

By: KEIFCA Chief Fishery Officer

To: Kent & Essex Inshore Fisheries and Conservation Authority  
– 7 March 2023

Subject: **Terms and conditions of the licence: Should a licence be transferred with a change in ownership of a company or return to KEIFCA?**

Classification Unrestricted

**Summary:**

The paper outlines the technical company law, the potential impacts, and the feedback from stakeholders on the issue of; if the ownership of a licence-holding company changes, whether the licence is transferred to the new owners of the company along with the company ownership.

As outlined and explained in agenda item B2, this paper will be removed from the agenda if the Authority agree to issue licences just to individuals (using the wording developed by Eastern IFCA).

**Recommendations:**

Members are asked to **COMMENT** and **APPROVE** that:

If the licences are issued to a company and the beneficial ownership of the company is sold:

*The licence can be transferred with the company ownership.*

**Background**

If the Authority agree (Agenda Item B2) that licences can be issued to a company, the next decision that members face is how to proceed if a successful applicant, once they received a licence, then seeks to change the ownership of their company (e.g., sell their company). In this event that this does occur, does the licence transfer to the new owners of the company along with the company ownership or is the licence returned to KEIFCA?

### **Options under consideration**

Reviewing the feedback from the Listening Phase and from the Consultation 3 pre-consultation replies the members agreed to consult on the following options:

If the licences are issued to a company and the beneficial ownership of the company is sold:

1. *The licence cannot be transferred with the company ownership (i.e. the company would probably not be sold in the 7 years)*

*Or*

2. *The licence can be transferred with the company ownership*

After a decision is made, steps will then be taken to develop legal wording applicable to the new Regulating Order.

This decision comes with significant repercussions; on one side, allowing the sale or transfer of a licence provides the flexibility for individual companies to make business decisions that could protect jobs and bring in capital. On the other side, a company could apply for a licence with the specific purpose of selling the company once it had gained a licence, and the new owners might have a very different approach to delivering against the application criteria.

In both options it is important to state that at no point is KEIFCA restricting the sale of a company, in both options the shareholders of the company can sell their ownership. However, transferring or selling a company to new owners is not the same as selling or transferring the fishery access which the licence provides to new owners.

### **Feedback from Consultation 3 opposing the renewal of a licence with a change in company ownership**

Below are illustrative examples of replies received from the consultation opposing the annual renewal of a licence by a company in the event of a change in that company ownership - For a compilation of all the replies please read the Consultation Summary document pages 31-34.

#### Comments from current TECFO licence holders

*"My suggestion that licences are only handed down to their next of kin sons or daughters or brothers etc that is a fishing skipper and has directorship of the vessel owned by the ltd company family owned to a long serving skipper if this not the case hand the licences back to IFCA for review. this will stop just investors none fisherman controlling the fishery with no fishing track record fishing and had never held a permit to fish."*

*"Licence used to earn a living not for financial gain"*

## Comments from CFFPB permit holders and the Catching Sector

*"Licences should not be sold, cockle fishing in the main families goes back generations and have only in the last 10 years been getting sold as they had such high value. If they can't be sold then they do not have value and would have to continue to be passed down to the next generation and keep local fishing tradition alive. The value is in the licence with what you catch each season"*

*"If this goes to the beneficial ownership this could be any Tom, Dick or Harry who has no experience within the industry; yet there could be someone who has had decades of experience and can't get a licence. The person who is a beneficial owner may already have a licence and under this scheme would continue to accumulate licences (monopoly)."*

*"I strongly believe licenses should be issued to individuals and not companies as I have stated above. I believe if a license holder wants to sell his company or vessel he should be allowed to, but the license should be a separate thing to the company's assets as in boats/factories. The license should stay with the individual or go back to KEIFCA to be redistributed if relevant criteria is not met."*

## **Feedback from Consultation 3 supporting the renewal of a licence in the event of a change in company ownership**

Below are illustrative examples of replies received from the consultation supporting the annual renewal of a licence by a company in the event of a change in that company ownership - For a compilation of all the replies please read the Consultation Summary document pages 31-34.

## Comments from current TECFO licence holders

*"Licence holders should have the ability to sell their business and the business maintain the license, but possibly with caveats to ensure that the new owners honor the commitments to the fishery and it's stakeholders made by the original licence holder. There are many compelling reasons that a licence holder may wish to sell the licence, including but certainly not limited to: ill health, no longer having the ability to honour their commitments to the fishery, domestic issues. Clearly the option to sell a company and have it continue to hold the license comes with pros and cons. It opens up to issues of the industry being monopolised, but UK law already has a framework in place to ensure this doesn't happen. You are in talks with the competitions authority, and it should be up to them to limit this kind of activity. It is not something the authority should be burdening themselves with governing. If you are looking for an industry that continually reinvests in itself then the option to sell a company needs to be left on the table. If the option to sell is taken away, then it will create a culture of taking what you can whilst you can. Building a business, with the only prospect of it holding value to you is if you continue to run it until you are unfit to do so would leave many uncertainties within the industry."*

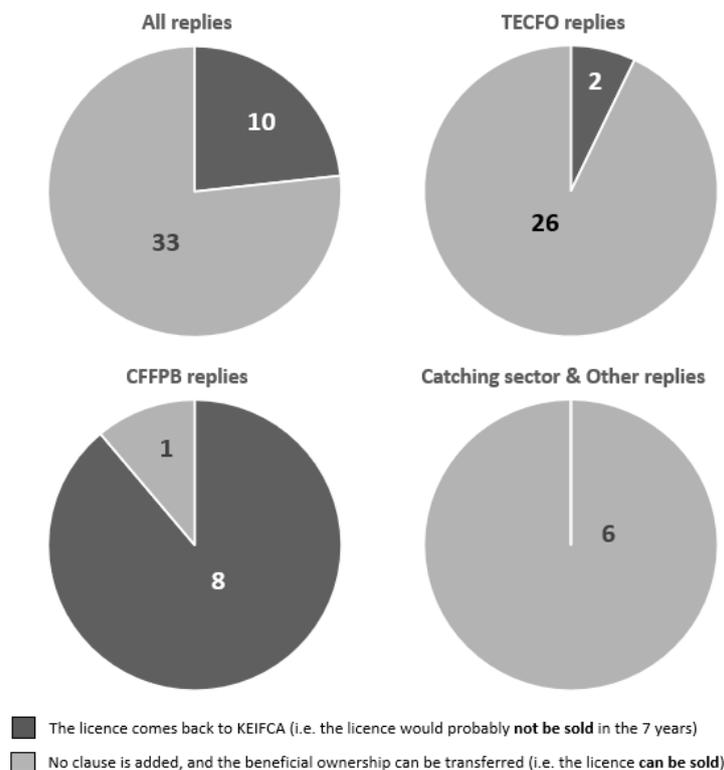
*"The ability of being able to sell any company is predominantly determined by the viability of the company, if a clause were to be added not allowing the company to be sold with the cockle licence, in effect the KEIFCA would be rendering the company and its assets as scrap value. It is entirely possible that a company may need to restructure for financial reasons for further investment to continue with its business plan and many other reasons that can occur thru personal circumstance alone, surely for the benefit of the sustainability of the Company and the Fishery this must be a major consideration to continue allowing the licences to be held by the company and enabling the company to be sold or Beneficial ownership to transfer as and when needed. I am sure the Authority wished to see continued investment and good strong companies within its cockle fishery"*

## Comments from CFFPB permit holders and the Catching Sector

*"Your licence criteria is heavily weighted towards local companies, how is a company like ourselves going to get a licence if we cannot purchase one? There is another way which you have not considered. You could set up a panel to decide what companies are eligible to purchase a licence if one comes available. A licence could only sell to a company on that list. You then have the best of both options. If a licence was sold, you would be assured that the licence would be going to a person/company who has fulfilled the needed criteria."*

### **Statistical breakdown of the consultation replies**

*Care needs to be taken in interpreting these summary pie charts as some consultation questionnaires responded on behalf of businesses employing numerous people, the results do however help give an overview of the majority view of different groups of stakeholders.*



### **Officer comments**

While Section 3 of the Sea Fisheries (Shellfish) Act 1967 allows KEIFCA as the grantee to recoup the costs of setting up and running the order, as well as impose tolls for the benefit of the fishery, the legislation does not provide for KEIFCA to make a profit from the sale of licences. This creates an interesting dynamic whereby the licence holder, who has not had to purchase the licence, could effectively sell the licence and make a profit from it, whilst KEIFCA, even as the grantee of the regulating order, cannot. As highlighted by the replies to the

consultation, companies without a licence are valued significantly less than companies with a licence.

This is an unusual arrangement and arises because fish and shellfish are regarded as a common resource that all citizens have a right to (one of the main actions of a regulating order is a severance of this public right to fish). As KEIFCA is funded by the local and national taxpayer and manages the fishery on behalf of the local community, it is ultimately the wider community that loses out on any profit made by a licence being sold. It is important to understand this background when considering the question in hand, and the nature of selling what at its heart is a community asset or a community right which does not belong to an individual.

It is common business practice to include a clause in a contract that links the agreement to the ownership of the company that has won contract, and that if ownership changes there is a break clause to revisit the contract (a Change of Control clause). Different to the licencing arrangement under TECFO 1994, the 7-year cycle provided by the new regulating order does provide an opportunity for change/ re-order the company, arrange investment over 7 years and for a company to have developed a contingency plan.

However, as outlined in paper B2, selling the ownership of a company with a licence can bring in new capital or ideas into a company, help a company raise capital in difficult times, potentially bring new investment into the community and protect local jobs. There is a strong argument that it is the right of company owners to do what they want with their company as well as the licence the company has been awarded and to reap the rewards of their labour if they choose to sell.

Different to the licencing arrangement under TECFO 1994, the 7-year cycle would mean that any new owners would have to apply in their own right for the following cycle against the criteria specified by the Authority, including being assessed against the plans their purchased company had provided in order to gain the licence.

Both of the options presented are sensible and justifiable options that can be technically delivered. Authority members should consider and balance the business advantages and flexibility to future licence holders against the importance of having clarity of licence ownership and the fairness of benefiting from the selling of a community resource.

In choosing an option, Members are asked to consider that the option decided upon can have a significant impact on how companies and cockle operations will be undertaken in the future.

## **Recommendation**

Allowing licences to be transferred in the event of a change in company ownership would maintain a capability of licence holders which has existed for the past 30 years throughout TECFO 1994. It has brought in new investment to the fishery and helped to protect local jobs.

Colloquial and everyday language has been used in the consultation of the principle discussed in this paper – i.e. can a licence be ‘transferred’. If the recommendation is approved, the next step will be to develop the legal wording and mechanisms applicable to the new Regulating Order to achieve the aims of the Authority. This legal wording will be subject to further comment and consultation.

### **RECOMMENDATION**

Members are asked to:

**COMMENT** and **APPROVE** that:

If the licences are issued to a company and the beneficial ownership of the company is sold:

*The licence can be transferred with the company ownership.*