

DÁIL ÉIREANN

AN ROGHCHOISTE UM THALMHAÍOCHT, BIA AGUS MUIR

SELECT COMMITTEE ON AGRICULTURE, FOOD AND THE MARINE

Dé Céadaoin, 27 Deireadh Fómhair 2021

Wednesday, 27 October 2021

Tháinig an Romhchoiste le chéile ag 1.30 p.m.

The Select Committee met at 1.30 p.m.

Comhaltaí a bhí i láthair/Members present:

Teachtaí Dála/Deputies	
Martin Browne,	Brian Leddin,
Colm Burke,*	Charlie McConalogue (Minister for Agriculture, Food and the Marine),
Michael Collins,	Jim O'Callaghan,+
Cormac Devlin,+	Ruairí Ó Murchú,*
Joe Flaherty,	Thomas Pringle,*
Martin Heydon,+	Neale Richmond.+

* In éagmais/In the absence of Deputies Paul Kehoe, Matt Carthy and Michael Fitzmaurice.

+ In éagmais le haghaidh cuid den choiste/In the absence for part of the meeting of Deputies Joe Flaherty, Brian Leddin and Michael Ring.

Teachta/Deputy Jackie Cahill sa Chathaoir/in the Chair.

Business of Select Committee

Chairman: Deputy Ó Murchú is substituting for Deputy Carthy, Deputy Pringle is substituting for Deputy Fitzmaurice and the Minister of State, Deputy Heydon, will substitute for Deputy Ring. No apologies have been received.

Before we begin, members now have the option of either being physically present in the committee room or joining the meeting via Microsoft Teams from their Leinster House offices. Members may not participate in the meeting from outside the parliamentary precincts. It is important to note that in order to participate in a division, committee members must be physically present in the committee room. If joining via Microsoft Teams, please mute microphones when not making a contribution and please use the raise hand function to indicate.

Members and all attendees are asked to exercise personal responsibility in protecting themselves and others from the risk of contracting Covid-19. They are strongly advised to practice good hand hygiene. Please do not move any chair from its current position and I urge members to maintain an appropriate level of social distancing during and after the meeting. Masks, preferably of a medical grade, should be worn at all times during the meeting, except when speaking. I ask for attendees' full co-operation on this. Members are reminded of the long-standing parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

Sea-Fisheries (Miscellaneous Provisions) Bill 2021: Committee Stage

Chairman: This meeting has been convened to consider Committee Stage of the Sea-Fisheries (Miscellaneous Provisions) Bill 2021. I welcome the Minister for Agriculture, Food and the Marine, Deputy McConalogue, and his officials.

Section 1 agreed to.

SECTION 2

Question proposed: "That section 2 stand part of the Bill."

Deputy Michael Collins: The Bill is very unfair in the way matters are being laid out for the fishermen of this country. In his short time acting as Minister with responsibility for agriculture between appointments, the Taoiseach signed a statutory instrument and we now find ourselves facing severe penalties for good, hard-working and honest-to-God fishermen of the Irish waters. As a nation and as politicians in this Dáil we should oppose that every way we can. I certainly will be opposing the Bill.

Minister for Agriculture, Food and the Marine (Deputy Charlie McConalogue): The overall purpose of section 2 is to update and insert certain definitions provided for under section 2 of the principal Act of 2006. Section 2(a) updates the definition of "Department" to the present title of "Department of Agriculture, Food and the Marine" from the title applicable when the principal Act was enacted in 2006, which was the Department of Communications, Marine and Natural Resources. Section 2(b) provides for a similar update in respect of the definition of a Minister.

Section 2(c) inserts a new definition of “fisheries monitoring centre” in light of the proposed amendment to section 16 of the Act of 2006 that is provided for in section 7. This means that any member of the Naval Service working in the fisheries monitoring centre is deemed a sea fisheries protection officer. This new definition of fisheries monitoring centre aligns fully with the definition of fisheries monitoring centre being provided for under Article 4 of Council Regulation (EC) No. 1224/2009 from November 2009.

Question put.

The Committee divided: Tá;, 5; Níl, 4.	
Tá;	Níl;
Cahill, Jackie.	Browne, Martin.
McConalogue, Charlie.	Collins, Michael.
O’Callaghan, Jim.	Ó Murchú, Ruairí.
Richmond, Neale.	Pringle, Thomas.
Ring, Michael.	

Question declared carried.

SECTION 3

Question proposed: “That section 3 stand part of the Bill.”

Deputy Michael Collins: This penalty point system for fishermen is a disaster from start to finish. It has been opposed by the main fishermen’s organisations who felt there was little or no consultation and on that basis, I will be opposing this section.

Deputy Ruairí Ó Murchú: Sinn Féin will be doing the same as Deputy Collins. I do not think it will come as a shock to anybody that we will be opposing this because it is an utterly unfair system in terms of the operation of penalty points. We have had two false dawns regarding putting this framework in place. People are not necessarily against a penalty points system *per se* but there must be fairness. The amendments put forward by Deputy Mac Lochlainn will deal specifically with some of those issues. There is no level of fairness in this and our position is that we will be voting against it. Individual issues pale into insignificance when one does not deal with the unfairness that is at the heart of this legislation.

Deputy Martin Browne: Deputies Collins and Ó Murchú have just said what I was going to say. The entire Bill is totally unfair to the fishing community. The fishermen themselves are not against a penalty points system but it must be fair. As has been said, as we go through the Bill we will be pointing out where it is totally unfair to the industry. We would ask the Minister to reconsider this legislation. I will say no more for now as we will be going through the Bill, bit by bit.

Deputy Charlie McConalogue: Section 3 of the Bill provides drafting amendments to correct minor typographical errors in sections 12(9) and 12(10) of the Sea-Fisheries and Maritime Jurisdiction Act 2006. The amendment provided for under section 3 (a) inserts a new subsection into section 12(9) of the 2006 Act to clarify that a notification of the publication of a fisheries management notice being made by publishing a notification in *Iris Oifigiúil* shall include the date and the manner in which the notice was published. The amendment substitution of “notification” for “notice” provided for under section 3(b) of the Bill is a consequential

drafting amendment. Fisheries management notices are issued by the Minister under section 12 and used to open and close fisheries, as well as set catch limits, generally monthly, in certain fisheries for Irish vessels. These provisions are primarily used to manage white fish stocks.

Question put.

The Committee divided: Tá;, 6; Níl, 4.	
Tá;	Níl;
Burke, Colm.	Browne, Martin.
Cahill, Jackie.	Collins, Michael.
Devlin, Cormac.	Ó Murchú, Ruairí.
McConalogue, Charlie.	Pringle, Thomas.
O'Callaghan, Jim.	
Richmond, Neale.	

Question declared carried.

SECTION 4

Deputy Charlie McConalogue: I move amendment No. 1:

In page 4, to delete lines 14 and 15 and substitute the following:

“(i) by the substitution of the following paragraph for paragraph (a):

“(a) upon—

(i) the application from any person, in such form as the Minister decides, or

(ii) the Minister’s own initiative, in respect of any person,

who—

(I) is the owner of an Irish sea-fishing boat which is entered in the Register of Fishing Boats, and

(II) to whom a sea-fishing boat licence has been granted,

and”,

and”.

Section 4 makes various amendments to section 13 of the 2006 Act. Section 4(a)(i) corrects a typographical error in order to make clear that only a person who is an owner of an Irish-registered sea fishing boat and to whom a sea fishing boat licence has been granted under the Act can apply for or be granted a fishing authorisation under section 13. Section 4 provides a statutory basis for the issue of authorisations in an electronic format.

Section 4(b) deletes unnecessary words. “Owner” is defined in section 6 of the Act of 2006 as including a charterer and hirer as well as the owner of a sea fishing boat, as the case may require.

The amendment at section 4(c) follows on from the amendment provided under section 4(a) (ii) by requiring that a printed copy of an authorisation issued in electronic form be kept on the boat concerned.

These amendments relate to section 13 of the Act of 2006. This section provides that the Minister may determine under what circumstances an Irish vessel will require an authorisation from the Department to fish for particular stocks. The Minister will issue such authorisations to appropriate vessels and, as part of this management process, approximately 2,000 authorisations and amendments are issued each year.

Deputy Michael Collins: I oppose the amendment. I will speaking on this at a later stage again. As I said, there was poor discussion on this Bill with the fishing organisations. I have been talking to the organisations since the Taoiseach signed the statutory instrument and set the ball in motion. They are furious about so many things that have been heaped on their backs in the past year and a half. It might have been unlucky for us that a certain Minister was there at that time but, unfortunately, we have been left in this situation. We are also in the midst of a Brexit crisis. A task force has completed a report that discusses decommissioning. Many fishermen do not see a future in the industry. The last thing they want is to be criminalised. Certainly when rules and regulations are applied anywhere it is always the Irish fishermen who come out the worst. We have seen that happen. The Sea-Fisheries Protection Authority, SFPA, has been engaged in masses of correcting everything with respect to what it sees as the Irish fishermen doing something wrong. However, foreign trawlers can waltz into and out of our waters when it suits them with little or no restrictions imposed on them. I certainly will be opposing this amendment.

Deputy Ruairí Ó Murchú: In fairness, we are dealing with a fishing industry that is under severe pressure. Those situations have become worse post Brexit. We have all spoken many times about the difficulties involved. As I stated previously, we will have a problem with this legislation until a point in time when an element of fairness is introduced with respect to the penalty points system. We cannot support it in any way, shape or form. That is the fact of the matter. There is not much point in my reiterating that. I will speak to those amendments that are specific to some of the outstanding issues. That is Sinn Féin’s policy in this regard. That is our position on this matter.

Chairman: Is the amendment agreed?

Deputy Michael Collins: It is not agreed.

Amendment put.

The Committee divided: Tá;, 6; Níl, 4.	
Tá;	Níl;
Burke, Colm.	Browne, Martin.
Cahill, Jackie.	Collins, Michael.
Devlin, Cormac.	Ó Murchú, Ruairí.
McConalogue, Charlie.	Pringle, Thomas.
O’Callaghan, Jim.	
Richmond, Neale.	

Amendment declared carried.

Section 4, as amended, agreed to.

SECTION 5

Question proposed: “That section 5 stand part of the Bill.”

Deputy Michael Collins: I have been meeting with fishing organisations in south-west Cork, as well as Donegal, Galway and Wexford, over the past 12 months or more. These are people with more knowledge than myself, and every one of them has asked me to pose the Sea-Fisheries (Miscellaneous Provisions) Bill in the best way possible. I am trying to do that. However, it is not just that alone. This has been a decimating year for fisheries. We had the weighing crisis at the piers not so long ago. There was also the situation with Brexit, where a disastrous deal was agreed to that should never have been agreed to. That was negotiated by Michel Barnier and seemingly no negotiator on behalf of the Irish fishermen, but maybe he was negotiating on behalf of other fishing sectors in Europe. We lost 25% of the pelagic quota. On my way up to this meeting I had fishermen ringing me asking what was going to happen here today and where did I stand on this Bill. They probably knew that already but they just wanted to make sure they had a voice at the table. A lot of those who are not landing quota species are going to end up getting little or no compensation out of the tie-up scheme that has been agreed to. I was talking to fishermen on my way up here today who feel that it is an extremely unfair situation they find themselves in. They are not part of the massive fleets. I know the bigger fleets are penalised the most but these fishermen certainly feel there is some room around a once-off payment to them and that they should be incorporated into the yearly compensation package for the tie-up scheme. That is something that needs to be looked at down the road. I am opposing this section.

Deputy Charlie McConalogue: The objective of this section is to make two amendments to section 15 of the Act of 2006, which provides for national regulatory measures to supplement the Common Fisheries Policy. Section 15 of that Act provides that the Minister may supplement the Common Fisheries Policy and, by regulations, prescribe national measures for the protecting and conserving of fish stock. Section 5(a) amends section 15(1)(c) of the 2006 Act to provide that the Minister may make regulations to supplement the Common Fisheries Policy and this will also apply to fishing by means other than using a vessel, such as hand gathering of fish, for example. The power to regulate such activities is absent in the 2006 Act as it stands and this section would correct that. These activities can have significant impacts on the stocks concerned. Accordingly, scope is required to regulate these activities effectively under the Act. Section 5(b) is a drafting amendment to section 15(2)(a)(i) of the Act of 2006. It is necessary to specifically include the term “fishing gear”, which is not specifically covered by the term “equipment”, as defined by section 6 of the Act of 2006. No amendments have been proposed here today to alter this section in any way. We are simply proposing the section for approval.

Question put.

The Committee divided: Tá;, 6; Níl, 4.	
Tá;	Níl;
Burke, Colm.	Browne, Martin.
Cahill, Jackie.	Collins, Michael.
Devlin, Cormac.	Ó Murchú, Ruairí.

McConalogue, Charlie.	Pringle, Thomas.
O'Callaghan, Jim.	
Richmond, Neale.	

Question declared carried.

SECTION 6

Chairman: Amendments Nos. 2, 3, 8 and 25 are related and will be discussed together.

Deputy Charlie McConalogue: I move amendment No. 2:

In page 6, to delete lines 19 to 21 and substitute the following:

“ ‘points’ means points assigned to a master of a sea-fishing boat for a serious infringement in accordance with Annex XXX to the Commission Regulation or section 15U, as the case may be;”.

Section 6 makes provision for the required EU point system for masters of sea-fishing vessels by inserting into the 2006 Act a new Chapter 2A, entitled “Regulation of Irish fishing masters”. Chapter 2A currently consists of 20 sections, those being, 15A to 15T, inclusive. Under the new chapter, the Minister shall establish and maintain a register of Irish citizens who are masters of sea-fishing boats and the points assigned to each such master. The register shall contain certain details, for example, a master’s name, address, contact details, etc. The control authorities shall have access to and may examine the register. The Minister may refuse to register a person if his or her application for registration is incomplete, inaccurate, false or misleading. However, the person concerned may make representations to the Minister before any such decision is taken. It shall be an offence for a person to furnish the Minister knowingly with false or misleading information when applying for registration. A certificate of master registration shall be issued by the Minister in respect of each person registered or entered in the register. Data entered in the register shall be stored only for as long as necessary for the operation of the register. It shall be an offence for an Irish citizen to take charge or attempt to take charge of an Irish or foreign sea-fishing boat unless he or she is registered.

The procedures around detection and notification of alleged serious infringements of the rules of the Common Fisheries Policy committed by masters and the subsequent assignment of points by the Sea-Fisheries Protection Authority, SFPA, closely resemble those provided for in a separate point system already in place under the European Union (Common Fisheries Policy) (Point System) Regulations 2020 - SI 318 2020 - for the holder of a sea-fishing boat licence established in response to the same EU legislation. First, the same independent determination panel and independent appeals officer will determine, on the balance of probability, whether a serious infringement has occurred. Second, the procedures and timelines laid down in the Bill for the determination panel and the appeals officer to make their determinations are similar to those provided for under SI 318. Third, the master can request an oral hearing before one or both of the determination panel and appeals officer. Fourth, a decision of the appeals officer to assign points can be appealed to the High Court on a point of law. Fifth, points assigned to a master remain assigned regardless of any criminal proceedings in respect of the serious infringement concerned. Finally, points assigned to a foreign master will be notified to the relevant authorities in the relevant member state.

The accumulation of points will result in the suspension of a master from the register, meaning that he or she will be prohibited from taking control of an Irish or foreign sea-fishing boat wherever it may be. The period of the suspension is determined by the number of points accumulated. The higher the number, the longer the suspension. The accumulation of 18, 36, 54 and 72 points will trigger suspensions of two, four, eight and 12 months, respectively. A master who has accumulated 90 points or more or received five 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 or her of certain matters. 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.

The first section of Chapter 2A, section 15A, relates to the interpretation and application of Chapter 2A of Part 2 and provides for definitions of certain terms appearing throughout the chapter. These definitions cover the relevant EU regulations, the statutory instrument for licence holders and terms used through the chapter, including “appeals officer”, “determination panel”, “certificate of master registration”, “competent authority”, “serious infringement” and “sea-fishing boat licence”. Section 15A(2) aligns the use of a word or expression in the chapter with that in EU regulation unless the context requires otherwise. Section 15A(3) provides that this chapter is without prejudice to section 2 of the Merchant Shipping (Certification of Seamen) Act 1979. This means that all of the prescribed qualifications and other requirements for manning of vessels apply and that the requirement to be on the fishing boat register is a separate requirement.

I have proposed amendments Nos. 2, 3, 8 and 25. Currently, the Bill provides that a serious infringement for which points should apply means an infringement of the rules of the Common Fisheries Policy mentioned in Commission Implementing Regulation (EU) No. 404/2011. The annex lists 12 serious infringements for which points should apply, none of which relates to violations of the land obligation. Regarding the landing obligation, under the Common Fisheries Policy, all catches of species subject to catch limits may no longer be discarded and must be retained on board and landed. This obligation to land all catches has been gradually phased in over several years, beginning in 2015 with pelagic fisheries before being extended to demersal fisheries in 2016. In 2019, it was fully implemented across all International Council for the Exploration of the Sea, ICES, areas in EU waters and all total allowable catch, TAC, species. It was fully implemented across all International Council for Exploration of the Seas, ICES, areas, in EU waters and for all species subject to total allowable catch limits in 2019.

Subsequent to the enactment of the 2011 implement regulation, a 2015 EU regulation amended both Articles 90 and 92 of the EU fisheries control regulation, which made the original provision for both points systems. The effect of the two 2015 EU law amendments, taken together, is to provide in EU law that points should apply to a sea-fishing boat licence holder for violations of the landing obligation. However, due to an inadvertent oversight, this provision was not included in the published Bill. It is now proposed that the Bill be amended to provide that points should be assigned to a master who commits serious infringements under the landing obligation. It is also proposed that five points should be assigned to a master who infringes the landing obligation as that is the quantum proposed in the draft EU fisheries control regulations currently under negotiation at EU level.

Deputy Michael Collins: The situation in which we find ourselves is a result of the Government trying to push through the Bill and the penalty points system. It looks as if fishermen on the water are damned if they do and damned if they do not. It seems that fishermen who are innocent will be landed with penalty points. Even if fishermen can prove their innocence, they

will still be on their backs, as such. It is something I have been asked to oppose every step of the way, and I will.

That is one of many measures that are causing massive difficulties to fishermen and which led to the recent large peaceful protests in Cork and Dublin. Fishermen cannot and will not take any more of this pressure. The penalty points system was looked at before the UK left the EU. It seems the UK has brought in a more favourable system for its fishermen. It is time for the Government to stand up to Europe a small bit and fight for Irish fishermen, who have been the whipping boys of Europe for the past 20, 25 or 30 years. They have had enough of it. They see nothing coming back from Europe in terms of the quota. There have been meetings, talks and discussions that have all been about kicking the can down the road, a bit like the situation in the farming sector. Those fishermen are told they might get something next year, the year after or the year after that and it is hard luck if they get nothing. It is not a worry for the Taoiseach, who signed the statutory instrument. He will not be there. He says he can renegotiate fishing quotas in a couple of years' time but he will not be in the top job at that stage so what is going to happen does not worry him. The bottom line is here and now. I oppose these amendments.

Deputy Thomas Pringle: I also oppose these amendments. Fisherman must labour under a duplicate system. There was a criminal aspect prior to this and we now have the procedural, non-criminal effect of the penalty points. The effect is a dual punishment for fishermen. It might be more acceptable if it was an either-or situation, whereby there would be penalty points or prosecution under the other system but, either way, a duplicate system is the wrong way to go about it. I oppose these amendments and will put forward amendments that might lead to the easing of some of the effects of the Bill that will arise later in the debate.

I will ask the Minister a couple of questions about this section of the Bill. Section 15J(2) states "all points in the Irish Fishing Master Register assigned to the master concerned shall be removed and shall be deleted from the Irish Fishing Master Register" if the fisherman receives no other points. Perhaps I am reading this wrong but if one has penalty points on one's licence, they fall after three years, regardless. If one has three points and gets another three points in the third year, that is a total of six. That does not seem to be the situation here. Is it the situation? Perhaps the Minister could clarify that. From reading the Bill, it seems that if an offence is committed within three years, the points become active again and remain on a licence. What is the situation in that regard?

The Bill refers to the registration of Irish citizens. What is the situation if a French person, for example, is skippering a vessel in Killybegs or Castletown? Does that person register on the French fishing register? What about an Irish person who is fishing on a Spanish vessel? Does that person register on the Irish register or the Spanish register? What is the situation in that regard? I would appreciate it if the Minister clarified those points.

Deputy Charlie McConalogue: If a fisherman does not receive additional points during the period concerned, the points lapse. However, if a fisherman receives additional points, the points do not lapse. There is an obligation on other member states, as there is on us as part of this Bill, to notify the competent authorities of the penalty points accrued within their waters and by anyone registered on their registers.

Deputy Thomas Pringle: One could get some points now, get additional points in three years' time that are then added on, and get additional points in another three years' time. All of those points can then combine to become enough for a suspension even though the first points could have been accrued ten years' beforehand. Is that right?

Deputy Charlie McConalogue: That is right.

Deputy Thomas Pringle: That seems a very unfair system.

Deputy Charlie McConalogue: Points continue to accrue unless there is a clean record.

Deputy Thomas Pringle: That is a very unfair system.

Deputy Martin Browne: We understand the purpose of the amendments the Minister is trying to bring through. The intention is to form a basis for a wider document and the amendments are designed to give effect to a scheme. We are not opposed to penalty points and neither are the fishermen, as has been said here already. We are opposed to the flawed and profoundly unfair scheme presented to us. It is impossible to have full due process for the sector if an appeal is successful in court and penalty points remain on the master's licence. That is why we are opposing these amendments. The whole system is flawed as far as we are concerned and we will be bringing up that matter again as we examine the other amendments.

Fundamentally, our arguments boil down to the issue of identifying the infringements themselves and the fact that the viability of these people's livelihoods is based on the balance of probability, when the bar should be no lower than the standard of beyond a reasonable doubt. Everybody is entitled to due process and that is where we have a major issue with the standard of the balance of probability. We pointed out issues on Committee Stage before they were pointed out in the Dáil by Deputy Michael Collins and others. The Minister is talking about issuing points earnestly through a flawed system. That is why we will be opposing this Bill overall.

Deputy Ruairí Ó Murchú: I said I would not repeat myself but I am probably going to do exactly that. I would not be the first person to do it in these hallowed halls, even if there is limited connectivity to the outside world. As has already been said, this boils down to an argument about the standards of proof and the difference between the balance of probabilities and beyond a reasonable doubt. That is the crux of the matter as regards the unfairness. It means that whatever amendments are being brought forward are, to a degree, inconsequential unless we deal with the crux of the matter. That is where the matter stands. We will obviously be taking the position we are taking.

I am curious as to how long a fishermen requires a clean bill of health after a finding against him or her whereby penalty points are assigned. We do not accept the system as it exists because it is utterly unfair and there is not a sufficient amount of protections. We will deal with that during the discussion of other amendments. How long does it take for a fisherman's record to become clean? I accept that if anything else happens during that period, existing penalty points are maintained and additional ones are accrued.

Deputy Charlie McConalogue: It is three years.

In response to Deputy Martin Browne, it was well thrashed out on Second Stage and discussed. It is an administrative system as opposed to a criminal system. The standard threshold in administrative systems is balance of probabilities and that is reflected here in the legislation.

Amendment put.

The Committee divided: Tá;, 6; Níl, 4.	
Tá;	Níl;

Burke, Colm.	Browne, Martin.
Cahill, Jackie.	Collins, Michael.
Devlin, Cormac.	Ó Murchú, Ruairí.
Flaherty, Joe.	Pringle, Thomas.
McConalogue, Charlie.	
Richmond, Neale.	

Amendment declared carried.

Deputy Charlie McConalogue: I move amendment No. 3:

In page 6, to delete lines 31 to 33 and substitute the following:

“ ‘serious infringement’ means an infringement of the rules of the common fisheries policy specified in Annex XXX to the Commission Regulation or Article 90(1)(c) of the Control Regulation.”.

Amendment put.

The Committee divided: Tá;, 6; Níl, 4.	
Tá;	Níl;
Burke, Colm.	Browne, Martin.
Cahill, Jackie.	Collins, Michael.
Devlin, Cormac.	Ó Murchú, Ruairí.
Flaherty, Joe.	Pringle, Thomas.
McConalogue, Charlie.	
Richmond, Neale.	

Amendment declared carried.

Deputy Charlie McConalogue: I move amendment No. 4:

In page 8, line 6, to delete “sections” and substitute “section”.

Chairman: Is amendment No. 4 agreed?

Deputy Michael Collins: It is not agreed without discussion.

Amendment put.

The Committee divided: Tá;, 6; Níl, 4.	
Tá;	Níl;
Burke, Colm.	Browne, Martin.
Cahill, Jackie.	Collins, Michael.
Devlin, Cormac.	Ó Murchú, Ruairí.
Flaherty, Joe.	Pringle, Thomas.
McConalogue, Charlie.	
Richmond, Neale.	

Amendment declared carried.

Chairman: Amendments Nos. 5, 6, 12 and 13 are related and will be discussed together.

Deputy Michael Collins: I move amendment No. 5:

In page 11, line 35, to delete “30 working days” and substitute “60 working days”.

Deputy Martin Browne: We find this amendment reasonable and we will support it. Not everything is as cut and dried as the Department seems to consider it to be in this sector.

Deputy Thomas Pringle: This is a reasonable proposal for additional time in the event of an offence being prosecuted. The master of a vessel may be at sea when he or she gets a notification that something is happening and could be at sea for two weeks or some similar time. Much time would be lost in the initial stages. The time should be lengthened. This amendment is reasonable. The Minister should take it on board and accept it.

Deputy Michael Collins: As Deputy Pringle said, additional time is needed. Thirty days is a short period to try to put together paperwork. If you feel you are being wronged and there is a case to be fought, you might still be at sea, and you have to put together that case when you get back. When a fisherman goes to sea, it is for two weeks, most of the time. Some of them find it so difficult to make a living right now that they are trying to go back out as soon as they come in because things have got so tough. Increasing the time from 30 to 60 days is surely not an unreasonable request. I will press this amendment.

Deputy Ruairí Ó Murchú: It already has been said that certain logistical difficulties relate to people who work in the fishing industry. If cases are put in front of people to answer, they need to be given sufficient time to be able to make the necessary submissions and preparations for an oral hearing and all those other situations. Once again, it is a matter of fairness and making sure that people are given sufficient time to allow for due diligence in order that they can protect their good names and make sure that they can put forward the best case to protect themselves from penalty points.

Deputy Charlie McConalogue: The amendments propose to increase the timeframes for masters to take certain steps under the Bill, such as making submissions to the determination panel requesting an oral hearing before both the panel and the appeals officer, and to provide extra information to the appeals officer too. The proposed amendments practically involve doubling the time period given for the master to input to key stages of the process. If I acceded to these amendments, it would delay the application of the points. Under the EU control regulation, points for licenceholders apply for three years, with a commencement date of the date of detection of the serious infringement. The amendments would delay the effective implementation of the three-year requirement. In addition, the Supreme Court delivered its judgment on SI 3 of 2014 for licenceholders in December 2017. The judgment makes it clear that one of the obvious purposes of the EU regulations is to ensure that the system of sanctions and dissuasive measures operates efficiently and without undue delay. With this in mind, increasing the timeframes concerned in the manner suggested would hinder the efficient and effective operation of the points system.

Whereas the Supreme Court judgments relate to the licenceholder system, it is considered

that the court’s analysis applies equally in the context of the masters’ points system provided for in the Bill. It should be noted that in the context of the licenceholder points system, certain timeframes were increased in SI 318 of 2020 to facilitate licenceholders, for example, making a submission or asking for an oral hearing within ten working days. A number of times were significantly increased. Those increased timeframes now feature in this Bill. I am satisfied that the current timeframes have given adequate time for licenceholders to make their case. For all of the reasons that I have mentioned, I do not propose to accept the amendments.

Amendment put.

The Committee divided: Tá;, 4; Níl, 6.	
Tá;	Níl;
Browne, Martin.	Burke, Colm.
Collins, Michael.	Cahill, Jackie.
Ó Murchú, Ruairí.	Flaherty, Joe.
Pringle, Thomas.	McConalogue, Charlie.
	O’Callaghan, Jim.
	Richmond, Neale.

Amendment declared lost.

Deputy Michael Collins: I move amendment No. 6:

In page 11, line 37, to delete “30 working days” and substitute “60 working days”.

Amendment put.

The Committee divided: Tá;, 4; Níl, 6.	
Tá;	Níl;
Browne, Martin.	Burke, Colm.
Collins, Michael.	Cahill, Jackie.
Fitzmaurice, Michael.	Flaherty, Joe.
Ó Murchú, Ruairí.	McConalogue, Charlie.
	O’Callaghan, Jim.
	Richmond, Neale.

Amendment declared lost.

Chairman: Amendments Nos. 7 and 14 are related and will be discussed together.

Deputy Michael Collins: I move amendment No. 7:

In page 12, line 17, to delete “on the balance of probabilities” and substitute “beyond a reasonable doubt”.

The issue comes down to whether the innocence of a fisherman is taken into account. When we were talking about the proposed change from 30 to 60 days the Minister said we do not want to delay the application of points. That is the problem. There seems to be a real drive to make sure that the Irish fisherman will get penalty points on his licence if any slight in-

fringement is found at the waters. That needs to be looked at more deeply because it seems to me that if the fisherman is proven innocent in Irish waters, he may still carry those penalty points. Maybe the Minister could give me clarity on the point that if a fisherman gets penalty points once and then does not have any for a number of years but has an infringement again in a couple of years, the resulting penalty points are still added onto the previous points he had. This seems to be a lose-lose situation for the Irish fisherman from start to finish.

As I said earlier, it has been an extremely difficult time for fishing and we need to fight out there in Europe for a better and a fairer system for the Irish fisherman. That has not been done to date. Look at even the bluefin tuna quota. I would say every other country in Europe can get as much quota as it wants or can make an application for quota and get it but the Irish fisherman cannot get any quota for bluefin tuna. There are lots of others and there is a great unfairness and a great imbalance out there. I think this will be an extra imbalance on the fisherman's back and I will certainly press the amendment.

Deputy Martin Browne: I concur with Deputy Collins. This is one of the fundamental issues we have with the Bill. We are introducing this amendment because allowing future livelihoods to depend on the loose balance of probabilities is plain wrong. Sinn Féin's and Deputy Collins's amendment tries to resolve that. How many people working in the fisheries industry, or indeed in any industry or even as an individual in the State, has the Minister met who believe they are being treated right, fairly and justly by having a conviction which could seriously impact their livelihood based on a balance of probabilities? We have been through this before at committee meetings and in the Dáil, and that is why we seek to rectify it by replacing the words "on the balance of probabilities" with the words "beyond a reasonable doubt".

Many members have made their feelings known on this, and those in the industry have made their feelings known to the Minister and his officials. For some reason, the Minister has tabled amendments to the Bill that deal with grammatical errors yet he has not addressed the fundamental problem that has been brought to his attention continuously. Will he tell the committee whether he thinks the people fishing in all kinds of weather are not to be believed or trusted? Setting the bar so low gives the impression that he does not trust fishers enough to warrant the threshold of "beyond a reasonable doubt". There is absolutely no way that I, my Sinn Féin colleagues or anybody else in the Opposition will support the wording we have before us. It is outrageous to think that our fishing industry is being treated in this way. Sinn Féin has said from the start that we would fight this every step of the way and we will hold true to our word. We cannot support this.

Deputy Ruairí Ó Murchú: I accept some of what the Minister said about criminal versus administrative systems, but what we have said here is that we are looking for fairness. We are talking about those who work in the fishing industry. Going back to our entry into the European Union, the CFP and all that has come from it, Deputy Collins put it very well and he is not the first person to use the phrase that the fishermen have been the whipping boys for many years. There has been an absolute level of unfairness, but the majority of those who work in the fishing industry are solid, sound people who just want to make their living from fishing. Again, is there a need for a system of regulation? Yes. Is there a need for sanction? There most definitely is. There are a number of bad apples this needs to apply to. If we are to offer fairness, however, we need to err on that side. A balance of probability leaves this too open. If a person is to be sanctioned, it can have serious consequences, and that is in addition to all the other issues in relation to unfairness. The difference between penalty points in this context and penalty points as we understand them for road users is that even if the fishers think they are finished with them,

that is not necessarily the case. We need to get to the point where it should be possible to prove a case beyond reasonable doubt. If that is not possible, the person should not be liable to such serious consequences. This provision is utterly unfair and we are pressing the amendments on that basis.

Deputy Thomas Pringle: I support the comments made by other members. It is detrimental to fishermen to have this dual process of penalties enforced on them. In addition, penalty points in this case are administered at a lower standard and can have a hugely detrimental effect on fishers and their ability to make an income for their families. They must be given due process and there should be a higher bar for sanctions in such cases. People could end up losing their livelihood on foot of this provision. There should be protection and it should be made much more difficult to catch people out and level such offences at them. This provision does not marry up with the criminal system. The amendment would make the procedure more compatible with the criminal system.

Deputy Charlie McConalogue: I thank the Deputies for their amendments and statements. The issue of the standard of proof to be used at a determination panel and by the appeals officer being on the balance of probabilities has been raised by the industry in the context of the licence holders points system, and is provided for under SI 318/2020. This issue was also raised at the pre-legislative scrutiny stage and on Second Stage in the Dáil. The legal standard of “beyond reasonable doubt” is almost entirely confined to criminal trials and is not applicable to proceedings of a civil nature where the standard used is the “balance of probabilities”. This is the standard that is used for the points system. The legal position is that it is the appropriate legal standard in this case also. The legal position further indicates that the Supreme Court did not, in either the Crayden or the O’Sullivan cases in which a forerunner of SI 318/2020 was challenged successfully, make any reference to “beyond reasonable doubt” throughout the two judgments. The Supreme Court did not take issue with the balance of probabilities standard of proof in any of the statutory instruments it considered. For these reasons, I am not in the position to consider accepting the two amendments proposed.

Amendment put.

The Committee divided: Tá; 4; Níl, 6.	
Tá;	Níl;
Browne, Martin.	Cahill, Jackie.
Collins, Michael.	Flaherty, Joe.
Ó Murchú, Ruairí.	Kehoe, Paul.
Pringle, Thomas.	Leddin, Brian.
	McConalogue, Charlie.
	Ring, Michael.

Amendment declared lost.

Deputy Charlie McConalogue: I move amendment No. 8:

In page 12, to delete lines 35 to 37 and substitute the following:

“(ii) of the proposal to assign the appropriate points in accordance with Annex XXX to the Commission Regulation or section 15U, as the case may be, to the master for the serious infringement.”.

Deputy Michael Collins: I challenge this amendment.

Amendment put.

The Committee divided: Tá;, 6; Níl, 4.	
Tá;	Níl;
Cahill, Jackie.	Browne, Martin.
Flaherty, Joe.	Carthy, Matt.
Kehoe, Paul.	Collins, Michael.
Leddin, Brian.	Fitzmaurice, Michael.
McConalogue, Charlie.	
Ring, Michael.	

Amendment declared carried.

Chairman: We now move to amendment No. 9 in the name of Deputy Michael Collins. Amendments Nos. 9 and 10 are related and will be discussed together. Amendment No. 10 is in the name of Deputy Mac Lochlainn and is a physical alternative to amendment No. 9.

Deputy Michael Collins: I move amendment No. 9:

In page 14, to delete lines 26 to 29 and substitute the following:

“**15J.** (1) Subject to subsection (2), points assigned by the Authority to a master who is an Irish citizen are suspended when any appeal is pending and shall be deemed fully revoked upon successful outcome of any such proceedings, in respect of the infringement concerned.”.

This amendment concerns the very significant concerns which Irish fishermen have regarding the application of these penalty points to them. It provides that the master will, if he is an Irish citizen, have these points “suspended when any appeal is pending and shall be deemed fully revoked upon [a] successful outcome of any such proceedings, in respect of the infringement concerned.” Deputy Mac Lochlainn will be supporting this afterwards also. This is very clear and is a major concern to many fishermen out there. I said in previous discussions that it looks that if the points are applied, and are applied in the wrong, they will remain on the fisherman’s licence. I have serious concerns about that and there is no black-and-white clarity here. It is not the case and it should obviously not be the case where a fisherman is found to be innocent in Irish waters but still finds himself locked with penalty points.

I look at the situations that we find ourselves in with Irish fishermen at the present time with the recent ramming incident off Castletownbere by a Spanish trawler fishing inside Irish fishing zones. There is clear footage of that with near loss of life as far as the Irish fishermen were concerned, with little or no laws there to protect the Irish fishermen. I still have to find out, and perhaps the Minister might confirm, if penalty points were applied to that Spanish trawler in its own country, or if penalty points are already in place there. What kind of laws are there to protect Irish fishermen because it looks to me that if we agree to this today, it will be another stick to beat the fishermen with?

Fishermen have been beaten around the bush quite often over the past number of years in any event. That incident shocked many fishermen because there was a trawler out there beg-

ging for mercy and there was a Spanish trawler perhaps three times the size of it circling this vessel for several hours with no one able to go to the aid of the Irish fishing trawler. We cannot find ourselves in that situation because if we are bringing penalty points in here to inflict on our Irish fishermen, surely to God there is protection out there for the Irish fleet when it is out on the seas. There is growing anger in Irish fisheries at the moment and it is hard to blame the fishermen because we are quite happy to be bringing these provisions in here this evening and going ahead. No matter what amendment we put in today, the Minister will oppose it by the sound of things and he is quite happy to do that no matter how fair and reasonable some of these amendments are. At the end of the day, however, if a foreign vessel comes into our waters and does what it damn well likes, there seems to be no protection for the Irish fishermen. Until we get clarity that this situation will and is being addressed, that will be the way our fishermen will feel they are being treated.

Deputy Ruairí Ó Murchú: I have been talking about fairness in respect of this system since we first came in here today. This is very difficult and I do not know how one can sell to somebody on the street the idea that penalty points are going to be imposed on you, that you appeal it, are found to be innocent, and these points still remain on your record. That does not make any sense whatsoever. There is no point in coming up with funny analogies as it just would not make any sense to anyone out there and it does not make any sense to us in here. Again, I am just asking that we deal with this on the basis of fairness. It is quite straightforward. If one appeals the penalty points, and it is found that they should not have been imposed on the person, they should therefore not be on one's record. It is as simple as that.

Deputy Martin Browne: I concur with the two previous speakers. Both of these amendments go to the very heart of the unfairness of this scheme and there is no point in saying anything different to that. As Deputy Collins has said, Irish fishermen must be treated the same as these big international boats.

Even in the event of a successful appeal to a conviction on the balance of probability, it is just crazy that the points should remain on the licence. In effect, the conviction itself remains. That is bonkers stuff. If he takes a step back and thinks about this rationally, I feel that the Minister will agree with this also. As Deputy Collins has said, it appears that no matter what kind of amendment is brought in by the Opposition, or how fair such an amendment makes the position for fishermen, it will be voted down.

Let us look at a hypothetical situation. If a garda pulls me going home from here this evening and believes that I have been speeding, he will inform me of this and take his eye off the road. If I go to court I will be convicted or perhaps cleared. In the latter case, those penalty points that would have been on my licence will disappear. With this law, I believe these points will remain on a fisherman's licence for ten years. It is crazy stuff. I am asking the Minister to look at this again rationally, to step back and to accept the two amendments that are in front of him to make this system fair for people who go out on a daily basis and put their lives at risk.

They know the system that needs to be put in place and they have said it. Deputy Collins has repeated this as he has met the fishermen. We have met them, as has the Minister. This is the message that is coming across from the fishermen. They know that penalty points have to be there but all they want is a fair system. What is being put in front of us here today is not fair and it is as simple as that. I am pleading with the Minister to look at this rationally, take a step back and let us put a wording into this document so that fishermen, when they go out to sea, know they are being treated fairly. I will leave it at that as this has arisen over and over again at committee, in the Dáil and here again today. We are just asking for a little fairness and that

this issue be looked at.

Deputy Thomas Pringle: As other members have said, this is about fairness and about what is right at this stage. There is a question where if one goes through a criminal conviction and the criminal courts find that no offence has taken place, these points should then fall off a licence. It stands to reason. While the penalty points regime is an administrative system, the penalties are very close to criminal sanctions in any event, which calls into question the very reasoning as to why they cannot fall off or why they are viewed differently. This needs to be addressed. Obviously, the Minister will not take this on board because that is his remit. It needs to be flagged here at every stage because it is plainly wrong. The advantage of administrative sanctions is that the sanctions are supposed to be less than for the equivalent criminal offence. However, somebody can lose their licence and the means of making a living for themselves and their family on foot of the proposed sanctions. That needs to be addressed and the Minister should take it on board.

I do not believe the Minister answered the previous question as to whether Irish citizens need to be on the Irish register. If an Irish citizen is fishing a vessel in Spain, would they be on the Spanish register? If a French fisherman is living in Castletownbere and fishing an Irish vessel, is he on the Irish register or where should he be registered? That is important because we have seen that the administration of so-called justice or whatever within the fishing industry is very different in different states. It seems that vessels can be caught here for illegal fishing and then it is sorted out when they go home. Will that happen in respect of this legislation? How will that work?

Deputy Charlie McConalogue: Concerns were raised about section 15J(1) in the context of the equivalent provision in the licence holders points system in pre-legislative scrutiny of the general scheme of the Bill and on Second Stage in the Dáil. The issue of points being removed where the master is found not guilty in criminal proceedings in respect of the infringement has been raised. This proposal would involve both systems being interlinked and they would not then stand alone from each other. The points and the criminal prosecution are separate systems involving separate standards of proof. The amendment would lead to confusion and the conflation of evidence, and render elements inadmissible.

In addition, the legal advice it is clear that points under EU regulation are intended to be additional to a criminal prosecution. Accordingly, it could not be argued that Ireland has both criminal and points systems as required under EU regulation if we operated the system in a manner whereby the criminal proceedings completely eclipsed the points system. For these reasons, I am not accepting the two amendments.

Chairman: I wish to clarify that if amendment No. 9 is agreed, amendment No. 10 cannot be moved.

Amendment put.

The Committee divided: Tá;, 4; Níl, 6.	
Tá;	Níl;
Browne, Martin.	Burke, Colm.
Collins, Michael.	Cahill, Jackie.
Ó Murchú, Ruairí.	Flaherty, Joe.
Pringle, Thomas.	McConalogue, Charlie.

	O'Callaghan, Jim.
	Richmond, Neale.

Amendment declared lost.

Deputy Martin Browne: I move amendment No. 10:

In page 14, lines 27 to 29, to delete all words from and including “regardless” in line 27 down to and including “concerned.” in line 29 and substitute the following:

“subject to the outcome of any criminal proceedings in respect of the serious infringement concerned. Where a Master or Owner is found not guilty in such criminal proceedings, then the Authority shall take such steps to remove any record of the assignment of Penalty Points as if they had never been assigned in the first place. This shall include notifying the Licensing Authority to ensure the points are removed from the Capacity.”.

Amendment put.

The Committee divided: Tá;, 4; Níl, 6.	
Tá;	Níl;
Browne, Martin.	Burke, Colm.
Collins, Michael.	Cahill, Jackie.
Ó Murchú, Ruairí.	Flaherty, Joe.
Pringle, Thomas.	McConalogue, Charlie.
	O'Callaghan, Jim.
	Richmond, Neale.

Amendment declared lost.

Deputy Michael Collins: I move amendment No. 11:

In page 17, line 17, after “fee” to insert “(not exceeding €25)”.

In the event of this very unjust Bill being passed by the Dáil, every fisherman and fisherwoman will have the right to appeal his or her conviction, especially if he or she is in the right. I asked the Minister about the recent near ramming incident off Castetownbere a while ago, but I did not get any reply as to whether the Spanish trawler was arrested and brought to justice, as it should be. However, in a situation where a fisherman ends up with penalty points and he believes it is not justified and that he is not guilty, the system we are putting in place is putting everything up against him regardless of what it is. What will be the fee for the fisherman to appeal the conviction?

I strongly believe that the fee for an appeal should be no more than €25. If it is at the discretion of the Minister, it could run into thousands of euro, which would put it out of the reach of already struggling fishermen who are hard-pressed at present without another burden put on their backs. One can well imagine that if people feel they have been wronged, they will do everything in their power to clear their name, even though it appears to me that with the way the system is drafted one is damned if one does or if one does not. One will still end up with

penalty points one way or the other, clear or unclear. However, surely the Minister will not penalise them further by handing an unfair fee to those who want to appeal any decisions. I am proposing a fee of €25.

The Government Deputies here today should refer back to their constituencies or refer to their colleagues in rural constituencies where there are fishermen or where quite a lot of the farmers are also fishermen. They will not be at all happy with their actions today. I appeal to them to take on board some of our amendments, at least. We are here because the fishermen have asked us to be here to fight their cause for them. As far as I am concerned, the fee should be €25.

Deputy Thomas Pringle: I support this amendment. It is reasonable. This Bill provides for a lot of blows to fishermen and what they do. Then it provides that the appeal should be accompanied by a fee which may be determined by the Minister. This Minister might be okay and amenable to a lesser fee, but he is going to revisit this from time to time and it could become another unfair burden. We will see what fee will be arrived at, but it could be set at €1,000, €1,500, €2,000 or €3,000. What will the fee be? That is a very serious matter because not only does somebody have an administrative sanction, the person will also have a criminal sanction and then will have a fee to pay to have an appeal heard in this respect. The cost of the appeal should be prescribed in the legislation to provide for some type of fairness and to ensure that people who have to work under the system will know what it will cost them at that stage. I fully support this amendment, and all members should support it.

Deputy Martin Browne: I support the amendment too. As both speakers have said, the fishermen are being hit enough with the penalties and so forth, so if they seek an appeal it should be a nominal fee like €25.

Deputy Ruairí Ó Murchú: It is a straightforward amendment to ensure that somebody has easy access to enable an appeal to be made. This is just ensuring there are checks and balances in the system. It is a very fair request.

Deputy Charlie McConalogue: The amendment provides that a fee for an appeal to the appeals office should not exceed €25. It is important not to be overprescriptive and specify an exact amount in this regard in the Bill. I believe any fee that the Minister may determine after enactment of the Bill would be reasonable. It would not be imposed for revenue-raising purposes and would take into account all relevant factors, including the important matter of the master's ability to pay. To be prescriptive in the Bill about the quantum of any fee would unnecessarily compromise the flexibility the Minister of the day should have when determining what fee should apply. In addition, to specify a maximum fee in statute now could mean that any sum specified could become outdated over time due to inflation and, therefore, could require legislative amendment. Accordingly, I do not propose to accept the amendment.

We have seen that with other legislative measures as well, where putting figures into primary legislation which can be there for many years is not the most sensible way to go forward. Certainly, in anything I have done as Minister I have been very proportionate, and the expectation of any Minister of the day is that he or she would be proportionate and reasonable as well. The appeal system is being put in place to facilitate access for fishers to the ability to appeal. It is very important that happens, and that is very much the spirit and purpose behind the Bill overall. Setting a fee which would be prohibitive in that regard would be totally counter to that and would not be appropriate. I believe we should not include a figure there but trust in the common sense of the Minister of the day to ensure the fee is proportionate. Putting it into

legislation means that to change it at any stage in future would require the length of time that is involved in bringing primary legislation through both Houses of the Oireachtas and the many Stages involved. The sensible approach here is not to insert the fee figure, but to respect the fact that it is to be a low, proportionate and reasonable figure.

Deputy Michael Collins: I find this astonishing, to be honest. The sea-fisheries Bill is going through but it does not have a set fee for people who want to appeal their conviction and penalty points. The Minister says he wants to be reasonable. He could not be more reasonable than by including a figure of €25. My worry is that while this Minister might want to be reasonable, the next Minister might not want to be reasonable and might want to punish them more severely. If the Minister is going ahead with this Bill, surely he has a fee in mind already. What is that fee? Will it be €1,000 or €20,000? He is saying “reasonable”. We could not be any more reasonable than by putting this amendment forward and seeking a fee of €25. If the Minister is not agreeing to that and if it going to be left to the decision-making of future Ministers in coming years, I shudder to think of what the fee will be. Is it going to be a stick to beat back the fishermen who want to appeal? If the rate for the appeal is set at a massively high figure, it will discourage them from going forward.

This Bill should be scrapped until a decision is made on how much the fishermen will have to pay if they wish to appeal, which they have every right to do if they feel they have been wronged. Irish fishermen and fisherwomen have been punished long enough in this country by hidden paperwork and Ministers going abroad and not fighting for their rights. We need to know here and now what the charge will be. That is all I ask. If the Minister will not agree with the €25 fee, he should tell us what the fee is. He cannot just say that he will tell us later when it happens. That is not good enough. We need answers here. This document is almost finished as far as the Minister is concerned.

Deputy Martin Browne: I agree with Deputy Michael Collins. What is being asked in this amendment is fair. I cannot get over the Minister’s statement that it would be unfair on another Minister to have to go through the rigmarole of changing the fee. That is the Minister’s job. He should set the fee now in this Bill. If a future Minister does not agree with it, he or she can bring forward proposals to change it. I call on the Minister to accept the amendment regarding the €25 fee. If a future Minister does not agree with it, so be it; he or she can change it down the road. We should send a clear message to the fishing industry by setting that kind of a limit on an appeal fee so that if people make an appeal in the future, they will not worry about its cost. I appeal to the Minister to accept the amendment.

Deputy Thomas Pringle: The Department’s view of a reasonable fee may be different from the view of people in the real world. There is a certain amount of arbitrariness involved which is causing difficulty. There must be standards already set by the Department in regard to fees in agricultural appeals, etc. Perhaps it would be appropriate for the Minister to refer to a structure of fees that could be applied rather than stating that the fee will be determined by the Minister from time to time. That is not appropriate and adds an extra burden to the people subject to this process. More clarity is needed in this regard. This amendment makes sense in setting a fee. The Minister can put forward an amendment to adjust that quickly in the future, if need be.

Deputy Ruairí Ó Murchú: I agree with what has been said and Sinn Féin will support the amendment. I accept the argument that has been made for not including a figure in the Bill but we need clarity around what would be a fair fee. As Deputy Pringle said, we should consider providing a general framework for what this should look like now, and beyond that. In fair-

ness to the Minister, he said it would be a “reasonable” fee. Perhaps he can give a response on whether promises can be given in regard to that if the intention is not to include a fee in the legislation.

Deputy Charlie McConalogue: I do not propose to accept the amendment but I will reflect on the matter before Report Stage.

Amendment put.

The Committee divided: Tá;, 4; Níl, 6.	
Tá;	Níl;
Browne, Martin.	Burke, Colm.
Collins, Michael.	Cahill, Jackie.
Ó Murchú, Ruairí.	Flaherty, Joe.
Pringle, Thomas.	McConalogue, Charlie.
	O’Callaghan, Jim.
	Richmond, Neale.

Amendment declared lost.

Deputy Michael Collins: I move amendment No. 12:

In page 17, line 23, to delete “30 working days” and substitute “60 working days”.

Amendment put.

The Committee divided: Tá;, 4; Níl, 6.	
Tá;	Níl;
Browne, Martin.	Burke, Colm.
Collins, Michael.	Cahill, Jackie.
Ó Murchú, Ruairí.	Flaherty, Joe.
Pringle, Thomas.	McConalogue, Charlie.
	O’Callaghan, Jim.
	Richmond, Neale.

Amendment declared lost.

Deputy Michael Collins: I move amendment No. 13:

In page 17, line 33, to delete “20 working days” and substitute “40 working days”.

Amendment put.

The Committee divided: Tá;, 4; Níl, 6.	
Tá;	Níl;
Browne, Martin.	Burke, Colm.
Collins, Michael.	Cahill, Jackie.
Ó Murchú, Ruairí.	Flaherty, Joe.

Pringle, Thomas.	McConalogue, Charlie.
	O'Callaghan, Jim.
	Richmond, Neale.

Amendment declared lost.

Deputy Michael Collins: I move amendment No. 14:

In page 18, line 17, to delete “on the balance of probabilities” and substitute “beyond a reasonable doubt”.

Amendment put.

The Committee divided: Tá;, 4; Níl, 6.	
Tá;	Níl;
Browne, Martin.	Burke, Colm.
Collins, Michael.	Cahill, Jackie.
Ó Murchú, Ruairí.	Flaherty, Joe.
Pringle, Thomas.	McConalogue, Charlie.
	O'Callaghan, Jim.
	Richmond, Neale.

Amendment declared lost.

Deputy Martin Browne: I move amendment No. 15:

In page 18, to delete line 22 and substitute the following:

“(b) involved a serious infringement not minor in nature giving due regard to all of the facts of the case, and”.

Sinn Féin has tabled this amendment to make it clear that the infringement in question is not minor in nature. Fishers are already under significant pressure as a result of the regulations and the lack of quota. They do not need to be treated as guilty until proven innocent, especially in the context of the Minister trying to make sure the penalty points stay on their licence even if they appeal successfully in court.

Deputy Thomas Pringle: This, too, is an important amendment. It highlights the nature of the penalty points system. There is a need to show that the infringement is not minor but, rather, a serious one. The amendment is important and should be taken on board by the Minister.

Deputy Michael Collins: I support the amendment tabled by Deputy Mac Lochlainn. It is clear there is a massive difference between a minor infringement and an extremely serious one. That needs to be clarified. As I stated in respect of the amendment relating to the fee for appeal, we do not know, even at this stage, what the fees will be, but we are supposed to be discussing this document in its final stages. If fishers ask me tonight what the fees will be, I will not be able to answer. We are supposed to be at the tail end of this Bill, and the Government has made sure that all these amendments will not be taken into account. There are many minor infringements out on the waters that should be taken account of in a manner other than penalty points.

It seems that the penalty points we are discussing will be imposed on fishermen, regardless of whether they are innocent. I find that difficult and very unfair. I ask the Minister to give full consideration to the amendment. It is only fair that he do so. Fishermen have been treated terribly unfairly in recent years. I have been calling for a stand-alone Minister for fisheries, be that Deputy McConalogue or another Deputy in government, to be at the table for each and every set of negotiations. That is a red-line issue for me because the great resource we have off our coast at Castletownbere, Donegal, Wexford, Galway and such places is being thrown away and handed over as a little bargaining chip-----

Deputy Charlie McConalogue: As a matter of interest, which Cabinet position would the Deputy drop?

Deputy Michael Collins: That would be a matter for the Taoiseach of the day, not for me. If I was at the Government table, we would find plenty of space to make sure the best-----

Chairman: The Deputies should stick to the amendment.

Deputy Michael Collins: The Minister asked me a question and I want to give him an answer.

Chairman: He should not have asked the Deputy the question.

(Interruptions).

Chairman: Agriculture will be safe in any event.

Deputy Charlie McConalogue: It is only half a proposal if the Deputy does not give the alternative-----

Deputy Michael Collins: Fisheries has always been the poor relation in Irish politics. That has been the reality for the past 20 or 25 years but now the turkey has certainly come home to roost. Many fishermen are very angry. This is another serious issue that affects them. There are minor infringements and serious infringements but we do not know when the penalty points will kick in. If a fisherman is found not guilty in the context of the penalty points, will he at least be given the same respect as he would be given under every other legal process, with the understanding that the points are gone and he has a clear licence to fish? I will be supporting the amendment.

Deputy Ruairí Ó Murchú: Once again, we are talking about fairness. The idea is to show fishers that the intent is not to absolutely hammer them for minor infringements. All present accept there is a need for sanctions and a system to deal with major infringements but the issue relates to separating minor infringements and serious ones. The fact is that we are playing around with legislation that has a fundamental flaw at its core with which we really need to deal. The Government has not taken on board the substantive amendments that could have changed the Bill into a completely different beast that could deliver for us and for fishermen. That is disappointing. In fairness to Deputy Michael Collins, he is correct that fishermen and others in the fishing industry believe they have been treated as the poor relation for many years. The Government is continuing to treat them in that way.

Deputy Charlie McConalogue: I thank Deputy Mac Lochlainn for tabling the amendment. It relates to an appeals officer confirming that points should be assigned where he or she considers that the alleged serious infringement did occur and was a serious infringement. The

serious infringement referred to is already defined in the Bill for masters. The legal position is that the amendment confuses EU law and Irish law, as well as civil law and criminal law, and the difference between serious and non-minor offences in Irish law. The two standards referred to are entirely different and the amendment serves only to confuse the issue. Accordingly, this proposal was not accepted in the context of SI 318 of 2020 as regards the licence holders points system and I do not propose to accept it in the context of the Bill here either.

Deputy Martin Browne: The Minister spoke of mixing up the law. Will he clarify the difference between a serious infringement and being “involved a serious infringement not minor in nature giving due regard to...”? Will he clarify the difference where the penalty points kick in and give us some clarification on the two points?

Deputy Michael Collins: I fully agree with Deputy Browne in his question to the Minister. What is a serious infringement? I was talking about the near-ramming incident off Castletownbere earlier this year. Would that be deemed as a penalty point infringement under the laws that stand in other European countries? On several occasions I asked were penalty points applied to the Spanish trawler that day when it was fishing illegally in Irish waters in Castletownbere, and from that day until now, nobody seems to be able to tell me. My worry is we are putting laws in place to make sure the Irish fisherman is kept well under the rule of thumb but there is no rule of thumb when it comes to a foreign vessel illegally fishing here that nearly rams our vessels in Irish waters. The fishermen on that Irish Castletownbere trawler sought help from the authorities at 8 a.m. that day and nobody assisted them. I think there was some arrest made, the next day or the day after.

What are we putting in place here? Are we putting stronger laws on the backs of the Irish fishermen? We certainly will not put a law in place if there is any infringement of a foreign vessel in this country. I have asked the Minister on several occasions here. If he even at least acknowledges it, maybe he would say he cannot give me an answer on that case. Is that deemed a minor infringement? Was that deemed a serious infringement? Was the illegal fishing proven? If it was, were penalty points applied to that trawler? I can see where this amendment Deputy Mac Lochlainn has put forward is leading. There is a need for clarity. Perhaps the Minister could clarify it for us.

Deputy Charlie McConalogue: On a particular incident, that is something that operates entirely separate to me, as Minister. It is overseen entirely by the enforcement authorities, which I have no role in or which does not get reported directly to me either. Any actions that would be taken would be dealt with in terms of engaging with the justice authorities within the State, which obviously operate entirely separate from Government as well.

On Deputy Browne’s question on what is a serious infringement versus a minor one, the determination panel determines whether a serious infringement has occurred and whether the alleged master was the master of the boat when it occurred. The provisions of the EU IUU regulation set down activities that are considered as serious infringements depending on the gravity of the infringement in question which shall be determined taking into account criteria such as the damage done, its value, the extent of the infringement or its reputation. The determination panel makes that determination having considered all the evidence and takes into account the criteria set down in the regulation and any other criteria it considers relevant. If it is minor, it does not get penalty points, but if it is regarded by the determination panel as a serious infringement then it does, and the determination panel has criteria which are set down internationally as to what meets that threshold.

Deputy Martin Browne: Have those regulations been sent out to the fishing industry so that its members know what is a minor infringement and what is a serious infringement?

Deputy Ruairí Ó Murchú: The whole point is looking for some sort of clarity on where it falls under. Maybe there even needs to be some clarity regarding the framework put into the public domain about what is and is not an infringement because there is a perception that we are once again setting people up for a hammering. If that is not the case, we should make it clear. I would imagine Deputy Collins is coming back in looking for an answer to the question he posed previously.

Deputy Michael Collins: The Minister referred to a determination panel. First, who is that made up of? Second, it has been set on rules based in Europe. Some European countries have different rules in comparison with others. Who will have the final say on whether a fisherman has committed a minor infringement or a serious infringement? That is a serious issue. Who will have that final say? Is the panel made up of Irish people?

On the situation off Castletownbere that I still cannot seem to get an answer to and that the Minister states is not under his guise, at the end of the day surely the Sea Fisheries Protection Authority, SFPA, is answerable to someone and the Department of Agriculture, Food and the Marine must have some answers made available to it when people's lives are at risk and there was, as far as I am concerned, a major infringement, because it was not only that they were fishing in Irish waters but that they were intimidating an Irish vessel. There does not seem to be any sympathy here for them. I could not get it on the day, I could not get it from the Taoiseach and I could not get it from the Minister. I cannot get it from anybody. Nobody knows. Is it all brushed under the carpet? Is it that we do not insult the Spanish, the French or whoever? Is the law of the land being applied the same to them as will be applied to Irish fishermen? That is a straight question that needs clarity here.

Deputy Charlie McConalogue: To be absolutely clear, the law of the land applies to all vessels fishing in our waters regardless of where they are from. The same law and same enforcement applies to all of them. Obviously, in any specific case, whether it is an Irish vessel or otherwise, it is only the enforcement authorities who can bring that forward and who deal with that.

The determination panel is set up in accordance with the Bill which we are discussing here today in great detail. The Bill sets out who will be on the determination panel, how it will be structured, etc. It outlines how the determination panel is made up of three persons nominated by the Attorney General. That is all provided for in the Bill, which we are discussing, proposing amendments to and which we are taking forward through the Stages. It is part of this legislation.

Amendment put.

The Committee divided: Tá;, 4; Níl, 6.	
Tá;	Níl;
Browne, Martin.	Burke, Colm.
Collins, Michael.	Cahill, Jackie.
Ó Murchú, Ruairí.	Flaherty, Joe.
Pringle, Thomas.	McConalogue, Charlie.
	O'Callaghan, Jim.

27 OCTOBER 2021

	Richmond, Neale.
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Amendment declared lost.

Chairman: We are now in session three hours and we have many more amendments to go and sections to be dealt with in this Bill. I propose we adjourn and reconvene at a date to be confirmed. Is that agreed? Agreed. I thank everyone.

Progress reported; Committee to sit again.

The select committee adjourned at 4.29 p.m. *sine die*.