

Sea-Fisheries (Miscellaneous Provisions) Bill 2021

Bill No. 108 of 2021

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Abstract

The Sea-Fisheries (Miscellaneous Provisions) Bill 2021 is to amend the *Sea-Fisheries and Maritime Jurisdiction Act 2006*, primarily to allow for a new points system for Irish citizen masters of sea-fishing boats in accordance with Article 92 of Council Regulation (EC) No 1224/2009 of 20 November 2009 and Title VII of Commission Implementing Regulation (EU) No. 404/2011 of 8 April 2011.



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Summary

The aim of the [Sea-Fisheries \(Miscellaneous Provisions\) Bill 2021](#) ('the Bill') is to make a number of miscellaneous and technical amendments to the [Sea-Fisheries and Maritime Jurisdiction Act 2006](#), plus a new provision for a points system for Irish citizen masters of sea-fishing boats in accordance with Article 92 of [Council Regulation \(EC\) No 1224/2009 of 20 November 2009](#) and [Title VII of Commission Implementing Regulation \(EU\) No. 404/2011 of 8 April 2011](#).

The [Common Fisheries Policy](#) uses a points system for infringements of fishery rules, applied to masters (skippers) of fishing vessels. This will apply to masters of any fishing vessel operating inside the Irish Exclusive fishery limits¹ (Irish and foreign flagged) and an Irish sea fishing vessel wherever it may be. One provision is to establish an Irish Fishing Master Register to record points assigned to each master that commits a serious infringement of the Common Fisheries Policy.

Further, a number of technical amendments to the [Sea-Fisheries and Maritime Jurisdiction Act 2006](#) and to [S.I. No. 318/2020 - European Union \(Common Fisheries Policy\) \(Point System\) Regulations 2020](#) are included.

Ireland has been issued with a reasoned opinion by the European Commission over compliance with point system rules (July 2020).²

Table of provisions

A summary of the Bill's provisions is included in Table 1 below.

Table 1 Table of provisions of the Sea-Fisheries (Miscellaneous Provisions) Bill 2021

Section	Title	Effect
1	Definition	Act of 2006 refers to the <i>Sea-Fisheries and Maritime Jurisdiction Act 2006</i> .
2	Amendment of section 2 of Act of 2006	This section defines words and phrases used in the Bill. Important definitions include: "fisheries monitoring centre" as per Article 4 of Council Regulation (EC) No. 1224/2009: "fisheries monitoring centre' means an operational centre established by a flag Member State and equipped with computer hardware and software enabling automatic data reception, processing and electronic data transmission." ³

¹ As defined in the Act of 2006: "exclusive fishery limits of the State comprise all seas that lie inside the outer limit of the exclusive economic zone." The exclusive economic zone is defined in the [Maritime Jurisdiction Act 2021](#).

² See: Maritime Affairs and Fisheries: Commission sends reasoned opinion to IRELAND over compliance with point system rules.

³ Article 4 (15) of [Council Regulation \(EC\) No 1224/2009 of 20 November 2009](#).

Section	Title	Effect
		"serious infringement" means an infringement of the rules of the common fisheries policy specified in Annex XXX to the Commission Regulation.
3	Amendment of section 12 of Act of 2006	Miscellaneous provisions regarding notices in Iris Oifigiúil.
4	Amendment of section 13 of Act of 2006	Miscellaneous provisions regarding carrying of sea fishing authorisation.
5	Amendment of section 15 of Act of 2006	Minor miscellaneous changes to national regulatory measures to supplement common fisheries policy.
6	Regulation of Irish fishing masters	<p>This is a substantial section with numerous provisions regarding a register of Irish fishing masters. Part 2 of the Act of 2006 is amended by the insertion of the following Chapter after the Act's Chapter 2. In summary:</p> <ul style="list-style-type: none"> • A register of fishing masters shall apply to Irish citizens as defined under the <i>Irish Nationality and Citizenship Acts 1956 to 2004</i>. • An Irish Fishing Master Register shall be established which includes personal data such as PPSN and other identifying data, and a record of points and infringements assigned to him or her by 'the Authority' (meaning the Sea Fisheries Protection Authority 'SFPA') . Data are to be stored a minimum of 3 years. • A 'certificate of master registration' shall be issued to each registered Irish fishing master and must be carried on board. • Unless in an emergency/to avert immediate danger, this section provides for an offence for an Irish citizen to take charge, or attempt to take charge, of an Irish sea-fishing boat or a foreign sea-fishing boat wherever it may be, unless he or she is for the time being registered in the Irish Fishing Master Register. It carries a fine of up to €15,000. • A Determination Panel will be established for the purpose of determining, in accordance with this Chapter, whether a serious infringement has occurred and whether a person was, at the time, the master of the sea-fishing boat. • Notification of an alleged serious infringement shall be by a report by an official of the Authority. This covers both Irish sea-fishing boat, wherever the boat may be,

Section	Title	Effect
		<p>and, non-Irish fishing boats within in the exclusive fishery limits of the State.</p> <ul style="list-style-type: none"> • A Determination Panel will be established for the purpose of determining, in accordance with this Chapter, whether a serious infringement has occurred and whether a person was, at the time, the master of the sea-fishing boat. A case of an alleged serious infringement would entail a report forwarded to the Authority, and a period of 30 days for the alleged master to make their written submission. An oral hearing may be requested. • The Determination Panel has 20 days in which to request additional submissions from both parties. • Within 70 days the Panel must determine “on the balance of probabilities whether a serious infringement has occurred and whether the alleged master was, at the time the serious infringement occurred, the master of the sea-fishing boat”. • Where a serious infringement is found, points are assigned in accordance with the EU regulation requirements,⁴ and notified to the master. • Section 6 provides for a requirement that all particulars of any deletions of suspension and serious infringements are recorded. In the event that points are assigned, they are deleted after three years if no further infringements are recorded in that time. • Where a master accumulates 90 points or has received five suspensions, they shall be removed from the Register. • An Appeals Officer will be assigned at the Authority. A time period of 30 days is available in which to submit to the Appeals Officer. The appeal must be in writing, by the master and is subject to a fee (to be determined). An oral hearing is the first process facilitated in appeal. Again, the balance of probabilities is assessed by the Appeals Officer. An appeals decision time limit is 45 working days from receipt of

⁴ Namely Article 92 of [Council Regulation \(EC\) No 1224/2009 of 20 November 2009](#) and [Title VII of Commission Implementing Regulation \(EU\) No. 404/2011 of 8 April 2011](#)

Section	Title	Effect
		<p>the appeal. A further 15 working days are permitted in “exceptional circumstances”.</p> <ul style="list-style-type: none"> • Appeals decisions must be published by the Authority on its website. • A High Court Application in respect of appeals must be within 28 days of notification. • This section provides for a new offence to knowingly employ a sea-master who has been removed from the Register to control or master a vessel (unless in an emergency/to avert immediate danger). This carries a fine of up to €15,000. • This section provides for allowance of any extension of time limits by the Determination Panel and the Appeals Officer as it wishes to align with the requirements of European Union (Common Fisheries Policy) (Point System) Regulations 2020 (S.I. No. 318 of 2020).
7	Amendment of section 16 of Act of 2006	Adds a reference to the fisheries monitoring centre to section 16.
8	Amendment of section 17 of Act of 2006	Technical amendment.
9	Data Transfer	A new provision to Chapter 3 of Part 2 of the Act of 2006, allowing for relevant data transfer to and from the Revenue Commissioners.
10	Amendment of section 28 of Act of 2006	Amendment to section on Penalties and forfeiture for certain indictable fishery offences. This provision is for forfeit/confiscation of any fish and fishing equipment upon conviction.
11	Amendment of section 37 of Act of 2006	Technical amendment broadening nets to any fishing gear, concerning presumption of sea-fishing equipment presumed relevant to the offence.
12	Amendment of section 54 of Act of 2006	Technical amendment.
13	Amendment of Fisheries (Amendment) Act 2003	An amendment to require a sea fishing boat applicant must be aged 18 or over.
14	Amendment of European Union (Common Fisheries Policy) (Point System) Regulations 2020	Provides for certain amendments to Regulation 7 of the European Union (Common Fisheries Policy) (Point System) Regulations 2020 (S.I. No. 318 of 2020) regarding assigning points to a licence holder by the Sea Fisheries Protection Authority.

Section	Title	Effect
15	Short title, collective citation and commencement	This is a standard provision regarding citing and commencement of the Act and collective acts.

Source: Derived from [Sea-Fisheries \(Miscellaneous Provisions\) Bill 2021](#) and [Explanatory and Financial Memorandum](#).

Introduction

This Bill Digest provides a background to the Bill and a summary of Pre-legislative scrutiny of the General Scheme of the Bill by the Joint Committee on Agriculture, Food and the Marine.

Background

Ireland was issued with a reasoned opinion by the European Commission over Ireland's compliance with Common Fisheries Policy (CFP) rules in July 2020: "[Maritime Affairs and Fisheries: Commission sends reasoned opinion to IRELAND over compliance with point system rules](#)":

"The Commission decided today to send a reasoned opinion to Ireland over its failure to fulfil its obligations under [Council Regulation \(EC\) No 1224/2009](#) (also "Control Regulation") establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (CFP). Specifically, Ireland has failed to comply with European Union rules on establishing a point system for fisheries-related serious infringements committed by masters and licence holders of vessels flying the flag of Ireland. The Commission considers that Ireland has not established a system that assigns an appropriate number of points to masters of fishing vessels who commit serious violations of the common fisheries policy rules. It has also failed to put into operation the current national legislation implementing the point system for licence holders. Therefore, the Commission has issued a reasoned opinion to Ireland which now has three months to address the failures. Otherwise, the Commission may decide to refer the case to the Court of Justice of the European Union."

Policy and legislative context

The Department of Agriculture, Food and the Marine did report in its Regulatory Impact Analysis (RIA) in 2018 the policy context for the Bill:⁵

"A key objective of the Bill is to implement a points system for Masters of fishing vessels involved in serious infringements of the rules of the Common Fisheries Policy which the State is obliged to introduce under Article 92 of EU Commission Regulation 1224/2009,

⁵ Department of Agriculture, Food and the Marine. [Review of Regulatory Impact Analysis of the Proposal for a Bill to amend the Sea Fisheries and Maritime Jurisdiction Act 2006 to provide for a Points System for Masters of Fishing Vessels](#). April 2018.

which will apply to any fishing vessel operating inside the Irish Exclusive fishery limits and an Irish sea fishing vessel wherever it may be.

The Points System is intended to promote compliance with the rules of the CFP and seeks to deliver on the CFP objective of ensuring proportionate, effective and dissuasive penalties for serious infringements and will contribute to providing a level playing field in fisheries control across Member States. There has been extensive consultation with the Department's Legal Services Division, the Office of the Attorney General and external counsel on this issue in order to devise a system which is compatible with our legal system and existing legislation.

A number of miscellaneous amendments were identified during the period immediately after the enactment of the present Act in 2006. They are primarily technical in nature and correct typographic and reference errors in the Act and so would improve the overall operation of the Act. The most significant proposed amendment relates to Section 28 of the 2006 Act which deals with penalties for certain indictable fishery offences. The amendment is intended to address a typographical error in this Section which effectively means that there is currently no way to prosecute anybody detected fishing without a valid Sea-fishing Boat Licence."

Previous legislation related to the current Bill

Ireland

[S.I. No. 318/2020](#) - European Union (Common Fisheries Policy) (Point System) Regulations 2020.

[S.I. No. 125/2016](#) - European Union (Common Fisheries Policy) (Point System) Regulations 2016.

[Sea-Fisheries and Maritime Jurisdiction Act 2006 \(No. 8\)](#)

United Nations

[The Maritime Code 1994](#)

European Union

[Common Fisheries Policy](#)

[EU Fisheries Control System](#)

[Title VII of Commission Implementing Regulation \(EU\) No. 404/2011 of 8 April 2011](#)

[Article 92 of Council Regulation \(EC\) No 1224/2009 of 20 November 2009](#)

Regulatory Impact Analysis (RIA)

The Department of Agriculture, Food and the Marine did report on Regulatory Impact Analysis (RIA) in November 2014: '[Proposal for a Bill to amend the Sea Fisheries and Maritime Jurisdiction Act 2006 to provide for Fixed Penalties for minor offences, a Points System for Masters of Fishing Vessels for serious offences and Quota Management Policy](#)'. That RIA was subsequently reviewed in April 2018 and prior to the preparation of the General Scheme, the department summarised the preferred policy options in '[Review of Regulatory Impact Analysis of the Proposal for a Bill to amend the Sea Fisheries and Maritime Jurisdiction Act 2006 to provide for a Points System for Masters of Fishing Vessels](#)'.

Public consultation

Aside from its RIA, the department states that it sought input during consultation:

“Consultation to date has included the publication of a Regulatory impact assessment which was made available on the Departments website in November 2014. The Department also requested the views of the following; Federation of Irish Fishermen, Irish South and East Fish Producers Organisation, Irish Fish Producers and Exporters Association, Irish Fisherman's Producer Organisation, Irish South and West Fish Producers Organisation, Killybegs Fishermen's Organisation, Sea Fisheries Protection Authority, Environmental Pillar (Members include: An Taisce, BirdWatch Ireland, Coast Watch, Irish Seal Sanctuary, Irish Whale and Dolphin Group), Bord Iascaigh Mhara, The Marine Institute, Department of Transport, Tourism and Sport, Department of Defence, Department of Communications, Energy and Natural Resources, Inland Fisheries Ireland, Department of Environment, Department of Public expenditure and Reform, Department of Finance, Department of Justice, Equality & Law Reform, Irish Naval Service, Irish Air Corps, Dunmore East Fishermen's Co-Op, Clogherhead Fishermen's Co-Op, Foyle Fishermen's Co-Op, Galway & Aran Fishermen's Co-Op, Castletownbere Fishermen's Co-Op Soc Ltd., IFA Aquaculture, North RIFF (c/o BIM), North-West RIFF (c/o BIM), West RIFF (c/o BIM), South West RIFF (c/o BIM), South-East RIFF (c/o BIM), North-East RIFF (c/o BIM).“

Pre-legislative scrutiny of the General Scheme of the Bill

Pre-legislative scrutiny (PLS) was undertaken by the Joint Committee on Agriculture, Food and the Marine in April–May 2021 (debates of [20 April 2021](#), [11 May 2021](#), [13 May 2021](#)). In scrutinising the [General Scheme of the Sea-Fisheries \(Amendment\) Bill 2021](#), the Joint Committee held public meetings with department officials, engaged with representatives of the Sea Fisheries Protection Authority (SFPA), and met with and received written submissions from fish producer organisations.

The Joint Committee concluded its PLS and submitted its PLS findings and concerns report by means of its [letter of 21 June 2021, in which](#) the Joint Committee chair expressed:

- “The Joint Committee expresses its concern at the standard of proof to be used by the determination panel and the appeals officer. The balance of probabilities is to be used as a threshold for applying penalty points rather than culpability beyond a reasonable doubt. Furthermore, the Joint Committee is concerned that penalty points applied under this legislation would not be deleted even if a master is found innocent of the alleged breaches in a court of law. These issues may negatively impact the perceived fairness of the penalty points system. The Joint Committee calls on you to re-examine the standard of proof to be used in the application of penalty points and consider a means by which penalty points may be deleted if a master is found innocent of the alleged offences for which they were applied.
- A significant issue highlighted in meetings with fish producer organisations and the SFPA is the revocation of weighing after transport. There is an urgent need for the SFPA to submit a revised control plan; one which reinstates in-factory weighing across the industry, which is a level of oversight by the SFPA and the NSAI that is considered to be unmatched in the EU.

- Any inconsistency that may arise between the application of penalty points to EU and non-EU vessels must be addressed. Such an inconsistency could lead to Irish vessels facing a higher regulatory burden than UK registered vessels fishing in Irish waters.
- The Joint Committee calls on you to support and resource the implementation of the recommendations of the PwC report, '[Review of the Organisational Capacity of the Sea Fisheries Protection Authority \[April 2020\]](#)'. It is imperative that penalty points for masters of vessels are applied in the context of a robust and fair system of fisheries controls. Lack of capacity at present within in the SFPA must not have the effect of constraining the activities of the fisheries sector.”

Table 2 Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations.








L&RS categorisation of the Department's response in the Bill to the Committee's key issue	Traffic light dashboard used in Table 4 to highlight impact of the Committee's PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear.	
Key issue has not been accepted or implemented in the Bill.	

Table 3 Traffic light dashboard comparing the Bill as published with Committee PLS recommendations.

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
<p>Key issue 1:</p> <p>Questionable fairness of allocating points system. The standard of proof required threshold is based upon balance of probabilities rather than culpability beyond a reasonable doubt.</p>	<p> In their PLS the Joint Committee identified the potentially problematic nature of a Determination Panel concluding on the balance of probabilities as evidenced by the report of the Authority, rather than a threshold for proof required.</p> <p>All alleged serious infringements are made by means of a written report by the Authority. Section 6 of the Bill provides that a Determination Panel will be established for the purpose of determining whether a serious infringement has occurred and whether a person was, at the time, the master of the sea-fishing boat.</p> <p>In addressing an appeals process, an Appeals Officer will be assigned at the Authority. A time</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
		<p>period of 30 days is available in which to submit to the Appeals Officer. The appeal must be in writing, by the master and is subject to a fee (to be determined).</p> <p>The Bill does not address concerns regarding the 'balance of probabilities' providing the required threshold of proof, nor how existing reports and/or points may or may not be considered in the Authority's assessment of further alleged infringements.</p>
<p>Key issue 2: Weighing of fishery products, in-factory.</p>		<p>The Bill as published does not cover or address this issue.</p>
<p>Key issue 3: Applying penalty points to EU and non-EU vessels. Particular concern that UK vessels in Irish waters are advantaged.</p>		<p>The Bill does not provide for assigning penalty points to or having a register of points assigned to foreign nationals. Instead, a provision in Section 6 (15I) includes that points assigned to a foreign master will be notified in writing to the relevant authorities of the relevant Member State. The UK is not specified. Thus the Bill does not provide for the Authority dealing with serious infringements by UK fishing masters in Irish territorial waters in the same way as provided for other EU Member States.</p>
<p>Key issue 4: Fair administration and SFPA capacity/resourcing re the register of penalty points.</p>		<p>The Bill does not have provisions for organisational capacity or resourcing for the Sea Fisheries Protection Authority.</p>

Source: Compiled by the author, L&RS.

Principal provisions of the Bill

This section of the Bill Digest examines the main provisions of the Bill, which contains a total of 15 sections. A synopsis of each Section of the Bill is given in Table 1 above. The following briefly describes the Sections:

- Sections 1 to 5 are miscellaneous technical provisions covering definitions etc.
- Section 6 is the main part of the Bill. This is a substantial section with numerous provisions regarding a register of Irish fishing masters.
- Sections 7 and 8 are miscellaneous technical provisions.
- Section 9 is a new provision for data transfer with the Revenue Commissioners.
- Section 10 is a provision for forfeit/confiscation of any fish and fishing equipment upon conviction.

- Sections 11 and 12 are miscellaneous technical provisions.
- Section 13 is an amendment to require a sea fishing boat applicant must be aged 18 or over.
- Section 14 provides for assigning points to a licence holder by the Sea Fisheries Protection Authority.
- Section 15 is a standard provision regarding citing and commencement of the Act and collective acts.

Section 6 is described in greater detail below.

Section 6: Regulation of Irish fishing masters

Section 6 of the Bill is to amend the *Sea-Fisheries and Maritime Jurisdiction Act 2006*, to be inserted to the Act of 2006 as 'Chapter 2A'.

The section is to formalise some of the provisions already set out in [S.I. No. 318/2020](#) - European Union (Common Fisheries Policy) (Point System) Regulations 2020. The [Explanatory and Financial Memorandum](#) describes the accumulation of points for Irish citizen fishing masters:

“The accumulation of points will result in the suspension of a master from the register, that is, he/she will be prohibited from taking control of an Irish sea-fishing boat or a foreign sea-fishing boat, wherever it may be. The period of the suspension is determined by the number of points 3 accumulated – the higher the number of points accumulated, the longer the suspension. The accumulation of 18, 36, 54 and 72 points will trigger suspensions of two, four, eight and twelve months, respectively. A master who has accumulated 90 points or more or has received 5 suspensions shall be removed from the register by the Minister. When points are assigned to a master on the register, the Minister shall notify him/her of certain matters. A master who has been suspended or removed from the register is required to immediately inform the sea fishing boat licence holder who engages or proposes to engage him or her as master of such suspension or removal. It shall be an offence for a sea fishing boat licence holder to employ a person knowing that he or she has been suspended or removed from the register.”

Further, in summary:

- A register of fishing masters shall apply to Irish citizens as defined under the *Irish Nationality and Citizenship Acts 1956 to 2004*.
- An Irish Fishing Master Register shall be established which includes personal data such as PPSN and other identifying data, and a record of points and infringements assigned to him or her by the Authority. Data are to be stored a minimum of 3 years.
- A 'certificate of master registration' shall be issued to each registered Irish fishing master and must be carried on board.
- Unless in an emergency/to avert immediate danger, this section provides for an offence for an Irish citizen to take charge, or attempt to take charge, of an Irish sea-fishing boat or a foreign sea-fishing boat wherever it may be, unless he or she is for the time being registered in the Irish Fishing Master Register. It carries a fine of up to €15,000.
- A Determination Panel will be established for the purpose of determining, in accordance with this Chapter, whether a serious infringement has occurred and whether a person was, at the time, the master of the sea-fishing boat.

- Notification of an alleged serious infringement shall be by a report by an official of the Authority. This covers both Irish sea-fishing boat, wherever the boat may be, and, non-Irish fishing boats within in the exclusive fishery limits of the State.
- A Determination Panel will be established for the purpose of determining, in accordance with this Chapter, whether a serious infringement has occurred and whether a person was, at the time, the master of the sea-fishing boat. A case of an alleged serious infringement would entail a report forwarded to the Authority, and a period of 30 days for the alleged master to make their written submission. An oral hearing may be requested.
- The Determination Panel has 20 days in which to request additional submissions from both parties.
- Within 70 days the Panel must determine “on the balance of probabilities whether a serious infringement has occurred and whether the alleged master was, at the time the serious infringement occurred, the master of the sea-fishing boat”.
- Where a serious infringement is found, points are assigned in accordance with the EU regulation requirements and are notified to the master.
- Section 6 provides for a requirement that all particulars of any deletions of suspension and serious infringements are recorded. In the event that points are assigned, they are deleted after three years if no further infringements are recorded in that time.
- Where a master accumulates 90 points or has received five suspensions, they shall be removed from the Register.
- An Appeals Officer will be assigned at the Authority. A time period of 30 days is available in which to submit to the Appeals Officer. The appeal must be in writing, by the master and is subject to a fee (to be determined). An oral hearing is the first process facilitated in appeal. Again, the balance of probabilities is assessed by the Appeals Officer. An appeals decision time limit is 45 working days from receipt of the appeal. A further 15 working days are permitted in “exceptional circumstances”.
- Appeals decisions must be published by the Authority on its website.
- A High Court Application in respect of appeals must be within 28 days of notification.
- This section provides for a new offence to knowingly employ a sea-master who has been removed from the Register to control or master a vessel (unless in an emergency/to avert immediate danger). This carries a fine of up to €15,000.
- This section provides for allowance of any extension of time limits by the Determination Panel and the Appeals Officer as it wishes to align with the requirements of European Union (Common Fisheries Policy) (Point System) Regulations 2020 (S.I. No. 318 of 2020).

Implications and implementation issues

No financial implications of the Bill are anticipated.⁶

⁶ [Explanatory and Financial Memorandum](#).

Issues around practical implementation have been reported on and the subject of a number of PQs recently.⁷ Issues with enforcement of fisheries controls have been identified by a number of reports and European Commission audits, including in 2018 which found “severe and significant weaknesses detected in the Irish control system during an audit carried out by the Commission in Ireland, in 2018”.⁸ Some of the issues are explored below. The weighing of catch relate directly to quotas so is potentially significant.

Fairness of a penalty points system and proof/evidence

In their PLS the Joint Committee identified the potentially problematic nature of a Determination Panel concluding on the balance of probabilities as evidenced by the report of the Authority, rather than a threshold for proof required.

All alleged serious infringements are made by means of a written report by the Authority. Section 6 of the Bill provides that a Determination Panel will be established for the purpose of determining, in accordance with this Chapter, whether a serious infringement has occurred and whether a person was, at the time, the master of the sea-fishing boat. A case of an alleged serious infringement would entail a report forwarded to the Authority, and a period of 30 days for the alleged master to make their written submission. An oral hearing may be requested.

The Determination Panel has 20 days in which to request additional submissions from both parties.

Within 70 days the Panel must determine “on the balance of probabilities whether a serious infringement has occurred and whether the alleged master was, at the time the serious infringement occurred, the master of the sea-fishing boat”.

In addressing an appeals process, an Appeals Officer will be assigned at the Authority. A time period of 30 days is available in which to submit to the Appeals Officer. The appeal must be in writing, by the master and is subject to a fee (to be determined).

Section 6 provides for a requirement that all particulars of any deletions of suspension and serious infringements are recorded. In the event that points are assigned, they are deleted after three years if no further infringements are recorded in that time.

The Bill does not address concerns regarding the threshold of proof, nor how existing reports and/or points may or may not be considered in the Authority’s assessment of further alleged infringements.

Weighing of fishery products

The Joint Committee on Agriculture, Food and the Marine identify this issue in their PLS.

The European Commission identified that there are weaknesses in the control system regarding weighing of fish, and that it was open to manipulation. Historically there had been a derogation for

⁷ See L&RS *Bill Briefing* for expanded links and media commentary. “Bill Briefing | Sea-Fisheries (Miscellaneous Provisions) Bill 2021 » L&RS.” Accessed September 17, 2021.

<https://library.oireachtas.ie/legislative-resources/2021/bill-briefing-sea-fisheries-miscellaneous-provisions-bill-2021/>.

⁸ [EU fisheries control system: Commission urges Ireland to investigate shortcomings. Press Release, MARE, EU.](#)

the fishing industry to weigh fishery products following transport away from the place of landing. The EU Commission revoked the Irish Control Plan for the weighing of fishery products after transport (Article 61 (1) of Council Regulation EC 1224/2009) on the 13 April 2021 with immediate effect.⁹ Previously, all fishery products were to be weighed at the place of landing before those products are transported, held in storage or sold. Currently, sample weighing for certain fishery products landed in standardised boxes continues to be permitted.

Debate on the issue of where and when to weigh fish were heard by the Joint Committee on Agriculture, Food and the Marine on [Thursday, 13 May 2021](#). In short, the difficulties arise around where weighing can take place (before or after transport, i.e. at-pier rather than in-factory) and removal of ice-packing, individual weighing and re-packing as part of a weighing control system, and the practicalities that this process would present to the fish quality.

The Bill as published does not address this issue.

Assigning points to foreign nationals

The Bill does not provide for assigning penalty points to or having a register of points assigned to foreign nationals. Instead a provision in Section 6 (15I) includes that points assigned to a foreign master will be notified in writing to the relevant authorities of the relevant Member State. The UK is not specified. Thus the Bill does not provide for the Authority dealing with serious infringements by UK fishing masters in Irish territorial waters in the same way as provided for other EU Member States.

Organisational capacity of the Sea Fisheries Protection Authority

The Bill does not deal with resources for the Sea Fisheries Protection Authority (SFPA).

Suggested further reading

The Library & Research Service published a [Bill Briefing](#) webpage for members.

⁹ "Weighing of Fishery Products | Sea Fisheries Protection Authority." Accessed September 17, 2021. <https://www.sfpa.ie/What-We-Do/Sea-Fisheries-Information/Weighing-of-Fishery-Products>.

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