

Order made by the Scottish Ministers, laid before the Scottish Parliament under section 15(3) of the Fisheries Act 1981, for approval by resolution of the Scottish Parliament within 40 days beginning with the day on which the Order was made, not taking into account periods of dissolution or recess for more than four days.

SCOTTISH STATUTORY INSTRUMENTS

2012 No. 264

SEA FISHERIES

SEA FISH INDUSTRY

**The Fishing Boats (Satellite-tracking Devices) (Scotland)
Scheme 2012**

Made - - - - 25th September 2012

Laid before the Scottish Parliament 28th September 2012

Coming into force - - 29th October 2012

The Scottish Ministers make the following Scheme in exercise of the powers conferred by section 15(1) and (2) of the Fisheries Act 1981(a) and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) This Scheme may be cited as the Fishing Boats (Satellite-tracking Devices) (Scotland) Scheme 2012 and comes into force on 29th October 2012.

(2) This Scheme extends to Scotland and the Scottish zone.

Interpretation

2.—(1) In this Scheme—

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

“approval” means approval granted under paragraph 5;

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

“authorised provider” means the supplier and installer of satellite-tracking devices authorised by the Scottish Ministers and specified in a notice under paragraph 4(4);

“Control Regulation” means Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries

(a) 1981 c.29. See section 18(1) of the Fisheries Act 1981 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 have effect in relation to Scotland as modified by section 18A inserted by that Order, Schedule 2, paragraph 68(4).

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(a);

“grant” means grant under this Scheme;

“relevant conditions” means any conditions relating to the approval of an application which have been notified to the applicant under paragraph 5(1)(c);

“satellite-tracking device” means a device which sends the data specified at Article 9(2) of the Control Regulation by way of satellite to a Fisheries Monitoring Centre;

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

(2) Any reference in this Scheme to a numbered paragraph is to be construed as a reference to the paragraph so numbered in this Scheme.

Satellite-tracking device grants

3.—(1) Any person who owns a registered fishing boat which—

- (a) measures more than 12 metres overall in length, but no more than 15 metres overall in length;
- (b) is a Scottish based fishing boat; and
- (c) meets such other eligibility criteria as the Scottish Ministers may have determined and published in the notice referred to in paragraph 4(4),

is eligible to make an application to the Scottish Ministers in respect of that fishing boat for a grant equal to the costs specified in sub-paragraph (2).

(2) Subject to sub-paragraph (3), the costs are—

- (a) the cost of purchasing a satellite-tracking device from the authorised provider;
- (b) the cost of purchasing a three year warranty in respect of the satellite-tracking device from the authorised provider; and
- (c) the cost of having the authorised provider install the satellite-tracking device on board the fishing boat in respect of which the application is made.

(3) The cost specified in sub-paragraph (2)(c) does not include any cost wholly or partly incurred in respect of the concealment of the satellite-tracking device, its associated cables and wires, or any other associated materials or equipment, for cosmetic purposes.

(4) For the purposes of this paragraph—

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

“port of registration” means the port at which the fishing boat is registered in the register maintained under section 8 of the Merchant Shipping Act 1995(d); and

“Scottish based fishing boat” means a fishing boat, the port of administration and port of registration of which are, at the date of the application relating to the fishing boat, a port in Scotland.

(a) OJ L 343, 22.12.2009, p.1.

(b) 1998 c.46. The sea within the British Fishery Limits (that is the limits set by or under section 1 of the Fishery Limits Act 1976 (c.86)) which is adjacent to Scotland is determined by the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).

(c) 1967 c.84. Section 4 was amended by the Aquaculture and Fisheries (Scotland) Act 2007 (asp 12), schedule 1, paragraph 3(a) and by the Marine and Coastal Access Act 2009 (c.23), sections 4(6) and 197.

(d) 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 apply.

(2) An application must be lodged with the Scottish Ministers on or before the appropriate closing date in order to be considered for approval except where the Scottish Ministers are satisfied that—

- (a) the particular circumstances of the applicant render it unreasonable to expect the applicant's application to have been lodged by the appropriate closing date; and
- (b) in those particular circumstances, the date by which the application was lodged is as early as can reasonably be expected.

(3) In this Scheme “the appropriate closing date” means such date as the Scottish Ministers may from time to time determine.

(4) The Scottish Ministers must publish in such manner as they consider appropriate a notice inviting applications and specifying—

- (a) the authorised provider;
- (b) the appropriate closing date;
- (c) other eligibility criteria for the purposes of paragraph 3(1)(c); and
- (d) such other matters as they consider it is appropriate for them to have regard to for the purposes of the Scheme.

(5) An application made in pursuance of a notice published under sub-paragraph (4) must—

- (a) be in writing and signed by the applicant; and
- (b) must—
 - (i) be made in such form and manner;
 - (ii) include such information and undertakings; and
 - (iii) be delivered to such address,

as the Scottish Ministers may specify in the notice or from time to time require.

(6) An applicant must 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 and approval of applications

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

- (a) approve or reject any application made to them;
- (b) if an application is approved, determine the conditions, if any, for payment of the grant; and
- (c) notify the applicant in writing of the decision and (if appropriate) any conditions which they have determined under sub-paragraph (1)(b).

(2) Without prejudice to the generality of sub-paragraph (1)(b), a condition may be determined which requires the applicant to provide such undertakings as the Scottish Ministers may consider appropriate to an application.

Eligibility for and payment of grant

6.—(1) Subject to sub-paragraph (2) and paragraph 11, applicants whose applications have been approved either under paragraph 5 or following a successful review under paragraph 9(7)(b) are eligible for payment of grant in accordance with paragraph 7.

- (2) No grant is to be paid in respect of any boat unless the Scottish Ministers are satisfied that—
- (a) the satellite-tracking device installed on board the fishing boat by the authorised provider complies with the requirements of the Control Regulation; and
 - (b) any relevant conditions for payment determined under paragraph 5(1)(b) have been complied with.

Method of payment

7.—(1) Payment 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.

(2) The Scottish Ministers may make payment of grant directly to the authorised provider on behalf of the applicant.

Assistance to authorised officers

8. Any applicant or any employee or agent of any applicant must 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.

Review of decision

9.—(1) Where the Scottish Ministers reject an application under paragraph 5(1)(a) an application for review may be made no later than 3 months from the date of notification of that decision by the Scottish Ministers under paragraph 5(1)(c).

(2) An application for review may be made by—

- (a) any applicant whose application has been rejected; or
- (b) any other person.

(3) An application for review must—

- (a) be in writing;
- (b) be delivered to the address specified by the Scottish Ministers by notice published under paragraph 4(4); and
- (c) specify—
 - (i) the name and address of the applicant;
 - (ii) the decision of the Scottish Ministers which is to be reviewed and its date;
 - (iii) where the application for review is made by a person mentioned in sub-paragraph (2)(b), the basis upon which that person seeks review; and
 - (iv) full details of the grounds upon which review is sought.

(4) An application under this paragraph is to be treated as made if it is received by the Scottish Ministers at the address specified by them for receipt of such applications.

(5) Where an application is made under this paragraph the Scottish Ministers must review the decision which is specified in it.

(6) In reviewing a decision the Scottish Ministers may—

- (a) consider any document or other evidence produced by the applicant or, where different, the applicant for review (whether or not that document or evidence was available at the time of the decision);
- (b) invite the applicant or, where different, the applicant for review to provide such further information relevant to the review as they consider appropriate; and
- (c) give the applicant or, where different, the applicant for review an opportunity to give evidence and to make representations in person or through a representative.

(7) Following the review of a decision the Scottish Ministers may—

- (a) confirm the decision; or
- (b) revoke the decision in its entirety and substitute a new decision.

(8) The Scottish Ministers must notify the applicant and, where different, the applicant for review in writing of their decision under sub-paragraph (7) as soon as reasonably practicable.

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 eligible under paragraph 3 to make the application;
- (b) the application should be approved by the Scottish Ministers;
- (c) any relevant conditions have been complied with;
- (d) the installation of the satellite-tracking device is being, or has been, carried out;
- (e) any amount of grant is recoverable in accordance with paragraph 11;
- (f) an offence under section 17 of the Fisheries Act 1981 has been or is being committed.

(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—

- (a) those premises; and
- (b) any documents on those premises which are or which such officer has reasonable cause to believe are, relevant documents.

(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 8 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 such 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; or
- (d) remove and retain for a reasonable period any such relevant document which the officer has reason to believe may be required as evidence of proceedings under this Scheme and, where any such document is kept by means of computer, require it to be produced in a form in which it may be taken away and in which it is visible and legible.

(7) An authorised officer is not 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) there were reasonable grounds for doing it; and

(c) it was done with reasonable skill and care.

(8) In this paragraph—

“premises” includes any fishing boat or other vehicle;

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

“relevant premises” includes the boat 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 Scottish based fishing boat it appears to them—

- (a) that any relevant conditions for payment of the grant have been breached or have not been complied with; or
- (b) without prejudice to the generality of sub-paragraph (1)(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 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 directly or to the authorised provider on the applicant’s behalf by virtue of paragraph 7(2).

(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 eligible under paragraph 3 to make;
- (b) the applicant or an employee or agent of the applicant—
 - (i) has intentionally obstructed an authorised officer, or person accompanying such an authorised officer under paragraph 10(5), in the exercise of the powers 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.

(3) Before revoking an approval or reducing or withholding any grant or making a demand by virtue of sub-paragraph (1), the Scottish 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 Scottish Ministers consider reasonable; and
- (c) consider any such representations.

Interest

12.—(1) Where the Scottish Ministers recover on demand payment 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 is, unless the contrary is shown, conclusive of those matters.

(3) For the purposes of this paragraph “LIBOR”, in relation to any day, means the sterling three month London interbank offered rate in force for that day rounded if necessary to two decimal places.

St Andrew’s House,
Edinburgh
25th September 2012

RICHARD LOCHHEAD
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme makes provision for the making of grants by the Scottish Ministers in respect of the provision and installation on board Scottish based fishing boats over 12 metres in length but no more than 15 metres in length of satellite-tracking devices.

Satellite-tracking devices are required on board all fishing boats over 12 metres overall length but no more than 15 metres in length by virtue of the Control Regulation establishing a community control system for ensuring compliance with the rules of the common fisheries policy.

Applications for grant will be considered in respect of Scottish based fishing boats meeting the requirements set out in paragraph 3 of the Scheme. These include requirements that the Scottish based fishing boats must be more than 12 metres in length, but no more than 15 metres in length, and must be a “Scottish based fishing boat” as defined in paragraph 3(4).

Paragraphs 4 to 6 of the Scheme lay down a procedure for the making, consideration and approval of applications.

Paragraph 7 provides that the Scottish Ministers may make payment of grant by instalment at intervals and times determined by them, and that they may make payment of grant directly to the authorised provider (defined in paragraph 2(1)) on the applicant’s behalf.

Paragraph 9 provides a mechanism for a review of a decision of the Scottish Ministers to reject an application made under this Scheme.

Paragraph 10 sets out the powers of authorised officers (defined in paragraph 2(1)) and paragraph 8 requires any applicant or any employee or agent of an applicant to give such assistance to an authorised officer as may reasonably be requested.

Paragraph 11 gives the Scottish Ministers power, in certain circumstances, to revoke the approval of an application or to withhold grant, or any part of it and, where any payment of grant has already been made, to recover from the applicant a sum equal to grant paid, irrespective of whether the payment of grant was made to the applicant direct or to the authorised provider on the applicant’s behalf.

Paragraph 12 makes provision as to the recovery of interest on sums recovered under paragraph 11.

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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