

**2015 No. 399**

**FISHERIES**

**The European Maritime and Fisheries Fund (Financial Assistance) Regulations (Northern Ireland) 2015**

*Made* - - - - - *3rd December 2015*

*Coming into operation* - *14th January 2016*

**CONTENTS**

1. Citation and commencement
2. Interpretation
3. Payments by the Department
4. Advertisement of financial assistance
5. Application for financial assistance
6. Approval of application
7. Notification of decision
8. Evidence of expenditure or action
9. Method of payment
10. Records
11. Variation, suspension and revocation of an approval
12. Recovery of payment
13. Powers of entry
14. Offences and penalties
15. Revocations and saving provisions

The Department of Agriculture and Rural Development is a department designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to the common agricultural policy of the European Union.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Department that it is expedient for references to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund<sup>(c)</sup> to be construed as references to that Regulation as amended from time to time.

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(a) S. I. 2000/2812.

(b) 1972 c. 68.

(c) O.J. No.L149, 20.5.2014, p.1.

The Department of Agriculture and Rural Development makes the following Regulations in exercise of the powers conferred by section 2(2) of, as read with paragraph 1A of Schedule 2 to, the European Communities Act 1972(a).

### **Citation and commencement**

1. These Regulations may be cited as the European Maritime and Fisheries Fund (Financial Assistance) Regulations (Northern Ireland) 2015 and come into operation on 14<sup>th</sup> January 2016.

### **Interpretation**

2.—(1) In these Regulations—

“application” means an application for financial assistance under regulation 5(1);

“approval” means approval of an application under regulation 6;

“the Department” means the Department of Agriculture and Rural Development, being the intermediate body for Northern Ireland designated in respect of the EMFF Operational Programme for the purpose of Article 123(6) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund(b);

“the EMFF Operational Programme” means the United Kingdom’s operational programme drawn up for the purposes of Article 17 of the EMFF Regulation;

“the EMFF Regulation ” means Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund(c), as amended from time to time; and

“notice” means notice in writing.

(2) Subject to regulation 14(2), the Interpretation Act (Northern Ireland) 1954(d), except section 20(3), applies to these Regulations as it applies to an Act of the Assembly.

### **Payments by the Department**

3. The Department may pay financial assistance for any of the purposes specified in Title V of the EMFF Regulation.

### **Advertisement of financial assistance**

4.—(1) The Department must advertise the financial assistance available, and provide application forms and guidance notes for making an application.

(2) The Department may determine in each financial year how much financial assistance (if any) is payable for any activity.

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(a) 1972 c.68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7). Paragraph 1A was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).

(b) O.J. No.L347, 20.12.13, p.320. The Department of Agriculture and Rural Development was designated as the intermediate body for Northern Ireland in respect of the EMFF Operational Programme by regulation 3(1)(c) of the Grants for Fishing and Aquaculture Industries Regulations 2015 [S.I. 2015/1711] and carries out those functions of the UK managing authority in Northern Ireland as are specified in the written arrangements made between the Department and the Marine Management Organisation.

(c) O.J.No.L149, 15.5.2014 p.1.

(d) 1954 c.33(NI).

### **Application for financial assistance**

5.—(1) An application for financial assistance must be made on a form provided by the Department, and be submitted to the Department at the address specified.

(2) The application must contain all the information specified.

(3) The application must be made within any specified time limit.

(4) Any person who, in applying for financial assistance, gives information knowing it to be false or not believing it to be true is guilty of an offence.

(5) In this regulation, “specified” means specified on the form or on any documentation provided with the form.

### **Approval of application**

6. The Department may approve an application with conditions, or may reject it.

### **Notification of decision**

7.—(1) Where the Department approves an application it must give notice of its decision, and of the conditions to which the approval is subject, to the applicant.

(2) Where the Department is minded to reject an application or approve it subject to conditions, it must, before making a decision in relation to the application—

(a) give notice of the decision it is minded to make to the applicant; and

(b) give the applicant an opportunity to make representations within a date specified in the notice.

(3) The Department must —

(a) after considering any representations made to it, decide whether to reject the application or, as the case may be, approve it subject to conditions; and

(b) give notice of its decision to the applicant.

### **Evidence of expenditure or action**

8.—(1) The Department must not make any payment of financial assistance unless it is satisfied that an applicant has properly incurred expenditure of a kind in respect of which the financial assistance is payable and has complied with any conditions of the approval of the financial assistance.

(2) For the purposes of paragraph (1) the Department may require an applicant to provide information evidencing expenditure or any necessary actions relating to the financial assistance.

(3) Paragraph (1) does not apply to financial assistance which may be paid in advance to support the preparation and implementation of production and marketing plans in accordance with Article 66(4) of the EMFF Regulation.

### **Method of payment**

9. Financial assistance may be paid in a single payment or by instalments.

### **Records**

10.—(1) It is a condition of the payment of any financial assistance that the applicant makes a record of all payments of financial assistance made and all expenditure in respect of which such payments are made, and keeps any such record for at least six years after the date on which the last payment was made.

(2) Failure to comply with paragraph (1) is an offence.

### **Variation, suspension and revocation of an approval**

11.—(1) The Department may, at any time before the payment of the last instalment of the financial assistance, suspend or revoke the approval, or vary a condition of the approval.

(2) Where the Department is minded to suspend or revoke an approval, or vary a condition of an approval, it must, before deciding to do so—

- (a) give notice of the decision it is minded to make to the applicant; and
- (b) give the applicant an opportunity to make representations within a date specified in the notice.

(3) The Department must—

- (a) after considering any representations made to it, decide whether to suspend or revoke the approval, or vary the condition of the approval; and
- (b) give notice of its decision to the applicant.

### **Recovery of payment**

12.—(1) The Department may, by notice given to the applicant, require the repayment of all or any part of the financial assistance paid, if it is satisfied that—

- (a) the approved application in respect of which the payment of financial assistance was made, or any supporting information provided by the applicant in relation to it, contained information that was inaccurate or misleading;
- (b) any sum paid by way of financial assistance was used for any purpose other than the purpose for which it was paid; or
- (c) any condition subject to which the application was approved has not been or will not be complied with.

(2) A notice given under paragraph (1) must require the applicant to repay the sum specified in the notice within no less than 28 days from the date on which the notice is given.

(3) On the expiry of the period of 28 days referred to in paragraph (2), the Department may, without prejudice to any other right or remedy available to it, charge interest on the amount of any outstanding sum required to be repaid by a notice under paragraph (1) at the rate of 1% a year above the base lending rate of the Bank of England, accruing daily from the expiry of the period of 28 days.

(4) Where any sum, or part of the sum specified in a notice under paragraph (1) is not repaid within the period specified in the notice, the Department may recover such sum as remains outstanding together with interest as a civil debt.

### **Powers of entry**

13.—(1) Subject to paragraph (3), an officer of the Department may, on producing, if so required, a duly authenticated authorisation, enter any premises at any reasonable hour for the purpose of enforcing these Regulations.

(2) The officer may be accompanied by—

- (a) such other persons that the officer considers necessary; and
- (b) a representative of the European Commission acting for the purposes of the EMFF Regulation.

(3) An officer of the Department may not enter any premises used wholly or mainly as a dwelling unless a lay magistrate has issued a warrant authorising the officer to enter the dwelling.

(4) A lay magistrate may only issue such a warrant if the lay magistrate is satisfied on a complaint on oath as to both of the following—

- (a) that there are reasonable grounds for the exercise of the right of entry in relation to the dwelling; and

(b) that any of the conditions in paragraph (5) apply.

(5) The conditions are—

- (a) that admission to the dwelling has been refused;
- (b) that such a refusal is reasonably expected;
- (c) that the premises are unoccupied or the occupier is temporarily absent and it is not practicable to communicate with any person entitled to grant entry to the dwelling;
- (d) that the purpose of entry may be frustrated or seriously prejudiced unless an officer arriving at the dwelling can secure immediate entry to it.

(6) A warrant issued under paragraph (4) continues in force until the purpose for which the warrant was issued has been fulfilled or, if earlier, the expiry of such period as the warrant may specify.

(7) On entering the premises the officer may—

- (a) inspect the premises, and any plant, machinery or equipment;
- (b) inspect, copy and if necessary remove records;
- (c) search the premises;
- (d) seize any computers and associated equipment for the purpose of copying documents provided they are returned as soon as practicable;
- (e) carry out any inquiries, examinations and tests;
- (f) require any person in or on the premises to afford such assistance or provide such information with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by paragraph (7);
- (g) require any person in or on the premises to produce such document or record that is in the person's possession or control, as the officer considers necessary for the enforcement of these Regulations.

(8) In this regulation "premises" includes any fishing or other vessel, place, vehicle, trailer or container.

### **Offences and penalties**

14.—(1) A person is guilty of an offence if—

- (a) the person intentionally obstructs an officer of the Department in the performance of any of the officer's functions under these Regulations;
- (b) the person fails without reasonable excuse to comply with a requirement reasonably made by an officer of the Department in the exercise of any power conferred by these Regulations;
- (c) the person furnishes to an officer of the Department acting in the execution of these Regulations any information knowing it to be false or misleading.

(2) For the purposes of these Regulations section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words "the liability of whose members is limited" and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(3) Where an offence under these Regulations has been committed by a partnership and it is proved that the offence—

- (a) has been committed with the consent or connivance of a partner; or
- (b) is attributable to any neglect on the partner's part,

the partner (as well as the partnership) is guilty of that offence and liable to be proceeded against and punished accordingly.

(4) Where any offence under these Regulations has been committed by an unincorporated association (other than a partnership) and it is proved that the offence—

- (a) has been committed with the consent or connivance of an officer of the association or a member of its governing body; or
- (b) is attributable to any neglect on the part of such officer or member,

the officer or member (as well as the association) is guilty of that offence and liable to be proceeded against and punished accordingly.

(5) A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

### **Revocations and saving provisions**

**15.**—(1) Subject to paragraphs (2) and (3), the following regulations are revoked—

- (a) the Fisheries and Aquaculture Structures (Grants) Regulations (Northern Ireland) 2002**(a)**;
- (b) the Fisheries and Aquaculture Structures (Grants) (Amendment) Regulations (Northern Ireland) 2004**(b)**;
- (c) the European Fisheries Fund (Grants) Regulations (Northern Ireland) 2008**(c)** ; and
- (d) the European Fisheries Fund (Grants) (Amendment) Regulations (Northern Ireland) 2008**(d)**.

(2) Paragraph (1) does not affect the continuing application of the Fisheries and Aquaculture Structures (Grants) Regulations (Northern Ireland) 2002 in respect of applications received by the Department before 20<sup>th</sup> October 2008.

(3) Paragraph (1) does not affect the continuing application of the European Fisheries Fund (Grants) Regulations (Northern Ireland) 2008 in respect of applications received by the Department before 30<sup>th</sup> April 2015.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 3<sup>rd</sup> December 2015.



*John Speers*  
A senior officer of the  
Department of Agriculture and Rural Development

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(a) S.R. 2002 No.6.  
(b) S.R. 2004 No.109.  
(c) S.R. 2008 No.394.  
(d) S.R. 2008 No.500.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations provide that the Department may pay financial assistance for the purposes of Title V of Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund (OJ.No. L149, 20.5.2014, p.1) (the “EMFF Regulation”).

The EMFF Regulation provides for support from the European Maritime and Fisheries Fund in respect of certain categories of investments, projects or actions in the fisheries and aquaculture sectors.

Regulations 3 to 7 set out the procedure relating to applications for financial assistance. Regulation 5 makes it an offence to supply false information when making an application.

Regulation 8 makes payment of financial assistance dependent on provision of satisfactory evidence of expenditure incurred and compliance with conditions of approval.

Regulation 9 makes provision for the method of payment of financial assistance.

Regulation 10 makes payment conditional on the applicant retaining relevant records for the stipulated time period and failure to do so is an offence.

Regulation 11 provides for the variation, suspension and revocation of any approval of an application for financial assistance.

Regulation 12 provides that the Department may, by notice, recover payments of financial assistance in certain circumstances, and that sums outstanding may be recovered as a debt.

Regulations 13 and 14 provide the Department with powers of entry, and offences and penalties, for the enforcement of these Regulations.

Regulation 15 revokes schemes of financial assistance to the fishing industry, that are closed to new applications, along with appropriate savings provisions.

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