

2014 No. 379

SEA FISHERIES

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

Made - - - - - *18th December 2014*

Laid before the Scottish Parliament *22nd December 2014*

Coming into force - - - *2nd February 2015*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for the references to EU instruments in these Regulations to be construed as references to those instruments as amended from time to time.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Sea Fishing (Points for Masters of Fishing Boats) (Scotland) Regulations 2014 and come into force on 2nd February 2015.

(2) Subject to paragraph (3), these Regulations extend to Scotland and the Scottish zone only.

(3) So far as they extend beyond Scotland and the Scottish zone, they do so only as a matter of Scots law.

(4) In this regulation “Scotland” and “the Scottish zone” have the same meaning as in section 126(1) of the Scotland Act 1998(b).

Interpretation

2. 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;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), section 3(3) and Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and was amended by the 2008 Act, section 3(3) and Schedule, Part 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 Boundary Order 1999 (S.I. 1999/1126).

“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, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 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(c), as amended from time to time;

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

“the Implementing Regulation” means Commission Implementing Regulation (EU) No 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy(d), as amended from time to time;

“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;

“prosecuting authority” means—

- (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(e);
- (b) in relation to prosecutions in Wales, the Welsh Ministers or the Counsel General; and
- (c) in relation to prosecutions in Northern Ireland, the Department of Agriculture and Rural Development in Northern Ireland;

“register of masters” means the register of masters referred to in regulation 4 of the Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014(f);

“Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995(g) and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging;

“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, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999(h), as amended from time to time; and
- (b) Article 90 of the Control Regulation;

(a) 1981 c.61.

(b) See the 1972 and 1982 UK Declarations to the Final Act of the 1972 Accession Treaty (OJ 1972 L 73, 27.3.1972, p.196 and OJ 1983 C 23, 28.1.1983, p.1) and the UK 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 C 191, 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) 508/2104 (OJ No L 149, 20.5.2014, p.1).

(d) OJ No L 112, 30.04.2011, p.1, as last amended by Corrigendum to Commission Implementing Regulation (EU) No 404/2011 (OJ No L 328, 10.12.2011, p.58).

(e) 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).

(f) S.I. 2014/3345.

(g) 1995 c.21.

(h) 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).

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

Points authority

3. The Scottish Ministers are the authority responsible for allocating points to a master of a Scottish fishing boat who is, in relation to that Scottish fishing boat—

- (a) convicted of a serious infringement by a court in the United Kingdom;
- (b) convicted of a serious infringement by a court in another member State or in a third country; or
- (c) given an administrative sanction for a serious infringement in another member State or a third country.

Notification of suspension and disqualification

4. For the purpose of enabling the Marine Management Organisation^(a) to maintain the register of masters, the Scottish Ministers must notify the Marine Management Organisation—

- (a) of the start and end date of any period during which a master is suspended from mastering a Scottish fishing boat under regulation 10(1);
- (b) whether a master has been disqualified under regulation 10(3); and
- (c) of the start date of any such disqualification.

Notification to the master

5. The Scottish Ministers, when reporting a case to the Procurator Fiscal which may result in the prosecution of a master of a Scottish fishing boat for a serious infringement, must also notify that master in writing of—

- (a) the points relating to the infringement which would be allocated under regulation 7; and
- (b) the period of any suspension, or of any disqualification under regulation 10, which would be triggered by the allocation of those points.

Meaning of conviction

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

- (a) on the expiry of the period for appealing against that conviction; or
- (b) on the date 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 a Scottish fishing boat is convicted of a serious infringement by a Scottish court, the Scottish Ministers must, within 7 days of the date that they become aware of the conviction—

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

(2) If a master of a Scottish fishing boat is convicted of a serious infringement by a court in England, Wales or Northern Ireland, the Scottish Ministers must, within 7 days of receiving notification of the conviction from the prosecuting authority—

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

(a) The Marine Management Organisation was established under section 1 of the Marine and Coastal Access Act 2009 (c.23).

(c) notify the Marine Management Organisation of the allocation of points .

(3) In this regulation and in regulation 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 the Implementing Regulation which, for the purposes of these Regulations, is deemed to apply to serious infringements by masters.

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

8.—(1) A master of a Scottish fishing boat who is charged with an offence in another member State or in a third country may request the Scottish Ministers to notify the master—

- (a) if the offence is a serious infringement;
- (b) of the points relating to such an infringement; and
- (c) of the period of any suspension, or any disqualification, which would be triggered by the allocation of those points to the master.

(2) The Scottish Ministers must provide the information requested under paragraph (1) to the master within 7 days of receiving the master’s request.

(3) The Scottish Ministers must, within 7 days of being satisfied that the master of a Scottish fishing boat 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 the master the points relating to the serious infringement;
- (b) notify the master of the allocation of points ; and
- (c) notify the Marine Management Organisation of the allocation of points.

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

9.—(1) If a master of a Scottish fishing boat has committed two or more serious infringements in relation to a Scottish fishing boat 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 Scottish Ministers under regulation 7 or 8 in respect of those serious infringements is the sum of the points for each infringement, but to a maximum of 12 points.

(2) An enforcement officer is—

- (a) a person appointed for the purposes of Article 74 of the Control Regulation—
 - (i) by the Scottish Ministers or a prosecuting authority;
 - (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 by 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 of masters is suspended from mastering a Scottish 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; and
- (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 Scottish fishing boat.

- (4) A suspension or disqualification under this regulation starts—
- (a) on the start date set out in the register of masters; or
 - (b) if the master is mastering a Scottish 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 Scottish fishing boat—
- (a) while suspended from doing so; or
 - (b) when disqualified from doing so.

Offence of employing suspended or disqualified masters

11.—(1) It is an offence for a person to employ a master to master a UK fishing boat if the register of masters indicates that the master is suspended or has been disqualified.

- (2) In this regulation, “UK fishing boat” means a fishing boat which—
- (a) is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995^(a); or
 - (b) is wholly owned by persons qualified to own British ships for the purposes of that Part.

Penalties

- 12.** A person who commits an offence under these Regulations is liable—
- (a) on summary conviction, to a fine not exceeding £5,000; or
 - (b) on conviction on indictment, to a fine.

RICHARD LOCHHEAD
A member of the Scottish Government

St Andrew’s House,
Edinburgh
18th December 2014

^(a) 1995 c.21.

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 (“the Control Regulation”).

The Regulations set up a system for the allocation of points to the masters of Scottish fishing boats who are British nationals and who have committed serious infringements of EU fisheries law.

Regulation 3 provides that the Scottish Ministers are responsible for allocating points to such masters.

Regulation 4 provides for the notification of suspension periods and disqualifications to the Marine Management Organisation, for the purpose of enabling that Organisation to maintain a UK-wide register of masters who have been allocated points.

Regulation 5 requires the Scottish Ministers to notify masters of Scottish fishing boats who are to be prosecuted in Scotland of the points that would be allocated if they were convicted of serious infringements of EU fisheries law.

Regulations 7 and 8 provide for the allocation of points to masters. Regulation 9 provides for masters to be allocated a maximum of 12 points in respect of multiple serious infringements detected by an enforcement officer in the course of one inspection.

Regulation 10 provides for masters to be suspended from mastering Scottish fishing boats for various periods, depending on the number of points they accumulate. Under regulation 10(3), masters are disqualified from mastering Scottish fishing boats if they accumulate 90 points at any one time. Under regulation 10(5), it is an offence for a master to master a Scottish fishing boat while suspended or disqualified from doing so.

Regulation 11 makes it an offence for a person to employ a disqualified or suspended master to master a UK fishing boat.

Regulation 12 provides that a person convicted of an offence under these Regulations is liable, on summary conviction, to a fine not exceeding £5,000 or, on conviction on indictment, to a fine.

A Business and Regulatory Impact Assessment (“BRIA”) has been prepared in relation to these Regulations and placed in the Scottish Parliament Information Centre. Copies of the BRIA are available from Marine Scotland, Victoria Quay, Leith, Edinburgh EH6 6QQ and on line at www.legislation.gov.uk.

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£6.00

S201412197 12/2014 19585

<http://www.legislation.gov.uk/id/ssi/2014/379>

ISBN 978-0-11-102574-1



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