



STATUTORY INSTRUMENTS.

S.I. No. 318 of 2020

EUROPEAN UNION (COMMON FISHERIES POLICY) (POINT SYSTEM)
REGULATIONS 2020

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1. Citation
2. Application
3. Interpretation
4. Competent authorities
5. Determination Panel
6. Notification of an alleged serious infringement
7. Proposal to assign points by SFPA
8. Matters relating to points assigned
9. Recording of points by Licensing Authority
10. Points assigned attach to fishing capacity
11. Appeals Officer
12. Appeal to the Appeals Officer
13. Points system to be term of Irish licence
14. Offence — failure to inform potential future licence holder of assignment of points
15. Prohibition on fishing where fishing licence is withdrawn
16. Prosecution of summary offences

17. Service of notifications to fishing licence holders
18. Matters relating to oral hearings
19. Fixed payment notice
20. Non-application of Part 3 of Act of 2003 to suspension or permanent withdrawal of Irish licence
21. Revocation

EUROPEAN UNION (COMMON FISHERIES POLICY) (POINT SYSTEM)
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I, Micheál Martin, 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 purpose of giving effect to Article 92 of Council Regulation (EC) No 1224/2009 of 20 November 2009¹ (as amended by Regulation (EU) 2015/812 of the European Parliament and of the Council of 20 May 2015²) and Title VII of Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011³ (as amended by Commission Implementing Regulation (EU) 2015/1962 of 28 October 2015⁴ and Commission Implementing Regulation (EU) 2020/30 of 14 January 2020⁵), hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Common Fisheries Policy) (Point System) Regulations 2020.

Application

2. These Regulations apply to serious infringements of the rules of the Common Fisheries Policy as defined in Annex XXX of the Commission Regulation which occur on or after the date the Determination Panel is established by the SFPA, notice of which shall be published in a newspaper published and circulating in the State.

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);

“Appeals Officer” shall be construed in accordance with Regulation 11;

¹ OJ L 343, 22.12.2009, p.1

² OJ L 133, 29.5.2015, p. 1

³ OJ L 112, 30.4.2011, p.1

⁴OJ L 287, 31.10.2015, p. 6

⁵ OJ L 9, 15.1.2020, p. 3

“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 and Commission Implementing Regulation (EU) 2020/30 of 14 January 2020;

“Control Regulation” means Council Regulation (EC) No 1224/2009 of 20 November 2009 as amended by Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013⁶, Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013⁷, Council Regulation (EU) No 1385/2013 of 17 December 2013⁸, Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014⁹, Regulation (EU) 2015/812 of the European Parliament and of the Council of 20 May 2015, Regulation (EU) 2019/473 of the European Parliament and of the Council of 19 March 2019¹⁰ and Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019¹¹;

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

“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 Regulation (EU) 2017/1130 of the European Parliament and of the Council of 14 June 2017¹²;

“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;

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

⁶ OJ L 354, 28.12.2013, p. 1

⁷ OJ L 354, 28.12.2013, p. 22

⁸ OJ L 354, 28.12.2013, p. 86

⁹ OJ L 149, 20.5.2014, p. 1

¹⁰ OJ L 83, 25.3.2019, p. 18

¹¹ OJ L 198, 25.7.2019, p. 105

¹² OJ L 169, 30.6.2017, p. 1

“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;

“IUU Regulation” means Council Regulation (EC) No 1005/2008 of 29 September 2008¹³ as amended by Commission Regulation (EC) No 1010/2009 of 22 October 2009¹⁴, Commission Regulation (EU) No 86/2010 of 29 January 2010¹⁵ and Commission Regulation (EU) No 202/2011 of 1 March 2011¹⁶;

“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;

“report” includes an inspection report, a surveillance report, a report of control data 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;

“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;

¹³ OJ L 286, 29.10.2008, p. 1

¹⁴ OJ L 280, 27.10.2009, p.5

¹⁵ OJ L 26, 30.1.2010, p.1

¹⁶ OJ L 57, 2.3.2011, p.10

“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.

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.

Determination Panel

5. (1) The SFPA shall establish a panel to be known as “the Determination Panel” for the purpose of determining whether a serious infringement, as described in Annex XXX of the Commission Regulation, has occurred.
- (2) The Determination Panel shall consist of 3 members, who shall be appointed by the SFPA.
- (3) The Determination Panel shall arrange its own business as it sees fit and hold 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, on such terms and conditions as are specified in writing, to the Determination Panel 3 independent legal professionals nominated by the Attorney General.
- (6) A member of the Determination Panel shall—
 - (a) hold office for a term of 2 years 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) 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.
- (7) The Determination Panel shall, if so requested by the licence holder, hold an oral hearing for the purposes of the determination.
- (8) A request by a party for any oral hearing shall be made in writing to the Determination Panel within 30 working days from the date of the notification referred to in Regulation 6(6).
- (9) An oral hearing shall not be held if the request is received later than 30 working days from the date of the notification referred to in Regulation 6(6).

(10) A member of the Determination Panel may—

- (a) resign from office by letter addressed to the SFPA and the resignation shall take effect on the date on which the SFPA receives the letter, or
- (b) be removed from office by the SFPA where in the opinion 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.

(11) The number of days specified in Regulation 6(9) shall be extended by the number of days that a post of the Determination Panel is vacant.

(12) The Determination Panel shall, at such intervals and in relation to such periods as are specified in writing by the Minister, submit a performance-report in writing to the Minister in relation to the performance of its functions as a Determination Panel under these Regulations during the period to which the performance-report relates.

(13) 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.

(14) The SFPA shall provide all reasonable facilities and services as may be required by the Determination Panel for the performance of its functions.

Notification of an alleged serious infringement

6. (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 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 prepare a report and forward it to the SFPA.

(2) The SFPA shall send the report and any material collected to the Determination Panel to determine if a serious infringement has occurred.

(3) A report prepared and any material collected by an Official in the exercise of his or her powers and any submission referred to in paragraph (5) may be used by the Determination Panel in determining whether a serious infringement has occurred for which points should be proposed under these Regulations.

(4) The SFPA shall, at the same time as it sends the material referred to in paragraph (2) to the Determination Panel, provide the licence holder with a copy of the material.

(5) The licence holder shall be given the opportunity to make submissions in writing to the Determination Panel within 30 working days from the date of the notification.

(6) The SFPA, on receipt of a report citing an alleged serious infringement, shall notify the licence holder -

- (a) that an alleged serious infringement has been detected,
- (b) that the matter shall be sent to the Determination Panel to determine if a serious infringement has occurred,
- (c) of the opportunity for the holder of the licence to make submissions in writing to the Determination Panel within 30 working days from the date of the notification, and
- (d) that the holder of the licence may, within 30 working days from the date of the notification, make in writing a request for an oral hearing to the Determination Panel.

(7) 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 provided with the material and notified in accordance with paragraphs (4) and (6), 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 of the Commission Regulation shall be provided with the material and notified in accordance with paragraphs (4) and (6).

(8) The Determination Panel may request that extra information be provided by the SFPA or the holder of the fishing licence in relation to the issue under determination by the Determination Panel and, in any case, not later than 20 working days after receiving the request, the SFPA or licence holder, as the case may be, shall provide the information.

(9) The Determination Panel shall, within 70 working days of the date of notification to the holder of a licence, determine on the balance of probabilities if a serious infringement has occurred.

(10) In determining whether an alleged serious infringement has occurred, the Determination Panel shall have regard to the criteria set out in Article 3(2) of the IUU Regulation.

(11) The Determination Panel shall communicate their determination and reasons for their determination to the SFPA and the licence holder.

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 in accordance with Annex XXX of the Commission Regulation 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 given by the Determination Panel, or
- (b) in case the vessel is a foreign fishing vessel, notify the holder of the foreign licence relating to the vessel or, where the holder is not contactable, the master of the vessel of—
- (i) the proposal to notify the flag Member State concerned of the detection of the serious infringement, and
 - (ii) the reasons for the determination given by the Determination Panel.
- (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—
 - (i) the serious infringement, and
 - (ii) where relevant, the appropriate number of points proposed to be assigned, and
 - (b) inform, as the case may be,—
 - (i) the holder of the Irish Licence,
 - (ii) the holder of the foreign licence relating to the foreign fishing vessel concerned,
 - (iii) if the holder of the foreign licence relating to the vessel is not contactable, then the master of the foreign vessel concerned, or
 - (iv) 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
- of the licence holder's right to appeal 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 Appeals Officer under Regulation 12 has expired, without such an appeal having been made, or
 - (b) where an appeal under Regulation 12 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 application of points, 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 an appeal under Regulation 12 has expired without such an appeal having been made, or
 - (b) where an appeal is made under Regulation 12, the withdrawal of the appeal or the decision of the Appeals Officer to uphold the determination of the Determination Panel,
- 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 SFPA 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 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.

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.

Appeals Officer

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

(2) The Appeals Officer 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) The Appeals Officer 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 Appeals Officer—
 - (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 Appeals Officer 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 12(11) shall be extended by the number of days that the post of the Appeals Officer is vacant.

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

(7) The Appeals Officer 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.

Appeal to the Appeals Officer

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 appeal to the Appeals Officer, not later than 30 working days from the date of the notification of the proposal by the SFPA, as the case may be -

- (i) to assign points to him or her, or
- (ii) to notify the flag Member State concerned.

(2) An appeal shall—

- (a) be made
 - (i) where the serious infringement concerned relates to an Irish sea-fishing boat, by the holder of the Irish licence relating to the boat, or
 - (ii) where the serious infringement concerned relates to a foreign fishing vessel, by 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 appellant, 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 Appeals Officer shall, if so requested by the licence holder, 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 SFPA, as the case may be -

- (a) to assign points to him or her, or
- (b) to notify the flag Member State concerned.

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

(6) The Appeals Officer may request that extra information with regard to the issue of any serious infringement be provided by the SFPA or the holder of the fishing licence in relation to the determination of the Determination Panel and, in any case, not later than 20 working days after receiving the request, the SFPA or licence holder, 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 SFPA 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—

- (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.

(10) The Appeals Officer shall confirm that the points shall be assigned to the holder of the licence where on the balance of probabilities, he or she considers that the alleged serious infringement in respect of which it is proposed to assign points —

- (a) did occur,
- (b) occurred after the commencement of these Regulations,
- (c) involved an infringement that was serious, and
- (d) did involve the fishing vessel concerned.

(11) Subject to paragraph (12), an Appeals Officer shall make a decision in relation to the appeal not later than 45 working days from the date of receipt of the appeal to him or her under paragraph (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 paragraph (11) to make a decision.

(13) The Appeals Officer 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.

(14) A party to an appeal 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 paragraph (14) shall be made not later than 28 days after the notification to the parties of the decision of the Appeals Officer under paragraph (13).

(16) In this Regulation “appeal” means an appeal 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 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.

Matters relating to oral hearings

18. (1) In conducting an oral hearing referred to in Regulation 5(7) or 12(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,
- (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 Regulation 5(7) or 12(3), and that person fails to attend at the scheduled hearing in accordance with a notification referred to in paragraph (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 Regulations 6(9) or 12(11) notwithstanding a person's failure to attend at a scheduled hearing.

(3) A person to whom a notice referred to in paragraph (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 so attended, 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.

Fixed payment notice

19. (1) Where a sea fisheries protection officer, 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

20. 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

21. The European Union (Common Fisheries Policy) (Point System) Regulations 2016 (S.I. No. 125 of 2016) are revoked.



GIVEN under my Official Seal,
26 August, 2020.

MICHEÁL MARTIN,
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 3 independent legal professionals nominated by the Attorney General to determine if on the balance of probabilities a serious infringement occurred. The instrument also establishes an independent Appeals Officer 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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