

Scheme 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 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.

SCOTTISH STATUTORY INSTRUMENTS

2010 No. 374

SEA FISHERIES

**The Fishing Boats (EU Electronic Reporting) (Scotland)
Scheme 2010**

<i>Made</i>	- - - -	<i>28th October 2010</i>
<i>Laid before the Scottish Parliament</i>		<i>1st November 2010</i>
<i>Coming into force</i>	- -	<i>2nd November 2010</i>

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 (EU Electronic Reporting) (Scotland) Scheme 2010 and comes into force on 2nd November 2010.

(2) Subject to sub-paragraph (3), this Scheme extends to Scotland and the Scottish zone.

(3) Insofar as it extends beyond Scotland and the Scottish zone, it does so only as a matter of Scots law.

Interpretation

2.—(1) In this Scheme—

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

“the appropriate closing date” means such date as the Scottish Ministers may from time to time determine;

“approval” means approval granted under paragraph 5 of this Scheme;

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

(a) 1981 c.29 (“the 1981 Act”). The functions of the Secretary of State, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). See section 18(1), as modified by section 18A(7), of the 1981 Act 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).

“authorised supplier” means a supplier of software to facilitate the electronic recording and transmission of fishing logbook, transshipment declaration and landing declaration data in accordance with Articles 15, 22 and 24 of the Control Regulation authorised by the Scottish Ministers and specified in a notice under paragraph 4(2);

“Control Regulation” 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) 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 condition” means any condition relating to the approval of an application which has been notified to the applicant under paragraph 5(1)(c);

“relevant software” means software to facilitate the electronic recording and transmission of fishing logbook, transshipment declaration and landing declaration data in accordance with Articles 15, 22 and 24 of the Control Regulation; and

“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 anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(c), which has been recorded and is consequently capable of being reproduced.

Fishing logbook grants

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

- (a) of 12 metres length overall or more; and
- (b) is a Scottish-based fishing boat—

may make an application to the Scottish Ministers in respect of that fishing boat for a grant.

(2) The amount of the grant—

- (a) must not exceed the cost of purchase or supply of relevant software; and
- (b) may be such lesser amount as determined by the Scottish Ministers.

(3) 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(d) 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(e); 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) O.J. No. L 343, 22.12.2009, p.1.

(b) 1998 c.46. The sea within 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 Order 1999 (S.I. 1999/1126).

(c) 2000 c.7 amended by the Communications Act 2003 (c.21), sections 406 and 411(2) and (3) and Schedule 17, paragraph 158.

(d) 1967 c.84 (“the 1967 Act”); section 4 was substituted by the Fishery Limits Act 1976 (c.86), section 3 and amended by the Fisheries Act 1981 (c.29), section 20; the Sea Fish (Conservation) Act 1992 (c.60), section 1 and the Marine and Coastal Access Act 2009 (c.23), section 4(6). It has effect in Scotland as modified by section 22A of the 1967 Act, as inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43(13).

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

- (a) the authorised supplier;
- (b) the appropriate closing date; and
- (c) such other matters as they consider it is appropriate for them to have regard to for the purposes of this Scheme.

(3) 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.

(4) An application must be in writing and must—

- (a) be made in such form and manner;
- (b) include such information and undertakings; and
- (c) be delivered to such address,

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

(5) 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.

Determination of application

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

- (a) approve or reject the application;
- (b) if the 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 the application.

Eligibility for and payment of grant

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

(2) No grant may be paid in respect of any fishing boat unless the Scottish Ministers are satisfied that—

- (a) the software purchased from the authorised supplier is relevant software; and
- (b) any relevant condition has 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 direct to the authorised supplier on behalf of the applicant.

Review of decision

8.—(1) This paragraph applies to decisions by the Scottish Ministers to reject an application under paragraph 5(1)(a).

(2) An application for review may be made no later than 3 months from the date of notification of the decision to be reviewed to the Scottish Ministers for a review of that decision.

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

- (a) the name and address of the applicant, and where that person is not the person named in the decision, the basis upon which that person is seeking review;
- (b) the decision of the Scottish Ministers which is to be reviewed and its date;
- (c) full details of the grounds upon which review is sought; and
- (d) the change sought to the decision.

(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 shall 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 (whether or not that document or evidence was available at the time of the decision);
- (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.

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

- (a) confirm the decision;
- (b) amend or alter the decision in any respect which they consider appropriate; or
- (c) revoke the decision in its entirety and substitute a new decision.

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

Assistance to authorised officers

9. An applicant or any employee or agent of an 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.

Powers of authorised officers

10.—(1) An authorised officer may at all reasonable hours and on producing, if required to do so, some duly authenticated document showing the authority of the officer, exercise the powers specified in this paragraph for the purpose of ascertaining whether and to what extent—

- (a) a person is entitled under paragraph 3 to make the application;
- (b) the application should be or should have been approved;
- (c) any relevant condition has been complied with;
- (d) the installation of the relevant software 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(a) 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 those premises and 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 9 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 an 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 fishing 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 fishing boat it appears to them—

- (a) that any relevant condition has been breached or has 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,

(a) 1981 c.29. Section 17 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21), section 289G.

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 authorised supplier 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 entitled under paragraph 3 to make;
- (b) the applicant or an employee or agent of the applicant—
 - (i) has failed to give to an authorised officer, or person accompanying such an authorised officer under paragraph 10(5), such assistance as the officer may request under paragraph 9;
 - (ii) 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
 - (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.

(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 intend to 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, unless the contrary is shown, is conclusive of those matters.

(3) For the purposes of this paragraph “LIBOR”, in relation to any particular day of the month, means the rate of interest per centum notified by the Bank of England on the first working day of the month, rounded if necessary to two decimal places.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew's House,
Edinburgh
28th October 2010

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 purchase of software to facilitate the electronic recording and transmission of fishing logbook, transshipment declaration and landing declaration data on board fishing boats of 12 metres length overall or more in accordance with Articles 15, 22 and 24 of Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (O.J. No. L 343, 22.12.2009, p.1).

Applications for grant will be considered in respect of fishing boats meeting the requirements set out in paragraph 3 of the Scheme. These include requirements that the vessels must have an overall length of 12 metres or more and must be a “Scottish based fishing boat” as defined in paragraph 3(3).

Paragraphs 4 and 5 of the Scheme lay down a procedure for the making, consideration and approval of applications.

Paragraph 6 provides that applicants who have had their application approved under paragraph 5 are eligible for payment of grant and sets out the circumstances in which the Scottish Ministers will not make payment of grant to an applicant whose application has been approved.

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 direct to the authorised supplier (defined in paragraph 2) on the applicant’s behalf.

Paragraph 8 provides 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) and paragraph 9 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 supplier 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 any Scheme made under the Fisheries Act 1981 and wilful refusal to supply information, make returns or produce documents when required to do so by or under the Scheme.

No regulatory impact assessment has been prepared for this instrument as it has no direct impact on the costs of businesses, charities or the voluntary sector.

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