

Ministerial Opening Statement to Joint Oireachtas Committee on Agriculture, Food and the Marine meeting of Tuesday 20 April 2021: Pre Legislative Scrutiny of Sea Fisheries (Amendment) Bill 2021.

I thank Committee Chair, Deputy Cahill, and Committee Members for providing me with the opportunity to discuss the General Scheme of the Sea Fisheries (Amendment) Bill 2021 in the context of Pre Legislative Scrutiny. I am also grateful to the Committee for facilitating Scrutiny of this important draft legislation at an early date.

By way of background, I should advise members that EU Council Regulation 1224/2009, known as the Control Regulation, establishes a Community control system for ensuring compliance with the rules of the Common Fisheries Policy and establishing a level playing-field across the EU on fisheries control

The Control Regulation requires *inter alia* that Member States implement a points system for serious infringements of the rules of the CFP committed by the master (skipper) of a fishing vessel. 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 must contribute to a level-playing field in fisheries control across Member States.

. Serious infringements include the following:-

- not fulfilling obligations to record and report catch or catch related data
- concealing, tampering or disposal of evidence relating to an investigation
- fishing without a valid licence, authorization or permit.

The system was due to be in place by 1 January 2012 and the delay in implementing it is subject to EU infringement proceedings at present. A negative judgement from the European Court of Justice in any such proceedings could cost the State significantly in lump sum and ongoing fines.

I should also inform Members that serious financial implications arise from the non-implementation of the points system because, as a condition of the EU contribution to

Ireland's European Maritime and Fisheries Fund (EMFF) Programme, certain conditions must be fulfilled, including compliance with the requirements of the Control Regulation to legislate for and implement Points Systems for sea fishing boat licence holders and masters of fishing vessels. The Commission has suspended €24 million to date approximately. Investment is ongoing and thus the outstanding EU contribution will grow over time. Ultimately this will reach €37 million unless the non-compliance is resolved. Once Ireland has enacted the necessary legislation and put in place the related administrative procedures and resources, the Commission are then required to lift the suspension of payments.

In December 2019, the then Government approved a General Scheme which provided that where a serious infringement was alleged to have been committed by a master, he/she would have been given an option to accept a lesser number of points than would apply as a consequence of a successful prosecution. If the points were accepted, they would have remained assigned to the master irrespective of the outcome of the prosecution. However, the fact that a master had accepted points, would not have been taken as evidence of wrongdoing for the purposes of any criminal trial. If the master decided not to accept the points initially and was subsequently convicted of the serious infringement, he/she would have been assigned a higher number of points.

I reviewed the approach in light of the recent developments including in particular the Reasoned Opinion issued by the EU Commission in 2020 in the context of the Infringement proceedings which means that the Commission will be examining in detail all aspects of our implementation of a points system for masters. In addition, Ireland is under significant scrutiny from the EU Commission from the ongoing EU Administrative Inquiry into Ireland's fisheries control system. Having considered all aspects, I considered that the EU Commission would not accept a system which permits a Master, in serious breach of obligations, to achieve a reduction in 50% of the points appropriate to that infringement by accepting the breach, as had been provided for under the 2019 scheme.

I examined all options and came to the conclusion that the only acceptable scheme for masters is to replicate the main provisions as that provided for licence holders and set down in Statutory Instrument European Union (Common Fisheries Policy)(Point System) Regulations 2020 (SI 318/2020).

The scheme for a masters points now being proposed in the General Scheme follows, insofar as is possible, the provisions of the existing separate Licence Holders' Point with regard to *inter alia* the list of serious infringements, the number of points assigned and the suspension thresholds as provided for under the EU Regulations.

The period of the suspension is determined by the number of points 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 permanently disqualified from taking control of a sea-fishing boat in the exclusive fishery limits of the State or an Irish sea-fishing boat, wherever it may be.

The masters points system proposed in the General Scheme also mirrors the provisions of SI 318/2020 (as regard the licence holders points system) in other respects including:

- The points system provides for the establishment of a register of Irish fishing masters and points are assigned to persons on that register who must hold Irish citizenship.
- The points assigned to a non-Irish national will be notified to the relevant authorities of the Member State concerned.
- An independent Determination Panel and independent Appeals officer will determine on the balance of probabilities whether a serious infringement has occurred and the procedures and timelines laid down for the Determination Panel and the Appeals Officer to make their determinations are very similar.
- A decision of the Appeals Officer to assign points may be appealed to the High Court on a point of law only.
- Points assigned to a master remain assigned regardless of any criminal proceedings in respect of the serious infringement concerned.

The General Scheme provides that the Minister for Agriculture, Food and the Marine shall establish and maintain a register of masters. It is proposed that a person cannot take charge of a sea fishing vessel unless he/she is registered and to do otherwise is an offence. The only conditions are that the master is an Irish citizen and are in compliance with the points system. Other than on consideration of those simple criteria, the Minister should not refuse a person entry onto the register.

The General Scheme also contains a Head to facilitate the sharing of certain data between the Sea Fisheries Protection Authority and the Revenue Commissioners. Such data sharing already occurs in respect of other public bodies e.g. between Revenue and the Department of Social Protection. It is proposed that a framework be put in place that would allow for joint sharing of information for alleged fisheries offences and tax offences in the fisheries sector.

There are also various technical and miscellaneous amendments which were identified during the period immediately after the enactment of the Principal Act, the Sea Fisheries and Maritime Jurisdiction Act, 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.

To conclude, my firm view is that an efficient and effective Masters points system is necessary to protect law-abiding Masters, who make up the vast majority of those in the industry, and to preserve this precious and valuable resource for all Irish fishermen and for future generations. I am confident that the Masters points system proposed in the General Scheme will play a vital role in delivering on the Common Fisheries Policy objective of ensuring proportionate, effective and dissuasive penalties for serious infringements and contributing to a level playing field in fisheries control across Member States. Implementation of the points system is very urgent given the long delay since 2012, the ongoing EU infringement proceedings and the suspension of EU EMFF funding. Ireland is the only Member State at this stage without a functioning Masters points system.

I thank the Committee again for its time and look forward to a constructive discussion this morning on the General Scheme.