

Licence Allocation Procedure

This procedure will be used in the issuing of probationary licences under the Dee Estuary Cockle Fishery Order 2008, along with providing a framework for the ranking of applicants eligible for a short-term, non-renewable licence within the fishery. An individual may not hold more than one licence within the Dee Estuary Cockle Fishery.

A ranked list created according to this procedure in 2021 will be valid until December 31st 2023, with applications being opened again in January 2024, to create a new ranked list valid until December 31st 2027 (The final day of the fishing season prior to the expiry of the Regulating Order on June 30th 2028).

Applicants in 2024 will have their 2021 score rolled over into the 2024 process. An applicant who applies in 2021 will only need to provide evidence for 2021, 2022 and 2023 during the 2024 application process. Points for these years will be added to their 2021 score. New applicants in 2024 will be able to submit a full range of evidence dating back to pre-1995.

Licence applications

The decision to advertise applications for a probationary licence will be at the discretion of NRW and primarily based on permanent licence availability. A secondary use of the ranked list will be to identify individuals to receive short-term, non-renewable licences if NRW chooses to issue them.

Advertisements for applications are to be placed on the NRW website and other appropriate media. The advertisement for applications will run for a minimum of 4 weeks.

Applications must be received by NRW by the closing date set out in the advertisement. Applications will not be accepted after the closing date.

An application will not be considered from any applicant who has not reached 16 years of age before the first day of the season in the fishery for which the ranking list is valid. NRW will not accept evidence gained when the applicant was under 16 years of age.

In cases where fraudulent information is supplied as part of and/or in support of an application, that application shall be deemed null and void. Where said fraudulent information has been supplied by another applicant, their own application shall also be deemed null and void.

Licence allocation process

All applicants must pass a Fit and Proper Person Assessment (FPPA) before they will be considered for entry into the fishery.

An applicant who fails the FPPA will have their application rejected. NRW shall initially consider all applications by assessing:

- The fit and proper persons assessment (FPPA)
- The details on the application form
- The supporting documentation accompanying the application

The above categories of information, all of which should be submitted to NRW in writing, shall collectively be called the Assessment Information.

The Assessment Information should demonstrate the extent to which the applicant has:

- Shown that they are a suitable person to participate in the Dee cockle fishery. Failure to pass the fit and proper persons test will result in an application being rejected.
- Actively and materially participated in the Dee cockle fishery or in a cockle fishery elsewhere
- Operated as a commercial fisher on the Dee or as a commercial fisher elsewhere
- Owned a registered fishing vessel or been qualified as a vessel skipper

In submitting Assessment Information to NRW, applicants should take into account the following:

Evidence of active and material participation in the Dee cockle fishery, or as a commercial fisher on the Dee or elsewhere could include:

- Tax returns, catch returns, sales invoices, landing documentation
- MCA records of ownership of vessels, fleet registers, original certificates showing relevant qualifications
- Evidence from a verifiable source to demonstrate activity in fishing industry such as, but not limited to, NWIFCA or MMO permits or communications. Photographic evidence may be accepted if it is legible and verifiable (e.g. photos of permits/licences) but will not be accepted if it is unverifiable (e.g. a photo of an individual standing on/next to a fishing boat).

Evidence of an illness or disability inhibiting participation in the fishery:

Where an applicant can demonstrate active and material participation in the fishery during at least one full fishing season and consider that they would have been able to demonstrate participation in the fishery during one or more subsequent fishing seasons but for the illness or disability, then they may submit evidence of their illness or disability in lieu of evidence of participation in the fishery during the fishing season(s) in question.

Evidence of illness or disability could include evidence of statutory payments received throughout the period in question (for example, in the form of statutory sick pay, disability living allowance or incapacity benefit, or other statutory payments that relate to disability or incapacity to work), or production of contemporaneous medical records which satisfactorily demonstrate that the applicant was medically unfit to participate throughout the fishing season(s) in question.

NRW reserves the right to request additional information to verify applications. Submission of medical records must be accompanied by a waiver giving NRW permission to contact the applicant's medical practitioner for verification.

NRW are looking for applicants to demonstrate their prior experience of cockling on the Dee, other commercial fishing experience on the Dee, and/or cockling experience elsewhere. NRW shall consider the Assessment Information for each applicant and their evidence of active and material participation in either the commercial cockle fishery or other commercial fishery against the following criteria:

Section 1:

Pre 1995 (any 1 Year, *Maximum 5 points*)

5 points for evidence of commercial fishing activity on the Dee

Section 2:

1995-2007 (13 Years, *Maximum 33 points, cockle fishery was only open in 1997, 2001, 2002, 2003 and 2005*)

5 points for evidence of commercial cockle fishing on the Dee

OR

1 point for evidence of other commercial fishing activity on the Dee

Section 3:

2008-2014 (7 Years, *Maximum 35 points*)

5 points for each year of evidence of cockle fishing on the Dee as a licence holder, permit holder or endorsee

OR

4 points for each year of evidence of other commercial fishing activity on the Dee

OR

3 points for each year of evidence of cockle fishing elsewhere

OR

2 points for each year of evidence of other commercial fishing activity elsewhere or evidence of ownership of a registered fishing vessel or qualified vessel skipper certification

Section 4:

2015-2020 (*6 Years, Maximum 30 points*)

FOR THE PERIOD 2015-2020 AN INCOME TAX RETURN MUST BE SUBMITTED FOR EACH YEAR OF EVIDENCE. THE INCOME TAX RETURN MUST STATE THAT AT LEAST SOME OF THE INCOME WAS DERIVED FROM COMMERCIAL FISHING ACTIVITY. IF NO INCOME TAX RETURN IS SUBMITTED FOR A GIVEN YEAR NO POINTS WILL BE SCORED IN THAT YEAR.

5 points for each year of evidence of cockle fishing on the Dee as a licence holder, permit holder or endorsee

OR

4 points for each year of evidence of other commercial fishing activity on the Dee

OR

3 points for each year of evidence of cockle fishing elsewhere

OR

2 points for each year of evidence of other commercial fishing activity elsewhere or evidence of ownership of a registered fishing vessel or qualified vessel skipper certification

18. In the 2021 application process the maximum possible score will be 103 points. In future years a maximum of 5 points per year will be available. For example, during the 2024 application process a maximum of 15 points will be available for the period of 2021-2023.

Decisions

Upon receipt, applications will be reviewed by a member of the cockle fishery management team. The cockle fishery management team will be composed of, at a minimum, the Dee Estuary Cockle Officer, the line manager of the Cockle Officer and the Dee Estuary Cockle Fishery Manager. The management team may also include other individuals from the NRW Marine Service Area with appropriate background and experience.

The application will be provisionally scored by the Dee Estuary Cockle Officer. The applicant will then be contacted by a member of the cockle management team and notified of their provisional score. The applicant will then be given 5 working days from the date of being notified of their provisional score to provide further evidence they consider relevant. 10 working days from the date of being notified of their provisional score, the applicant will be asked to confirm, by signature, that they have provided all relevant evidence to back up their application.

Once all applications have been provisionally scored and applicants have confirmed that they have provided all relevant evidence, the applications will be assessed by a minimum of 3 members of the NRW cockle management team in order to determine the final points award and subsequent ranking of applicants.

The cockle management team will examine all information that they have obtained including:

- The Completed FPPA
- The Assessment Information that has been substantiated
- Any other information that NRW has obtained during the application process

For all evidence provided for Sections 1 and 2 (paragraph 17) the cockle management team will consult with a verification group comprising a subset of DECFAG members. This means that all evidence of Dee based activity from the period before the Regulating Order will be assessed by a stakeholder group who are recognised to have knowledge of historical activity on the Dee. Members of this group will not be party to any application and/or scoring details outside of their verification requirements. No evidence submitted for the period 2008 and onwards will be presented to this group.

Any applicant who has a provisional score adjusted by the cockle management team at this stage will be notified of this decision and will be given an opportunity to appeal this decision.

Any appeals generated as a result of such a point adjustment will be processed before a final ranked list can be generated.

NRW will record the proceedings of scoring by the management team and following the approval of final scores of applications will generate a ranked list of applicants.

The ranked list of applicants will be held as a closed document within NRW. Individual applicants in the top 10 will be informed of their place on the list. Applicants outside the top 6 will be informed that they are not in the top 6. In the event that a licence is issued, and the successful applicant is removed from the list, the 'new' top 6 will be notified of their positions. These new positions will also apply in the event of short-term, non-renewable licences being issued (see paragraphs 47-55 below).

Right of Appeal

In the event that an applicant has their provisional score adjusted by the cockle management team they will be notified of their right to appeal.

Together with notification of the right of appeal the applicant shall be supplied with:

- The decision documentation, subject to any legal restrictions
- A copy of the Appeal Procedure (below)

Appeal Procedure

On receipt of an appeal from an applicant, NRW will convene an Appeal Panel. The appeal panel should consist of 3 individuals, of which 2 will be NRW managers. The third member of the panel will be appointed by the Environment Agency. A legal adviser shall also support the panel.

The Appeal Panel will be chaired by one of the NRW managers, but all decisions will be reached by consensus. A full written record will be made of all Appeal Panel proceedings.

If an applicant has their provisional points score adjusted by the cockle management team and chooses to appeal they must register the grounds for their appeal in writing within 10 working days of the date of NRW's written confirmation of their score. When registering their grounds for appeal, the applicant must stipulate whether they propose to attend in person and be heard by the Appeal Panel or to submit their appeal in writing only. Arrangements will then be made for a meeting of the Appeal Panel within 28 days of the registration of the appeal. The Dee cockle officer will liaise with the applicant to ensure any written evidence is submitted to NRW at least 5 working days in advance of the hearing.

If the applicant elects to attend the hearing, they are entitled to have one legal adviser or other representative or supporter in attendance. They are also entitled to call a maximum of three witnesses to support their appeal. They must inform the Appeal Panel at least 5 working days in advance of the hearing if they propose to have witnesses or have any other person present evidence on their behalf at the hearing.

At an attended appeal hearing the Chair of the Appeal Panel will provide an opportunity for NRW and the applicant or their representative to present evidence, to call relevant witnesses and for each to question the other for clarification or to challenge evidence presented.

If the applicant chooses to present their case in writing only, NRW will ensure that all evidence for the Appeal Panel is provided in writing.

Whatever the appeal format, NRW will, as a minimum, provide to the Appeal Panel all the information supplied to the applicant regarding the decision to adjust a score as laid out above.

Within 5 working days of the Appeal Panel hearing or their consideration of written submissions, the decision of the Appeal Panel will be communicated in writing via the Dee cockle officer to the applicant.

The Dee cockle officer will ensure, and make a written record, that the applicant is in possession of:

- The information supplied when the provisional point scoring was adjusted
- The written record of the appeal hearing
- A record of any new information considered in the appeal

- Any findings of fact and the reasons for the decision of the Appeal Panel

Procedure for offering a licence

In the event that a licence is to be allocated, NRW will write to the applicant at the top of the ranked list, advising them of the offer of a licence on payment of the appropriate duty and informing them of the last date upon which payment may be made (the payment deadline).

In the event of a licence being offered during the period June 1st to December 31st, the payment deadline will be 20 working days from the date of the offer. When a licence becomes available between Oct 1st and Dec 31st NRW can use its discretion as to whether the licence is issued immediately or for the beginning of the following season. In the event of a licence being offered during the period Jan 1st to May 31st the payment deadline will be June 30th. NRW will issue a licence on receipt of a cleared payment provided that the payment is received (and cleared as necessary) no later than 5:00pm on the payment deadline.

NRW will not issue a licence until payment is made and if payment has not been received (and cleared as necessary) by 5:00pm on the payment deadline, the offer of a licence will lapse and NRW will be entitled to offer the licence to the next ranked applicant. An applicant who allows the offer of a licence to lapse in this way will be removed from the ranked list.

If the licence offer is accepted, the successful applicant(s) will be required to serve the first two seasons as a probationary period, with the potential for removal if the required standards are not met. The minimum standard would be adherence to the Licence Conditions and compliance with the minimum fishing effort detailed in paragraph 42 below. Should the probationary licensee(s) be convicted of an offence on the Fishery or otherwise commit an offence which would cause the probationary licensee to fail the FPPA, the licence(s) would be cancelled.

Except in exceptional circumstances, all probationary licensees must also fish a minimum of 45% of available tides in each of the probationary seasons. A probationary licensee will not be allowed to use an endorsee.

Allocation of licences in subsequent year

Individuals who have held a licence (other than a short-term, non-renewable licence) in the preceding season, will be notified by NRW of the need to apply for the coming season by post. This letter, together with an application form will be sent out by NRW as soon as possible after the end of the season.

Applications for the coming season must be received by NRW within 6 weeks of the date of the letter from NRW being sent. The exact deadline will be specified within the letter.

If a licensee from the preceding season has not returned their application form by this deadline, NRW will contact them to consider whether any special mitigating circumstances warrant late acceptance of an application. Any decision to allow a late application to proceed will be at NRW's discretion.

Licences will be allocated to all individuals who held a licence (other than a short-term, non-renewable licence) during the preceding season, who wish to continue fishing. If a licensee has their licence revoked they will not be eligible for a licence in the subsequent season.

Failure to renew a licence in any year when licences are available will result in the individual losing their entitlement to a licence. Exception will only be made for long term illness on receipt of medical evidence and at NRW's discretion.

Issuing of short-term, non-renewable licences

The decision to issue short-term, non-renewable licences, including the number and duration of such licences, will be at the discretion of NRW and based on the: results of the annual stock assessment of the Fishery; the analysis of catch returns; and the appropriate assessment to be carried out in accordance with the Conservation of Habitats and Species Regulations 2017. A short-term, non-renewable licence will be issued for a period of less than a full season, and will only be valid within a single season.

The ranked list generated by the Licence Allocation Process will remain valid for the periods specified in paragraph 2 above.

Should NRW wish to issue short-term, non-renewable licences, they will be offered to the highest ranked individual(s) on the ranked list after the previous successful applicant. NRW will write to each individual advising them of the offer of a short-term, non-renewable licence on payment of the appropriate duty and informing them of the last date upon which payment may be made (the payment deadline). Calculation of fees for short-term, non-renewable licences is addressed in paragraph 57 below

The payment deadline will be twenty eight days after the date of the offer letter.

NRW will issue a short-term, non-renewable licence upon receipt of a cleared payment provided that the payment is received (and cleared as necessary) no later than 5:00pm on the payment deadline.

NRW will not issue a short-term, non-renewable licence until payment is made and if payment has not been received (and cleared as necessary) by 5:00pm on the payment deadline, the offer of a short-term, non-renewable licence will lapse and NRW will be entitled to offer the short-term, non-renewable licence to the next highest ranked individual on the ranked list.

A short-term, non-renewable licence issued under this section can only authorise an individual to fish for cockles for the duration of the dates specified on the licence and for the fishing season to which it relates.

The allocation of a short-term, non-renewable licence under this section does not entitle an individual to allocation of a licence (short-term, non-renewable or otherwise) in subsequent seasons.

Individuals who receive an offer of a short-term, non-renewable licence under this section will retain their place on the ranked list for the issue of a probationary licence

irrespective of whether they accept or decline the offer of a short-term, non-renewable licence.