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*Number 15 of 2018*

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**Heritage Act 2018**

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CONTENTS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title, collective citation and construction

PART 2

CANALS

2. Definition
3. Amendment of section 1(1) of Act of 1986
4. General duty of Waterways Ireland
5. Bye-laws and enforcement - canals

PART 3

WILDLIFE

6. Definitions (Part 3)
7. Destruction or burning of vegetation on uncultivated land
8. Disapplication of section 40(1) of Act of 1976 to cutting etc. undertaken pursuant to section 70 of Roads Act 1993
9. Powers of authorised persons
10. Penalties and fixed payment notice

PART 4

HERITAGE COUNCIL

11. Amendment of Heritage Act 1995

ACTS REFERRED TO

Canals Act 1986 (No. 3)  
Heritage Act 1995 (No. 4)  
Inland Fisheries Act 2010 (No. 10)  
Maritime Safety Act 2005 (No. 11)  
Petty Sessions (Ireland) Act 1851 (14 & 15 Vict., c.93)  
Road Traffic Act 1961 (No. 24)  
Roads Act 1993 (No. 14)  
Veterinary Practice Act 2005 (No. 22)  
Wildlife (Amendment) Act 2000 (No. 38)  
Wildlife (Amendment) Act 2010 (No. 19)  
Wildlife Act 1976 (No. 39)  
Wildlife Acts 1976 to 2012



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*Number 15 of 2018*

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## **HERITAGE ACT 2018**

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An Act to amend and extend the Wildlife Act 1976, the Canals Act 1986 and the Heritage Act 1995 and to provide for related matters. [18th July, 2018]

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

### PART 1

#### PRELIMINARY AND GENERAL

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

1. (1) This Act may be cited as the Heritage Act 2018.
- (2) The Canals Act 1986 and *Part 2* may be cited together as the Canals Acts 1986 and 2018.
- (3) The Wildlife Acts 1976 to 2012 and *Part 3* may be cited together as the Wildlife Acts 1976 to 2018 and shall be read together as one.
- (4) The Heritage Act 1995 and *Part 4* may be cited together as the Heritage Council Acts 1995 and 2018.

### PART 2

#### CANALS

#### **Definition**

2. In this Part “Act of 1986” means the Canals Act 1986.

#### **Amendment of section 1(1) of Act of 1986**

3. Section 1(1) of the Act of 1986 is amended—
  - (a) by the deletion of the definition of “common interest property”, and
  - (b) by the insertion of the following definitions:

“ ‘authorised officer’ means a person appointed as an authorised officer under section 7B;

‘canal bye-laws’ means bye-laws made under section 7;”.

### **General duty of Waterways Ireland**

4. The following section is substituted for section 5 of the Act of 1986:

#### **“General duty of Waterways Ireland**

5. (1) Subject to subsection (2)—

(a) it is the duty of Waterways Ireland to undertake the care, management and maintenance of the canals and other canal property as a public amenity for use by the public for—

(i) navigation in such parts of the canals as are open to navigation from time to time, or

(ii) fishing or otherwise for the enjoyment and recreation of the public,

and

(b) Waterways Ireland may designate particular parts of the canals and other canal property for particular purposes including purposes incidental to such purposes as aforesaid.

(2) Waterways Ireland shall consult with the Minister for Communications, Climate Action and Environment in relation to any matters which affect or may affect fish, fish life, fish stocks or fishing in the canals.”.

### **Bye-laws and enforcement - canals**

5. The following sections are substituted for sections 7 and 7A (inserted by section 56 of the Maritime Safety Act 2005) of the Act of 1986:

#### **“Power of Waterways Ireland to make bye-laws for canals**

7. (1) Waterways Ireland may in accordance with this section make bye-laws for the care, management, maintenance and control and the regulation of the use of the canals and other canal property in relation to any one or more of the following matters:

(a) the regulation of the conditions (including conditions as to safety) under which boats may be used on the canals;

(b) the regulation of the type or class of boat (including its dimensions) which may be used on the canals;

(c) the closing to navigation of any part of the canals;

(d) the restriction or prohibition of navigation on the canals or any part of the canals at any time by any boat or type or class of boat;

- (e) the issue of permits or licences to authorise and regulate the use of boats on the canals or other canal property;
  - (f) the prohibition of a boat using the canals which does not have a permit or licence issued in respect of it as required by canal bye-laws;
  - (g) the opening to navigation of any part of the canals not open to navigation;
  - (h) the alteration of water levels of the canals;
  - (i) the regulation of bathing in the canals;
  - (j) the regulation of fishing in the canals (other than matters in respect of which the Minister for Communications, Climate Action and Environment may make bye-laws under section 57 of the Inland Fisheries Act 2010);
  - (k) the regulation of berths and moorings and the placing of buoys on the canals or other canal property;
  - (l) the prevention of damage to the canals or other canal property;
  - (m) the prohibition or restriction of activities on the canals or other canal property;
  - (n) the obligations of persons using the canals or other canal property;
  - (o) the removal from the canals or other canal property of any boat or thing which is or may become a danger to life, navigation or fish stocks or would otherwise interfere with the proper use of the canals or other canal property and matters relating to the cost of such removal and disposal of such;
  - (p) the charging and fixing of fees, tolls and charges in respect of the use by boats of the canals (including the use of locks on the canals and mooring on the canals) and the charging and fixing of fees in respect of the use by persons of the canals (including the taking of water from the canals);
  - (q) matters relating to the regulation and care of animals on the canals or other canal property;
  - (r) the requirement to have adequate cover of insurance in respect of any boat being used on the canals;
  - (s) the specification of the form of a fixed payment notice and such amount as may be specified for the purpose of section 7A(1)(b).
- (2) (a) If Waterways Ireland proposes to make bye-laws under subsection (1), it shall—

- (i) publish a notice of the proposal on its website and in one or more newspapers circulating in the vicinity of the canal or other canal property to which the proposal relates, and
  - (ii) communicate the proposal in writing to each local authority whose functional area is affected by the proposal.
- (b) A notice under paragraph (a) shall contain a statement in general terms of the purposes for which the proposed bye-laws are to be made and state that—
- (i) a copy of the draft bye-laws is available for public inspection—
    - (I) on its website, and
    - (II) at a place specified in the notice, during ordinary business hours,and
  - (ii) a person may submit to Waterways Ireland objections to the draft bye-laws at any time during the period of 90 days commencing on the day of the first publication of the notice.
- (c) Waterways Ireland shall, during the period of 90 days, keep a copy of the draft bye-laws available for public inspection on its website and at the place specified in the notice.
- (d) Any person who objects to the draft bye-laws may submit his or her objections to Waterways Ireland in writing at any time during the period of 90 days. Waterways Ireland shall consider the objections.
- (e) On the expiration of the period of 90 days, Waterways Ireland shall, as it thinks proper, refrain from making the bye-laws or, with the consent of the Minister for Culture, Heritage and the Gaeltacht, make the bye-laws with or without modification.
- (f) Waterways Ireland shall—
- (i) make available to the public copies of canal bye-laws for the time being in force relating to a canal or other canal property—
    - (I) for inspection at the public offices of Waterways Ireland, during ordinary office hours, and
    - (II) for purchase for such fee (if any) as may be determined by it,and
  - (ii) publish canal bye-laws on its website.
- (3) Canal bye-laws may contain all such incidental, subsidiary and ancillary provisions as Waterways Ireland considers necessary or expedient for the purposes of the bye-laws.



- (4) Waterways Ireland shall, within 5 years after the making of any bye-laws under subsection (1) and thereafter at intervals not exceeding 5 years, review such bye-laws and prepare and submit a report on its findings to the Minister for Culture, Heritage and the Gaeltacht consequent on that review.
- (5) The Minister for Culture, Heritage and the Gaeltacht shall, as soon as practicable after receiving a report under subsection (4), cause a copy of the report to be laid before each House of the Oireachtas.
- (6) A person who contravenes or fails to comply with a provision of a bye-law made under subsection (1) which is stated in canal bye-laws to be a penal provision commits an offence and is liable on summary conviction to a class D fine.
- (7) Where an offence under subsection (6) is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person being a director, manager or secretary or other officer of such body, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against as if he or she were guilty of the first-mentioned offence.
- (8) Every bye-law made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution is passed by either House of the Oireachtas within the next 21 days on which such House has sat after the bye-law is laid before it annulling such bye-law, such bye-law shall be annulled accordingly, but without prejudice to the validity of anything previously done under such bye-law.
- (9) Waterways Ireland may recover as a simple contract debt in any court of competent jurisdiction from any person by whom it is payable any amount due and owing under bye-laws made under subsection (1) for the purposes of paragraph (p) of that subsection.

**Fixed payment notice**

- 7A.** (1) Where an authorised officer of Waterways Ireland has reasonable grounds for believing that a person is committing or has committed an offence under section 7, he or she may serve the person with a notice, in the form specified by Waterways Ireland in canal bye-laws stating that—
- (a) the person is alleged to have committed the offence specified in the notice,
  - (b) the person may, during the period of 21 days beginning on the date of the notice, make to Waterways Ireland, at the address specified in the notice, a payment of the specified amount, accompanied by the notice, duly completed, and

- (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if a payment specified in the notice, accompanied by the notice, duly completed, is made during that period, no prosecution in respect of that alleged offence will be instituted.
- (2) Where notice is given under subsection (1)—
- (a) a person to whom the notice applies may, during the period specified in the notice, make to Waterways Ireland at the address specified in the notice, the payment specified in the notice, accompanied by the notice, duly completed,
  - (b) Waterways Ireland may receive the payment, issue a receipt for it and retain the money paid, and any payment 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 specified in the notice is made, accompanied by the notice, duly completed, during that period, no prosecution in respect of the alleged offence shall be instituted.
- (3) The specified amount for the purposes of subsection (1)(b) is €150 or such lesser amount as may be specified in canal bye-laws for a contravention of a provision of canal bye-laws.
- (4) In a prosecution for an offence under section 7 the onus of proving that a payment pursuant to a notice under this section has been made lies on the defendant.

**Authorised officers**

- 7B.** (1) Waterways Ireland may appoint such or so many of its officers or classes of its officers as it considers appropriate to be authorised officers for the purposes of ensuring the control and regulation of the canals and other canal property and enforcing this Act and canal bye-laws.
- (2) A person appointed as an authorised officer under this section shall be furnished with a warrant of his or her appointment and shall, when exercising any power conferred on him or her by or under this Act or canal bye-laws, if requested by a person affected, produce the warrant of appointment or a copy of it to that person for inspection.
- (3) An appointment under this section as an authorised officer shall cease—
- (a) if Waterways Ireland revokes the appointment,
  - (b) if the appointment is for a fixed period, on the expiry of that period, or
  - (c) if he or she ceases to be an officer of Waterways Ireland.

- (4) An authorised officer appointed by Waterways Ireland may exercise the functions of an authorised officer under this Act and canal bye-laws in or on the canals or other canal property.
- (5) An authorised officer may for the purposes of—
- (a) enforcing the conditions under which boats may be used in the canals in compliance with canal bye-laws,
  - (b) ensuring that a boat on the canals is authorised in accordance with canal bye-laws to use the canals, or
  - (c) ensuring that persons on the canals or other canal property are complying with canal bye-laws,
- do all or any of the following:
- (i) board and inspect a boat (other than such part of it as constitutes a dwelling) on the canals or other canal property and may, for the purpose of boarding it, stop a boat that is under way;
  - (ii) request any person in charge of the boat to give to him or her for inspection any permit or licence issued under canal bye-laws or evidence of insurance required under canal bye-laws, relating to the boat;
  - (iii) request a person on the canals (whether or not in a boat) or other canal property to give to him or her such information within the knowledge of the person as the officer may reasonably require for the purposes of ensuring compliance with canal bye-laws;
  - (iv) give to a person on the canals (whether or not in a boat) or other canal property such directions, orally or in writing, as he or she considers reasonable for the purpose of ensuring compliance with canal bye-laws or the safety of persons or the care, management and maintenance of property on the canals or other canal property;
  - (v) direct a person whom he or she believes to be contravening or failing to comply with canal bye-laws to—
    - (I) give to the officer his or her name and address and (if the officer considers it necessary) evidence of his or her identity, or
    - (II) leave the canals or other canal property,or both.
- (6) An authorised officer may give to the owner of a boat such directions, orally or in writing, as he or she considers reasonable for the purpose of his or her functions under this Act or canal bye-laws.
- (7) A person to whom a direction is given, or a request is made, under this section shall comply with the direction or request.
- (8) A person shall not—

- (a) obstruct, impede or otherwise interfere with an authorised officer in the performance of his or her functions under this Act or canal by-laws, or
  - (b) give to an authorised officer, when requested by the officer, information that is to the knowledge of the person false or misleading or a false name or address.
- (9) A person who contravenes or fails to comply with subsection (7) or (8) commits an offence and is liable on summary conviction to a class D fine.
- (10) An authorised officer shall not board, except with the consent of the occupier, that part of a boat that constitutes a private dwelling unless he or she has obtained a search warrant under section 7C.
- (11) Where, in the course of exercising a power under this Act, an authorised officer finds or comes into possession of anything that the officer has reasonable grounds for believing to be evidence of an offence or suspected offence under this Act, the officer may seize and retain it for use in evidence in proceedings for an offence under this Act.
- (12) A statement or admission made by a person pursuant to a requirement to give information under subsection (5)(iii) shall not be admissible as evidence in proceedings against the person for an offence (other than an offence under subsection (9)).

### **Search warrant**

- 7C.** (1) If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for believing that—
- (a) evidence of or relating to the commission or intended commission of an offence under section 7 is or may be found on a boat on the canals or on other canal property, or
  - (b) a record relating to such an offence is or may be on a boat on the canals or other canal property,
- then the judge may issue a search warrant.
- (2) A search warrant under this section shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers or other persons as the named authorised officer thinks necessary, at any time, within one month from the date of issue of the warrant, on production, if so requested, of the warrant, to enter the boat named in the warrant and to exercise all or any of the functions conferred on an authorised officer by or under this Act.

**Service of directions, etc.**

- 7D.** (1) A direction or requirement given in writing under section 7B shall be addressed to the person concerned by name and may be served on or given to the person—
- (a) by giving a copy to the person concerned, his or her employee, servant or agent, or in the case of a partnership, by delivery of a copy to any of the partners,
  - (b) by leaving a copy at the address at which the person ordinarily resides, where he or she carries on business, or, where an address for service of directions or requirements has been furnished by the person to Waterways Ireland, at that address,
  - (c) by sending a copy by post in a prepaid registered envelope to the address at which the person ordinarily resides or carries on business,
  - (d) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the direction or requirement relates to land, premises or a boat, by delivering a copy to the land, premises or boat, or by affixing a copy in a conspicuous position on or near the land, premises or boat, or
  - (e) by sending a copy by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the person ordinarily resides or carries on business or, if an electronic address or facsimile number address for the service of a direction or requirement has been furnished by the person to Waterways Ireland, that electronic address or facsimile machine, but only if—
    - (i) the recipient's facility for the reception of electronic mail generates a message confirming the successful receipt of the electronic mail, or
    - (ii) the sender's facsimile machine generates a message confirming the successful transmission of the total number of pages of the direction or requirement.
- (2) Where the name of the person cannot be ascertained by reasonable enquiry it may be addressed to the person using the words 'the owner' or 'the occupier'.

**Prosecutions**

- 7E.** (a) Proceedings for an offence under this Act may be prosecuted summarily by Waterways Ireland.
- (b) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted within 12 months from the date of the offence."

## PART 3

## WILDLIFE

**Definitions (Part 3)****6.** In this Part—

“Act of 1976” means the Wildlife Act 1976;

“Act of 2000” means the Wildlife (Amendment) Act 2000;

“Act of 2010” means the Wildlife (Amendment) Act 2010.

**Destruction or burning of vegetation on uncultivated land**

- 7.** (1) Notwithstanding section 40 (as amended by the Inland Fisheries Act 2010) of the Act of 1976, the Minister may make regulations, in relation to land referred to in that section, to allow the burning of vegetation during such period or periods during the month of March of such year in such part or parts of the State as specified in the regulations, subject to such conditions or restrictions specified in the regulations to ensure the protection of fauna or flora.
- (2) Notwithstanding section 40 of the Act of 1976, the Minister may make regulations, in relation to land referred to in that section, to allow the cutting of vegetation growing in any hedge or ditch on the roadside during the month of August of such year as is specified in the regulations, subject to such conditions or restrictions specified in the regulations in relation to hedgerow husbandry, management or maintenance to ensure the protection of fauna or flora.
- (3) A person to whom regulations under this section apply, or acting on behalf of such person, who does anything in contravention of the regulations commits an offence.
- (4) (a) Subject to *paragraph (b)*, this section remains in force until the expiration of 2 years from the date of the passing of this Act and then shall expire.
- (b) This section may be continued in force from time to time by a resolution of each House of the Oireachtas, passed before its expiry, for such further period not to exceed 3 years as is specified in the resolution.
- (5) In this section “fauna or flora” means fauna and flora protected under Chapter III of Part II of the Act of 1976.

**Disapplication of section 40(1) of Act of 1976 to cutting etc. undertaken pursuant to section 70 of Roads Act 1993**

- 8.** Section 40(2) of the Act of 1976 is amended by inserting the following paragraph after paragraph (f):

“(g) the felling, cutting, lopping, trimming or removal of a tree, shrub, hedge or other vegetation pursuant to section 70 of the Roads Act 1993;”.

**Powers of authorised persons**

9. The Act of 1976 is amended—

(a) in section 44 (as amended by section 5 of the Act of 2010)—

(i) by the substitution for subsection (1) of the following:

“(1) Any person, not being the owner or occupier of land, who, without the permission of the owner or occupier of the land or, in the case some other person is entitled to enjoy sporting rights over the land, that other person—

(a) hunts a wild bird or wild animal on the land,

(b) carries or brings on the land a thing mentioned in section 72(7) (as amended by section 65(d) of the Act of 2000), or

(c) shoots over or into the land,

commits an offence.”,

and

(ii) in subsection (2) by the substitution of “Where a person who is neither the owner nor the occupier of land carries on the land a thing mentioned in section 72(7),” for “Where a person who is neither the owner nor the occupier of land carries on the land a firearm, other weapon or device (or a part thereof) described in paragraph (c) of subsection (1) of this section,

(b) in section 69 (as amended by section 63 of the Act of 2000)—

(i) by substituting for subsection (3)(c) the following:

“(c) Any person who assaults an authorised person in the exercise of any power conferred on him or her by this Act shall be guilty of an offence.”,

and

(ii) by inserting after subsection (7A) the following:

“(7B) A statement or admission made by a person pursuant to a requirement to give information under section 72 or 73 shall not be admissible as evidence in proceedings against the person for an offence (other than an offence under subsection (3)).”,

(c) in section 72 (as amended by section 6 of the Act of 2010)—

(i) by substituting for subsections (2), (2A) and (3) the following:

“(2) A member of the Garda Síochána or an authorised person who has reasonable grounds for suspecting that a person has committed an offence under the *Wildlife Acts 1976 to 2018* may, at all reasonable times—

(a) stop and search the person,

- (b) require the person to give his or her name and address and, if requested, to verify the information given,
- (c) require the person to give such information and assistance as the member or authorised person, as the case may be, considers necessary for the purposes of exercising his or her functions under the *Wildlife Acts 1976 to 2018*, and
- (d) require the person to declare whether he or she has in his or her possession and, if such member or authorised person, as the case may be, considers it necessary, to produce on demand for examination—
  - (i) any specimen of fauna, flora, fossils or minerals or any part, product or derivative of any such specimen,
  - (ii) any licence or permission granted by the Minister under the *Wildlife Acts 1976 to 2018* (including any certificate deemed, pursuant to subsection (5) or (5A) of section 29, to be a licence so granted),
  - (iii) in the case of a person who is resident in a Member State (other than the State), a European Firearms Pass within the meaning of Article 1(4) of Council Directive No. 91/477/EEC of 18 June 1991<sup>1</sup> issued to him or her by the competent authority of that Member State, or any other permit, licence, authorisation or other document to hold a firearm duly issued by a competent authority of such a Member State,
  - (iv) any permit or certificate issued for the purposes of the CITES Regulations together with any supporting documents in the person's possession and any permit or certificate to which Article 11 of Council Regulation (EC) No. 338/97 of 9 December 1996<sup>2</sup> relates, or
  - (v) any thing which is mentioned in subsection (7) which is in the person's possession,

and such member or authorised person may seize and retain any specimen or part, product or derivative of a specimen or any thing so produced which appears to him or her to be something which might be required as evidence in proceedings for an offence under the *Wildlife Acts 1976 to 2018*.

- (2A) A member of the Garda Síochána or an authorised person may, if such member or authorised person has reasonable grounds for suspecting from the activity of any person (in this subsection referred to as the 'suspected person') that an offence under any provision of the *Wildlife Acts 1976 to 2018* is being, or has been, committed, in the presence of such member or person, by the suspected person and that person has,

1 OJ No. L256, 13.9.1991, p.51

2 OJ No. L61, 3.3.1997, p.1



or had at the time of being so suspected, in his or her possession, or under his or her control, any thing which is mentioned in subsection (7) or any other thing capable of being used to commit an offence, then such member or authorised person may, without prejudice to any other function exercisable by such member or person—

- (a) require the suspected person—
  - (i) to desist from continuing or recommencing that activity,
  - (ii) to give to the member or authorised person, as the case may be, his or her name and address and, if requested, to verify the information given, and
  - (iii) to give to the member or authorised person, as the case may be, such information and assistance as the member or authorised person considers necessary for the purposes of exercising his or her functions under the *Wildlife Acts 1976 to 2018*,

and

- (b) arrest without warrant or cause any other person acting under direction of such member or authorised person to arrest without warrant or to assist in arresting the suspected person if that person—
  - (i) continues or recommences that activity,
  - (ii) fails to give his or her name or address or any information or assistance requested or required, or
  - (iii) gives a name or address or information which the member or authorised person has reasonable grounds to suspect is false or misleading,

and where the suspected person has been so arrested by an authorised person, the authorised person shall, as soon as is practicable in the circumstances, deliver the suspected person into the custody of a member of the Garda Síochána to be dealt with according to law.

- (3) A member of the Garda Síochána or an authorised person may, if he or she has reasonable grounds for suspecting that a person is committing or has committed an offence under any provision of the *Wildlife Acts 1976 to 2018*, at all reasonable times enter any land (other than a dwelling save with the consent of its occupier) to which the suspicion relates and may also, whether on that land or otherwise—
  - (a) search any vehicle, vessel or aircraft or any mechanically-propelled vehicle (within the meaning of the Road Traffic Act 1961) used or suspected of being used to transport, export or import any specimen of fauna, flora, fossils or minerals or any part, product or derivative of any such specimen contrary to any provision of the *Wildlife Acts 1976 to 2018*, and such member or authorised person, for the

purpose of carrying out the search, may, if he or she thinks fit, require the person who for the time being is in control of the vehicle, vessel or aircraft or mechanically propelled vehicle to bring it to a stop or refrain from moving it,

- (b) open and examine any package, parcel, box or other container which he or she reasonably suspects is being so used,
- (c) require the person who is for the time being in control of a vehicle, vessel, aircraft or any mechanically propelled vehicle mentioned in paragraph (a) or any other person found thereon or therein to—
  - (i) give his or her name and address,
  - (ii) give such information and assistance as the member or authorised person, as the case may be, considers necessary for the purposes of exercising his or her functions under this Act, and
  - (iii) produce for examination any book, record or other document which relates to any specimen of fauna or flora and which is in the person's possession or under his or her control and, if known to the person, the name and address of the owner of any specimen of fauna or flora or any part or product of fauna or flora found in the course of the search,
- (d) inspect and, if he or she thinks fit, take copies of any entry in any book, record or other document produced pursuant to a requirement made under this subsection,
- (e) if—
  - (i) such member or authorised person has reasonable grounds for suspecting that any offence has been or is being committed under the *Wildlife Acts 1976 to 2018* with or in relation to anything found in the course of the search,
  - (ii) he or she reasonably suspects that any vehicle, vessel, aircraft or mechanically propelled vehicle has been or is being used in committing an offence under the *Wildlife Acts 1976 to 2018* and it appears to him or her that it might be required in evidence in proceedings for an offence under those Acts, or
  - (iii) a document so found is a record or other document which the member or person has reason to believe might be required as evidence in proceedings for an offence under the *Wildlife Acts 1976 to 2018*,

the member or authorised person may seize and detain it and anything else so found which appears to him or her to be something which might be required as evidence in proceedings for an offence under the *Wildlife Acts 1976 to 2018*, and

- (f) require, if considered necessary in order to determine the identity or ancestry of any specimen of fauna, the taking from that specimen of a sample of blood or tissue but only if—
  - (i) the sample is taken by a veterinary practitioner registered under Part 4 of the Veterinary Practice Act 2005, and
  - (ii) in the opinion of the veterinary practitioner the taking of such a sample will not cause lasting harm to the specimen.”,

and

- (d) in section 73(2), by inserting after paragraph (ii) the following:

“(ia) require a person referred to in paragraph (ii) to give such information and assistance as he or she considers necessary for the purposes of exercising his or her functions under the *Wildlife Acts 1976 to 2018*.”.

### **Penalties and fixed payment notice**

- 10. (1) The following sections are substituted for section 74 of the Act of 1976:

#### **“Penalties**

- 74. (1) Where a person commits an offence under the *Wildlife Acts 1976 to 2018*, not being an offence mentioned in subsection (2), (3) or (4), such person is liable on summary conviction to a class A fine.
  - (2) Where a person commits an offence under section 28, 33, 34 or 38 (not being an offence to which subsection (3) applies) such person is liable—
    - (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months or to both, or
    - (b) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 2 years or to both.
  - (3) Where a person commits an offence under Part II (other than under section 28, 33, 34 or 38) or under section 45, 47, 51, 52, 53A or 58(3)
    - (b) in relation to—
      - (a) any specimen of a species of fauna specified in the Fourth Schedule,
      - (b) any specimen of a species listed in annexes to the CITES Regulations, or
      - (c) any specimen of a species of flora or fauna which is of a species for the time being declared by regulations under this section to be a species to which this subsection relates,
- such person is liable—

- (i) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months or to both, or
  - (ii) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 2 years or to both.
- (4) Where a person commits an offence under section 19(9), 21(4)(a) or 36(11) of the Wildlife (Amendment) Act 2000, such person is liable—
- (a) on summary conviction, to a class A fine, or
  - (b) on conviction on indictment, to a fine not exceeding €100,000.
- (5) Where a person commits an offence under section 69(3)(c) such person is liable—
- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months or to both, or
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years or to both.
- (6) Where the Minister is satisfied that a particular species of fauna or flora is in danger of extinction or requires special protection because of a threat to its existence throughout the State or in any specified area of the State, the Minister may by regulations declare—
- (a) the species, or
  - (b) the species in any specified area,
- to be one to which subsection (3) relates.

**Fixed payment notice**

- 74A.** (1) Where a member of the Garda Síochána or an authorised person has reasonable grounds for believing that a person is committing or has committed an offence under the *Wildlife Acts 1976 to 2018* (referred to in section 74(1)) and declared to be a fixed payment offence, he or she may serve the person with a notice, in the prescribed form stating that—
- (a) the person is alleged to have committed the offence specified in the notice,
  - (b) the person may, during the period of 21 days beginning on the date of the notice, make to the Minister, at the address specified in the notice a payment of the prescribed amount (being not more than €500) accompanied by the notice, duly completed, and
  - (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if a payment specified in the notice, accompanied by the notice, duly completed, is made during that period, no prosecution in respect of that alleged offence will be instituted.

- (2) Where notice is given under subsection (1)—
- (a) a person to whom the notice applies may, during the period specified in the notice, make to the Minister at the address specified in the notice, the payment specified in the notice, accompanied by the notice, duly completed,
  - (b) the Minister may receive the payment, issue a receipt for it and retain the money paid, and any payment 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 specified in the notice is made, accompanied by the notice, duly completed, during that period, no prosecution in respect of the alleged offence shall be instituted.
- (3) The Minister may by order declare offences, referred to in section 74(1), under the *Wildlife Acts 1976 to 2018* to be fixed payment offences for the purposes of this section.
- (4) The Minister may make regulations prescribing any matter or thing which is referred to in this section as prescribed or to be prescribed and in prescribing the amount to accompany the payment of a notice under this section may prescribe different amounts in relation to different fixed payment offences.
- (5) In a prosecution for an offence referred to in subsection (1) the onus of proving that a payment pursuant to a notice under this section has been made lies on the defendant.”.
- (2) The following provisions are repealed:
- (a) paragraph (a) of section 63 and section 68 of the Act of 2000;
  - (b) section 7 of the Act of 2010.

#### PART 4

##### HERITAGE COUNCIL

#### **Amendment of Heritage Act 1995**

#### **11. The Heritage Act 1995 is amended—**

- (a) in section 6(3), by the substituting for paragraph (b) the following:
  - “(b) co-operate with, engage with, advise and support public authorities, local communities and persons in relation to the functions of the Council, and”,

- (b) in section 14, by substituting “such allowances for expenses” for “such remuneration and allowances for expenses”, and
  - (c) in the Schedule—
    - (i) in paragraph 1, by substituting for subparagraph (1) the following:
      - “(1) The Council shall consist of a chairperson and not fewer than 8 or more than 10 ordinary members.”,
    - (ii) in paragraph 2, by substituting for subparagraph (1) the following:
      - “(1) Of the members of the Council not fewer than 4 shall be men, and not fewer than 4 shall be women.”,
    - (iii) in paragraph 6, by substituting for subparagraph (2) the following:
      - “(2) The quorum for a meeting of the Council shall be 5 members, including the chairperson, of the Council.”,
- and
- (iv) in paragraph 9—
    - (I) by deleting subparagraph (2), and
    - (II) in subparagraph (5), by deleting “, other than one referred to in subparagraph (2)”.