operation

STATUTORY RULES OF NORTHERN IRELAND

2001 No. 349

AGRICULTURE

The Fishing Vessels (Decommissioning) Scheme (Northern Ireland) 2001

Made - - - - 5th October 2001

Coming into operation 19th November 2001

The Department of Agriculture and Rural Development, in exercise of the powers conferred on it by Article 17(1), (2) and (3) of the Agriculture and Fisheries (Financial Assistance) (Northern Ireland) Order 1987⁽¹⁾ and of every other power enabling it in that behalf, and with the approval of the Department of Finance and Personnel, hereby makes the following Scheme:

Citation and commencement

1. This Scheme may be cited as the Fishing Vessels (Decommissioning) Scheme (Northern Ireland) 2001 and shall come into operation on 19th November 2001.

Interpretation

2.—(1) In this Scheme—

“application” means an application for grant;

“authorised officer” means any officer authorised in writing by the Department for the purpose of this Scheme;

“bid” means the amount of grant for which an applicant offers to decommission his vessel and surrender the associated fishing licence;

“breadth” means the breadth calculated and measured in accordance with the rules specified in Article 3 of Council Regulation (EEC) No. 2930/86⁽²⁾;

“the Community waters” means the sea falling under the sovereignty or within the jurisdiction of the member States;

(1) S.I.1987/166 (N.I. 1)

(2) O.J. No. L274, 25.9.86, p. 1

“Council Regulation 2792/1999” means Council Regulation (EC) No. 2792/1999 of 17th December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector⁽³⁾;

“day” means all or any part of a period of 24 consecutive hours beginning at midnight;

“decommissioning”, in relation to a vessel, means the permanent withdrawal of that vessel from operation within the sea fish industry of the European Community by means of scrapping and “decommissioned” and “decommissioning grant” shall be construed accordingly;

“the Department” means the Department of Agriculture and Rural Development;

“fishing trips” means time spent by a vessel—

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

“FQA” means the fixed quota allocation attributed to a vessel licence, in line with the mechanism established on 1st January 1999, and maintained on UK VFQA Database and any reference to an allocation of FQAs in relation to a particular vessel means that allocation as determined by that database;

“grant” means decommissioning grant under this Scheme;

“length”, in relation to a vessel means the length calculated and measured in accordance with the rules specified in Article 2(1) of Council Regulation (EEC) No. 2930/86;

“licence” means a licence granted in respect of a vessel under section 4 of the Sea Fish (Conservation) Act 1967⁽⁴⁾;

“port of administration” means the port from which the licence granted in respect of a vessel under section 4 of the Sea Fish (Conservation) Act 1967 is issued;

“the register” means the register of vessels established under section 8 of the Merchant Shipping Act 1995⁽⁵⁾ and references to “registered” shall be construed accordingly;

“relevant conditions” means any conditions relating to the approval of an application which have been notified to the applicant under Article 6(2)(b);

“sea area” means a statistical division or sub area of the International Council for the Exploration of the sea⁽⁶⁾ specified in the Schedule hereto;

“scrapping”, in relation to a vessel, means permanently breaking up the vessel or otherwise permanently disabling it (but not, in either case, by scuttling) so that it is incapable of use for any seagoing purpose and “scrapped” shall be construed accordingly;

“sea fish” has the same meaning as in Article 17(6) of the Agriculture and Fisheries (Financial Assistance) (Northern Ireland) Order 1987;

“strike price” means a price set by the Department under Article 5(1)(d);

“UK VFQA Database” means the database maintained by the Fisheries Departments in the UK comprising details concerning, the registered UK fishing fleet, the licences with associated FQA entitlements attached to currently registered fishing vessels and FQA entitlements not currently attached to registered fishing vessels;

“vessel” means a sea fishing boat as defined in the Fisheries Act (Northern Ireland) 1966⁽⁷⁾;

(3) O.J. No. L337, 30.12.99, p. 1

(4) 1967 c. 84; section 4 was amended by the Fishery Limits Act 1976 (c. 86) section 3, the Fisheries Act 1981 (c. 29), section 20 and the Sea Fish (Conservation) Act 1992 (c. 60), section 1

(5) 1995 c. 21

(6) Cmnd. 2586

(7) 1966 c. 17 (N.I.)

“VCU” means Vessel Capacity Unit, which is a measure of UK fishing vessel capacity as defined by the formula $(L \times B) + (0.45 \times P)$ where:

L is the length of the vessel measured in metres

B is the breadth of the vessel measured in metres

P is the engine power of the vessel expressed in kilowatts; and

(2) In this Scheme, any reference to a vessel being based in Northern Ireland shall be construed as a reference to a vessel the port of administration for which is a Northern Ireland port.

Decommissioning grants

3.—(1) Any person who owns a registered vessel—

- (a) which is at least 10 metres in length;
- (b) in respect of which there is a licence, which authorises fishing in all or any part of the Community waters for all or any of the sea fish for which the United Kingdom has a share of the Community total allowable catch⁽⁸⁾;
- (c) which whilst registered as a United Kingdom vessel has spent at least 75 days at sea on fishing trips in the calendar year 1999 and at least 75 days at sea on fishing trips in the calendar year 2000;
- (d) which has been based in Northern Ireland during the period from 1st January 2001 up to and including the date of application relating to the vessel under this Scheme;
- (e) which, had, on the date of the application a valid vessel certificate under the provisions of the Fishing Vessels (Safety Provisions) Rules 1975⁽⁹⁾;
- (f) which is at least 10 years old at the date of application; and
- (g) which is in the same ownership at the time of application as on 1st January 2001.

may make an application to the Department for grant aid in respect of that vessel.

Applications

4.—(1) The Department shall publish in such manner as it considers appropriate a notice inviting, and specifying the closing date for, applications.

(2) An application made in pursuance of a notice published under paragraph (1) shall be in writing, shall be made in such form and manner, shall include such information and shall be delivered to such address as the Department may from time to time require.

(3) An applicant shall furnish all such further information relating to the application as the Department may require.

(4) An application shall be in respect of one vessel only and shall include a bid stating the amount of grant aid for which the applicant offers to scrap the vessel.

(5) No more than one application in pursuance of a notice published under paragraph (1) may be made in respect of any vessel.

(6) The foregoing provisions of this Article shall apply in respect of any subsequent notices inviting applications.

(8) See Council Regulation (E.C.) No. 2848/00 (O.J. No. L334, 15.12.00, p. 1) as amended by Council Regulation (O.J. No. L96, 6.4.01, p. 1), which, for the year 2001, fixes the total allowable catches (TACs) for certain fish stock and groups of fish stock and specifies the allocation of the share of the TACs available to each Member State

(9) S.I. 1975/330, as amended by S.I. 1975/471, 1976/432, 1977/313, 1977/498, 1978/1598, 1978/1873, 1981/567, 1991/1342 and by the Fisheries Act 1981, Schedule 3, paragraph 8(3)

(7) Where an application in respect of a vessel has been approved by the Department under Article 6, no further application may be made in respect of that vessel.

Consideration of applications

5.—(1) As soon as reasonably practicable after the date specified as the closing date for applications in a notice published under Article 4(1) the Department shall—

- (a) reject any application which is contrary to Article 7 of Council Regulation 2792/99;
- (b) establish a bid price per VCU, by dividing the bid by respective VCUs;
- (c) divide the vessels in respect of which an application has been made into two classes, namely—
 - (i) vessels having an allocation for Irish Sea Cod, whiting, haddock and hake in excess of 300 FQAs; and
 - (ii) any vessel having an allocation for such fish of 300 FQAs or less.
- (d) set a strike price for each class of vessel established under sub-paragraph (c);
- (e) announce strike price for each such class of vessel after all bids have been received; and
- (f) in relation to each such class approve each application for grant aid made under Article 3 by starting with the lowest bid price and proceeding in ascending order to highest or until the amount of money allocated to the Scheme has been exhausted.

(2) For the purposes of paragraph (1)—

“Irish Sea Cod” means cod (*Gadus morhua*) in the sea area ICES Statistical Division VIIa;

“whiting” means whiting (*Melanus merlangus*) in the sea area ICES Statistical Division VIIa;

“haddock” means haddock (*Melanogrammus aeglefinus*) in the sea area ICES Statistical Sub-Area VII; and

“hake” means hake (*Merluccius merluccius*) in the sea areas ICES Statistical Division VB and ICES Statistical Sub-Areas VI, VII, XII and XIV.

(3) In relation to each class of vessel established under paragraph (1)(c) the strike price shall be set at the level of the highest bid price per VCU which relates to a vessel of that class and is determined by the Department to be reasonable.

(4) The Department may reject any application if it considers the amount of the bid in the application to be unreasonable, having regard to the amount of money allocated to this Scheme.

(5) The Department shall reject any application if it has reasonable grounds for suspecting that there has been any fixing or adjustment of the amount of a bid by, under or in accordance with any agreement (whether legally binding or not) or arrangement with another person.

Approval of applications

6.—(1) Subject to the provisions of this Scheme, the Department may at any time—

- (a) determine conditions to which an approval given under Article 5(1)(f) shall be subject; and
- (b) amend such conditions.

(2) The Department shall in writing—

- (a) notify applicants of the result of their applications;
- (b) notify applicants whose applications it has approved under Article 5(1)(f) of any conditions which it has determined or amended under paragraph (2).

(3) The amount of grant aid payable in relation to any vessel under this Scheme shall be the strike price determined in relation to the class to which that vessel belongs multiplied by the number of VCUs for that vessel.

(4) For the purposes of paragraph (3) “class” means any class referred to in Article 5(1)(c).

Eligibility for payment of grant

7.—(1) Subject to paragraph (2) and Article 16, applicants whose applications have been approved under Article 5(1)(f) shall be eligible for payment of grant aid under Article 6(3).

(2) A grant shall not be paid to an applicant in respect of any vessel unless the Department is satisfied that the requirements set out in Articles 8 and 9 have been complied with.

Scrapping requirements

8.—(1) At least two weeks prior to the scrapping of the vessel the applicant shall notify the Department in writing of the intended date and place of scrapping (which shall be within a member State) and the proposed method of scrapping.

(2) The vessel shall not be scrapped until the method of scrapping notified under paragraph (1) has been approved by the Department.

(3) The applicant shall before a date to be determined by the Department, furnish to the Department a declaration that the vessel has been scrapped in accordance with this Scheme.

Surrender of licences and removal from the register

9.—(1) The applicant shall before the date to be determined by the Department—

- (a) surrender the licence referred to in Article 3(1)(b), and any current licence in respect of the vessel granted otherwise than under section 4 of the Sea Fish (Conservation) Act 1967, to the person who granted the licence and in the case of any licences granted by a person other than the Department furnish to the Department evidence that all such licences have been so surrendered;
- (b) take all necessary steps to ensure that the vessel is removed from the register and furnish to the Department evidence that it has been so removed.

(2) In this Article a “licence” includes any written authorisation, consent or permit.

Substantial damage or destruction of vessel

10.—(1) Where an application has been approved under Article 5(1)(f) and thereafter the vessel to which the approved application relates is substantially damaged or destroyed—

- (a) the applicant shall forthwith in writing notify and provide full details to the Department of the damage or destruction;
- (b) the applicant shall with the notice referred to in sub-paragraph (a) furnish the Department with information concerning—
 - (i) any policy of insurance in respect of the vessel which was in force at the time of, and
 - (ii) any criminal or civil proceedings which to his knowledge are contemplated or in progress in respect of,the incident;
- (c) the applicant shall provide the Department with such further information as it may require concerning the incident, the insurance arrangements relating to the vessel and any such criminal or civil proceedings;

(d) the applicant shall if requested by the Department provide it with written authority authorising contact with the insurers of the vessel; and

(e) the applicant shall notify the Department of any amount received under such policy of insurance, or by way of compensation or damages, as a result of the incident.

(2) Paragraph (1) shall apply regardless of whether or not the method of scrapping the vessel had been approved under Article 8(2) before the incident occurred.

(3) In this Article “incident” means an incident in which the vessel to which an approved application relates is substantially damaged or destroyed.

Method of payment

11. Payments by way of grant may be made by the Department at such time, or by such instalments at such intervals or times, as it may determine.

Undertakings

12. Any person whose application has been approved under Article 6 will be required to give an undertaking not to purchase another vessel, other than a Northern Ireland based vessel, within a period of 10 years from the date of approval of grant aid and may be required by the Department to give such other undertakings as it may consider appropriate to the case.

Assistance to authorised officers

13. Any applicant or any employee, servant or agent of any applicant shall give to an authorised officer such assistance as he may reasonably request to exercise the power conferred upon him by Article 14.

Powers of authorised officers

14. An authorised officer at all reasonable hours and on producing, if required to do so, some duly authenticated document showing his authority, may enter upon and inspect any vessel which is, or which such officer has reasonable cause to believe is, a vessel in respect of which an application has been made for the purpose of ascertaining whether and to what extent—

- (a) a person is entitled under Article 3 to make the application;
- (b) the application should be selected for approval under Article 5;
- (c) Articles 8 to 10 and 13, any relevant conditions and any undertakings given by the applicant have been complied with;
- (d) the scrapping of the vessel is being, or has been, actually carried out;
- (e) any amount of grant is recoverable in accordance with Article 16;
- (f) an offence under Article 17(4) of the Agriculture and Fisheries (Financial Assistance) (Northern Ireland) Order 1987 has been or is being committed.

Protection of officers

15. Any authorised officer shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by virtue of Article 14 if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

Reduction, withholding and recovery of grant

16. If at any time the Department has approved an application in respect of any vessel it appears to it that any of the relevant conditions have not been complied with or (without prejudice to the generality of such conditions) that—

- (a) the application of any part of it was not an application which the applicant was entitled under Article 3 to make;
- (b) the applicant or an employee, servant or agent of an applicant—
 - (i) has failed to comply with any requirement imposed by Articles 8 to 10 and 13;
 - (ii) has intentionally obstructed any officer in the exercise of his powers under Article 14; or
 - (iii) 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 (regardless of whether or not the method of scrapping the vessel has been approved under Article 8(2) before such damage or destruction occurred),

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

Recovery of Interest

17.—(1) If the Department decides to recover any amount under Article 16, it may also recover on demand interest on that amount at a rate of 1 percentage point above LIBOR calculated on a daily basis for the period from the day on which financial assistance was granted until the Department recovers the amount.

(2) In any proceedings relating to the recovery of such interest a certificate of the Department 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 evidence of these matters.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on
5th October 2001.

L.S.

E. Cummins
A Senior Officer of the
Department of Agriculture and Rural
Development

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The Department of Finance and Personnel hereby approves the foregoing Scheme.
Sealed with the Official Seal of the Department of Finance and Personnel on 5th October 2001.

L.S.

W. Pauley
A Senior Officer of the
Department of Finance and Personnel

SCHEDULE

Article 5(2)

Sea Areas in respect of which FQA allocations apply

ICES Statistical Division Vb (Faroes Grounds)

The waters bounded by a line beginning at a point in 63°00' north latitude, 4°00' west longitude; thence due west to 15°00' west longitude; thence due south to 60°00' north latitude; thence due east to 5°00' west longitude; thence due north to 60°30' north latitude; thence due east to 4°00' west longitude; thence due north to the point of beginning.

ICES Statistical Sub-Area VI (Rockall and West of Scotland)

The waters bounded by a line beginning at a point on the north coast of Scotland in 4°00' west longitude; thence due north to 60°30' north latitude; thence due west to 5°00' west longitude; thence due south to 60°00' north latitude; thence due west to 18°00' west longitude; thence due south to 54°30' north latitude; thence due east to the coast of the Republic of Ireland; thence in a northerly and easterly direction along the coast of the Republic of Ireland and of Northern Ireland to a point on the east coast of Northern Ireland in 55°00' north latitude; thence due east to the coast of Scotland; thence in a northerly direction along the west coast of Scotland to the point of beginning.

ICES Statistical Division VIIa (Irish Sea)

The waters bounded by a line beginning at a point on the west coast of Scotland in 55°00' north latitude; thence due west to the coast of Northern Ireland; thence in a southerly direction along the coasts of Northern Ireland and the Republic of Ireland to a point on the south-east coast of the Republic of Ireland in 52°00' north latitude; thence due east to the coast of Wales; thence in a north-easterly and northerly direction along the coast of Wales, England and Scotland to the point of beginning.

ICES Statistical Sub-Area VII (Irish Sea, West of Ireland and Porcupine Bank, South Coast of Ireland, Bristol Channel and English Channel)

The waters bounded by a line beginning at a point on the west coast of the Republic of Ireland in 54°30' north latitude; thence due west to 18°00' west longitude; thence due south to 48°00' north latitude; thence due east to the coast of France; thence in a northerly and north-easterly direction along the coast of France to a point in 51°00' north latitude; thence due west to the south-east coast of England; thence in a westerly and northerly direction along the coasts of England, Wales and Scotland to a point on the west coast of Scotland in 55°00' north latitude; thence due west to the coast of Northern Ireland; thence in a northerly and westerly direction along the coasts of Northern Ireland and the Republic of Ireland to the point of beginning.

ICES Statistical Sub-Area XII (North of Azores)

The waters bounded by a line beginning at a point in 62°00' north latitude and 15° 00' west longitude; thence due west to 27°00' west longitude; thence due south to 59°00' north latitude; thence due west to 42°00' west longitude; thence due south to 48°00' north latitude; thence due east to 18°00' west longitude; thence due north to 60°00' north latitude; thence due east to 15°00' west longitude; thence due north to the point of beginning.

ICES Statistical Sub-Area XIV (East Greenland)

The waters bounded by a line from the geographic North Pole along the meridian of 40°00' west longitude to the north coast of Greenland; thence in an easterly and southerly direction along the

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coast of Greenland to a point in 44°00' west longitude; thence due south to 59°00' north latitude; thence due east to 27°00' west longitude; thence due north to 68°00' north latitude; thence due east to 11°00' west longitude; due north to the geographic North Pole.

EXPLANATORY NOTE

(This note is not part of the Scheme.)

This Scheme provides for the making of grants by the Department of Agriculture and Rural Development, in respect of the decommissioning, by scrapping, of vessels.

Applications for grant will be considered in respect of vessels meeting the requirements set out in Article 3 of the Scheme.

Articles 4 to 6 of the Scheme lay down a procedure for the making and approval of applications and the amount of grant. Applications must be in respect of one vessel only and include a bid by the applicant of the amount of grant for which he offers to scrap the vessel. Bids will be selected for approval in accordance with Article 5.

Eligibility for grant is dependent on proof of scrapping by a method approved by the Department, surrender of licences relating to the vessel and removal of the vessel from the register (Articles 8 and 9). In the event of substantial damage or destruction of the vessel the applicant is required to provide the Department with certain information (Article 10).

Provision is made concerning the method of payment of grant (Article 11). The Department will require an undertaking not to purchase another vessel, other than a Northern Ireland vessel within a specified period and may require other undertakings to be given by a person whose application is approved (Article 12).

Applicants are required, on request, to give assistance to authorised officers of the Department, who are given powers of entry and inspection for specified purposes (Articles 13 to 15), and provision is made for the reduction, withholding and recovery of grant in certain circumstances (Article 16). Provision is also made for the recovery of interest (Article 17).

Article 16(4) of the Agriculture and Fisheries (Financial Assistance) (Northern Ireland) Order 1987 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.

This Scheme is made by virtue of Article 7 of Council Regulation (EC) No. 2792/99 laying down the criteria and arrangements regarding Community structural assistance in the fisheries sector (O.J. No. L337 30.12.99, p. 3).