

2021 No. 161

SEA FISHERIES

**The Sea Fish Industry (Coronavirus) (Fixed Costs) Regulations
(Northern Ireland) 2021**

Affirmed by Resolution of the Assembly on 5th July 2021

Made - - - - 15th June 2021

Coming into operation in accordance with regulation 1(1)

The Department of Agriculture, Environment and Rural Affairs(a) makes the following Regulations in exercise of the powers conferred by section 33(10) and paragraph 3(1) and (2) of Schedule 6 to the Fisheries Act 2020(b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Sea Fish Industry (Coronavirus) (Fixed Costs) Regulations (Northern Ireland) 2021 and come into operation on the day after which they are affirmed by resolution of the Assembly.

(2) The Interpretation Act (Northern Ireland) 1954(c) applies to these Regulations as it applies to an Act of the Assembly.

Scheme

2. The Department of Agriculture, Environment and Rural Affairs makes the Scheme set out in the Schedule.

Revocations

3. The Sea Fish Industry (Coronavirus) (Fixed Costs) Scheme (Northern Ireland) 2020(d), the Sea Fish Industry (Coronavirus) (Fixed Costs) (Amendment) Scheme (Northern Ireland) 2020(e) and the Sea Fish Industry (Coronavirus) (Fixed Costs) Scheme (Northern Ireland) 2021(f) are revoked.

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on 15th June 2021



(a) 2016 c.5.
(b) 2020 c.22.
(c) 1954 c.33 (N.I.)
(d) S.R. 2020 No. 76
(e) S.R. 2020 No. 95
(f) S.R. 2021 No. 65

Owen Lyttle
A senior officer of the
Department of Agriculture, Environment and Rural Affairs

The Sea Fish Industry (Coronavirus) (Fixed Costs) Scheme (Northern Ireland) 2021

Citation

1. This Scheme may be cited as the Sea Fish Industry (Coronavirus) (Fixed Costs) Scheme (Northern Ireland) 2021.

Interpretation

2. In this Scheme—

“application”, except in relation to an application for a review under article 7, means an application for a grant;

“the Commission Communication” means the Communication from the EU Commission dated 19 March 2020 (2020/C 91 I/01) laying down a Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak(a);

“the Commission Decision” means the Decision of the EU Commission of 6 April 2020 (SA. 56841(2020/N)– United Kingdom)(b) approving the United Kingdom COVID-19 Temporary Framework for UK Authorities, as read with the Decision of the EU Commission of 8 December 2020(c)(SA. 58823 (2020/N)– United Kingdom) approving the amendments to the Temporary Framework notified by the United Kingdom;

“the Department” means the Department of Agriculture, Environment and Rural Affairs;

“eligible person” has the meaning given in article 3;

“eligible Northern Ireland fishing boat” has the meaning given in article 4;

“fixed costs” means any administration expenses, administration wages, berthing fees and associated charges, Commissioner of Irish Lights fees, cleaning and waste (premises), depreciation, directors’ pension contribution, directors’ remuneration, directors’ salaries, directors’ social security, distribution costs, electronics, freight, gear repair, haulage, hire purchase, hire and maintenance of equipment, laundry and cleaning, legal and professional fees, light and heat, marketing, navigational aids, postage and stationery, premises costs, printing and stationery, rates, rent, ship’s telephone, staff training, storage, sundries, telephone, telecommunications, transport and packing charges, use of home as office, VAT (if not VAT registered), vehicle expenses, vessel insurances or vessel repairs;

“grant” means a grant in respect of fixed costs of an eligible Northern Ireland fishing boat calculated in accordance with article 6;

“port of administration”, in relation to a fishing boat, means the port from which the licence granted in respect of the fishing boat under section 4 of the Sea Fish (Conservation) Act 1967(d) was issued;

“qualifying period” means the period 1st September 2020 to 31st December 2020 (both dates inclusive);

“sea fishing activity” means searching for sea fish, shooting, setting, towing or hauling of fishing gear, taking catch on board, transshipping, retaining on board, processing on board, transferring, caging, fattening and landing of sea fish and sea fisheries products;

(a) OJ C911, 20.3.2020, p.1, as amended on 3 April 2020 (OJ C1121, 4.4.2020, p.1), 8 May 2020 (OJ C164, 13.5.2020, p.3), 29 June 2020 (OJ C218, 2.7.2020, p.3), 13 October 2020 (OJ C340, 13.10.2020, p.1), 28 January 2021 (OJ C34, 1.2.2021, p.6) and 10 March 2021 (OJ C177, 7.5.2021, p.23)

(b) OJ C144, 30.4.2020, p.1 as amended on 23 April 2020 (OJ C421, 4.12.2020, p.6) as amended on 31 July 2020 (OJ C269, 14.8.2020, p.15)

(c) OJ C439, 18.12.2020, p.1

(d) 1967 c.84 section 4 was repealed by the Fisheries Act 2020 (c.22), licenses granted under section 4 continue to have effect by virtue of Schedule 4, Part 3, paragraph 28(5) and (6) of that Act

“static fishing gear” means any pot, creel, receptacle or container with one or more openings or entrances and which is capable of being left at sea to catch crustaceans or molluscs.

Meaning of eligible person

3.—(1) An eligible person is a person who—

- (a) is the owner or charterer of an eligible Northern Ireland fishing boat;
- (b) submitted an application in writing to the Department;
- (c) has not received a payment in respect of fixed costs from the Department between 19th March 2021 and 15th April 2021 (both dates inclusive); and
- (d) on 31st December 2019 was a micro or small-sized enterprise and—
 - (i) was not already in difficulty; or
 - (ii) was already in difficulty and the conditions set out in paragraph (3) are met.

(2) A person is “in difficulty” if the person is an undertaking in difficulty within the meaning of Article 3(5) of the Fisheries Block Exemption Regulation.

(3) The conditions are that the person—

- (a) is not subject to insolvency proceedings;
- (b) has not received rescue aid(a) or, if the person has received rescue aid, has reimbursed the loan or terminated the guarantee before a grant is paid to that person; or
- (c) has not received restructuring aid(b) or, if the person has received restructuring aid, is no longer subject to a restructuring plan at the date a grant is paid to that person.

(4) In this article—

“the Fisheries Block Exemption Regulation” means Commission Regulation (EU) No 1388/2014(c) declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union;

“micro or small-sized enterprise” means a person who is within the category of micro or small-sized enterprises in Article 2 of Annex 1 to the Fisheries Block Exemption Regulation.

Meaning of eligible Northern Ireland fishing boat

4.—(1) An eligible Northern Ireland fishing boat is a Northern Ireland fishing boat within the meaning of article 2(2) of the Sea Fisheries (Northern Ireland) Order 2002(d) which—

- (a) is owned or chartered by an eligible person;
- (b) has a valid safety certificate issued by the Maritime and Coastguard Agency;
- (c) at the date of the application is insured for the purposes of commercial sea fishing;
- (d) has, during the period 1st November 2018 to 31st October 2020 (both dates inclusive), conducted more than 50% of its sea fishing activity using static fishing gear;
- (e) has, during the period 1st November 2018 to 31st October 2020 (both dates inclusive), landed more than 50% of its value of declared sea fish landings into ports in the United Kingdom;
- (f) has declared sea fish landings for the year 2019 which were valued at £10,000 or more;

(a) Commission Communication – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C249, 31.7.2014, p.1 see page 11
(b) Commission Communication – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C249, 31.7.2014, p.1 see page 12
(c) OJ L369, 24.12.2014, p.37. Regulation (EU) No 1388/2014 was amended by Commission Regulation (EU) 2020/2008 (OJ L414, 9.12.2020, p.15)
(d) S.I. 2002/790

- (g) had a minimum of 12 declared sea fish landings during the period 1st June 2020 to 31st October 2020 (both dates inclusive); and
- (h) is not the subject of an application for financial support under the Department's Temporary Cessation of Fishing Scheme 2020(a).

(2) In this article, "declared sea fish landing" means a declaration made to the Department giving information about the quantities and weight of each species of sea fish landed by a fishing boat.

(3) For the purposes of paragraph (1)(f), the value of declared sea fish landings is the value of sea fish landed by a fishing boat calculated by the Department by reference to the average weekly market price per kilogramme at first sale for each species of sea fish at the date of landing.

Award of grant by the Department

5.—(1) The Department may pay a grant to an eligible person in respect of an eligible Northern Ireland fishing boat for all or part of the qualifying period.

(2) A grant must not be paid in any case or to any extent except in compliance with the relevant conditions set out in the Commission Communication and the Commission Decision.

(3) The Department must reject an application in respect of a fishing boat if it is satisfied that the port of administration of the fishing boat has been changed to a port in Northern Ireland for the primary purpose of ensuring that the fishing boat is an eligible Northern Ireland fishing boat for the purposes of this Scheme.

(4) The Department must notify an applicant in writing of its decision to approve or reject an application and—

- (a) if an application is rejected, the reasons for the rejection and the right of review under article 7; and
- (b) if an application is approved, the amount of grant to be paid.

Amount of grant

6.—(1) The amount of grant payable to an eligible person for one month of the qualifying period is calculated as the total of the eligible Northern Ireland fishing boat's fixed costs in the audited accounts for that fishing boat in each of the three most recent financial years divided by 72.

(2) The maximum amount of grant payable for the qualifying period in respect of an eligible Northern Ireland fishing boat is £5,000.

Review of decision

7.—(1) A person may apply to the Department for a review of a decision in relation to this Scheme in accordance with this article.

(2) An application for review must be made to the Department no later than one month from the date of the notification of the decision to be reviewed.

(3) An application for review shall be in writing and shall specify—

- (a) the name and address of the person applying for the review;
- (b) the decision of the Department in respect of which the application for review is made and its date; and
- (c) full particulars of the grounds upon which a review of the decision is sought.

(4) Where an application for review is made the Department shall review the decision.

(5) In reviewing a decision the Department may—

- (a) consider any document or other evidence produced by the person (whether or not that document or evidence was available at the time of the decision);

(a) This scheme is delivered under Article 33 of the Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund

- (b) invite the person to provide such information relevant to the review as the applicant considers appropriate; and
 - (c) give the person, or their representative, an opportunity to make representations orally or in writing.
- (6) Following a review of the decision the Department may—
- (a) confirm the decision; or
 - (b) substitute for it a new decision.
- (7) As soon as reasonably practicable after reviewing the decision, the Department must notify the person in writing of its decision and the reasons for it.

Withholding and recovery

8.—(1) This article applies where, having approved an application (either under article 5 or following a successful review under article 7), it appears to the Department that—

- (a) the person was not an eligible person;
 - (b) any condition set out in the Commission Communication or the Commission Decision has not been complied with; or
 - (c) the person knowingly or recklessly provided materially false or misleading information or any document which is false in a material particular in relation to the application.
- (2) Subject to sub-paragraph(3), the Department may—
- (a) revoke the approval of an application;
 - (b) withhold the payment of any grant, or any part of it, to be made under article 5(1); or
 - (c) where any payment of grant has already been made under article 5(1), recover on demand from the person an amount equal to the whole or any part of such payment.
- (3) Before exercising the power under paragraph (2) the Department must—
- (a) give the person a written explanation of the reasons for the proposed action;
 - (b) afford the person the opportunity to make written representations within a reasonable time specified by the Department; and
 - (c) consider any such representations made.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for a scheme of financial support (the Scheme) in the form of grants to the sea fishing industry to address financial difficulties as a result of the global Coronavirus pandemic. The grants are to assist with the fixed costs of Northern Ireland fishing boats that deploy static fishing gear to catch crustaceans or molluscs.

The Scheme is introduced in regulation 2 and is set out in the Schedule.

Articles 3 and 4 of the Schedule define an eligible person and eligible Northern Ireland fishing boat for the purposes of the Scheme. An eligible Northern Ireland fishing boat must, among other things, be insured for commercial sea fishing purposes, conduct most of their fishing activity using static fishing gear, land the majority of its catch into UK ports, and have declared landings in 2019 valued at more than £10,000.

Article 5 of the Schedule provides that the Department may award a grant to an eligible person for the qualifying period and only where it complies with the Commission Communication and Commission Decision which approved amendments to the Temporary Framework for State aid measures in the United Kingdom to support the economy in the current COVID-19 outbreak.

Article 6 of the Schedule provides for the calculation of the grant, and the maximum amount payable in respect of an eligible fishing boat.

Article 7 of the Schedule provides for a review of the decision by the Department to reject an application.

Article 8 of the Schedule provides for the withholding and recovery of grant in certain circumstances.

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