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*Number 2 of 2022*

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**Sea-Fisheries (Miscellaneous Provisions) Act 2022**

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**SEA-FISHERIES (MISCELLANEOUS PROVISIONS) ACT 2022**

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*Number 2 of 2022*

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## **SEA-FISHERIES (MISCELLANEOUS PROVISIONS) ACT 2022**

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An Act to amend the Sea-Fisheries and Maritime Jurisdiction Act 2006 to give effect to Article 92 of Council Regulation (EC) No. 1224/2009 of 20 November 2009<sup>1</sup> and Title VII of Commission Implementing Regulation (EU) No. 404/2011 of 8 April 2011<sup>2</sup> and in that regard to provide for a system of registration and assignment of points to masters of sea-fishing boats who are Irish citizens; to make provision for certain other amendments to the Sea-Fisheries and Maritime Jurisdiction Act 2006; to amend the Fisheries (Amendment) Act 2003; to amend the European Union (Common Fisheries Policy) (Point System) Regulations 2020 (S.I. No. 318 of 2020); and to provide for related matters. [15th March, 2022]

**Be it enacted by the Oireachtas as follows:**

### **Definition**

1. In this Act, “Act of 2006” means the Sea-Fisheries and Maritime Jurisdiction Act 2006.

### **Amendment of section 2 of Act of 2006**

2. Section 2 of the Act of 2006 is amended—
  - (a) in the definition of “Department”, by the substitution of “Department of Agriculture, Food and the Marine;” for “Department of Communications, Marine and Natural Resources;”,
  - (b) in the definition of “Minister”, by the substitution of “Minister for Agriculture, Food and the Marine;” for “Minister for Communications, Marine and Natural Resources;”, and
  - (c) by the insertion of the following definition:

“ ‘fisheries monitoring centre’ has the same meaning as it has in Article 4 of Council Regulation (EC) No. 1224/2009 of 20 November 2009<sup>3</sup>;”.

### **Amendment of section 12 of Act of 2006**

3. Section 12 of the Act of 2006 is amended by—
  - (a) the substitution of the following subsection for subsection (9):

1 OJ No. L 343, 22.12.2009, p. 1

2 OJ No. L 112, 30.4.2011, p. 1

3 OJ No. L 343, 22.12.2009, p. 1

“(9) Without prejudice to subsection (8), notification of the publication of a notice under that subsection shall be made by publishing a notification in *Iris Oifigiúil* and such notification shall include the date on which, and manner in which, the notice was published.”,

and

(b) in subsection (10), by the substitution of “notification” for “notice” wherever it appears.

#### **Amendment of section 13 of Act of 2006**

4. Section 13 of the Act of 2006 is amended—

(a) in subsection (1)—

(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

(ii) by the substitution of “grant (in electronic form or otherwise)” for “grant”,

(b) in subsection (2)(a), by the deletion of “, charterer or hirer, as the case may be,”, and

(c) in subsection (5), by the substitution of the following paragraph for paragraph (k):

“(k) requiring the keeping of the authorisation, or where the authorisation is issued in electronic form, a printed copy of the authorisation, on the boat concerned.”.

#### **Amendment of section 15 of Act of 2006**

5. Section 15 of the Act of 2006 is amended—

(a) in subsection (1)(c), by the insertion of “fishing or” after “any person engaged in”, and

- (b) in subsection (2)(a)(i), by the substitution of “fishing gear or equipment,” for “equipment on them,”.

### **Regulation of Irish fishing masters**

6. Part 2 of the Act of 2006 is amended by the insertion of the following Chapter after Chapter 2:

#### “CHAPTER 2A

#### *Regulation of Irish fishing masters*

#### **Interpretation and application (Chapter 2A of Part 2)**

##### **15A. (1) In this Chapter—**

‘Appeals Officer’ shall be construed in accordance with section 15M;

‘certificate of master registration’ shall be construed in accordance with section 15C(1);

‘Commission Regulation’ means Commission Implementing Regulation (EU) No. 404/2011 of 8 April 2011<sup>4</sup> laying down detailed rules for the implementation of Council Regulation (EC) No. 1224/2009 of 20 November 2009<sup>5</sup> establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy, as amended by Commission Implementing Regulation (EU) 2015/1962 of 28 October 2015<sup>6</sup>, Commission Implementing Regulation (EU) 2020/30 of 14 January 2020<sup>7</sup> and Commission Implementing Regulation (EU) 2020/863 of 22 June 2020<sup>8</sup>;

‘competent authority’ means, in relation to another Member State, the competent authority designated by that Member State to perform the functions of the competent authority under the Control Regulation;

‘Control Regulation’ means Council Regulation (EC) No. 1224/2009 of 20 November 2009<sup>9</sup> establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, as amended by Regulation (EU) No. 1379/2013 of the European Parliament and of the Council of 11 December 2013<sup>10</sup>, Regulation (EU) No. 1380/2013 of the European Parliament and of the Council of 11 December 2013<sup>11</sup>, Council Regulation (EU) No. 1385/2013 of 17 December 2013<sup>12</sup>, Regulation (EU) No. 508/2014 of the European

4 OJ No. L 112, 30.4.2011, p. 1

5 OJ No. L 343, 22.12.2009, p. 1

6 OJ No. L 287, 31.10.2015, p. 6

7 OJ No. L 9, 15.1.2020, p. 3

8 OJ No. L 200, 24.06.2020, p. 1

9 OJ No. L 343, 22.12.2009, p. 1

10 OJ No. L 354, 28.12.2013, p. 1

11 OJ No. L 354, 28.12.2013, p. 22

12 OJ No. L 354, 28.12.2013, p. 86

Parliament and of the Council of 15 May 2014<sup>13</sup>, Regulation (EU) 2015/812 of the European Parliament and of the Council of 20 May 2015<sup>14</sup>, Regulation (EU) 2019/473 of the European Parliament and of the Council of 19 March 2019<sup>15</sup> and Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019<sup>16</sup>;

‘Determination Panel’ shall be construed in accordance with section 15G;

‘engage’, in relation to a master of a sea-fishing boat, means—

- (a) retain, hire or otherwise employ the master concerned, or
- (b) enter into any other contractual or legal arrangement with the master concerned pursuant to which the master acts as master of a sea-fishing boat;

‘Irish citizen’ means a person who—

- (a) is an Irish citizen under the Irish Nationality and Citizenship Acts 1956 to 2004, or
- (b) acquires Irish citizenship under those Acts or any other enactment;

‘IUU Regulation’ means Council Regulation (EC) No. 1005/2008 of 29 September 2008<sup>17</sup> establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, as amended by Commission Regulation (EC) No. 1010/2009 of 22 October 2009<sup>18</sup>, Commission Regulation (EU) No. 86/2010 of 29 January 2010<sup>19</sup> and Commission Regulation (EU) No. 202/2011 of 1 March 2011<sup>20</sup>;

‘official’ has the same meaning as it has in Article 4(6) of the Control Regulation;

‘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;

‘registered master’ means an Irish citizen who is entered in the Irish Fishing Master Register in accordance with section 15B;

‘Regulations of 2020’ means the European Union (Common Fisheries Policy) (Point System) Regulations 2020 (S.I. No. 318 of 2020);

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13 OJ No. L 149, 20.05.2014, p. 1

14 OJ No. L 133, 29.05.2015, p. 1

15 OJ No. L 83, 25.03.2019, p. 18

16 OJ No. L 198, 25.07.2019, p. 105

17 OJ No. L 286, 29.10.2008, p. 1

18 OJ No. L 280, 27.10.2009, p. 5

19 OJ No. L 26, 30.01.2010, p. 1

20 OJ No. L 57, 02.03.2011, p. 10

‘report’ means a report in writing and includes an inspection report, a surveillance report, a report of control data or material, collected by an official acting in the execution of his or her powers or duties;

‘sea-fishing boat licence’ means a licence granted under section 4 (inserted by section 97) of the Act of 2003;

‘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.

- (2) A word or expression that is used in this Chapter and is also used in the Commission Regulation, the Control Regulation or the IUU Regulation has, unless the context otherwise requires, the same meaning in this Chapter as it has in the Commission Regulation, the Control Regulation or the IUU Regulation, as the case may be.
- (3) This Chapter is without prejudice to section 3 of the Merchant Shipping (Certification of Seamen) Act 1979 and any regulations made thereunder.

#### **Irish Fishing Master Register**

- 15B.** (1) For the purposes of this Chapter, the Minister shall establish and maintain, in such form (including electronic form) as he or she considers appropriate, a register, to be known as the ‘Irish Fishing Master Register’, of Irish citizens who are masters of sea-fishing boats and the points assigned in accordance with this Chapter to each such master.
- (2) A person applying for registration in the Irish Fishing Master Register shall—
    - (a) furnish the Minister with such information as the Minister may reasonably require for the purposes of maintaining the Irish Fishing Master Register, and
    - (b) without prejudice to the generality of paragraph (a), satisfy the Minister that he or she—
      - (i) is an Irish citizen, and
      - (ii) is not, at the time of registration, assigned 90 or more points in accordance with this Chapter.
  - (3) An application for entry in the Irish Fishing Master Register shall be made in such form and manner as the Minister may specify.
  - (4) The Irish Fishing Master Register shall contain the following details in respect of each person registered therein:
    - (a) his or her name and address;

- (b) his or her phone number, email address and any other relevant contact details;
  - (c) his or her personal public service number (within the meaning of section 262 of the Social Welfare Consolidation Act 2005);
  - (d) his or her registration number as specified in the certificate of master registration issued in respect of him or her;
  - (e) the date of registration on the certificate of master registration;
  - (f) the number of points (if any) assigned to him or her by the Authority in accordance with this Chapter;
  - (g) the date on which any such points were so assigned;
  - (h) details of any suspension of the registration of the person in the Irish Fishing Master Register, including the date and duration of any such suspension, a summary of the reasons for the suspension and particulars of all deletions of such suspensions;
  - (i) the date of occurrence and details of each serious infringement for which he or she has been assigned points (if any);
  - (j) the date of the detection of each such serious infringement;
  - (k) the date on which any points assigned to the master or any suspension of the registration of the master may be deleted from the Irish Fishing Master Register in accordance with section 15J(2) or 15K(6);
  - (l) such other information as the Minister considers necessary to ensure the effective management of the Irish Fishing Master Register.
- (5) A registered master shall notify the Minister of any change in the details specified in paragraph (a) or (b) of subsection (4) relating to him or her.
- (6) The Minister shall make the following information entered in the Irish Fishing Master Register in relation to a person entered in that register available in such manner as he or she considers appropriate to holders of sea-fishing boat licences and other relevant persons:
- (a) his or her name;
  - (b) his or her registration number;
  - (c) the number of points assigned to him or her;
  - (d) details of any suspension of the registration of the person in the Irish Fishing Master Register, including the date and duration of any such suspension.

- (7) An official shall, at all reasonable times, have access to and may inspect and examine the Irish Fishing Master Register.
- (8) Upon receipt of a notification under section 15I(3)(b) or section 15I(6)(b), the Minister shall record on the Irish Fishing Master Register the points assigned in accordance with this Chapter to the master to whom the notification relates.
- (9) Subject to subsection (10), the Minister may refuse to register a person in, or remove a person from, the Irish Fishing Master Register where the Minister is satisfied that the person's application for registration is or was, at the time it was made, incomplete, inaccurate, false or misleading in any material respect.
- (10) Where the Minister proposes, in accordance with subsection (9), to refuse to register in, or to remove from, the Irish Fishing Master Register, a person, he or she shall—
  - (a) notify the person concerned in writing of the proposal and of the reasons for the proposed refusal or removal,
  - (b) notify the person in writing that he or she, or a person acting on his or her behalf, may make representations to the Minister in relation to the proposal within 14 days of the receipt by the person of the notification referred to in paragraph (a), and
  - (c) consider any such representations duly made before deciding whether to refuse to register in, or to remove from, the Irish Fishing Master Register, the person.
- (11) The Minister shall retain a record, in such form (including electronic form) as he or she considers appropriate, of persons who have been removed from the Irish Fishing Master Register in accordance with subsection (9) or (13) or section 15L.
- (12) A person who, when applying for registration in the Irish Fishing Master Register, furnishes information to the Minister knowing it to be false or misleading in any material respect shall be guilty of an offence and shall be liable—
  - (a) on summary conviction, to a class A fine, or
  - (b) on conviction on indictment, to a fine not exceeding €15,000.
- (13) Where a person is convicted of an offence under subsection (12), he or she shall be removed by the Minister from the Irish Fishing Master Register.
- (14) In this section, 'relevant person' means—
  - (a) a holder of a sea-fishing boat licence, and

- (b) a person who has made an application for a sea-fishing boat licence to the licensing authority and such licence has not yet been granted.

**Certificate of master registration**

**15C.** (1) A certificate certifying that a person is entered in the Irish Fishing Master Register (a ‘certificate of master registration’) and specifying—

- (a) the registration number of the registered master, and
- (b) the date of registration of the person,

shall be issued by the Minister in respect of each person so entered.

- (2) A master shall, at all times when he or she is acting as the master of a sea-fishing boat, carry his or her certificate of master registration on board the sea-fishing boat.
- (3) A person who fails to comply with subsection (2) commits an offence and is liable on summary conviction to a class A fine.

**Data entered in Irish Fishing Master Register**

**15D.** (1) Subject to subsection (2), data entered in the Irish Fishing Master Register shall be stored only for as long as necessary for the operation of the Irish Fishing Master Register for the purposes of this Chapter.

- (2) Where data entered in the Irish Fishing Master Register concerns the points system referred to in Article 92 of the Control Regulation, such data shall be stored for a minimum of 3 years, starting from the year following the later of—

- (a) the year in which the data is entered in the Irish Fishing Master Register, or
- (b) the year in which the most recent points are assigned to the person to whom it relates.

**Regulations relating to maintenance and administration of Irish Fishing Master Register**

**15E.** (1) The Minister may by regulations make provision for such additional, incidental, consequential or supplementary matters relating to the maintenance and proper administration of the Irish Fishing Master Register as appear to him or her to be necessary or expedient.

- (2) Without prejudice to the generality of subsection (1), regulations under that subsection may provide for—
  - (a) the manner in which the Irish Fishing Master Register shall be maintained, and

- (b) the manner in which the Irish Fishing Master Register shall be operated to ensure compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016<sup>21</sup>.

**Taking charge of certain sea-fishing boats when not registered in the Irish Fishing Master Register**

- 15F.** (1) Subject to subsection (3), an Irish citizen shall not 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.
- (2) A person who contravenes subsection (1) commits an offence and is liable—
- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €15,000.
- (3) In proceedings for an offence under subsection (2), it shall be a defence for the defendant to prove that he or she took charge of the Irish sea-fishing boat or the foreign sea-fishing boat in order to avert, or to seek to avert, an immediate or imminent danger to the boat or a person on the boat.

**Determination Panel**

- 15G.** (1) The Determination Panel established and appointed under and in accordance with Regulation 5 of the Regulations of 2020 shall be the Determination Panel 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.
- (2) Paragraphs (2) to (14) of Regulation 5 of the Regulations of 2020 shall apply to a Determination Panel under this section, subject to the following modifications:
- (a) a reference to the Regulations of 2020 shall be construed as a reference to this Chapter;
- (b) a reference to a ‘licence holder’ shall be construed as a reference to a master of a sea-fishing boat;
- (c) a reference to a ‘determination’ shall be construed as a reference to a determination under this Chapter;
- (d) in paragraphs (8) and (9), the references to Regulation 6(6) shall be read as references to section 15H(2)(b);
- (e) in paragraph (11), the reference to Regulation 6(9) shall be read as a reference to section 15H(6).

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21 OJ No. L 119, 4.5.2016, p.1.

**Notification of an alleged serious infringement**

**15H.** (1) Where an official detects an alleged serious infringement—

- (a) involving an Irish sea-fishing boat, wherever the boat may be, or
- (b) involving a foreign sea-fishing boat, in the exclusive fishery limits of the State (within the meaning of Part 3),

of which boat the person who is alleged to be the master ('the alleged master') is an Irish citizen or a national of another Member State, the official shall prepare a report and forward the report and any material collected in relation to the alleged infringement to the Authority.

(2) Where a report is forwarded to the Authority pursuant to subsection (1), the Authority shall—

- (a) send the report and any material collected relating to the alleged serious infringement to the Determination Panel to determine if a serious infringement has occurred,
- (b) notify the alleged master in writing—
  - (i) that an alleged serious infringement has been detected,
  - (ii) that he or she is alleged to have been the master of the sea-fishing boat when the alleged serious infringement took place,
  - (iii) that the matter shall be sent to the Determination Panel to determine if a serious infringement has occurred,
  - (iv) of the opportunity for him or her to make submissions in writing to the Determination Panel within 30 working days from the date of the notification, and
  - (v) that he or she may, within 30 working days from the date of the notification, make a request in writing to the Determination Panel for an oral hearing,

and

- (c) provide the alleged master with a copy of the report and the material referred to in paragraph (a).

(3) A report and any material forwarded to the Authority by an official pursuant to subsection (1) and any submission referred to in subsection (4) may be used by the Determination Panel in making a determination under subsection (6).

(4) The alleged master shall be given the opportunity to make submissions in writing to the Determination Panel within 30 working days from the date of the notification referred to in subsection (2)(b).

- (5) The Determination Panel may request that extra information be provided by the Authority or the alleged master in relation to the issue under determination by the Determination Panel and the Authority or the alleged master, as the case may be, shall provide the information not later than 20 working days after receiving the request.
- (6) The Determination Panel shall, not later than 70 working days after the date of notification referred to in subsection (2)(b) to the alleged master, 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.
- (7) In determining whether an alleged serious infringement has occurred, the Determination Panel shall have regard to the criteria referred to in Article 3(2) of the IUU Regulation.
- (8) The Determination Panel shall notify the Authority and the alleged master concerned in writing of its determination under subsection (6) and the reasons for that determination.

**Assignment of points by Authority**

- 15I.** (1) Where the Authority is notified under section 15H(8) that the Determination Panel has determined that a serious infringement has occurred and the master, at the time the serious infringement occurred, was the master of the sea-fishing boat, the Authority shall—
- (a) in a case where the master concerned is an Irish citizen, notify the master in writing—
    - (i) of it having been so notified, and
    - (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,or
  - (b) in a case where the master concerned is a national of another Member State, notify the master—
    - (i) of it having been so notified, and
    - (ii) that it is proposed to notify the competent authority of the Member State of which the master is a national of the detection of the serious infringement.
- (2) A notification under subsection (1) to a master shall—
- (a) give particulars of—
    - (i) the serious infringement concerned, and

- (ii) where relevant, the appropriate number of points proposed to be assigned,  
and
  - (b) inform the master of the master's right to appeal in accordance with section 15N.
- (3) Subject to subsection (5), where a notification has been issued under subsection (1) in respect of a master who is an Irish citizen, the Authority shall—
- (a) assign the appropriate number of points to the master in question,  
and
  - (b) as soon as practicable thereafter, notify the Minister of the following matters:
    - (i) the name and address of the master to whom the points are assigned;
    - (ii) the registration number of the registered master;
    - (iii) the identity of the sea-fishing boat to which the infringement concerned relates;
    - (iv) the particulars of the serious infringement concerned;
    - (v) the number of points assigned;
    - (vi) the date from which the points are assigned.
- (4) Subject to subsection (5), where a notification has been issued under subsection (1) in respect of a master who is a national of another Member State, the Authority shall notify the competent authority of the Member State of the following matters:
- (a) the identity of the sea-fishing boat to which the infringement concerned relates;
  - (b) the name and address of, and any other identifying details available relating to, the master of the sea-fishing boat;
  - (c) the particulars of the serious infringement concerned;
  - (d) the number of points applicable to that infringement.
- (5) Points shall not be assigned under subsection (3) or a notification shall not be made under subsection (4), as the case may be, until—
- (a) the period allowed to appeal the determination by the Determination Panel to the Appeals Officer under section 15N has expired, without such an appeal having been made, or
  - (b) where an appeal under section 15N is made—

- (i) in case the appeal is withdrawn, the date of the withdrawal, or
  - (ii) in case the Appeals Officer decides to uphold the determination of the Determination Panel in respect of the serious infringement, the date of that decision.
- (6) Where the Authority receives a notification under Article 89(4) of the Control Regulation from the competent authority of another Member State of the detection of a serious infringement involving a sea-fishing boat of which an Irish citizen was the master, the Authority shall—
- (a) assign the appropriate number of points to the master, and
  - (b) notify the master and the Minister accordingly.
- (7) Points assigned by the Authority in accordance with this section shall apply from the date of detection of the serious infringement concerned.
- (8) The Authority shall not assign more than 12 points in respect of any one inspection.
- (9) In this section—
- ‘identity’, in relation to a sea-fishing boat, includes the lettering and numbering of the boat;
  - ‘inspection’ has the same meaning as it has in Article 4(4) of the Control Regulation.

#### **Matters relating to points assigned**

- 15J.** (1) Subject to subsection (2), points assigned by the Authority to a master who is an Irish citizen remain assigned regardless of any criminal proceedings pending, or the outcome of any such proceedings, in respect of the serious infringement concerned.
- (2) If a master who is an Irish citizen and to whom points have been assigned in accordance with this Chapter, does not commit, within 3 years from the date of the detection of the last serious infringement to which the points relate, another serious infringement, 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.

#### **Suspension of Irish fishing master from Irish Fishing Master Register**

- 15K.** (1) Subject to subsection (6) and section 15J(2), where points are assigned to a master on the Irish Fishing Master Register in accordance with this Chapter, the Minister shall suspend the registration of the master in the Irish Fishing Master Register—
- (a) where the master accumulates a total of 18 points, for a period of 2 months,

- (b) where the master accumulates a total of 36 points, for a period of 4 months,
  - (c) where the master accumulates a total of 54 points, for a period of 8 months, and
  - (d) where the master accumulates a total of 72 points, for a period of 12 months.
- (2) Where the registration of a master in the Irish Fishing Master Register is suspended under subsection (1), the Minister shall record the suspension in that Register.
- (3) A master whose registration in the Irish Fishing Master Register has been suspended under subsection (1) shall immediately inform the holder of a sea-fishing boat licence who engages or proposes to engage him or her as master, of—
- (a) such suspension,
  - (b) the reasons for such suspension, and
  - (c) the duration of such suspension.
- (4) A person who fails to comply with subsection (3) commits an offence and is liable on summary conviction to a class B fine.
- (5) Where during a period of suspension under subsection (1) (in this subsection referred to as ‘the first-mentioned period’), the master is assigned further points which result in a further suspension under that subsection, the period of the further suspension shall commence on the day immediately following the last day of the first-mentioned period.
- (6) Where a master whose registration in the Irish Fishing Master Register has been suspended under subsection (1) does not commit another serious infringement within 3 years from the date of the detection of the last serious infringement to which the points assigned to him or her relate, the record in that Register of the suspension shall be deleted by the Minister.

**Removal of master from Irish Fishing Master Register for accumulation of points or suspensions**

- 15L.** (1) Where a master accumulates 90 points (which have not been deleted in accordance with section 15J(2)) or has received five suspensions under section 15K (which have not been deleted in accordance with subsection (6) of that section), the Minister shall remove the master from the Irish Fishing Master Register.
- (2) A person who has been removed from the Irish Fishing Master Register under subsection (1) shall not be entitled to be re-entered in the Register.

- (3) A person who has been removed from the Irish Fishing Master Register under subsection (1) shall immediately inform the holder of a sea-fishing boat licence who engages or proposes to engage him or her as a master of such removal.
- (4) A person who fails to comply with subsection (3) commits an offence and shall be liable on summary conviction to a class B fine.

### **Appeals Officer**

- 15M.** (1) An Appeals Officer appointed under and in accordance with Regulation 11 of the Regulations of 2020 shall be an Appeals Officer for the purposes of this Chapter.
- (2) Paragraphs (2), (3), (5), (6) and (7) of Regulation 11 of the Regulations of 2020 shall apply to an Appeals Officer, subject to the following modifications:
    - (a) a reference to the Regulations of 2020 shall be construed as a reference to this Chapter;
    - (b) a reference to ‘licence holder’ shall be construed as a reference to the master of a sea-fishing boat;
    - (c) a reference to an appeal shall be construed as a reference to an appeal under this Chapter;
    - (d) in paragraph (5), the reference to Regulation 12(11) shall be construed as a reference to section 15N(11).
  - (3) Should the post of Appeals Officer become vacant, pending the appointment of a new appointee the Authority will suspend—
    - (a) in a case where the master concerned is an Irish citizen—
      - (i) the proposal to assign the appropriate points to the master for the serious infringement, and
      - (ii) the notification to the master of the proposal to assign points,or
    - (b) in a case where the master is a national of another Member State—
      - (i) the notification to the master of the sea-fishing boat concerned of the proposal to notify the competent authority of the Member State of which the master is a national of the detection of the serious infringement, and
      - (ii) the proposal to notify the competent authority of the Member State of which the master is a national of the serious infringement detected and the number of points appropriate to that infringement.

**Appeal to the Appeals Officer**

**15N.** (1) A master who is—

(a) an Irish citizen to whom points are proposed to be assigned in accordance with section 15I(3), or

(b) a national of another Member State, in respect of whom it is proposed to make a notification under section 15I(4),

may appeal to the Appeals Officer, not later than 30 working days from the date of the notification referred to in section 15I(1) in respect of the proposal—

(i) to assign points to him or her, or

(ii) to notify the competent authority of the Member State of which he or she is a national,

as the case may be.

(2) An appeal shall—

(a) be made by the master,

(b) be made in writing, and

(c) be accompanied by a statement of grounds relied on by the master concerned.

(3) The Appeals Officer shall, if so requested by a master who has made an appeal, hold an oral hearing for the purposes of the appeal.

(4) A request by a party for any oral hearing shall be made in writing to the Appeals Officer not later than 30 working days from the date of the notification of the proposal by the Authority under section 15I(1)—

(a) to assign points to him or her, or

(b) to notify the Member State of which the master concerned is a national.

(5) An oral hearing shall not be held if the request referred to in subsection (4) is received later than the time specified in that subsection.

(6) The Appeals Officer may request that extra information with regard to the subject matter of the appeal be provided by the Authority or a master and, in any case, not later than 20 working days after receiving the request, the Authority or master, as the case may be, shall provide the information.

(7) The Appeals Officer shall arrange his or her business as he or she sees fit and may set down the procedures to be followed in respect of the conduct and consideration of appeals.

- (8) The Authority shall provide all reasonable facilities and services as may be required by the Appeals Officer for the performance of his or her functions.
- (9) The Appeals Officer may, where an appeal is made by a master—
  - (a) confirm that points shall be assigned to the master concerned or that notification be made to the Member State of which the master concerned is a national, as the case may be, or
  - (b) find in favour of the master, in which event—
    - (i) in the case of a master who is an Irish citizen, points shall not be assigned and a notification shall not be made under section 15I(3), or
    - (ii) in the case of a master that is a national of another Member State, a notification under section 15I(4) shall not be made.
- (10) The Appeals Officer shall confirm that points shall be assigned to the master or that notification be made to the Member State of which the master concerned is a national, as the case may be, under subsection (9)(a) where on the balance of probabilities, the Appeals Officer considers that the alleged serious infringement in respect of which it is proposed to assign points or notify the competent authority of the Member State—
  - (a) did occur,
  - (b) involved a serious infringement, and
  - (c) did involve the sea-fishing boat of which the master concerned was master at the time of the serious infringement.
- (11) Subject to subsection (12), an Appeals Officer shall make a decision in relation to an appeal not later than 45 working days from the date of receipt of the appeal by him or her under subsection (1).
- (12) In exceptional circumstances, the Appeals Officer may take not more than 15 working days in addition to the number of days mentioned in subsection (11) to make a decision.
- (13) The Appeals Officer shall notify the master concerned, and the Authority, in writing of his or her decision and the reasons for it and the decision or reasons for the decision may be published on a website maintained by the Authority.
- (14) The Authority or the master concerned may apply to the High Court on a point of law regarding a decision of the Appeals Officer.
- (15) An application to the High Court under subsection (14) shall be made not later than 28 days after the notification to the parties of the decision of the Appeals Officer under subsection (13).

(16) In this section ‘appeal’ means an appeal under this section.

#### **Notification of assignment of points**

**15O.** Where points are assigned to a master on the Irish Fishing Master Register under section 15I, the Minister shall notify the master in writing—

- (a) of the number of points which have been assigned,
- (b) the total number of points assigned to him or her which have not been deleted in accordance with section 15J(2),
- (c) where the master has accumulated points, such that, in accordance with section 15K, the registration of the master in the Irish Fishing Master Register is to be suspended, the start date and end date of the period of suspension, and
- (d) where the master has accumulated sufficient points or suspensions, such that, in accordance with section 15L, the master is to be removed from the Irish Fishing Master Register, that the master has been so removed.

#### **Service of notifications to masters**

**15P.** (1) Subject to subsection (2), a notification that is required to be made or a document or other material that is required to be sent to a master under this Chapter shall be addressed to the master by name, and may be made or sent in any of the following ways:

- (a) by giving a copy to the master,
- (b) by leaving it—
  - (i) at the address at which the master ordinarily resides or, in a case in which an address for service has been furnished, at that address, or
  - (ii) on the sea-fishing boat of which the master is for the time being the master,
- (c) by sending it by post in a prepaid registered letter to the address at which the master ordinarily resides or, in a case in which an address has been furnished, to that address,
- (d) in a case in which an email address has been furnished, by sending it to that email address,
- (e) in a case in which a master is registered on an electronic interface, by leaving it on that electronic interface,
- (f) where the master is mastering a sea-fishing boat that is at sea at the time of such making or sending, by email, satellite telephone or through the fisheries monitoring centre and by subsequent

confirmation by any of the other methods referred to in this subsection, or

- (g) where the master is a national of another Member State, by a request to the other Member State for notification to that master in accordance with Article 161 of the Commission Regulation.
- (2) Where a notification is required to be made, or a document or other material is required to be sent, under this Chapter to a master who is a national of another Member State and the Authority does not have contact details for him or her, the notification may be made, or the document or other material may be sent, to the licence holder of the sea-fishing boat concerned in one of the following ways:
- (a) by giving a copy of the notification, or document or other material, to the licence holder,
  - (b) by leaving it—
    - (i) at the address at which the licence holder ordinarily resides, or in a case in which an address for service has been furnished, at that address, or
    - (ii) on the sea-fishing boat for which the licence holder holds the licence,
  - (c) by sending it by post in a prepaid registered letter to the address at which the licence holder ordinarily resides, or in a case in which an address has been furnished, to that address, or
  - (d) in a case in which an email address has been furnished, by sending it to that email address.
- (3) For the purpose of this section, a company within the meaning of the Companies Act 2014 shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.
- (4) In this section, ‘electronic interface’ means a secure information technology platform, portal, exchange network or other similar interface maintained by, or on behalf of, the Minister which requires personal log-in details.

#### **Matters relating to oral hearings**

- 15Q.** (1) In conducting an oral hearing referred to in section 15H(2)(b)(v) or section 15N(3), the Determination Panel or Appeals Officer, as the case may be, may—
- (a) by notice in writing to any person, require the person to attend at such time and place as is specified in the notice to give evidence in relation to any matter in question at the hearing or to produce any

books, accounts, maps, plans or other documents in his or her possession, custody or control which relate to the matter, or

- (b) take evidence on oath and for that purpose may administer oaths, and a person giving evidence at an oral hearing shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.
- (2) Where a person requests an oral hearing under section 15H(2)(b)(v) or section 15N(3), and that person fails to attend at the scheduled hearing in accordance with a notice referred to in subsection (1)(a), the Determination Panel or the Appeals Officer, as the case may be, may make the determination or finding within the time specified in sections 15H(6) or 15N(11) notwithstanding a person's failure to attend at a scheduled hearing.
- (3) A person to whom a notice referred to in subsection (1)(a) has been given who—
- (a) refuses or neglects to attend in accordance with the notice,
  - (b) alters, suppresses, conceals or destroys any document to which the notice relates, or
  - (c) having attended in accordance with the notice, refuses to give evidence or refuses or fails to produce any document to which the notice relates,
- commits an offence and is liable on summary conviction to a class C fine.

**Offence of employing person who is suspended or removed from Irish Fishing Master Register**

- 15R.** (1) A holder of a sea-fishing boat licence shall not—
- (a) permit a person to take control of the sea-fishing boat to which the licence relates, or
  - (b) engage a person as a master of the sea-fishing boat to which the licence relates,
- knowing that the person is an Irish citizen and is not registered in the Irish Fishing Master Register or that the registration of that person in that Register is suspended under section 15K.
- (2) A holder of a sea-fishing boat licence shall not—
- (a) permit a national of another Member State to take control of the sea-fishing boat to which the licence relates, or
  - (b) engage such a national as a master of such a sea-fishing boat to which the licence relates,

knowing that he or she has been suspended or removed from a register in the Member State equivalent to the Irish Fishing Master Register or has had his or her right or permission to master a sea-fishing boat permanently withdrawn under the law of that Member State that gives effect to Article 92 of the Control Regulation.

- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable—
  - (a) on summary conviction, to a class A fine, or
  - (b) on conviction on indictment, to a fine not exceeding €15,000.
- (4) In proceedings against the holder of a sea-fishing boat licence for a contravention of subsection (1)(a) or (2)(a), it shall be a defence for the defendant to prove that he or she permitted the person referred to in those paragraphs to take charge of the sea-fishing boat concerned in order to avert, or to seek to avert, an immediate or imminent danger to the sea-fishing boat or a person thereon.

#### **Consideration by Determination Panel and Appeals Officer of submissions**

- 15S.** (1) A Determination Panel, in relation to an alleged serious infringement, may conduct a determination under this Chapter at the same time as conducting a determination in relation to the same serious infringement under the Regulations of 2020 acting as a Determination Panel under those Regulations and may, including during an oral hearing under section 15H(2)(b)(v) or under those Regulations, take evidence and hear and consider submissions relating to—
- (a) a master in respect of whom the alleged serious infringement has been detected under this Act, and
  - (b) a holder of a sea-fishing boat licence in respect of whom the alleged serious infringement has been detected under the Regulations of 2020.
- (2) An Appeals Officer, in relation to an alleged serious infringement, may conduct an appeal under this Chapter at the same time as conducting an appeal in relation to the same serious infringement under the Regulations of 2020 acting as an Appeals Officer under those Regulations and may, including during an oral hearing under section 15N(3) or under those Regulations, take evidence and hear and consider submissions relating to—
- (a) a master in respect of whom the alleged serious infringement has been detected under this Act, and
  - (b) a holder of a sea-fishing boat licence in respect of whom the alleged serious infringement has been detected under the Regulations of 2020.

**Extension of time limits**

- 15T.** (1) Any time limit referred to in this Chapter within which any action is required to be taken or may not be taken, or anything is required to be done or may not be done, may be extended by the Determination Panel or the Appeals Officer, as the case may be, by such period as is necessary to align the time limit concerned with a corresponding time limit in the Regulations of 2020 relating to a determination or appeal under those Regulations arising out of the same alleged serious infringement.
- (2) Any time limit referred to in the Regulations of 2020 within which any action is required to be taken or may not be taken, or anything is required to be done or may not be done, may be extended by the Determination Panel or the Appeals Officer, as the case may be, within the meaning of those Regulations, by such period as is necessary to align the time limit concerned with a corresponding time limit in this Chapter relating to a determination or appeal under this Chapter arising out of the same alleged serious infringement.

**Points to be assigned for serious infringement specified in Article 90(1)(c) of Control Regulation**

- 15U.** For the purposes of Article 90 of the Control Regulation, the number of points to be assigned in accordance with this Chapter for a serious infringement specified in paragraph (1)(c) of that Article shall be five.”

**Amendment of section 16 of Act of 2006**

7. Section 16 of the Act of 2006 is amended in subsection (1)(c), by the insertion of “or serving in the fisheries monitoring centre,” after “the State,”.

**Amendment of section 17 of Act of 2006**

8. Section 17 of the Act of 2006 is amended in subsection (1)(j)(i), by the substitution of “paragraph (b)(i), (ii) or (v),” for “paragraph (b)(i) and (ii) and (v),”.

**Data Transfer**

9. Chapter 3 of Part 2 of the Act of 2006 is amended by the insertion of the following section after section 26:

**“Data Transfer**

- 26A.** (1) (a) Information held by the Authority for the purposes of the *Fisheries Acts 1959 to 2022* may be transferred by the Authority to the Revenue Commissioners.
- (b) Information held by the Revenue Commissioners for the purposes of a relevant Act relating to income derived from the fisheries

sector may be transferred by the Revenue Commissioners to the Authority.

- (2) In this section, ‘relevant Act’ means—
- (a) an Act that is a Tax Act within the meaning of section 1(2) of the Taxes Consolidation Act 1997, or
  - (b) the Value-Added Tax Consolidation Act 2010.”.

#### **Amendment of section 28 of Act of 2006**

10. Section 28 of the Act of 2006 is amended—

- (a) in subsection (5), by the substitution of the following paragraph for paragraph (b):
  - “(b) in the case of a conviction under any other provision mentioned in a Table, any fish and fishing gear found on the boat to which the offence relates or found in any other place to which they had been moved from the boat are, as a statutory consequence of the conviction, forfeited.”,
- (b) in subsection (6)(b), by the deletion of “all or any of”,
- (c) in column (2) of Table 1, opposite Reference Number 1(b), by the substitution of “a contravention relating to fishing gear or equipment” for “illegal nets or other equipment”,
- (d) in column (2) of Table 1, opposite Reference Number 2, by the substitution of “10(4)” for “10(2)”, and
- (e) in column (2) of Table 2, opposite Reference Number 1, by the substitution of “Section 4(13) (fishing without or in contravention of a sea-fishing boat licence).” for “Section 4(12) (fishing without or in contravention of sea-fishing boat licence).”.

#### **Amendment of section 37 of Act of 2006**

11. Section 37 of the Act of 2006 is amended in paragraph (b), by the substitution of “any fishing gear or” for “any nets or”.

#### **Amendment of section 54 of Act of 2006**

12. Section 54 of the Act of 2006 is amended in paragraph (b), by the substitution of “51(2),” for “51(2)(a),”.

#### **Amendment of Fisheries (Amendment) Act 2003**

13. The Fisheries (Amendment) Act 2003 is amended—

- (a) in section 4(3)(b) (amended by section 97 of the Act of 2006)—

- (i) in subparagraph (iii), by the substitution of “application is made,” for “application is made.”, and
  - (ii) by the insertion of the following subparagraph after subparagraph (iii):
    - “(iv) where the applicant is a natural person, made by a person who is over 18 years of age at the date of the application.”,
- and
- (b) in section 5 (amended by section 99(c) of the Act of 2006)—
    - (i) in subsection (1)(b), by the deletion of “of the 2003 Act”, and
    - (ii) in subsection (2)(b), by the deletion of “of the 2003 Act”.

#### **Amendment of European Union (Common Fisheries Policy) (Point System) Regulations 2020**

14. Regulation 7 of the European Union (Common Fisheries Policy) (Point System) Regulations 2020 (S.I. No. 318 of 2020) is amended—
- (a) by the insertion of the following paragraph after paragraph (2):
    - “(2A) Subject to paragraph (3), where a notification has been issued under paragraph (1) in respect of an Irish sea-fishing boat, the Authority shall assign the appropriate number of points to the holder of the Irish licence relating to the boat concerned for the serious infringement.”,
  - (b) in paragraph (3), by the substitution of “in accordance with paragraph (2A)” for “in accordance with paragraph (1)”, and
  - (c) in paragraph (4)(b)—
    - (i) in clause (i), by the substitution of “the points are to be assigned” for “the proposed points are to be assigned”, and
    - (ii) in clause (iv), by the substitution of “the number of points assigned” for “the number of points to be assigned”.

#### **Short title, collective citation and commencement**

15. (1) This Act may be cited as the Sea-Fisheries (Miscellaneous Provisions) Act 2022.
- (2) The Sea-Fisheries Acts 2003 to 2019 and *sections 1 to 13* may be cited together as the Sea-Fisheries Acts 2003 to 2022.
  - (3) The Fisheries Acts 1959 to 2019 and *sections 1 to 13* may be cited together as the Fisheries Acts 1959 to 2022.
  - (4) This Act shall come into operation on such day or days as the Minister for Agriculture, Food and the Marine may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.