



Marine
Management
Organisation

Guidance for the application of a point system for serious infringements

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Disclaimer

Please note that this guidance is not a definitive guide to the law. The relevant legislation can be found by following the links in the related resources section of this document. Further information and advice can be obtained by contacting your local fisheries office.

Introduction

1. Where serious infringements have been committed, the relevant Fisheries Administration is obliged, to apply points to the fishing licences related to relevant fishing boats registered in their jurisdiction as defined in. Article 92 Council Regulation (EC) 1224/2009 and articles 125 to 134 and Annex XXX of Commission Implementing Regulation (EU) No 404/2011

Interpretation

2. In this guidance the following terms shall be interpreted as follows:

- "relevant fisheries administration" shall mean:
 - in the context of England and English fishing boats, the Marine Management Organisation (MMO)
 - in the context of Scotland and Scottish fishing boats, Marine Scotland
 - in the context of Wales and Welsh fishing boats, the Welsh ministers
 - in the context of Northern Ireland and Northern Irish fishing boats, the Department of Agriculture and Rural Development for Northern Ireland (DARD)
- "relevant fishing boat" shall mean a fishing boat which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995³ and whose entry in the register specifies a port in the jurisdiction of the relevant fishing administration as the port to which the boat is to be treated as belonging.

Jurisdiction

3. Relevant fisheries administrations shall be responsible for the application of points to the licences of all relevant fishing boats that are registered as belonging to a port in their jurisdiction, regardless of the location of the serious infringement.

4. This guidance details the manner in which the points system will be applied, the number of points which will be applied for which offences, the timescale for which they will be attached to a licence, and if points are accumulated, what effect this will have on a fishing licence.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:343:0001:0050:EN:PDF>

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:112:0001:0153:EN:PDF>

³ <http://www.legislation.gov.uk/ukpga/1995/21/contents>

Application of points

5. Points are applied to a licence when a serious infringement is committed of the category listed in Annex A of this document. However, an infringement of the category listed in Annex A will only constitute a serious infringement where the relevant Fisheries Administration determines that the gravity of the infringement, having regard to all of the circumstances, makes it a serious infringement.

6. The relevant Fisheries Administration will only consider an infringement committed by or in respect of a relevant fishing boat to potentially be a serious infringement if criminal proceedings have been brought in respect of the infringement, and the natural or legal persons responsible for the infringement have been convicted of an offence arising from such an infringement.

7. However, where the relevant Fisheries Administration is notified of an infringement committed by or in respect of a relevant fishing boat by an EU member state, the relevant Fisheries Administration will consider whether they have been dealt with by way of criminal proceedings or other broadly equivalent civil sanctions and will have regard to all of the circumstances (including the action taken by the EU member state and any views it has expressed) when determining the gravity of the infringement. other broadly equivalent civil sanctions and will have regard to all of the circumstances (including the action taken by the EU member state and any views it has expressed) when determining the gravity of the infringement.

How many points will be applied?

8. Points will be applied for serious infringements in accordance with Annex A of this document.

9. Where two or more serious infringements are detected in the course of one inspection, a maximum of 12 points will be applied. Determination of what constitutes and inspection shall not be confined to a physical boarding of a vessel or inspection of its catch or gear, but may include, among other things:

- an inspection at sea
 - a portside inspection
 - any other physical inspection of a vessel, vehicle or premises
- a documentation check – which would include VMS checks or electronic records system checks

Where a documentation check results in the detection of multiple serious infringements, each of which occur on separate and distinct fishing trip, each infringement shall be considered to have been detected in a separate and distinct inspection.

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:286:0001:0032:EN:PDF>

10. It must be noted that, where serious infringements are detected during multiple inspections, a maximum of 12 points may be attracted **per inspection**.

When will points be applied?

11. Points will be applied from the date on which the serious infringement(s) was/ were committed and shall be applied to the licence following conviction for the offence.

12. If points are incurred for serious infringements committed on different dates, the points will apply from the dates that each infringement was committed.

13. Points will not be deleted from the licences until 3 years after the date of the last serious infringement.

Accumulation of points

14. The accumulation of certain numbers of points will lead to the suspension of a fishing licence. The number of points and periods of suspension are set out below.

Table 1: Number of points which lead to fishing licence suspension or withdrawal

| Points thresholds | Period of suspension of fishing licence |
|-------------------|---|
| 18 | 2 months |
| 36 | 4 months |
| 54 | 8 months |
| 72 | 12 months |
| 90 | Fishing licence permanently revoked |

15. Where serious infringements are detected during a series of inspections that are tried as one prosecution case and the total number of points attracted is equal to or more than the number of points which gives rise to a suspension, the licence will be suspended for the relevant period as shown in Table 1.

16. If sufficient points have been accumulated to give rise to suspension of the licence, those points remain on the licence after the suspension period has expired (see 'How long will the points stay on the fishing licence' below for further information). Any new points which are attracted through subsequent serious infringements shall be added to the existing total.

What happens if my fishing licence is suspended?

17. If one of the trigger points for suspension of a licence has been reached, the relevant Fisheries Administration will exercise its powers under section 4 of the Sea Fish (Conservation) Act 1967 to suspend the licence for the relevant period unless the relevant Fisheries Administration is satisfied that there are exceptional circumstances. The owner(s) of the licence shall be notified:

- that the licence is suspended
- the date the suspension takes effect
- the length of the suspension
- what action the owner needs to take in view of the licence suspension
- that no fixed quota allocations may be transferred.

18. The suspension shall only take effect once the period for appeal from the conviction(s) which give rise to the suspension have expired. Therefore, the following periods apply:

⁵ <http://www.legislation.gov.uk/ukpga/1967/84/contents>

⁶ <http://www.legislation.gov.uk/uksi/2012/1726/contents/made>

⁷ <http://www.legislation.gov.uk/ukpga/1968/19/contents>

19. If the vessel is engaged in fishing activities at the time the suspension begins, the vessel owner and/or master will be notified by the relevant Fisheries Administration, fishing activity must be stopped immediately and the vessel must immediately proceed back to either its home port or a port nominated by the vessel's administration, with its fishing gear lashed and stowed. If there is any catch on board the vessel, the owner and crew will be instructed how to deal with this by the relevant Fisheries Administration upon return to port.

Any vessel whose licence is suspended shall be entered on the national register as being a vessel without a fishing licence.

20. A vessel is not allowed to fish while its licence is suspended. If it is found to be fishing during a period of suspension, enforcement action will be taken⁸. Where appropriate, the vessel may be included on the Illegal, Unreported and Unregulated vessel list.

21. A licence cannot be transferred during the period of suspension. It shall remain frozen throughout the duration of that suspension.

What happens if my fishing licence is revoked?

22. If the holder of a fishing licence accumulates 90 or more points, the relevant Fisheries Administration may consider permanently withdrawing or revoking that fishing licence in accordance with its licence suspension and revocation policy.

How long will the points stay on the fishing licence?

23. If the holder of the fishing licence does not commit another serious infringement within three years from the date of the last serious infringement, all points on the fishing licence shall be deleted.

24. If a fishing licence has been suspended, the points which gave rise to the suspension remain on the fishing licence until three years pass since the date of the last serious infringement.

25. If further serious infringements are committed within three years from the last serious infringement, those points will be added to the total points currently held. Points will only be deleted once three years have passed with no further serious infringements being committed.

⁸ Fishing without authority of a valid licence is a serious infringement which attracts 7 points under the scheme.

⁹ <http://www.legislation.gov.uk/ukpga/1967/84/contents>

Deletion of points from a fishing licence

26. In a three year period following a serious infringement being committed, the holder of a fishing licence may use **one** of the available options below to reduce the number of points on the licence. The maximum number of points that will be removed will be two points, and only one of the options can be used within a three year period.

Methods for deleting points from a licence

- (a) The fishing vessel which has been used in committing the infringement for which points were assigned uses thereafter VMS or records and transmits thereafter fishing logbook, transshipment and landing declaration data electronically without being legally subject to these technologies.
- (b) The holder of the fishing licence volunteers after the assignation of points to take part in a scientific campaign for the improvement of the selectivity of the fishing gear.
- (c) The holder of the fishing licence is a member of a producer organisation and the holder of the fishing licence accepts a fishing plan adopted by the producer organisation in the year following the assignation of the points involving a reduction of 10 per cent of the fishing opportunities for the holder of the fishing licence.
- (d) The holder of the fishing licence joins a fishery covered by an eco-labelling scheme that is designed to certify and promote labels for products from well-managed marine capture fisheries and focus on issues related to the sustainable use of fisheries resources.

27. One of the options may be used within a three year period, but only where it would not lead to the removal of all remaining points from the licence and the licence has more than two points.

28. Once points have been removed from a licence, the relevant Fisheries Administration will notify the licence holder that they have been removed, and also inform them how many points remain on the licence.

Transfer of points

29. Points are not removed from a licence if a licence is transferred. The points remain on the licence for the full three year period regardless of whether the licence is transferred during that time.

30. It is the obligation of the licence holder to inform any potential purchaser of the licence of the number of points that are on the licence and the period they will remain on the licence for.

31. If, prior to a licence being transferred, the licence holder has used one of the methods in paragraph 32 to reduce the number of points on the licence the new holder of the licence will **not** be able to use any of those methods to further reduce the number of points on the licence.

Joining and splitting of licences

32. If more than one licence is aggregated, that is, if a vessel owner purchases two or more licence entitlements with the intention of joining those licences together into one licence, and the licence entitlements purchased have points attached to them, these points will transfer to the new aggregated licence.

33. If the licences have different numbers of points which were applied to them on different dates, the higher number of points will be attached to the new licence, and will be treated as if these points were attached to the licence from the latest infringement date.

34. If a licence is split, or disaggregated, into more than one licence, and the licence that is being split has points attached to it, that number of points will be attached to **each** of the new licences which is created, and shall attach for the same period of time as would have been relevant to the original licence.

35. The licence holder who is transferring these licences has an obligation to inform potential recipients of the new licences details of what points are attached to the licences.

Effect of points on entitlements

36. Where the holder of a licence which has points attached to it removes a licence from a vessel and creates an entitlement – that is, a licence which is not for the time being attached to a vessel, but which the licence holder still retains – the three year period for which points stay on a licence shall be suspended from the date on which the licence is made into an entitlement, and shall begin to run again once the entitlement attached to a vessel and is reverted to a full licence.

Related resources

Copies of the relevant UK legislation can be accessed through www.legislation.gov.uk/

MMO contacts

How to contact the MMO headquarters and local offices is available online at www.marinemanagement.org.uk/contacts/index.htm

Welsh Government contacts

Welsh Government Fisheries Unit, Suite 3, Cedar Court, Haven's Head Business Park, Milford Haven, Pembrokeshire, SA73 3LS

Tel: 01646 696 012

Fax: 01646 696 030

Email: milfordhavenfisheryoffice@wales.gsi.gov.uk

DARD contacts

DARD, Fisheries Inspectorate, Room 421, Dundonald House, Upper Newtownards Road, Ballymiscaw, Belfast, BT4 3SB

Stephen McComiskey – Tel: 02890 524 259, Email:
Stephen.McComiskey@dardni.gov.uk

Annex A: Summary of Annex XXX of Commission Regulation (EU) No 404/2011

Points to be assigned for serious infringements¹⁰

| Serious infringements | | Points to be applied |
|-----------------------|---|----------------------|
| 1 | <p>Not fulfilling of obligations to record and report catch or catch related data, including data to be transmitted by satellite vessel monitoring system</p> <p>(Article 90 paragraph 1 of the Council Regulation (EC) 1224/2009 in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(b) of Regulation (EC) No 1005/2008)</p> | 3 |
| 2 | <p>Use of prohibited or non-compliant gear according to EU legislation</p> <p>(Article 90 paragraph 1 of the Council Regulation (EC) 1224/2009 in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(e) of Regulation (EC) No 1005/2008)</p> | 4 |
| 3 | <p>Falsification or concealing of markings, identity or registration</p> <p>(Article 90 paragraph 1 of the Council Regulation (EC) 1224/2009 in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(f) of regulation (EC) No 1005/2008)</p> | 5 |
| 4 | <p>Concealing, tampering or disposal of evidence relating to an investigation</p> <p>(Article 90 paragraph 1 of the Council Regulation (EC) 1224/2009 in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(g) of Regulation (EC) No 1005/2008)</p> | 5 |
| 5 | <p>Taking on board, transhipping or landing of undersized fish in contravention of the legislation in force</p> <p>(Article 90 paragraph 1 of the Council Regulation (EC) 1224/2009 in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(i) of regulation (EC) No 1005/2008)</p> | 5 |

¹⁰ Offences referred to in Article 90(1) of the Control Regulation are not currently considered as serious infringements.

| Serious infringements | | Points to be applied |
|------------------------------|--|-----------------------------|
| 6 | <p>Carrying out of fishing activities in the area of a regional fisheries management organisation in a manner inconsistent with or in contravention of the conservation and management measures of that organisation</p> <p>(Article 90 paragraph 1 of the Council Regulation (EC) 1224/2009 in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(k) of Regulation (EC) No 1005/2008)</p> | 5 |
| 7 | <p>Fishing without a valid licence, authorisation or permit issued by the flag state or the relevant coastal state</p> <p>(Article 90 paragraph 1 of the Council Regulation (EC) 1224/2009 in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(a) of Regulation (EC) No 1005/2008)</p> | 7 |
| 8 | <p>Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth</p> <p>(Article 90 paragraph 1 of the Council Regulation (EC) 1224/2009 in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(c) of regulation (EC) No 1005/2008)</p> | 6 |
| 9 | <p>Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited</p> <p>(Article 90 paragraph 1 of the Council Regulation (EC) 1224/2009 in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(d) of Regulation (EC) No 1005/2008)</p> | 7 |
| 10 | <p>Obstruction of work of officials in the exercise of their duties in inspecting for compliance with the applicable conservation and management measures or the work of observers in the exercise of their duties of observing compliance with the applicable Union rules</p> <p>(Article 90 paragraph 1 of the Council Regulation (EC) 1224/2009 in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(h) of Regulation (EC) No 1005/2008)</p> | 7 |
| 11 | <p>Transshipping to or participating in joint fishing operations with, support or re-supply of fishing vessels identified as having engaged in IUU fishing under Regulation (EC) No 1005/2008, in particular those included in the Union IUU vessel list or in the IUU vessel list of a regional fisheries management organisation</p> <p>(Article 90 paragraph 1 of the Council Regulation (EC) 1224/2009 in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(j) of regulation (EC) No 1005/2008)</p> | 7 |

| Serious infringements | | Points to be applied |
|------------------------------|--|-----------------------------|
| 12 | Use of a fishing vessel with not nationality and that is therefore a stateless vessel in accordance with international law (Article 90 paragraph 1 of the Council Regulation (EC) 1224/2009 in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(l) of regulation (EC) No 1005/2008) | 7 |