

Department of Environment, Food and Agriculture
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**Suspension or Cancellation of the
Isle of Man Sea Fishing Licence**

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Policy Owner: Department of Environment, Food and Agriculture
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Purpose:

The purpose of this policy is to lay out how powers conferred upon the Department by the Fisheries Act 2012 may be invoked to suspend or cancel a Sea Fishing Licence issued by the Department.

Isle of Man Sea Fishing Licence holders are expected to comply with all relevant legislation and the conditions of the Isle of Man Sea Fishing Licence. Failure to do so can result in enforcement action being undertaken by the Department, including as guided by this Policy.

This policy is not intended to be exhaustive or determine the process for or likely outcome for every case. It is intended to guide decision makers, rather than establish rights.

Background:

The Department manages the fisheries within the territorial sea through a combination of regulations and byelaws and also through the conditions associated with the Sea Fishing Licence issued by the Department under Sections 37 and 38 of the Fisheries Act 2012 (the Act). Section 38, Subsection (8), Paragraph (b) of the Act enables the Department to suspend or cancel a Sea Fishing Licence issued by the Department of the same, if it appears to the Department to be necessary or expedient for the regulation of sea fishing.

38 Sea fishing licences

(8) A sea fishing licence -

(a) may be varied from time to time; and

(b) may be cancelled or suspended;

if it appears to the Department to be necessary or expedient for the regulation of sea fishing.

Where there are reasonable grounds to suspect that an offence may have been committed in relation to any regulations, byelaws or conditions of licence, the Department may invoke these

powers to suspend or cancel the licence issued in respect of the vessel(s) in question, even if it is determined not to prosecute. This includes (but is not limited to) where:

- the Department has reasonable grounds to suspect that an offence has been committed
- there may be insufficient evidence to pursue a prosecution at the time
- the Department is undertaking further investigation into the activities of the vessel

In addition to the power to suspend or cancel on reasonable grounds, the Department may exercise its power to suspend or cancel a licence even when a case is prosecuted and notwithstanding the power vested in a criminal Court to impose similar restrictions.

The development of this policy has been informed by the need to broaden the range of options available to the Department where non-compliance with management measures in place to regulate territorial sea is suspected. The Department will maintain and enforce effective regulatory measures to preserve and sustain the Island's fisheries. The fisheries are an important economic activity to be preserved for those whose livelihoods depend on a sustainable fishery.

Definitions:

"Sea Fishing Licence" means a licence issued by the Department under Sections 37 and 38 of the Fisheries Act 2012.

"registered fishing vessel" means a vessel which is registered in the Isle of Man under the Merchant Shipping (Registration of Fishing Vessels) Regulations 1991, or in the United Kingdom or Channel Islands under equivalent legislation.

"territorial sea" means those waters lying within 12 nautical miles of the baseline from which the breadth of the territorial sea adjacent to the Isle of Man is measured, but not extending beyond a line every point of which is equidistant from the nearest points of such baselines adjacent to the United Kingdom.

Scope:

The following policy shall apply to the suspension or cancellation of a Sea Fishing Licence, issued by the Department and authorising a specified, registered fishing vessel to fish within the territorial sea, where it appears to the Department that there are reasonable grounds to suspect that an offence may have been committed in relation to any regulations, byelaws or conditions of licence.

Policy:

- Where it appears to the Department that there are reasonable grounds to suspect that an offence may have been committed in relation to any regulations, byelaws or conditions of licence the Department may suspend or cancel the Sea Fishing Licence issued in respect of the vessel in question.
- The Department may also impose a suspension or cancellation at any time from when criminal proceedings are being contemplated or after the conclusion of proceedings (for example a not guilty plea and contested proceedings), as the case may require.
- Actions to suspend or cancel a licence under Section 38, subsection (8) paragraph (b) of the Fisheries Act 2012 will be undertaken in a transparent, non-discriminatory, proportional and fair manner.

Procedure:

Where a Sea Fishing Licences is to be suspended or cancelled as a result of this policy:

Initial consideration

- Before considering the suspension or cancellation of a Sea Fishing Licence, the Department shall consider all available evidence relating to the suspected offence.
- Evidence to be considered may include (but is not limited to) data obtained from the Vessel Monitoring System (VMS), the logbook, vessel sightings, vessel or catch inspection, AIS data, CCTV data, witness statements, scientific evidence, precedents and antecedents.

Reasonable suspicion cases (no prosecution)

- Upon the establishment of reasonable grounds of suspicion, the Department shall write to the nominated contact for the vessel outlining the grounds of suspicion and explaining that the Sea Fishing Licence issued in respect of the vessel in question may be suspended or cancelled if satisfactory explanation is not received.
- The nominated contact shall have five working days to provide a satisfactory explanation to the Department in writing.
- Should a satisfactory explanation not be received, the Department shall proceed to suspend or cancel the licence by writing to the nominated contact for the vessel.
- Suspension or cancellation of a Sea Fishing Licence does not prevent the Department from taking further action, which may include prosecution.

Criminal proceedings afoot or likely

- After a suspected breach which is likely to lead to interview under caution or prosecution or where a vessel and equipment is seized after being apprehended committing a suspected offence, a licence may be cancelled or suspended on a summary basis.
- Notwithstanding the above, upon admission of guilt under caution in relation to a suspected offence, the Department may proceed to suspend or cancel the licence by writing to the nominated contact for the vessel.
- In the event of a successful prosecution, a Sea Fishing Licence may also be suspended or cancelled, even if an earlier suspension has been imposed and even if the sentencing Court was not asked or declined to impose a suspension under its powers under section 82 of the Fisheries Act 2012.
- The Department is not limited to reliance on any agreed statement of facts advanced in criminal proceedings when considering whether a suspension should be imposed and its duration.

Who takes the decision and how might a licence be restricted as a conservation measure?

- The decision to suspend a licence shall be taken by the Head of Fisheries
- The duration of any suspension shall be proportional and fair and shall be stated in the letter notifying the suspension.
- For a first offence a suspension of up to three months may be applied
- For a second or subsequent offence a suspension of up to twelve months may be applied.
- In recognition of the seasonal nature of certain fisheries, the timing of any suspension will be determined at the discretion of the Head of Fisheries. A suspension may be immediate, split over the closure of a fishery, deferred to take effect at the most beneficial time for re-stocking of the fishery or deferred to the anniversary of the infringing conduct.
- The decision to cancel a licence shall be taken by the Chief Executive Officer of the Department.
- The decision to cancel a licence shall only be taken in extreme cases where the gravity of the circumstances warrants such action and shall only be taken having sought legal advice.

Seeking a review of a suspension or cancellation

- The licence holder may request the Department to review the decision by writing to the Department within four weeks of the notification of suspension or cancellation being issued, providing full and detailed supporting information.
- The review of a decision to suspend a licence shall be undertaken by the Chief Executive Officer of the Department.
- The review of a decision to cancel a licence shall be undertaken by the Minister for the Department.
- The Department shall notify the nominated contact of the outcome of the review within three weeks of receipt of the request.

Related information:

The Fisheries Act 2012 can be found at:

https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2012/2012-0005/FisheriesAct2012_3.pdf

Information regarding the Future Fisheries Strategy can be found at:

<https://www.gov.im/about-the-government/departments/environment-food-and-agriculture/fisheries-directorate/future-fisheries-strategy/>

Information on the Department's policies can be found at: <https://www.gov.im/about-the-government/departments/environment-food-and-agriculture/fisheries-directorate/legislation-policy-and-enforcement/>

Information on commercial licensing requirements can be found at:

<https://www.gov.im/categories/business-and-industries/commercial-fishing/iom-licencing/>

Forms:

An application form for an Isle of Man Sea Fishing Licence can be downloaded from:

<https://www.gov.im/categories/business-and-industries/commercial-fishing/iom-licencing/>

Frequently asked questions:

- *Who does this policy affect?*
This policy is applicable to anybody holding, or applying for, an Isle of Man Sea Fishing Licence.
- *What activities does the policy cover?*
The policy covers the suspension or cancellation of a Sea Fishing Licence where it appears to the Department that there are reasonable grounds to suspect that an offence may have been committed or where an offence has been admitted under caution or where there is a successful prosecution.
- *When does this policy take effect?*
The policy came into effect on the 9th of February 2018. This fourth version came into effect on 7th February 2020
- *How often will the policy be reviewed?*
This policy will be ordinarily be substantively reviewed every five years thereafter.
- *Why has the department introduced this policy?*
The Department needs to broaden the range of options available to it where non-compliance with management measures in place to regulate territorial sea is suspected. The Department wishes to protect the fishery for the benefit of those who fish lawfully and who adhere to the conservation measures imposed to sustain the fishery.
- *How was this policy decided upon?*

The policy developed from existing powers under the Fisheries Act 2012 upon the consideration of legal advice and examination of similar policies implemented by other Fisheries Administration throughout the UK

- *What authority has the Department got to introduce this policy?*
Section 38, Subsection (8), Paragraph (b) of the Fisheries Act 2012 enables the Department to suspend or cancel a Sea Fishing Licence issued by the Department of the same, if it appears to the Department to be necessary or expedient for the regulation of sea fishing.
- *What happens if my licence is suspended?*
If the Department has reasonable grounds to suspect that your vessel has committed an offence a letter will be sent to the nominated contact for the vessel inviting an explanation. If the explanation is not satisfactory a further letter will be sent to the nominated contact advising of the suspension or cancellation and providing further details. Where a person admits being guilty of an offence under caution, the Department may proceed to suspend or cancel the licence by writing to the nominated contact for the vessel.
- *What happens if my licence is suspended at the end of the fishing season?*
To avoid a situation where a suspension may run concurrently with a closed season, the Department may determine the effective timing of a suspension.
- *Can I ask for this decision to be reviewed?*
The licence holder can request that the decision to suspend or cancel a licence is reviewed within four weeks of the suspension or cancellation being issued. The request should be in writing and accompanied by full and detailed supporting information.
- *How do I ask for this decision to be reviewed?*
Details regarding the review process will be included in the notification to suspend or cancel the Sea Fishing Licence.
- *How do I find out what rules apply within the territorial sea?*
Various legislation exists concerning fishing within the territorial sea. For further information contact the Department using the details above or visit:
<https://www.gov.im/about-the-government/departments/environment-food-and-agriculture/fisheries-directorate/legislation-policy-and-enforcement/>
or
<http://www.tynwald.org.im/links/tls/Pages/default.aspx>
- *How do I find out more about licensing?*
For more information on licensing contact the Department using the details above or visit:
<https://www.gov.im/categories/business-and-industries/commercial-fishing/iom-licencing/>

Version History:

<i>Version No.</i>	<i>Date issued</i>	<i>Description</i>
1	09.02.2018	Original policy document
2	22.06.2018	Amendment to reflect admission of guilt under caution
3	03.07.2019	Amendment reflecting decision hierarchy following restructure of Department
4	07.02.2020	Amended to clarify instances of imposition of suspension or cancellation between when there is a prosecution and when there is not; amended review dates

END