

Scheme made by the Welsh Ministers and laid before the National Assembly for Wales under section 15(3) of the Fisheries Act 1981, for approval by resolution of the National Assembly for Wales within forty days beginning with the day on which the Scheme was made, subject to extension for periods of dissolution or recess for more than four days.

WELSH STATUTORY INSTRUMENTS

2012 No. 3172 (W.318)

SEA FISHERIES, WALES

The Fishing Boats (Satellite — Tracking Devices and Electronic Transmission of Fishing Activities Data) (Wales) Scheme 2012

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| <i>Made</i> | - - - - | <i>21 December 2012</i> |
| <i>Laid before the National Assembly for Wales</i> | - - | <i>21 December 2012</i> |
| <i>Coming into force</i> | - - | <i>31 December 2012</i> |

The Welsh Ministers, in exercise of the powers conferred by section 15(1) and (2) of the Fisheries Act 1981⁽¹⁾, and now vested in them ⁽²⁾, as read with paragraph 1A of Schedule 2 to the European Communities Act 1972⁽³⁾, make the following Scheme with the approval of the Treasury.

This Scheme makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for certain references to Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy and to Commission Implementing Regulation (EU) No 404/2011 laying down detailed rules for implementation of Council Regulation (EC) No 1224/2009 to be construed as references to those Regulations as amended from time to time.

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- (1) 1981 c. 29. See section 18(1) for the definition of “the Ministers”. Sections 15(2) and 18(1) were amended by S.I.1999/1820, Schedule 2, paragraph 68(1), (2) and (3).
- (2) By virtue of article 2(a) of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under section 15 of the 1981 Act were transferred to the National Assembly for Wales (as constituted under the Government of Wales Act 1998 (c. 38)) in so far as they are exercisable in relation to Wales. Those functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). The Treasury approval requirements under section 15 of the 1981 Act continue in effect.
- (3) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), Part 1 of the Schedule. Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006 (c. 51), section 28 and amended by the European Union (Amendment) Act 2008 (c. 7), section 3(3), Part 1 of the Schedule and the Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (SI 2007/1388), article 3, paragraph 1 of Schedule 1.

PART 1

Introductory Provisions

Title, commencement and application

1.—(1) The title of this Scheme is the Fishing Boats (Satellite — Tracking Devices and Electronic Transmission of Fishing Activities Data) (Wales) Scheme 2012 and it comes into force on 31 December 2012.

(2) This Scheme applies in relation to Wales.

Interpretation

2.—(1) In this Scheme—

“application” (“*cais*”) means an application for a grant under this Scheme and “applicant” (“*ceisydd*”) is to be construed accordingly;

“the closing date” (“*y dyddiad cau*”) means such date as the Welsh Ministers specify as the date on or before which applications must be lodged;

“the Control Regulation” (“*y Rheoliad Rheoli*”) means Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006(4) as amended from time to time;

“the Implementing Regulation” (“*y Rheoliad Gweithredu*”) means the Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy(5) as amended from time to time;

“eligible Welsh fishing boat” (“*cwch pysgota Cymreig cymwys*”) means a fishing boat which—

(a) is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995(6); and

(b) has its port of administration in Wales at the date of the application for the grant;

“grant” (“*grant*”) means a grant under this Scheme;

“master” (“*meistr*”) means the person for the time being in charge of the eligible Welsh fishing boat;

“port of administration” (“*porthladd gweinyddu*”), in relation to a fishing boat, means the port from which the licence granted in respect of that boat under section 4 of the Sea Fish (Conservation) Act 1967(7) is issued; and

“Wales” (“*Cymru*”) has the meaning given in section 158 of the Government of Wales Act 2006(8).

(4) OJ L 343, 22.12.2009.

(5) OJ L 112, 30.4.2011.

(6) 1995 c. 21.

(7) 1967 c. 84.

(8) 2006 c. 32.

(2) Any obligation of the Welsh Ministers to publish material under this Scheme means an obligation to make that material available in a manner that will ensure it is reasonably likely to be seen by those eligible for a grant.

PART 2

Grant for Satellite-Tracking Devices

Interpretation of Part 2

3. In this Part—

“approved supplier” (*“cyflenwr cymeradwy.”*) means the provider and installer of satellite-tracking devices selected by the Welsh Ministers and published in the invitation for applications for grant pursuant to paragraph 4(1) of this Scheme; and

“satellite-tracking device” (*“dyfais olrhain drwy loeren”*) has the same meaning as in Article 2(9) of the Implementing Regulation.

Invitation to apply for grant

4.—(1) The Welsh Ministers may from time to time publish an invitation for applications for a grant for a satellite-tracking device.

(2) An invitation must contain—

- (a) details of the satellite tracking device and approved suppliers;
- (b) details of conditions of eligibility for a grant;
- (c) requirements as to the form and manner of making an application;
- (d) any requirements for providing documents, information and undertakings in support of the application;
- (e) the closing date for making an application; and
- (f) any other information the Welsh Ministers consider relevant to an application.

Eligibility to make an application

5.—(1) A person may apply to the Welsh Ministers for a grant for a satellite-tracking device, in accordance with the provisions of this Scheme, if the person—

- (a) is the master, owner or charterer of an eligible Welsh fishing boat; and
- (b) has purchased from an approved supplier, or has commissioned an approved supplier to supply, a satellite-tracking device for use on that boat.

Applications

6.—(1) An application for a grant must be made in writing to the Welsh Ministers in accordance with the requirements of the invitation made under paragraph 4(1).

(2) Save as provided in sub-paragraph (3), an application must be received by the Welsh Ministers on or before the closing date.

(3) The Welsh Ministers may accept an application after the closing date if satisfied that—

- (a) the particular circumstances of the applicant render it unreasonable to expect the application to be made by the closing date; and

(b) the date by which the application is made is as early as can reasonably be expected.

(4) The Welsh Ministers may, before determining any application, require the applicant to provide any additional information.

Determination of applications

7.—(1) As soon as reasonably practicable after the closing date, or after the supply of any additional information requested pursuant to paragraph 6(4), the Welsh Ministers must—

- (a) identify and approve, subject to such conditions as they consider appropriate, those applications made in pursuance of an invitation made under paragraph 4(1) which satisfy the provisions of this Scheme; and
- (b) reject any other applications.

(2) The Welsh Ministers must reject an application if they are of the opinion that the port of administration of the fishing boat has been changed to a port in Wales for the primary purpose of ensuring that the fishing boat is an eligible Welsh fishing boat for the purposes of this Scheme.

(3) Where the Welsh Ministers approve an application under sub-paragraph (1)(a), they must notify the applicant in writing of that approval and any conditions to which it is subject.

(4) Where the Welsh Ministers reject an application under sub-paragraphs (1)(b) or (2), or approve an application subject to any condition under sub-paragraph (1)(a), they must notify the applicant in writing of—

- (a) the reasons for that rejection or approval subject to condition(s); and
- (b) the right to apply for a review under paragraph 18.

Payment of grant

8.—(1) The Welsh Ministers may make payment of a grant, or of any part of it, after the application has been approved under paragraph 7(1) and the Welsh Ministers are satisfied that—

- (a) the approved supplier has supplied the applicant with a satellite tracking device which has been installed in the eligible Welsh fishing boat;
- (b) the applicant has successfully used the satellite tracking device to transmit position data at regular intervals in accordance with the requirements of the Control Regulation; and
- (c) any condition for payment of the grant, or any part of it, has been complied with.

(2) The Welsh Ministers may—

- (a) make payment of the grant to the applicant or direct to the approved supplier on behalf of the applicant; and
- (b) make payment of the grant at such time, or by such instalments at such intervals or times, as the Welsh Ministers may determine.

Amount of Grant

9. The amount of the grant—

- (a) must not exceed the cost of purchase or supply of the satellite-tracking device; and
- (b) may be such lesser amount as determined by the Welsh Ministers.

PART 3

Grant for Approved Software

Interpretation of Part 3

10. In this Part—

“approved supplier” (“*cyflenwr cymeradwy*”) means a supplier specified in a list published by the Welsh Ministers under paragraph 11(1) in respect of the approved software;

“approved software” (“*meddalwedd gymeradwy*”) means software specified in a list published by the Welsh Ministers under paragraph 11(1); and

“fishing activities data” (“*data gweithgareddau pysgota*”) means the logbook data, transshipment declaration data and landing declaration data required under the Control Regulation to be recorded and transmitted by electronic means.

Approved software suppliers

11.—(1) The Welsh Ministers must publish a list specifying—

(a) software that is capable of—

(i) electronically recording fishing activities data; and

(ii) electronically transmitting fishing activities data in the required format; and

(b) the suppliers of that software.

(2) In this paragraph, “required format” (“*y ffurf ofynnol*”) means a format determined and published by the Welsh Ministers for the purposes of the Control Regulation.

Invitation to apply for grant

12.—(1) The Welsh Ministers may from time to time publish an invitation for applications for a grant for approved software.

(2) An invitation must contain—

(a) details of approved software and approved suppliers;

(b) details of conditions of eligibility for a grant;

(c) requirements as to the form and manner of making an application;

(d) any requirements for providing documents, information and undertakings in support of the application;

(e) the closing date for making an application; and

(f) any other information the Welsh Ministers consider relevant to an application.

Eligibility for grant

13. A person may apply to the Welsh Ministers for a grant for approved software, in accordance with the provisions of this Scheme, if the person—

(a) is the master, owner or charterer of an eligible Welsh fishing boat; and

(b) has purchased from an approved supplier, or has commissioned an approved supplier to supply, approved software for use on that boat.

Applications

14.—(1) An application for a grant must be made in writing to the Welsh Ministers in accordance with the requirements of the invitation made under paragraph 12(1).

(2) Save as provided in sub-paragraph (3), an application must be received by the Welsh Ministers on or before the closing date.

(3) The Welsh Ministers may accept an application after the closing date if they are satisfied that—

- (a) the particular circumstances of the applicant render it unreasonable to expect the application to be made by the closing date; and
- (b) the date by which the application is made is as early as can reasonably be expected.

(4) The Welsh Ministers may, before determining any application, require the applicant to provide additional information.

Determination of applications

15.—(1) As soon as reasonably practicable after the closing date, or after the supply of any additional information requested pursuant to paragraph 14(4), the Welsh Ministers must—

- (a) identify and approve, subject to such conditions as they consider appropriate, those applications made in pursuance of an invitation made under paragraph 12(1) which satisfy the provisions of this Scheme; and
- (b) reject any other applications.

(2) The Welsh Ministers must reject an application if they are of the opinion that the port of administration of the fishing boat has been changed to a port in Wales for the primary purpose of ensuring that the fishing boat is an eligible Welsh fishing boat for the purposes of this Scheme.

(3) Where the Welsh Ministers approve an application under sub-paragraph (1)(a), they must notify the applicant in writing of that approval and any conditions to which it is subject.

(4) Where the Welsh Ministers reject an application under sub-paragraphs (1)(b) or (2), or approve an application subject to any condition under sub-paragraph (1)(a), they must notify the applicant in writing of—

- (a) the reasons for that rejection or approval subject to conditions; and
- (b) the right to apply for a review under paragraph 18.

Payment of grant

16.—(1) The Welsh Ministers may make payment of a grant, or of any part of it, after the application has been approved under paragraph 15(1) and the Welsh Ministers are satisfied that—

- (a) the approved supplier has supplied the applicant with the approved software and the software has been installed in the eligible Welsh fishing boat;
- (b) the applicant has successfully used the approved software to electronically record and transmit fishing activities data in accordance with the requirements of the Control Regulation; and
- (c) any condition for payment of the grant, or any part of it, has been complied with.

(2) The Welsh Ministers may—

- (a) make payment of the grant to the applicant or direct to the approved supplier on behalf of the applicant; and
- (b) make payment of the grant at such time, or by such instalments at such intervals or times, as the Welsh Ministers may determine.

Amount of Grant

17. The amount of the grant—
- (a) must not exceed the cost of purchase or supply of the approved software; and
 - (b) may be such lesser amount as determined by the Welsh Ministers.

PART 4

Review of determination and reduction, withholding or recovery of Payments

Review of Determination

18.—(1) Where the Welsh Ministers reject an application under paragraphs 7(1)(b) or (2) or under paragraphs 15(1)(b) or (2) or approve an application subject to any condition under paragraph 7(1)(a) or under paragraph 15(1)(a), the person who applied for grant may apply to the Welsh Ministers, in accordance with the provisions of this paragraph, for a review of that determination.

(2) An application for a review under this paragraph must be received by the Welsh Ministers on a date no later than 6 months from the date of the relevant determination under paragraphs 7(1) or 15(1).

- (3) An application for review under this paragraph must be in writing and specify—
- (a) the name and address of the person applying for the review and the basis upon which the person is seeking review;
 - (b) the determination of the Welsh Ministers which is to be reviewed and its date;
 - (c) details of the grounds upon which review is sought; and
 - (d) the change sought to the determination.

(4) An application made under this paragraph may be made by post or by fax or other means of electronic communication which is capable of reproduction.

(5) Where an application is made under this paragraph, the Welsh Ministers must review the determination which is specified in it, reach a final decision and notify in writing the person applying for the review of that decision and the reasons for it.

- (6) In reviewing a determination the Welsh Ministers may—
- (a) consider any document or other evidence produced by the applicant (whether or not that document or evidence was available at the time of the determination);
 - (b) invite the applicant to provide such further information relevant to the review as they consider appropriate; and
 - (c) give the applicant an opportunity to give evidence and to make representations in person or through a representative.

Revocation, withholding or recovery of grant

19.—(1) If at any time after the Welsh Ministers have approved an application under paragraph 7(1) or under paragraph 15(1) it appears to them—

- (a) that any condition imposed under those paragraphs has been breached or has not been complied with; or

- (b) the applicant has committed or may have committed an offence under section 17 of the Fisheries Act 1981⁽⁹⁾,

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 of grant has been made, may recover from the applicant on demand an amount equal to the whole or any part of the payment which has been so made, irrespective of whether payment of grant was made to the applicant direct or to the approved supplier on the applicant's behalf by virtue of paragraphs 8(2)(a) or 16(2)(a).

(2) Before revoking an approval or withholding any grant or making a demand by virtue of subparagraph (1), the Welsh Ministers must—

- (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 Welsh Ministers consider reasonable; and
- (c) consider any such representations.

Interest

20.—(1) Where the Welsh Ministers decide to recover on demand an amount in accordance with paragraph 19(1)(b) they may, in addition, recover interest on that amount at a rate of 1% above LIBOR calculated on a daily basis for the period beginning with the day following that on which the amount was paid and ending on the day on which the amount is recovered.

(2) In this paragraph “LIBOR” (“*LIBOR*”), in relation to any day, means the sterling three-month London inter-bank offered rate in force for that day rounded if necessary to two decimal places.

(3) In any proceedings for recovery under this Scheme, a certificate issued by the Welsh Ministers stating the LIBOR applicable for any day is conclusive evidence of the LIBOR in question if the certificate also states that the Bank of England notified the Welsh Ministers of the LIBOR in question.

PART 5

Revocations

21. The following are revoked—

- (a) The Fishing Boats (Satellite-Tracking Devices)(Wales) Scheme 2006⁽¹⁰⁾; and
- (b) The Fishing Boats (Electronic Transmission of Fishing Activities Data)(Wales)Scheme 2010⁽¹¹⁾.

Alun Davies

Deputy Minister for Agriculture, Food, Fisheries
and European Programmes, under authority
of the Minister for Business, Enterprise,
Technology and Science, one of the Welsh
Ministers

21 December 2012

⁽⁹⁾ 1981 c. 29.

⁽¹⁰⁾ S.I. 2006/2799 (W.238).

⁽¹¹⁾ S.I. 2010/2369 (W.203).

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme, which applies in relation to Wales, is made with the approval of the Treasury and comes into force on 31 December 2012. The Scheme provides for the payment of grants as a contribution towards the cost of purchase or supply of satellite-tracking devices and software necessary to record and electronically transmit location and fishing activities data in accordance with Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006.

This Scheme provides that references to specified EU Instruments or specified parts of them are to be construed as references to the instruments or parts of them as they may be amended from time to time.

Part 2 of the Scheme makes provision for the payment of grants in respect of satellite-tracking devices. Paragraph 4 provides for the making of invitations to apply for the grant, paragraphs 5 and 6 make provision as to eligibility and the application process for the grant and paragraph 7 provides for the determination of applications, including the power to attach conditions to any approval and requirements as to notification. Paragraphs 8 and 9 make provision in respect of the payments of the grant and the amount of the grant.

Part 3 makes provision for the payment of grants in respect of approved software. Paragraph 11 provides for published lists of approved software and approved suppliers. Paragraph 12 provides for the making of invitations to apply for a grant, paragraph 13 and 14 make provision as to eligibility and the application process and paragraph 15 provides for the determination of applications for grant, including the power to attach conditions to any approval and requirements as to notification. Paragraphs 16 and 17 provide for the payments of grants and the amount of grant.

In Part 4, paragraph 18 makes provision for the review of a determination to refuse an application or a determination to attach a condition to an approval of an application for a grant made under either Part 2 or Part 3. Paragraph 19 provides for the revocation, withholding and recovery of grant approved under either Part 2 or Part 3 in certain circumstances and paragraph 20 enables interest to be payable on sums which are recovered.

In Part 5, paragraph 21 provides for the revocation of the Fishing Boats (Satellite-Tracking Devices) (Wales) Scheme 2006 and the Fishing Boats (Electronic Transmission of Fishing Activities Data) (Wales) Scheme 2010.

Regulatory Impact Assessment has been undertaken in relation to this Scheme and is available for inspection at the offices of the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.