

2014 No. 3345

SEA FISHERIES

**The Sea Fishing (Points for Masters of Fishing Boats)
Regulations 2014**

Made - - - - *18th December 2014*
Laid before Parliament *19th December 2014*
Laid before the National Assembly for Wales *19th December 2014*
Coming into force - - *12th January 2015*

The Secretary of State and, in relation to Wales, the Welsh Ministers, are designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the common agricultural policy of the European Union.

These Regulations make provision for a purpose mentioned in that section and it appears to the Secretary of State and the Welsh Ministers that it is expedient for the references to the EU Regulations referred to in regulations 2(1) and 4(5) to be construed as references to those Regulations as amended from time to time.

The Secretary of State, in relation to England and Northern Ireland, and (but only as regards regulations 3(1), 4, 7, 8(5) and 11) in relation to Scotland, and the Welsh Ministers, in relation to Wales, make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972^(c).

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014 and come into force on 12th January 2015.

(2) They extend to England and Wales and to Northern Ireland, and regulations 3(1), 4, 7, 8(5) and 11 also extend to Scotland.

(3) Regulation 14 applies only in relation to England.

(a) The Secretary of State is designated under S.I. 1972/1811, the Schedule. The function of the former Minister of Agriculture of making regulations under section 2(2) was transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order (S.I. 2002/794), article 2(2). The Welsh Ministers are designated under S.I. 2010/2690, article 3.

(b) 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), Part 1 of the Schedule.

(c) Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28 and amended by the European Union (Amendment) Act 2008, Part 1 of the Schedule and S.I. 2007/1388.

Interpretation

2. —(1) In these Regulations—

“administrative sanction” means a sanction other than a criminal sanction imposed by the authorities of another member State or third country on a master in respect of a serious infringement;

“British national” means a British citizen, a person who is a British subject by virtue of Part IV of the British Nationality Act 1981(a) and who has the right of abode in the United Kingdom and is therefore exempt from United Kingdom immigration control, or a British overseas territories citizen who has acquired citizenship from a connection with Gibraltar(b);

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

“conviction” has the meaning given by regulation 6;

“corresponding Scottish enactment” means, in relation to a provision of these Regulations, an enactment which in Scotland has the corresponding effect;

“DARD” means the Department of Agriculture and Rural Development in Northern Ireland;

“English fishing boat” means a UK fishing boat which is registered in England;

“fishing boat” means a vessel equipped for the commercial exploitation of living aquatic resources, including sea fish;

“master” means a British national who is the master of a fishing boat, and includes a person who carries out the functions of a master after disqualification or during a period of suspension under regulation 10;

“Northern Ireland fishing boat” means a UK fishing boat which is registered in Northern Ireland;

“points authority” has the meaning given by regulation 3(2);

“the points information” has the meaning given by regulation 7(5);

“prosecuting authority” has the meaning given by regulation 3(3);

“the register” means the register set up and maintained by the Marine Management Organisation under regulation 4(1);

“Scottish fishing boat” means a UK fishing boat which is registered in Scotland;

“serious infringement” has the meaning given by—

(a) Article 42 of Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing(d); and

(b) Article 90 of the Control Regulation;

“statutory notification” means a notification under any enactment having effect in Scotland and requiring the notification in question by the Scottish Ministers;

“third country” means a country which is not a member State;

“UK fishing boat” means a fishing boat which—

(c) is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995(e);
or

(a) 1981 c. 61; section 31 in Part IV was amended by the British Overseas Territories Act 2002 (c. 8), section 1(1)(b). Section 33 was repealed by the Nationality, Immigration and Asylum Act 2002 (c. 41), Schedule 2, paragraph 1(i) and Schedule 9.

(b) See the 1972 and 1982 UK Declarations to the Final Act of the 1972 Accession Treaty (OJ No. L 73, 27.3.1972, p. 196 and OJ No. C 23, 28.1.1983, p. 1) and the Declaration attached to the Final Act of the Intergovernmental Conference on the Treaty of Lisbon, annexed to the Final Act of the Treaty on European Union (OJ 1992 No. C 191, 29.7.1992, p. 98), which define “British national” for EU law purposes.

(c) OJ No. L 343, 22.12.2009, p. 1, as last amended by Regulation (EU) No. 508/2014 (OJ No. L 149, 20.5.2014, p. 1).

(d) OJ No. L 286, 29.10.2008, p.1, as last amended by Commission Regulation (EU) No. 202/2011 (OJ No. L 57, 2.3.2011, p. 10).

(e) 1995 c. 21; section 15 in Part 2 was amended by S.I. 2002/794.

- (d) is wholly owned by persons qualified to own British ships for the purposes of that Part;
“Welsh fishing boat” means a UK fishing boat which is registered in Wales.

(2) In this regulation and in regulation 4(5), references to EU Regulations are references to those EU Regulations as amended from time to time.

Relevant authorities

3.—(1) The Marine Management Organisation is the competent authority for the purposes of Article 89(4) of the Control Regulation, insofar as it relates to serious infringements by masters of fishing boats.

(2) The “points authority” is—

(a) the Marine Management Organisation, if—

- (i) a master is convicted of a serious infringement by a court in the United Kingdom in relation to a fishing boat other than a Welsh, Northern Ireland or Scottish fishing boat; or
- (ii) a master of any fishing boat, other than a Welsh, Northern Ireland or Scottish fishing boat, is—
 - (aa) charged with a fisheries offence in another member State or in a third country;
 - (bb) convicted of a serious infringement by a court in another member State or in a third country; or
 - (cc) given an administrative sanction for a serious infringement in another member State or a third country;

(b) the Welsh Ministers, if—

- (i) a master is convicted of a serious infringement by a court in the United Kingdom in relation to a Welsh fishing boat; or
- (ii) a master of a Welsh fishing boat, is—
 - (aa) charged with a fisheries offence in another member State or in a third country;
 - (bb) convicted of a serious infringement by a court in another member State or in a third country; or
 - (cc) given an administrative sanction for a serious infringement in another member State or a third country;

(c) DARD, if—

- (i) a master is convicted of a serious infringement by a court in the United Kingdom in relation to a Northern Ireland fishing boat; or
- (ii) a master of a Northern Ireland fishing boat, is—
 - (aa) charged with a fisheries offence in another member State or in a third country;
 - (bb) convicted of a serious infringement by a court in another member State or in a third country; or
 - (cc) given an administrative sanction for a serious infringement in another member State or a third country.

(3) The “prosecuting authority” is—

(a) in relation to prosecutions in England—

- (i) the Marine Management Organisation; or
- (ii) the Inshore Fisheries Conservation Authority prosecuting in relation to an alleged offence in its inshore fisheries conservation district^(a);

(a) Inshore fisheries and conservation districts and authorities were set up under sections 149 and 150 of the Marine and Coastal Access Act 2009 (c. 23).

- (b) in relation to prosecutions in Wales, the Welsh Ministers or the Counsel General;
 - (c) in relation to prosecutions in Northern Ireland, DARD.
- (4) Where the Marine Management Organisation is the points authority, regulations 7(1)(b) and (4)(c)(ii) and 8(3)(b) do not require it to notify itself.

Register of masters of fishing boats

4.—(1) The Marine Management Organisation must set up and maintain a register of masters who have been allocated points under regulation 7 or 8.

(2) The register must also include any points relating to serious infringements which the Scottish Ministers have notified to the Marine Management Organisation by statutory notification.

(3) The register must set out—

- (a) the name of each master who has been allocated points;
- (b) the total number of points allocated to each master;
- (c) the dates of each serious infringement in respect of which a master has been allocated points;
- (d) in relation to each serious infringement, which points authority allocated the points or, where the points were allocated by the Scottish Ministers, the fact that they were allocated by them;
- (e) the start and end date of—
 - (i) any period during which a master is suspended from mastering a fishing boat under regulation 10(1);
 - (ii) any period notified by the Scottish Ministers to the Marine Management Organisation by statutory notification as a period during which they have suspended a master from mastering a Scottish fishing boat by reason of points allocated to the master for serious infringements;
- (f) whether a master has been disqualified under regulation 10(3) or under a corresponding Scottish enactment; and
- (g) the date of any such disqualification.

(4) The Marine Management Organisation must ensure that the information in paragraph (3) is available to the public on its website.

(5) In this regulation and in regulations 5, 7 and 8, “the points relating to the serious infringement” are the points assignable in relation to the serious infringement under Article 126 of and Annex XXX to Commission Implementing Regulation (EU) No. 404/2011 laying down detailed rules for the implementation of the Control Regulation^(a), which, for the purposes of these Regulations, is deemed to apply to serious infringements by masters.

Notification of prosecution for serious infringements

5. Where a master is to be prosecuted for a serious infringement, the prosecuting authority must notify the master in writing—

- (a) that the master is to be prosecuted for a serious infringement;
- (b) of the points relating to the serious infringement; and
- (c) of the period of any suspension or disqualification which would be triggered by the allocation of those points.

^(a) OJ No. L 112, 30.4.2011, p.1, subject to a corrigendum (OJ No. L 328, 10.12.2011, p. 58).

Meaning of conviction

6. For the purposes of these Regulations, a master is only to be treated as convicted of a serious infringement—

- (a) on the expiry of the period for appealing against that conviction; or
- (b) on the date on which the conviction is upheld by the final court to which the master appeals.

Allocation of points in respect of UK convictions

7.—(1) If a master of an English, Welsh or Northern Ireland fishing boat is convicted in the United Kingdom of a serious infringement, the points authority must, within 7 days of the conviction or, if the conviction was in a Scottish court, of receiving statutory notification from the Scottish Ministers—

- (a) allocate to the master the points relating to the serious infringement; and
- (b) notify the allocation of points to the Marine Management Organisation.

(2) If a master of a Scottish fishing boat is convicted in England, Wales or Northern Ireland, the prosecuting authority must notify the Scottish Ministers within 7 days of the conviction.

(3) If the prosecuting authority is an Inshore Fisheries Conservation Authority, the Authority must notify the conviction to the Marine Management Organisation within 7 days.

(4) The Marine Management Organisation must—

- (a) within 7 days of receiving notification under paragraph (1)(b), include in the register against the master's name the points allocated to the master by the points authority;
- (b) within 7 days of receiving a statutory notification from the Scottish Ministers that they have allocated points to a master of a Scottish fishing boat for a serious infringement relating to that boat, include in the register against the master's name the points so allocated;
- (c) notify the points information to—
 - (i) the master (or, if they allocated the points to the master, the Scottish Ministers);
 - (ii) the points authority; and
 - (iii) if the prosecuting authority was an Inshore Fisheries Conservation Authority, that Authority.

(5) The points information in this regulation and in regulation 8 is information as to—

- (a) the points included in the register;
- (b) whether the inclusion of the points has triggered a suspension or disqualification under regulation 10 or under a corresponding Scottish enactment; and
- (c) the start date of any suspension or disqualification.

(6) If the allocation of points under this regulation triggers a suspension or disqualification under regulation 10 or under a corresponding Scottish enactment, the Marine Management Organisation must ensure that the start date of the suspension or disqualification is at least one calendar day after it is included in the register.

(7) If a suspension starts while the master is mastering a fishing boat engaged in fishing, the Marine Management Organisation must extend the period of the suspension by the number of calendar days the master spends at sea between the start date set out in the register and the date on which the master returns to port.

Allocation of points in respect of convictions and administrative sanctions in other member States and third countries

8.—(1) A master (“M”) who is charged with an offence in another member State or a third country may request that the points authority notify M—

- (a) whether the offence is a serious infringement;
- (b) of the points relating to any such serious infringement; and
- (c) whether the inclusion of those points in the register would trigger a suspension or disqualification under regulation 10.

(2) The points authority must provide this information to M within 7 days of receiving M's request.

(3) The points authority must, within 7 days of being satisfied that M has been convicted of, or received an administrative sanction in respect of, a serious infringement in another member State or a third country—

- (a) allocate to M the points relating to the serious infringement; and
- (b) notify the Marine Management Organisation of the allocation of points.

(4) The Marine Management Organisation must, within 7 days of allocating points under paragraph (3)(a) or of receiving notice under paragraph 3(b)—

- (a) include the points allocated by the points authority against M's name; and
- (b) notify the points information to M and the other points authorities.

(5) The Marine Management Organisation must, within 7 days of receiving a statutory notification from the Scottish Ministers that they have allocated points to the master of a Scottish fishing boat in respect of a serious infringement in another member State or a third country—

- (a) include the points allocated by the Scottish Ministers against M's name; and
- (b) notify the Scottish Ministers that it has done so.

Allocation of points in respect of serious infringements committed on the same occasion

9.—(1) If a master has committed two or more serious infringements and these are detected by an enforcement officer in the course of one inspection, the total number of points to be allocated to the master by the points authority under regulation 7 or 8 in respect of those serious infringements is the sum of the points for each infringement, but must not exceed 12 points.

(2) An enforcement officer is—

- (a) a person appointed for the purposes of Article 74 of the Control Regulation—
 - (i) by a prosecuting authority; or
 - (ii) in the case of a charge brought in another member State, by that member State; or
- (b) in the case of a charge brought in a third country in respect of a fishing activity which is a serious infringement, the person appointed in that country who carried out the inspection or surveillance which led to the charge being brought.

Suspension and disqualification

10.—(1) A master who has, at any one time, accumulated at least 18 points but fewer than 90 points in the register is suspended from mastering a relevant fishing boat.

(2) The duration of the suspension is—

- (a) 2 months, on the accumulation of 18 to 35 points inclusive;
- (b) 4 months, on the accumulation of 36 to 53 points inclusive;
- (c) 8 months, on the accumulation of 54 to 71 points inclusive;
- (d) 12 months, on the accumulation of 72 to 89 points inclusive.

(3) A master who has, at any one time, accumulated 90 points or more is disqualified from mastering a relevant fishing boat.

(4) A suspension or disqualification under this regulation starts—

- (a) on the start date set out in the register; or

- (b) if the master is mastering a relevant fishing boat engaged in fishing when a suspension or disqualification is triggered, on the day following the day on which the master returns to port.
- (5) It is an offence for a master to master a relevant fishing boat—
- (a) while suspended from doing so; or
 - (b) if disqualified from doing so.
- (6) In this regulation, “a relevant fishing boat” is a UK fishing boat which is not a Scottish fishing boat.

Deletion of points

11.—(1) If the Marine Management Organisation is not aware of any serious infringement committed by a master (“M”) within 3 years of the date on which M last committed a serious infringement, it must delete all points listed against M’s name in the register and remove M’s name from the register.

(2) This regulation does not apply if M has accumulated 90 points or more and been disqualified under regulation 10(3) or under a corresponding Scottish enactment.

Prohibition of employing suspended or disqualified masters

12. It is an offence for a person to employ a master to master a UK fishing boat if the register indicates that the master is suspended or has been disqualified.

Penalties

13. A person convicted of an offence under these Regulations is liable—

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

Review

14.—(1) The Secretary of State must, from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review, the Secretary of State must, as far as is reasonable, have regard to how Articles 89, 92 and 93 of the Control Regulation are executed and enforced in other member States.

(3) The report must, in particular—

- (a) set out the objectives intended to be achieved by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system which imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years which starts on the day on which these Regulations come into force.

(5) Each subsequent report must be published before the end of the period of five years which starts on the day on which the previous report was published.

18th December 2014

Carl Sargeant
Minister for Natural Resources, one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Article 92(6) of Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ No. L 343, 22.12.2009, p. 1) (“the Control Regulation”). They extend mainly to England, Wales and Northern Ireland, although regulations 3(1), 4, 7, 8(5) and 11 also extend to Scotland. Regulation 14 applies only in relation to England.

The Regulations set up a system for the allocation of points to the UK masters of fishing boats who have committed serious infringements of EU fisheries law. They also provide for the Marine Management Organisation to set up a register of UK masters with details of the points which have been allocated to them.

Regulation 4 provides for the setting up and maintenance of the register. Regulation 5 requires prosecuting authorities to notify masters of the points they will be allocated if they are convicted of serious infringements of EU fisheries law.

Regulations 7 and 8 provide for the allocation of points to masters. Regulation 9 limits to twelve the total number of points that may be allocated in respect of multiple serious infringements detected by an enforcement officer in the course of one inspection.

Regulation 10(1) and (2) provides for masters to be suspended from mastering fishing boats for various periods, depending on the number of points they accumulate. Under regulation 10(3), masters are disqualified from mastering fishing boats if they accumulate 90 points at any one time.

Regulation 11 provides that the Marine Management Organisation must delete points if a master has not committed a serious infringement for 3 years.

Regulation 12 makes it an offence for a person to employ a disqualified or suspended master on a UK fishing boat.

Regulation 13 provides that a person convicted of an offence under these Regulations is liable to a fine. These Regulations are enforceable by marine enforcement officers under section 238 of the Marine and Coastal Access Act 2009 (c. 23).

Regulation 14 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

The Marine Management Organisation maintains a register of points for fishing boat owners, which is enforced through fishing boat licensing systems. Details of this scheme are available at <http://www.marinemanagement.org.uk/fisheries/monitoring/points.htm>.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector in England is available at www.gov.uk/defra or from the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London, SW1P 3JR and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory assessment has been prepared as to the likely costs and benefits of complying with these Regulations in Wales. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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