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**AN BILLE IASCAIGH MHARA AGUS DLÍNSE MUIRÍ
(FÓGRA PIONÓIS SHOCRAITHE) (LEASÚ) 2009
SEA FISHERIES AND MARITIME JURISDICTION (FIXED
PENALTY NOTICE) (AMENDMENT) BILL 2009**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

Section

1. Provision for fixed penalty notices.
 2. Short Title and Collective Citation.
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BILL

entitled

AN ACT TO AMEND THE SEA FISHERIES AND MARITIME
JURISDICTION ACT 2006 TO PROVIDE FOR THE ISSU-
ING OF FIXED PENALTY NOTICES IN RESPECT OF
CERTAIN SEA FISHERIES OFFENCES.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—The Sea Fisheries and Maritime Jurisdiction Act 2006 is amended by inserting the following section after section 28:

Provision for fixed
penalty notices.

28A.—(1) The Minister may prescribe that this section applies to an offence identified in Tables 1 and 2 of section 28 and contravention of regulations made under section 3, in this section referred to as a ‘relevant offence’.

(2) Where a sea-fisheries protection officer has reasonable grounds for believing that a person is committing or has committed a relevant offence he or she may serve on the person a notice in the prescribed form or in a form to like effect stating that—

- (a) the person is alleged to have committed the offence in respect of the contravention,
- (b) the person may during the period of 21 days beginning on the date of the notice make to the organisation specified at the address specified in the notice a payment of €1,000, or such other amount prescribed under subsection (5), accompanied by the notice, and
- (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and,

if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(3) Where notice is given under subsection (2)— 5

(a) a person to whom the notice applies may, during the period specified in the notice, make to the organisation specified at the address specified in the notice the payment specified in the notice accompanied by the notice, 10

(b) the organisation specified may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, 15

(c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted. 20 25

(4) In a prosecution for an offence under section 28 the onus of proving that a payment pursuant to a notice under this section has been made lies on the defendant.

(5) (a) The Minister may prescribe another amount, or different amounts in respect of different contraventions or different classes of vessels, in lieu of the amount specified in subsection (2)(b). 30 35

(b) The maximum penalty for any one penalty notice issued subject to this section shall be €1,000.

(c) Nothing in this Act should be construed as preventing more than one penalty notice being issued for multiple fisheries infractions arising from the same incident, where a sea-fisheries protection officer has reasonable grounds for believing that a person is committing or has committed multiple offences. 40 45

(6) In this section ‘organisation’ means the Sea Fisheries Protection Authority or such other person as specified in a notice issued under this section.”. 50

2.—(1) This Act may be cited as the Sea Fisheries and Maritime Jurisdiction (Fixed Penalty Notice) (Amendment) Act 2009. Short Title and
Collective Citation.

(2) This Act and the Sea Fisheries and Maritime Jurisdiction Act 2006 may be cited together as the Sea Fisheries and Maritime Jurisdiction Acts 2006 and 2009.



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PENALTY NOTICE) (AMENDMENT) BILL 2009**

EXPLANATORY MEMORANDUM

Purpose of the Bill

Background

Under the Common Fisheries Policy, there is a requirement for Member States to enforce an effective system of sanctions for dealing with breaches of Community law.

Scientific evidence shows that commercial fishing stocks in Irish waters are at historically low levels. Without improved fisheries enforcement and control measures designed to control fishing effort, certain fish stocks risk collapse. At the same time, the sea-fishing community in Ireland has been aggrieved at the use of onerous criminal penalties to control even minor breaches of technical regulations. While all stakeholders accept the necessity to retain stiff penalties to control serious quota and environmental breaches, expensive and time-consuming criminal procedures are demonstrably an inefficient way to deal with minor and technical offences and to encourage a culture of sea-fisheries compliance.

Fixed Penalty Notices

Fisheries offences in Ireland are currently prosecuted under the auspices of the Sea Fisheries and Maritime Jurisdiction Act 2006. Section 28 of the Act provides for stiff maximum penalties to be levied for fisheries offences. In addition, mandatory tie ups, suspension or revocation of fishing licences and the forfeiture of catch and gear that are a statutory consequence of almost all offences under the Act, impose extremely serious penalties even for non-serious infractions.

The Bill recognises that serious quota breaches and environmental infractions are appropriate targets for the full rigour of fisheries enforcement.

However, Ireland is now the only major maritime jurisdiction in Europe to retain an exclusive reliance on criminal jurisdiction to control sea-fisheries offences. The European Commission, for example, has consistently re-iterated its stance that administrative penalties are effective means of ensuring compliance with the CFP in a cost-

effective manner.¹ Northern Ireland², England and Wales³ and Scotland⁴ have all introduced fixed penalty notice regimes in the last 12 months.

The scheme of the Bill is to preserve the warning-letter system employed by the Naval Service and the prosecution of offences provided for in section 28. The Bill introduces a median layer of sanctions, in the form of fixed penalty notices, to a maximum of €1,000 for any one notice, for infractions of sea-fisheries legislation which do not warrant or justify the very serious penalties envisaged in section 28. The fixed penalty notice system would thus complement rather than replace the system provided in the 2006 Act, retaining the option of a hearing in court.

Payment of the penalty notice means that criminal proceedings for the offence will no longer be brought; non-payment will result in the original offence being referred for prosecution. The aim of the scheme is to provide an improved enforcement mechanism which allows for an appropriate fine to be imposed punishing less serious fisheries infractions, but reducing costs and uncertainty for both fishermen and the sea-fisheries protection services. Other benefits of the Bill include:

- Promotion of a greater culture of compliance, by allowing sea-fisheries protection officers to levy “on-the-spot” fines for a wide variety of minor and technical fishery offences.
- Reduced administrative costs as many offences will now be dealt with by administrative measures, rather than through the courts.
- Faster conclusion of cases.
- Avoidance of a criminal record, with associated stigma, by accepting a fixed penalty notice in place of court proceedings.

It is noted that fixed penalty notices are widely used throughout the Statute Book, and that their use is particularly appropriate in the fisheries context.

The Bill has therefore been framed against the precedents provided for fixed penalty notices by section 103 of the Road Traffic Act 1961, section 14 of the Road Traffic Act 2006, section 79 of the Safety, Health and Welfare at Work Act 2005 and section 41 of the Local Government Act 2001. The sea-fisheries protection officer at no time makes a determination of guilt and the subject of the notice is entitled to contest the charge in court, without prejudice.

It is anticipated that the necessary draft regulations will be drawn up following detailed discussions between the Department and the fishing organisations.

Provisions of Bill:

Section 1 provides that the Minister may introduce regulations which allow for the provision of fixed penalties for certain offences under the Sea Fisheries and Maritime Jurisdiction Act 2006. This provision is modelled on section 47(2) of the Maritime Safety Act 2005.

¹See for example the Final Report on the Common Fisheries Policy 2005, Communication from the Commission to the Council and the European Parliament, 30th May 2005 (COM (2005) 207 Final).

²The Sea Fishing (Enforcement of Community Measures) (Penalty Notices) (Northern Ireland) Order 2008.

³Fishing (Enforcement of (Community Measures)(Penalty Notices) Order 2008.

⁴The Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2008.

Section 2 provides that the Bill on enactment shall be known as the Sea Fisheries and Maritime Jurisdiction (Fixed Penalty Notice) (Amendment) Act 2009.

*Deputy Jim O’Keeffe,
Bealtaine, 2009.*