



STATUTORY INSTRUMENTS.

**S.I. No. 125 of 2016**



EUROPEAN UNION (COMMON FISHERIES POLICY) (POINT  
SYSTEM) REGULATIONS 2016

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S.I. No. 125 of 2016

EUROPEAN UNION (COMMON FISHERIES POLICY) (POINT SYSTEM) REGULATIONS 2016

I, SIMON COVENEY, Minister for Agriculture, Food and the Marine, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purposes of giving full 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> as amended by Commission Implementing Regulation (EU) 2015/1962 of 28 October 2015<sup>3</sup>, hereby make the following regulations:

*Citation*

1. These Regulations may be cited as the European Union (Common Fisheries Policy) (Point System) Regulations 2016.

*Application*

2. These Regulations apply to serious infringements of the rules of the common fisheries policy detected on or after the commencement of these Regulations.

*Interpretation*

3. (1) In these Regulations—

“Act of 2003” means Fisheries (Amendment) Act 2003 (No. 21 of 2003);

“Act of 2006” means Sea-Fisheries and Maritime Jurisdiction Act 2006 (No. 8 of 2006);

“Control Regulation” means Council Regulation (EC) No. 1224/2009 of 20 November 2009 as amended by Commission Implementing Regulation (EU) 2015/1962 of 28 October 2015;

“Commission Regulation” means Commission Implementing Regulation (EU) No. 404/2011 of 8 April 2011 as amended by Commission Implementing Regulation (EU) 2015/1962 of 28 October 2015;

“Determination Panel” shall be construed in accordance with Regulation 5;

“IUU Regulation” means Council Regulation (EC) No. 1005/2008 of 29 September 2008<sup>4</sup>;

<sup>1</sup>OJ No. L 343, 22.12.2009, p.1

<sup>2</sup>OJ No. L 112, 30.4.2011, p.1

<sup>3</sup>OJ No. L 287, 31.10.2015, p.6

<sup>4</sup>OJ No. L 286, 29.10.2008, p. 1

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 8th March, 2016.*

“Fisheries Adjudicator” shall be construed in accordance with Regulation 11;

“fishing capacity” in relation to an Irish sea-fishing boat, means its tonnage within the meaning of Article 4, and its engine power within the meaning of Article 5, of Council Regulation (EEC) No. 2930/86 of 22 September 1986<sup>5</sup>;

“fishing licence” means an Irish licence or a foreign licence, as the case may be;

“foreign fishing vessel” means a Community fishing vessel other than an Irish sea-fishing boat;

“foreign licence”, in respect of a foreign fishing vessel, means a fishing licence issued in respect of the vessel by the competent authority of the flag Member State concerned;

“Irish sea-fishing boat” has the meaning assigned to it by section 2 of the Act of 2006;

“Irish licence” means a sea-fishing boat licence;

“Licensing Authority” has the meaning assigned to it by section 3 of the Act of 2003;

“Minister” means Minister for Agriculture, Food and the Marine;

“Register” means Register of Fishing Boats maintained under section 74 of the Act of 2006;

“sea-fisheries protection officer” means a sea-fisheries protection officer (within the meaning of the Act of 2006);

“sea-fishing boat licence” means a licence to fish for sea-fish granted in respect of an Irish sea-fishing boat under section 4 (inserted by section 97 of the Act of 2006) of the Act of 2003;

“serious infringement” means an infringement of the rules of the common fisheries policy mentioned in Annex XXX to the Commission Regulation that is determined by the Determination Panel, on the balance of probabilities, to be serious having regard to the criteria and guidance notes referred to in Regulation 6(3);

“infringement” means an infringement of the Common Fisheries Policy.

“SFPA” means Sea Fisheries Protection Authority.

(2) A word or expression that is used in the Control Regulation, the Commission Regulation or the IUU Regulation and is also used in these Regulations, has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Control Regulation, the Commission Regulation or the IUU Regulation, as the case may be.

<sup>5</sup>OJ No. L 274, 25.9.1986, p.1

*Competent authorities*

4. (1) The SFPA is designated as the competent authority in the State for the purposes of Article 125(a) and (b) of the Commission Regulation.

(2) The Licensing Authority is designated as the competent authority in the State for the purposes of Article 125(c) and (d) of the Commission Regulation.

(3) The SFPA are the competent Authority for the appointment of the Determination Panel mentioned in Regulation 5 of these regulations.

*Determination Panel*

5. (1) The SFPA shall establish a panel to be known as “the Determination Panel” for the purpose of determining whether an infringement has occurred, and if the infringement is a serious infringement for the purposes of Article 92 of the Control Regulation.

(2) The Determination Panel shall consist of 3 members, who shall be appointed by the SFPA, one panel member being a member of the SFPA.

(3) The Determination Panel shall hold such and so many meetings as may be necessary for the due execution of its functions.

(4) A decision of the Determination Panel shall be by simple majority.

(5) The SFPA shall appoint, in addition to the SFPA representative, on such terms and conditions as are specified in writing, to the Determination Panel—

(a) an independent legal professional nominated by the Office of the Attorney General, and

(b) a serving member of the Naval Services nominated by the Minister for Defence.

(6) A member of the Determination Panel shall—

(a) hold office for a term of 1 year and shall be eligible for re-appointment as such a member,

(b) subject to these Regulations, be independent in the performance of his or her functions, and

(c) excluding SFPA and the Naval Service Members, be paid such remuneration, and allowances for expenses, as the SFPA may, with the consent of the Minister for Public Expenditure and Reform, determine from time to time.

(7) A member of the Determination Panel may—

(a) resign from office by letter addressed to the Authority of the SFPA and the resignation shall take effect on the date on which the Authority of the SFPA receives the letter, or

(b) be removed from office by the Authority of the SFPA where in the opinion of the Authority of the SFPA, the Member of the Determination Panel—

(i) has become incapable through ill-health of effectively performing his or her functions under these Regulations, or

(ii) has committed stated misbehaviour.

(8) Should the post of member of the Determination Panel become vacant, pending a new appointee the SFPA will hold in suspense any part of the determination process until such time as the panel is constituted in accordance with paragraph (2).

(9) A member of the Determination Panel shall be entitled to an indemnity in respect of proceedings taken against him or her in respect of acts done or omissions made in good faith in his or her official capacity under these Regulations.

*Notification of an infringement to the SFPA*

6. (1) Where a sea-fisheries protection officer detects an alleged infringement—

(a) involving an Irish sea-fishing boat, wherever the boat may be, or

(b) involving a foreign fishing vessel, in the exclusive fishery limits of the State (within the meaning of section 88 of the Act of 2006)

he or she shall forward an inspection report to the SFPA.

(2) A report prepared, or material collected, by a sea-fisheries protection officer in the exercise of his or her powers under section 17 or 18 of the Act of 2006 may be used by the Determination Panel in determining whether a serious infringement has been committed for which points should be proposed under this Regulation.

(3) The SFPA may issue guidance notes, which shall be published on its website on the internet, for the purpose of providing practical guidance in identifying the criteria, for the purpose of these Regulations, the Control Regulation and the Commission Regulation, employed in determining whether an infringement is a serious infringement.

(4) The SFPA shall send the matter to the Determination Panel to determine if an infringement has occurred and whether the infringement detected is serious.

(5) The SFPA, on receipt of an inspection report mentioned in paragraph (1) citing an infringement, shall notify the licence holder that-

(a) an infringement has been detected,

- (b) the matter shall be sent to the Determination Panel to determine if an infringement has occurred and whether the infringement detected is serious, and
- (c) the holder of a licence shall be provided with the material referred to in Regulation 6(2) and shall be given the opportunity to make, in writing, submissions based on the criteria and guidance notes referred to in Paragraph 3 within 10 working days from the date of the notification.

(6) In case the vessel is a foreign fishing vessel-

- (a) if the holder of the foreign licence relating to the vessel is not contactable, the master of the vessel shall be notified and provided with the material in accordance with (a), (b) and (c) of paragraph (4), or
- (b) if neither the holder of the foreign licence relating to the vessel nor the master of the vessel is contactable, then the competent authority of the flag Member State under Article 125 shall be notified and provided with the material in accordance with (a), (b) and (c) of paragraph (4).

(7) The licence holder shall be given the opportunity to make submissions in writing based on criteria, and guidance notes, referred to in Regulation 7 within 10 working days from the date of the notification.

(8) The Determination Panel shall, within 35 working days of the date of notification to the holder of a licence, determine on the balance of probabilities if an infringement has occurred and whether the infringement is a serious infringement.

(9) In determining whether an alleged infringement is a serious infringement, for the purposes of paragraph (1), the Determination Panel shall have regard to—

- (a) the criteria set out in Article 3(2) of the IUU Regulation and Article 90 of the Council Regulation, and
- (b) guidance notes published by the SFPA, from time to time, under paragraph 3.

(10) The Determination Panel shall provide reasons for the determination.

*Proposal to assign points by SFPA*

7. (1) Where the Determination Panel determines that a serious infringement has occurred, the SFPA shall-

- (a) in case the vessel is an Irish sea-fishing boat—

- (i) propose to assign the appropriate points to the holder of the Irish licence relating to the boat concerned for the serious infringement,
- (ii) notify the holder of the Irish licence of the proposal to assign points, and
- (iii) notify the holder of the Irish licence of the reasons for the determination, or

(b) in case the vessel is a foreign fishing vessel—

- (i) notify the holder of the foreign licence relating to the vessel or, where the holder is not contactable, the master of the vessel, of the proposal to notify the flag Member State concerned of the detection of the serious infringement, and
- (ii) the reasons for the determination.

(2) A notification under paragraph (1) to the holder of a fishing licence or the master of a foreign fishing vessel shall—

(a) give particulars of the infringement and the appropriate number of points proposed to be assigned, and

(b) inform that—

- (i) holder of his or her option, or
- (ii) master of the option of the holder of the foreign licence relating to the foreign fishing vessel concerned, to refer the determination of the Determination Panel to the Fisheries Adjudicator, or
- (iii) if neither the holder of the foreign licence relating to the vessel nor the master of the vessel is contactable, then the competent authority of the flag Member State under Article 125 of the Commission Regulation shall be notified

in accordance with Regulation 12.

(3) The assignment of the points or the notification to the competent authority of a flag Member State, in accordance with paragraph (1), shall not occur until—

(a) the period allowed to refer the determination by the Determination Panel to the Fisheries Adjudicator under Regulation 12 has expired, without such a referral having been made, or

(b) where a referral under Regulation 12 is made, and—

- (i) in case the referral is withdrawn, the date of the withdrawal, or
- (ii) in case the Fisheries Adjudicator decides to uphold the proposal of the SFPA, the date of that decision.

(4) The SFPA shall, in the case of an Irish sea-fishing boat, notify the Licensing Authority, as soon as practicable, after—

- (a) the period allowed to make a referral under Regulation 12 has expired without such a referral having been made, or
- (b) where a referral is made under Regulation 12, the withdrawal of the referral or the decision of the Fisheries Adjudicator to uphold the proposal of the SFPA to assign points,—

of:

- (i) the name and address of the holder of the Irish licence to whom the proposed points are to be assigned,
- (ii) the identity of the Irish sea-fishing boat to which the Irish licence concerned relates,
- (iii) the nature of the serious infringement concerned, and
- (iv) the number of points to be assigned.

(5) In case the vessel is a foreign fishing vessel the SFPA shall notify the competent authority of the flag Member State concerned of the serious infringement detected and number of points appropriate to that infringement.

(6) Where the SFPA receives a notification under Article 89(4) of the Control Regulation from the competent authority of another State of the detection of a serious infringement by an Irish sea-fishing boat, the SFPA shall—

- (a) assign points to the holder of the Irish licence in respect of the boat concerned, and
- (b) notify the holder of the Irish licence and the Licensing Authority accordingly.

(7) Points assigned by the SFPA in accordance with this Regulation shall apply from the date of detection of the serious infringement concerned.

(8) In this Regulation “identity”, in relation to an Irish sea-fishing boat, includes the lettering and numbering of the boat as entered in the Register.

*Matters relating to points assigned*

8. (1) Subject to paragraph (2), points assigned to a holder of an Irish licence remain assigned regardless of any criminal proceedings pending, or the outcome of any such proceedings, in respect of the serious infringement concerned.

(2) The Licensing Authority shall establish procedures for the application of Article 92(4) of the Control Regulation or Article 133 of the Commission Regulation which shall be published on its website on the internet.

*Recording of points by Licensing Authority*

9. (1) Upon notification to it under Regulation 7(4) or 7(6), the Licensing Authority shall record the points assigned to the holder of an Irish licence that relates to the Irish sea-fishing boat concerned.

(2) Points notified to the Licensing Authority shall be recorded as applying from the date of detection of the serious infringement concerned.

(3) Points notified to the Licensing Authority shall also be recorded against the fishing capacity of the Irish sea-fishing boat concerned and remain so attached even if the boat or the capacity (or any part thereof) is subsequently de-registered or transferred, unless—

(a) otherwise notified by the SFPA, or

(b) any or all of the points have been deleted in accordance with Article 92(4) of the Control Regulation and Article 133 of the Commission Regulation.

(4) Points lawfully assigned under S.I. 3 of 2014 will remain extant on the fishing licence.

*Points assigned attach to fishing capacity*

10. (1) Subject to this Regulation or the deletion of any points, points assigned to a holder of an Irish licence in accordance with Regulation 7 and Article 126 of the Commission Regulation attach to the fishing capacity associated with the licence and remain attached regardless of any transfer, division or sale of that fishing capacity, or any de-registration of the Irish sea-fishing boat concerned.

(2) Where fishing capacity of an Irish sea-fishing boat in respect of which points are assigned is divided and transferred, the total of the points assigned in respect of that boat shall transfer with each separate part of the capacity transferred.

(3) Where fishing capacity from more than one Irish sea-fishing boat, in respect of which points are assigned, is combined and used for the purpose of an application for an Irish licence relating to another Irish sea-fishing boat, the total number of points assigned in respect of those first-mentioned boats shall transfer to the holder of the new licence.

(4) Where off-register fishing capacity expires under the requirement of the 2 year rule referred to in Part E of policy directive 2 of 2003, any points recorded as assigned against that expired capacity shall also expire except where the capacity is restored—

(a) on appeal under Part 3 of the Act of 2003, or

(b) by way of judicial review under Order 84 of the Rules of the Superior Courts.

(5) In paragraph (4)—

“policy directive” means a policy directive given by the Minister under section 3(2)(b) of the Act of 2003;

“off-register fishing capacity” means fishing capacity that is not, for the time being, assigned to an Irish sea-fishing boat.

*Fisheries Adjudicator*

11. (1) The Minister shall appoint, on such terms and conditions as are specified in writing, one or more than one person who is a practising barrister or solicitor of not less than 5 years standing to consider a referral under Regulation 12 who shall, in relation to the referral, be called the “Fisheries Adjudicator”.

(2) A Fisheries Adjudicator shall—

- (a) hold office for a term of 3 years and shall be eligible for re-appointment as such an officer,
- (b) subject to these Regulations, be independent in the performance of his or her functions, and
- (c) be paid such remuneration, and allowances for expenses, as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine from time to time.

(3) A Fisheries Adjudicator may—

- (a) resign from office by letter addressed to the Minister and the resignation shall take effect on the date on which the Minister receives the letter, or
- (b) be removed from office by the Minister where in the opinion of the Minister, the Fisheries Adjudicator—
  - (i) has become incapable through ill-health of effectively performing his or her functions under these Regulations, or
  - (ii) has committed stated misbehaviour.

(4) Should the post of Fisheries Adjudicator become vacant, pending a new appointee the SFPA will suspend—

- (a) in case the vessel is an Irish sea-fishing boat—
  - (i) the proposal to assign the appropriate points to the holder of the Irish licence relating to the boat concerned for the serious infringement, and

(ii) the notification to the holder of the Irish licence of the proposal to assign points, or

(b) in case the vessel is a foreign fishing vessel—

(i) the notification to the holder of the foreign licence relating to the vessel or, where the holder is not contactable, the master of the vessel, of the proposal to notify the flag Member State concerned of the detection of the serious infringement, and

(ii) the proposal to notify the competent authority of the flag Member State concerned of the serious infringement detected and the number of points appropriate to that infringement.

(5) the number of days specified in Regulation 13(9) shall be extended by the number of days that the post of the Fisheries Adjudicator is vacant.

(6) A Fisheries Adjudicator shall, at such intervals and in relation to such periods as are specified in writing by the Minister, submit a report in writing to the Minister in relation to the performance of his or her functions as a Fisheries Adjudicator under these Regulations during the period to which the report relates.

(7) A Fisheries Adjudicator shall be entitled to an indemnity in respect of proceedings taken against him or her in respect of acts done or omissions made in good faith in his or her official capacity under these Regulations.

*Referral to Fisheries Adjudicator*

12. (1) The holder of—

(a) an Irish licence relating to an Irish sea-fishing boat concerned with an alleged serious infringement detected, where points are to be assigned to him or her,

or

(b) a foreign licence relating to a foreign fishing vessel concerned with an alleged serious infringement detected, where a notification may be made to the flag Member State concerned, in accordance with Regulation 7(5)

may, not later than 20 working days from the date of the notification of the determination of the Determination Panel, refer the determination of the Determination Panel to the Fisheries Adjudicator who shall adjudicate on the matter.

(2) A referral under this Regulation shall—

(a) be made by—

(i) where the serious infringement concerned relates to an Irish sea-fishing boat, the holder of the Irish licence relating to the boat, or

- (ii) where the serious infringement concerned relates to a foreign fishing vessel, the holder of the foreign licence relating to the vessel,
  - (b) be made in writing,
  - (c) be accompanied by a statement of grounds relied on by the holder of the licence, and
  - (d) be accompanied by such fee as may be determined by the Minister, from time to time, and is published on the website of the Department of Agriculture, Food and the Marine on the internet.
- (3) The Fisheries Adjudicator may decide at his or her discretion whether or not to conduct an oral hearing for the purposes of the adjudication.
- (4) The Fisheries Adjudicator may direct that further information be provided by the SFPA or the holder of the fishing licence in relation to the determination of the Determination Panel that the infringement is a serious infringement and, having regard to paragraph (9) and, in any case, not later than 5 working days after receiving the request, the SFPA or licence holder, as the case may be, shall comply with such direction.
- (5) The Minister may set down the procedures to be followed in respect of the conduct and consideration of referrals and the Fisheries Adjudicator, subject to paragraph (12), shall comply with those procedures.
- (6) The Fisheries Adjudicator may—
- (a) confirm that the points shall be assigned to the holder of the Irish licence or that notification be made to the flag Member State concerned, as the case may be, or
  - (b) find in favour of the holder of the licence, in which event—
    - (i) in the case of an Irish sea-fishing boat, the points shall not be assigned and a notification under Regulation 7(4) shall not be made, or
    - (ii) in the case of a foreign fishing vessel, a notification under Regulation 7(5) shall not be made.
- (7) The Fisheries Adjudicator may only find in favour of the holder of the licence where on the balance of probabilities, he or she considers that the alleged serious infringement in respect of which points have been assigned—
- (a) did not occur,
  - (b) occurred before the commencement of these Regulations,
  - (c) involved an infringement that was not serious, or
  - (d) did not involve the fishing vessel concerned.

(8) In making a decision under this Regulation, the Fisheries Adjudicator shall have regard to Article 126(4) of the Commission Regulation.

(9) Subject to paragraph (10), a Fisheries Adjudicator shall make a decision in relation to a referral not later than 30 working days from the date of receipt of a referral to him or her under paragraph (1).

(10) In exceptional circumstances, the Fisheries Adjudicator may take not more than 15 working days in addition to the number of days mentioned in paragraph (9) to make a decision.

(11) The Fisheries Adjudicator shall notify the holder of the fishing licence concerned, and the SFPA, 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 publicly available website on the internet.

(12) A party to a referral may apply to the High Court regarding a decision of the Fisheries Adjudicator on a point of law.

(13) An application to the High Court under paragraph (12) shall be made not later than 14 days after the notification to the parties of the decision of the Fisheries Adjudicator under paragraph (11).

(14) In this Regulation “referral” means a referral under this Regulation.

*Points system to be term of Irish licence*

13. The points system under—

- (a) Article 92 of the Control Regulation,
- (b) Article 126 of the Commission Regulation, and
- (c) these Regulations,

is a term of an Irish licence.

*Offence — failure to inform potential future licence holder of assignment of points*

14. (1) The holder of a fishing licence who fails to comply with Article 128 of the Commission Regulation commits an offence and is liable, on summary conviction, to a class B fine.

(2) Where the holder of an Irish licence has been notified by the SFPA under Regulation 7(1) that points are proposed to be assigned, the licence holder shall advise in writing any other party to any proposed, or actual, sale, transfer or disposal of the fishing capacity of the Irish sea-fishing boat concerned of the proposal before—

- (a) the expiry of the time limits referred to in Regulation 12 and
- (b) the recording of the points by the Licensing Authority in accordance with Regulation 9(1).

(3) A person who fails to comply with paragraph (2) commits an offence and is liable, on summary conviction, to a class B fine.

*Prohibition on fishing where fishing licence is withdrawn*

15. (1) The holder of a fishing licence that is suspended or permanently withdrawn in accordance with Article 129 of the Commission Regulation who fails to comply with Article 130(2) of that Regulation 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 €100,000.

(2) Where a fishing licence in relation to a fishing vessel is suspended or permanently withdrawn in accordance with Article 129 of the Commission Regulation, the master of the vessel concerned who, upon receiving information on the fact of such suspension or withdrawal—

- (a) fails immediately to cease fishing activity,
- (b) does not proceed immediately to the home port of the vessel or a port indicated by a sea-fisheries protection officer,
- (c) fails to lash and stow fishing gear in accordance with Article 47 of the Control Regulation, or
- (d) fails to deal with any catch on board the vessel in accordance with the instructions of a sea-fisheries protection officer,

commits an offence and is liable—

- (i) on summary conviction, to a class A fine, or
- (ii) on conviction on indictment, to a fine not exceeding €50,000.

*Prosecution of summary offences*

16. A prosecution for an offence under these Regulations may be brought summarily by the SFPA.

*Service of notifications to fishing licence holders*

17. (1) A notification that is required to be served on or given to a holder of an Irish licence under these Regulations shall be addressed to the holder concerned by name, and may be so served on or given to the person in one of the following ways:

- (a) by delivering it to the holder;
- (b) by leaving it—
  - (i) at the address at which the holder ordinarily resides or, in a case in which an address for service has been furnished, at that address, or

(ii) where the holder is the master or owner of a fishing vessel, at that vessel;

(c) by sending it by post in a prepaid registered letter to the address at which the holder ordinarily resides or, in a case in which an address for service has been furnished, to that address;

(d) in a case in which an e-mail address for service has been furnished, to that e-mail address;

(e) where the vessel concerned is at sea, by e-mail, satellite telephone or through the Fisheries Monitoring Centre and subsequently confirmed by any of the other methods referred to in this paragraph.

(2) A notification that is required to be served on or given to a holder of a foreign licence under these Regulations shall be addressed to the holder concerned by name, and may be so served on or given—

(a) to the master of the vessel concerned, at the vessel,

(b) to the holder at any other place in the State where the holder carries on business,

(c) to the holder at an address, or to a named person in the State, nominated by the holder for the purpose of delivery of notifications, or

(d) where the vessel concerned is at sea, by e-mail, satellite telephone or through the Fisheries Monitoring Centre and subsequently confirmed by any of the other methods referred to in this paragraph.

(3) A notification that may be given to the master of a foreign fishing vessel under these Regulations shall be addressed to the master of the vessel and may be served on, or given to, him or her—

(a) at the vessel or any place in the State where he or she resides, or

(b) where the vessel is at sea, by e-mail, satellite telephone or through the Fisheries Monitoring Centre and subsequently confirmed by a method referred to in paragraph (2).

(4) For the purpose of this Regulation, a company within the meaning of the Companies Acts 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.

(5) In this Regulation “Fisheries Monitoring Centre” means the monitoring system operated in accordance with Article 9 of the Control Regulation by the Naval Service of the Defence Forces or the competent authority of another flag Member State.

*Fixed payment notice*

18. (1) Where an officer of the SFPA, authorised by the SFPA in that behalf, has reasonable grounds for believing that a person is committing or has committed an offence under Regulation 14, he or she may serve a notice in writing (“fixed payment notice”) on that person stating that—

- (a) the person is alleged to have committed the offence,
- (b) the person may during the period of 28 days beginning on the date of the notice make to the SFPA, at the address specified in the notice, a payment of €200, accompanied by the notice,
- (c) the person is not obliged to make the payment, and
- (d) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) Where a fixed payment notice is served under paragraph (1)—

- (a) the person to whom the notice applies may, during the period specified in the notice, make to the SFPA at the address specified in the notice the payment specified in the notice accompanied by the notice,
- (b) the SFPA may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In proceedings for an offence under Regulation 14—

- (a) the onus of proving that a payment, in accordance with a fixed payment notice, has been made lies on the person on whom the fixed payment notice was served, and
- (b) it is a defence for the accused to show that he or she has made a payment in accordance with this Regulation pursuant to a fixed payment notice issued in respect of that offence.

*Non-application of Part 3 of Act of 2003 to suspension or permanent withdrawal of Irish licence*

19. Part 3 of the Act of 2003 does not apply to the suspension or permanent withdrawal of an Irish licence under Article 129 of the Commission Regulation.

*Revocation*

20. The European Union (Common Fisheries Policy) (Point System) Regulations 2014 (S.I. No. 3 of 2014) are revoked.



GIVEN under my Official Seal,  
1 March 2016.

SIMON COVENEY,  
Minister for Agriculture, Food and the Marine.

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

This instrument adopts the requirements of Article 92 of Council Regulation(EC) No. 1224/2009 of 20 November 2009 and Title VII of Commission Implementing Regulation (EU) No. 404/2011 of 8 April 2011. In accordance with the regulations, this instrument establishes a point system, which will apply to the Licence Holder of a sea-fishing boat when a serious infringement of the Common Fisheries Policy is detected within the Exclusive Fishery Limits of the State or for an Irish vessel, wherever it may be. The Sea Fisheries Protection Authority is determined as the competent authority for the establishment of the system and the assignment of points. The Licensing Authority is the competent authority for the recording of points assigned to the licence of an Irish registered fishing vessel and for the transfer of those points.

This Statutory Instrument provides for the establishment of a Determination Panel comprised of a member of the SFPA, an independent legal professional and a serving member of the Naval Service to determine if on the balance of probabilities the infringement occurred and whether it is a serious infringement. The instrument also establishes an independent Fisheries Adjudicator to review the decision of the Determination Panel on the request of the licence holder.

The accumulation of points for persistent serious infringements of the Common Fisheries Policy will lead to the suspension of a sea fishing boat licence for a period from 2 months to one year. In extreme cases persistent serious fisheries infringements could lead to the permanent withdrawal of a licence.

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