1995 No. 391

AGRICULTURE

The Fishing Vessels (Decommissioning) Scheme (Northern Ireland) 1995

Made . . . . . *12th October 1995*

Coming into operation . . *13th November 1995*

The Department of Agriculture, in exercise of the powers conferred on it by Article 17(1) and (2) of the Agriculture and Fisheries (Financial Assistance) (Northern Ireland) Order 1987(**a**) 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) 1995 and shall come into operation on 13th November 1995.

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 purposes of this Scheme;

"breadth", in relation to a vessel, means the breadth calculated and measured in accordance with the rules specified in Article 3 of Council Regulation (EEC) No. 2930/86 defining characteristics for vessels(**b**) as amended(**c**);

"capacity units", in relation to a vessel, means—

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

where:

L is the length of the vessel in metres,

B is the breadth of the vessel in metres, and

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

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

(**a**) S.I. 1987/166 (N.I.1)
(**b**) O.J. No. L274, 25.9.86, p. 1
(**c**) There are no amendments relevant to this Scheme

"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;

"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;

"grant" means decommissioning grant under this Scheme;

"length", in relation to a vessel, except in the case of Article 3(1)(*f*), 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(**a**);

"the register" means the register of vessels established under section 1 of the Merchant Shipping (Registration, etc.) Act 1993(**b**) and references to "registered" shall be construed accordingly;

"the relevant area" means the area consisting of—

(*a*) the Community waters, and

(*b*) the sea falling under the sovereignty or within the jurisdiction of Norway south of latitude 62° north;

"relevant conditions" means any conditions relating to the approval of an application which have been notified to the applicant under Article 6(3)(*b*);

"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.

Decommissioning grants

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

(*a*) which is over 10 metres in length,

(*b*) in respect of which there is a licence which authorises fishing in all

(**a**) 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

(**b**) 1993 c. 22

or any part of the Community waters for all or any of the species of sea fish for which the United Kingdom has a share of the Community total allowable catch(**a**) and which are specified in paragraph (2),

(*c*) in respect of which a licence was granted in the calendar year 1994 by the Secretary of State concerned with the sea fish industry in Northern Ireland which authorised fishing in all or any part of the Community waters for all or any of the species of sea fish for which the United Kingdom has a share of the Community total allowable catch(**b**) and which are specified in paragraph (2),

(*d*) which whilst registered as a United Kingdom vessel has, during each of the calendar years 1993 and 1994, spent at least 100 days at sea on fishing trips in any part of the relevant area,

(*e*) which is a least 25 years old at the date of application,

(*f*) which, in the case of a vessel over 12 metres in registered length had, on the date of the application, either a valid vessel certificate under the provisions of the Fishing Vessels (Safety Provisions) Rules 1975(**c**), or a letter confirming the completion of a satisfactory survey issued by the Secretary of State for Transport, or, in the case of any other vessel, in the opinion of the Department is fit for undertaking fishing trips without the need for major repairs or alterations, and

(*g*) which between 1st January and 31st December 1994 spent more days at sea on nephrops fishing trips than on any other fishing trips,

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

(2) The species of sea fish mentioned in paragraph (1)(*b*) and (*c*) are herring (*Clupea harengus*), mackerel (*Scomber scombrus*), nephrops (*Nephrops norvegicus*), saithe (*Pollachius virens*), anglerfish (*Lophiidae*), cod (*Gadus morhua*), haddock (*Melanogrammus aeglefinus*), whiting (*Merlangius merlangus*), hake (*Merluccius merluccius*), plaice (*Pleuronectes platessa*) and sole (*Solea solea*).

(3) In paragraph (1)(*g*) "nephrops fishing trip" means any day in which the catch landed by the fishing vessel consisted of at least 30% nephrops (*Nephrops norvegicus*) and not more than 60% of other species listed in Annex II to Council Regulation 3094/86(**d**) as amended(**e**).

(4) Notwithstanding paragraph (1), a person may not make an application in respect of any fishing vessel—

(**a**) *See* Council Regulation (EC) No. 3362/94 (O.J. No. L363, 31.12.94, p. 1), as amended by Council Regulation (EC) No. 746/95 (O.J. No. L74, 1.4.95, p. 1), which, for the year 1995, fixes the total allowable catches (TACs) for certain fish stocks and groups of fish stocks and specifies the allocation of the share of the TACs available to each Member State

(**b**) *See* Council Regulation (EC) No. 3676/93 (O.J. No. L341, 31.12.93, p. 1), as amended by Council Regulations (EC) Nos. 2761/94 (O.J. No. L294, 15.11.94, p. 2) and 3021/94 (O.J. No. L321, 14.12.94, p. 1), which, for the year 1994, fixes the total allowable catches (TACs) for certain fish stocks and groups of fish stocks and specifies the allocation of the share of the TACs available to each Member State

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

(**d**) O.J. No. L288, 11.10.86, p. 1

(**e**) The relevant amending regulation of the European Community is Council Regulation (EC) No. 1796/94 (O.J. No. L187, 22.7.94, p. 1)

(*a*) in respect of which an application was approved by the Ministers under the Fishing Vessels (Decommissioning) Scheme 1994(**a**) but which was not decommissioned, or

(*b*) in respect of which an application was approved by the Ministers under the Fishing Vessels (Decommissioning) Scheme 1995(**b**).

(5) In paragraph (4) "the Ministers" means the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with the sea fish industry in Scotland, Wales and Northern Ireland.

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 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.

(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*) identify those applications made in pursuance of that notice which satisfy the foregoing provisions of this Scheme;

(*b*) divide the bid included in each such application by the number of capacity units of the vessel concerned; and

(*c*) place each such application in rank according to the result of the calculation referred to in sub-paragraph (*b*).

(2) 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.

(**a**) S.I. 1994/1568
(**b**) S.I. 1995/1610

(3) 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.

(4) Subject to paragraphs (2), (3) and (5), the Department shall select applications for approval by proceeding through the rank referred to in paragraph (1)(*c*) from the application incorporating the lowest amount bid per capacity unit towards the application incorporating the highest amount bid per capacity unit until the maximum amount of money allocated for the Scheme is reached.

(5) Where as a result of the procedure referred to in paragraph (4) there are two or more identical bids per capacity unit which are higher than the amount of any other bid which has been selected for approval, and there is insufficient money to meet all of them, in deciding which bid or bids to accept the Department may take into account the number of days at sea spent on fishing trips in any part of the relevant area by each of the vessels concerned during the calendar years 1993 and 1994, as recorded in the vessel's logbook, with a view to giving preference to vessels that spent more days at sea in those years.

Approval of applications

6.—(1) The Department shall approve any application which it has selected for approval under Article 5.

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

(*a*) determine conditions to which an approval given under this Article shall be subject; and

(*b*) amend such conditions.

(3) The Department shall in writing—

(*a*) notify applicants of the result of their applications;

(*b*) notify applicants whose applications it has approved under this Article of any conditions which it has determined or amended under paragraph (2).

Eligibility for payment of grant

7.—(1) Subject to paragraph (2) and Article 17, applicants whose applications have been approved under Article 6 shall be eligible for payment of grant in accordance with Article 11.

(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 17th May 1996 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 17th May 1996—

(*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 Ministers 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;

(*b*) "the Ministers" means the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with the sea fish industry in Scotland, Wales and Northern Ireland.

Substantial damage or destruction of vessel

10.—(1) Where an application has been approved under Article 6 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;

(*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.

Amount of grant

11. The amount of grant which an applicant who is eligible for payment of grant shall be paid shall be the amount of the bid made by such applicant in his application.

Method of payment

12. 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

13. Any person whose application has been approved under Article 6 may be required by the Department to give such undertakings as it may consider appropriate to the case.

Assistance to authorised officers

14. 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 15.

Powers of authorised officers

15. An authorised officer at all resonable 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 14, 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 17;

(*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

16. 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 15 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

17. If at any time after 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 or 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 14;

(ii) has intentionally obstructed any officer in the exercise of his powers under Article 15; 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;

(*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 had 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.

Sealed with the Official Seal of the Department of Agriculture on 12th October 1995.

(L.S.) *G. Lavery*

Assistant Secretary

The Department of Finance and Personnel hereby approves the foregoing Scheme.

Sealed with the Official Seal of the Department of Finance and Personnel on 12th October 1995.

(L.S.) *D. W. Thomson*

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Scheme.)

This Scheme provides for the making of grants by the Department of Agriculture for Northern Ireland, in respect of the decommissioning, by scrapping, of vessels which have predominately fished for nephrops in 1994.

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. Applications must be in respect of one vessel only and include a bid by the applicant for 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).

The amount of grant in respect of an approved application is the amount of the bid (Article 11) and provision is made concerning the method of payment of grant (Article 12). The Department may require undertakings to be given by a person whose application is approved (Article 13).

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 14 to 16), and provisions is made for the reduction, withholding and recovery of grant in certain circumstances (Article 17).

Article 17(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 8 of Council Regulation (EC) No. 3699/93 laying down the criteria and arrangements regarding community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products (O.J. No. L346, 31.12.93, p. 1).

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Water (Temporary Prohibition) (Revocation) Order (Northern Ireland) 1995

This Order, being of a temporary character, is not printed at length in this volume.