

# Final Business and Regulatory Impact Assessment

## **Title of Proposal**

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

## **Purpose and intended effect**

- **Background**

2.1 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 and been convicted of serious infringements of EU fisheries law. Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy requires Member States to establish two points systems under which persons are assigned an appropriate number of points as a result of them having committed a serious infringement of the rules of the common fisheries policy. One points system requires to apply to the holders of fishing boat licences who have committed a serious infringement and the other system requires to apply to masters of fishing boats who have committed a serious infringement.

2.2 In June 2013 Marine Scotland, together with other UK Fisheries Administrations introduced an administrative based scheme for fishing boat licence holders which was linked to the domestic UK sea fishing licensing system. This points scheme operates separately from any criminal proceedings or Fixed Penalty Notices. Since the introduction of the fishing licence points system no holder of a Scottish fishing boat licence has been awarded points.

- **Objective**

2.3 The title SSI is being introduced to meet Scotland's obligations under 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. Article 92(6) of the Regulation states that Member States are required to establish a points system under which a master of a fishing vessel is assigned the appropriate number of points as a result of a serious infringement of the rules of the common fisheries policy committed by him/her.

2.4 The agreed policy position of UK Fisheries Administrations is that a UK-wide central register of points is required in order to ensure a level playing field. The most practical way of doing that is through one authority, in this case the Marine Management Organisation, operating the register for the whole of the UK.

2.5 The consequences of a master accumulating and reaching trigger levels will be the imposition of a period where they will be banned from carrying out any of the functions of a fishing vessel master as envisaged under the rules of the common

fisheries policy. It will **NOT** seek to preclude their presence on a fishing vessel, or prevent them carrying out any activities which fall outwith the functions that only certified masters of fishing vessels are qualified to discharge.

- **Rationale for Government intervention**

2.6 Government intervention is required here because EU legislation requires every Member State to establish a points system for masters. As there is no existing domestic licensing system in the UK applicable to masters of fishing vessels, there is no immediate system or regime to which the points system can be attached. The UK Fisheries Administrations are therefore in a position whereby they have to create a new system under which points can be assigned to masters. The Scottish Government, along with other UK Fisheries Administrations, seeks to fully comply with the EU Regulations by establishing a points for masters scheme. The present Regulations will establish that points system for masters. As there is no existing legislative regime upon which the points allocated to masters can be attached (unlike the fishing boat licensing scheme in relation to the points system for licence holders), it is necessary for the points system for masters to be introduced by subordinate legislation. Across the UK, both points systems are based on the principle that points will only be allocated in respect of a conviction of an offence which the relevant competent authority considers is a serious infringement of the common fisheries policy.

2.7 The Sea Fishing (Points for Masters of Fishing Boats) (Scotland) Regulations 2014 will be in line with the purpose articulated in the Scottish Government's Economic Strategy: to focus Government and public services on creating a more successful country with opportunities for all of Scotland to flourish bringing increased sustainable growth. The Order will contribute to a wealthier and fairer country by providing a level regulatory playing field whilst safeguarding sustainable legal fishing activity. In this respect they will also contribute to the following National Outcomes: we value and enjoy our built and natural environment and protect it and enhance it for future generations and we reduce the local and global environmental impact of our consumption and production. In addition, they will contribute to the National Indicator outcomes aimed at improving the state of Scotland's marine environment.

## **Consultation**

- **Within Government**

3.1 Officials and Ministers from the other UK Fisheries Administrations (Department for Environment, Food and Rural Affairs, Marine Management Organisation, Welsh Assembly Government and Department of Agriculture Rural Development Northern Ireland and their predecessor departments) were involved in the negotiation of the Control Regulation. Specific discussion on a points system for masters has been taken forward between respective officials following on from the establishment of an administrative points system for fishing boat licence holders introduced in June 2013.

- **Public Consultation**

3.2 Given the very limited number of individuals - i.e. masters of fishing boats convicted of a serious fisheries offence - that might be affected by the Regulations, it

was not considered necessary to run a public consultation in Scotland. Analysis of recorded convictions for the last five years shows that no master of a Scottish fishing boat would have reached the trigger point for suspension under the provisions of the proposed Regulations.

- **Business**

3.3 The Fisheries Management and Conservation (FMAC) Group and its inshore equivalent (IFMAC) are decision-making bodies and discussion forums concerned with all issues connected to sea fisheries management. Both Groups are chaired by Marine Scotland and have representatives from the fishing industry representative bodies; fish producer organisations; environmental organisations, Marine Scotland Policy and Science with other UK administrations attending as observers. FMAC considered and discussed a Marine Scotland Policy paper on the introduction of points for serious fishing infringements in November and December 2012. A further advisory letter and paper was distributed to industry Stakeholders in May 2013, in advance of the introduction of the licence holders points system in June of that year and advised of the similar points system for masters of fishing boats. This direct engagement allowed feed in of industry views, which indicated general acceptance, in the practical application of the requirements under Council Regulation (EC) No 1224/2009.

## **Options**

4.1 Three options have been considered in implementing Article 92(6) of Council Regulation (EU) No 1224/2009: **Option 1** Do Nothing; **Option 2** Introduce an administrative system and **Option 3** Implement the Regulation fully, introducing a legislative based system by making a specific SSI.

**Option 1.** This would mean that the Scottish Government was failing to discharge its regulatory obligations under EU law and could lead to the UK facing infraction measures.

**Option 2.** On first sight an administrative system mirroring the licence points system appears attractive, where the aim lies in solely stopping suspended masters completing documents and returns required to undertake fishing trips. However, unlike the points system for licence holders, there is no existing licensing or other legislative regime to which the points allocated to masters can be attached. It is not considered that a stand-alone points scheme could be introduced on an administrative basis only, without being either underpinned directly by legislative provision or being linked to a system which is authorised by legislative provision. This is consistent with the principle that there should be “no punishment without law”. Also as the rest of the UK will have legislative cover for their masters points system an administrative based system in Scotland could leave a loophole allowing suspended masters to hop administrations.

**Option 3.** The English, Welsh and Northern Ireland Administrations are bringing their own points for masters subordinate legislation into force to ensure continuity across their parts of the UK. Marine Scotland is committed to maintaining a level playing field for its fishing industry and believes that this

option provides the best solution for ensuring compliance with EU law, maintaining the no punishment without law principle and limiting any potential for administration hopping by convicted masters within the UK Member State.

### **Sectors and groups affected**

4.2 Only fishing vessel masters convicted of a serious infringement of EU fisheries law may be affected. Analysis of recorded convictions for offences amounting to serious infringements over the last five years shows that no master of a Scottish fishing boat would have accumulated enough points to reach the trigger point for suspension under the provisions of the proposed Regulations.

### **Benefits**

4.3 The main benefit to introducing the points for masters subordinate legislation is to ensure that the Scottish Government is able to operate a points system in relation to masters of Scottish fishing vessels which feeds into a UK-wide register of points established and operated by the Marine Management Organisation. This will ensure that the Scottish Government is able to fully meet its obligations under Article 92(6) of Council Regulation (EC) No 1224/2009 and avoid infraction proceedings.

Option 1 Do nothing – There are no perceivable benefits to this option, the UK (and Scotland) must meet its legal obligations in line with all other Member States. Failing to establish a points system for masters would lead to infraction proceedings and ultimately large fines against the UK.

Option 2 Introduce an administrative solution - Whilst costs would be contained within Marine Scotland's administrative budget and this option would meet the EU regulatory requirement, it would not provide a level playing field across all UK Fisheries Administrations as England, Wales and Northern Ireland are introducing a system underpinned by subordinate legislation. An administrative based system in Scotland could lead to administration hopping by convicted masters.

Option 3 Introduce a legislative based system – This option would contain costs within Marine Scotland's administrative budget, ensure compliance with EU law and provide continuity (a level playing field) across the UK. Option 3 is considered as bringing the greatest benefits to all stakeholders.

### **Costs**

4.4 Any additional costs resulting from implementing this Regulation will fall to Marine Scotland compliance and licensing units in monitoring convictions and updating the central UK points register. The costs are negligible and will be absorbed within approved operational budgets. If this legislation is not adopted then the UK could incur substantial infraction costs. In Scotland, and the rest of the UK, stricter action against infringements will benefit legitimate fishers and preserve European fish stocks against illegal fishing activity.

Option 1 Do nothing – This could lead to potential maximum infraction fines of €703K per day or £256m per annum.

Option 2 Introduce an administrative system – low level non-monetised additional administrative costs to the Scottish Government. If the system was considered ineffective there remains the possibility of infraction costs; potential maximum infraction fines of €703K per day or £256m per annum.

Option 3 Introduce a legislative based system - low level non-monetised additional administrative costs to the Scottish Government with no risk of infraction fines

### **Scottish Firms Impact Test**

5.1 Industry has been aware of Council Regulation (EC) No 1224/2009 and its provisions since it was adopted in November 2009. Industry was also consulted through engagement in November and December 2012 with FMAC and the tabling of a discussion paper which outlined proposals for both the licence holders and masters points systems. FMAC and its related inshore Group represent 90%+ of Scottish fishers (almost 2,000 licence holders). Additionally all holders of Scottish fishing licences and members of FMAC received a letter and guidance note on EU points system for serious infringements in May 2013. No detailed adverse or positive comments were received in respect of the points proposal. This was expected because the points will only be allocated to masters convicted of a serious fisheries infringement. The application of points will not stop a fisher being on board a fishing boat as a crew member – it will only stop them completing official fishery forms as a master and performing other master-specific functions. The points will only be applied to a very limited number of people over a period of time. Current analysis of recorded convictions for the last five years shows that no master of a Scottish fishing boat would have reached the trigger point for suspension under the provisions of the proposed Regulations. There is also acceptance within the industry that the points system is part of the adopted EU Control Regulation and is therefore a legal requirement within the European Union.

### **Competition Assessment**

5.2 This proposal would only impact on the fish catching sector, specifically those convicted of a serious fisheries infringement and those enforcing it (Marine Scotland)

5.3 The enforcement of fisheries legislation is done to create a level playing field to ensure that all vessels comply with technical and conservation measures. The provision within the new Regulation is unlikely to have any major impact on the ability of operators to compete against each other as all fishers within the European Union must comply with the provisions of Council Regulation (EC) No 1224/2009.

5.4. Using the Competition & Markets Authority Competition Filter questions we have concluded that the proposals will neither directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

### **Test run of business forms**

5.5 The proposals do not introduce any new forms for business to complete.

### **Legal Aid Impact Test**

6.1 The proposals will not have any impact upon legally compliant fishers and the provisions within the Regulations will not alter or undermine an individual's access to

the justice system.

6.2 Directorate for Justice and Crown Office have both reviewed the draft Regulations and are content with its provisions.

**Enforcement, sanctions and monitoring**

7.1 The Compliance unit within Marine Scotland is responsible for monitoring convictions relating to fishery law and the Licensing Unit will make arrangements to update the UK central points register within seven days of a conviction being notified. Marine Scotland is required to annually report all enforcement action taken on serious fisheries infringements to the European Commission.

**Implementation and delivery plan**

8.1 Respective UK Fisheries Administrations will monitor the application of the new points system within their regions and review as group in advance of the annual report to the European Commission.

- **Post-implementation review**

8.2 Marine Scotland will undertake a review of the new legislation within the specified 10 year period.

**Summary and recommendation**

- **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	Low level non-monetised cost benefit to industry in respect of administrative costs.	Potential maximum infraction fines €703k per day or £256m per annum.
2	Low level Non-monetised additional administrative costs to government with a less effective system across UK administrations.	Potential maximum infraction fines €703k per day or £256m per annum
3	Avoidance of infraction fines- maximum infraction fines €703k per day or £256m per annum. Ensuring compliance with an EU obligation. Level regulatory playing field across EU Member States.Scotland's regulation will be brought into line with the rest of the UK.	None –costs will be contained within Marine Scotland's current enforcement budget.
4		

**9.1** In order to ensure continuity of the Regulation within the UK and the Scottish Government's commitment to providing a level playing field for our fishing industry, the Scottish Government intends to proceed with subordinate legislation as per option 3.

**Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

**Date:**

**Richard Lochhead  
Cabinet Secretary for Rural Affairs, Food and the Environment**

**Scottish Government Contact point: Gordon Hart Ext: 4980**