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BILLE IASCAIGH AN FHEABHAIL (Uimh. 2), 1951.
FOYLE FISHERIES (No. 2) BILL, 1951.

EXPLANATORY MEMORANDUM.

The Bill is arranged in eight Parts and five Schedules.

PART I.—PRELIMINARY AND GENERAL.

The seven Sections comprised in this Part deal in the main with such self-explanatory matters as Interpretation, Expenses, etc. Only two provisions call for special comment: Section 3 defines the Foyle Area which is referred to in Sections 11, 13, 14, 22, 28, 57, 62, 65, 68, 79, 80, 81 and 82 and in the Third and Fourth Schedules. This area comprises the present Merville and Derry Fishery Districts which together make up the fishery district originally created and defined as the Londonderry District by order dated the 9th July, 1855. Section 4 provides that as from the date on which the Foyle Fisheries Commission is established (Sections 10 and 11 *infra*) the fisheries enactments specified in the First Schedule will cease to apply to the Merville Area (i.e., the area corresponding to the present Merville Fishery District). The enactments in question are those which are rendered superfluous by reason of the effect of the concise code contained in Parts IV to VIII.

PART II.—ACQUISITION OF FOYLE FISHERY RIGHTS.

Section 8 authorises the Minister to enter into the agreement (jointly with the Belfast Ministry of Commerce) with the Irish Society for acquisition of a several fishery in the tidal portions of the Lough and River Foyle and its tributary the River Faughan; and further provides that on execution of the agreement there shall vest in the Minister and Ministry an indefeasible title to the fishing rights in question, the rights of the Irish Society in and to the said tidal portions and to the ground, soil and foreshore thereof being simultaneously extinguished. The provision in subsections (8) and (9) for compensation is a necessary corollary to a vesting clause in the wide terms of subsection (2). The most careful examination has, however, failed to reveal the existence of any interest which would in fact give rise to a claim for such compensation.

Section 9 declares the Act and the vesting agreement to be exempt from stamp duties.

PART III.—THE FOYLE FISHERIES COMMISSION.

Section 10 provides for separate Commencement of Part III.

Section 11 establishes the Commission, a body corporate with the dual functions of (a) the management and protection of the property acquired under Section 8 and (b) the conservation, protection and improvement of the fisheries of the entire Foyle Area. The powers, etc., of the Commission are set out in detail in the Third Schedule. The most noteworthy of the provisions in this Schedule is Article 3 whereby the Commission is authorised for a transitional period (of 3 years in the first instance) to administer at its discretion the fishery in that part of the Foyle tidal waters known as the Derry Stretch lying between Drumnashear and the defined mouth of the river. In effect this means that the Commission may, for the time being, manage the "Derry Stretch" as a private fishery.

Section 12 declares the Commission to be exempt in its use and occupation of lands and property from rates and taxes (including income tax), and provides for making good to the Donegal County Council the loss of rates entailed in such exemption.

Under Section 13 the Commission is empowered to make regulations with the force of law to enable it to discharge its functions of conservation, protection, etc., in the Foyle Area. The regulations will in part correspond to bye-laws such as the Minister is by the Fisheries Acts empowered to make for the rest of the State and in part will enable the Commission in effect to re-enact certain parts of the general Fisheries Code which are to be suspended by the operation of Section 4 supra.

Section 14 authorises the Commission to prescribe from time to time the maximum number of licences which may be issued for fishing by means other than rod and line in the tidal waters of the Foyle Area. The regulations for this purpose and for the purpose of allocating the licences under subsection (2) will be made under Section 13 and will, accordingly, bear the approval of the Minister and Ministry and will be laid before each house of the Oireachtas, which will have the usual power of annulment on resolution.

Sections 15 to 18 contain those financial provisions requisite to enable the Commission to perform its functions.

Sections 19 to 21 provide for the dissolution of the Merville Board of Conservators and for matters consequential thereon.

Section 22 with the associated Fourth Schedule constitutes an Advisory Council for the Foyle Area on a basis of representation closely allied to that of the outgoing Boards of Conservators for the Merville and Londonderry Districts.

PART IV.—RATES ON FISHERIES.

The effect of Sections 23 to 27 is to apply to the Merville Area (i.e., the former Merville Fishery District) a set of rating provisions corresponding to those of the Fisheries Act, 1925, namely that the fisheries will continue to be exempt from local authority rating, that a fishery rate will be payable to the Commission instead of to the Merville Board of Conservators as at present, and that the Minister will include the hereditaments in that area in the calculation when making a contribution to the Donegal County Council in respect of loss of rates under the provisions of Section 13 (7) of the Fisheries Act, 1925.

PART V.—TIMES OF FISHING AND ANCILLARY PROVISIONS.

PART VI.—PROTECTION OF FISHERIES.

PART VII.—POWERS OF AUTHORISED PERSONS.

Sections 28 to 67 do no more than to adapt to the circumstances of the Foyle Area the extensive provisions of the Fisheries Acts relating to the subjects indicated. The appended table shows the relationship between Parts IV to VIII of the Bill and the provisions of the Fisheries Acts, 1842 to 1949. The only innovation is the provision in Section 62 whereby on apprehension in the Merville Area of a person believed to be resident in Northern Ireland who is found committing an offence which is also an offence under Northern Ireland fishery law then the offender may be handed over to a member of the police forces of Northern Ireland to be dealt with according to law. Full reciprocity is secured in respect of the converse set of circumstances in the corresponding provision of the Northern Ireland Bill.

PART VIII.—LEGAL PROCEEDINGS.

Sections 68 to 73 and 76 to 81 do no more than to provide machinery for applying the penal provisions of the Act modelled on that obtaining in the general fisheries code.

Section 74 is a shortened form appropriate to the Foyle Area of the general provisions of the Fisheries Acts whereby evidence may be given of matters defined by regulations under Section 13 (1) (j).

Section 75 provides for forfeiture of licence and disqualification for holding a licence consequent on conviction of a licence holder for a fishery offence.

Sections 82 and 83 endow the Commission with the powers relating to the holding of public inquiries which under the Fisheries Acts are vested in the Minister.

SCHEDULES.

First Schedule sets out the enactments which by the operation of Section 4 will cease to apply to the Foyle Area.

Second Schedule comprises the draft terms of agreement referred to in Section 8.

Third Schedule prescribes the powers, etc., of the Commission established under Section 11.

Fourth Schedule defines the constitution, functions, etc., of the Advisory Council established under Section 22.

Fifth Schedule consists of the form of Appointment of private river watchers provided for under Section 56.

APPENDIX.

FOYLE FISHERIES (No. 2) BILL, 1951.

Relationship of Provisions in Parts IV to VIII to Provisions of the Fisheries Acts, 1842 to 1949.

Section of Foyle Bill	Subject Matter	Corresponding provision of Fisheries Acts (Abbreviations as per footnote)
PART IV.—RATES ON FISHERIES		
23	Rates on fisheries	1925, S. 13 : 1949 (No. 18), S. 7.
24	Liability of occupier for fishery rate	1848, S. 23.
25	Collection of fishery rate	1848, S. 26 as applied by 1925, S. 13.
26	Recovery of fishery rate	1848, S. 24 as applied by 1925, S. 13 ; 1939, S. 22.
27	Fishery rates struck by Movable Board	Transitory provision.
PART V.—TIMES OF FISHING AND ANCILLARY PROVISIONS		
28	Close seasons and close time	1842, S. 33 and bye-laws ; 1863, Ss. 20 and 23.
29	Fishing during close seasons	1924, S. 2.
30	Fishing during close time	1850, S. 46 ; 1863, S. 20.
31	Obstruction of salmon and trout	1850, S. 46 ; 1863, S. 25 ; 1924, S. 4.
32	Removal of fixed engines during close season and close time.	1949 (No. 27), S. 24.
33	Removal of nets from banks of rivers during close season.	1850, S. 34.
34	Use of nets during close season or close time.	1842, S. 66.
35	Prohibition of sale, etc., of salmon and trout unlawfully captured.	1924, S. 2 ; 1939, S. 38 ; 1949 (No. 27), S. 30.
36	Restrictions on sale and export for sale of salmon and trout.	Applies 1925, Part III as amended ; 1939, Ss. 42 and 44.
PART VI.—PROTECTION OF FISHERIES		
37	Restrictions on use of nets	1842, S. 66.
38	Mesh of nets for the taking of salmon in the sea and tideways.	1842, S. 20 ; 1845, Ss. 11 and 12.
39	Use of salmon nets near mouths of rivers.	1949 (No. 27), S. 13.
40	Restriction on possession of unlawful nets, etc.	1939, S. 24.
41	Use or possession of explosives	1924, S. 7.

Section of Foyle Bill	Subject Matter	Corresponding provision of Fisheries Acts (Abbreviations as per footnote)
42	Use or possession of deleterious or poisonous matter.	1850, S. 36.
43	Penalty for using, etc., certain devices for taking fish.	1939, S. 23; 1944, S. 2.
44	Fishing for salmon or trout in a river by cross lines.	1842, S. 70; 1949 (No. 27), S. 28.
45	Damming, etc., river or millrace for purpose of taking salmon or trout.	1842, S. 78.
46	Taking fish unlawfully killed or found dead.	1924, S. 8.
47	Taking, etc., spawn, smolts or fry of salmon or trout.	1842, S. 73.
48	Disturbing fish on spawning beds ..	1842, S. 78.
49	Penalties for taking, buying, etc., unseasonable salmon or trout.	1924, S. 3.
50	Obstructing persons lawfully fishing	1842, S. 28.
51	Placing fishing engine with intent to prevent fish entering nets lawfully set.	1842, S. 28.
52	Giving warning to persons unlawfully fishing.	1925, S. 33.
53	Appointment of Agents for fishery owners.	1850, S. 4.
PART VII.—POWERS OF AUTHORISED PERSONS		
54	Definitions	New.
55	Appointment of inspectors and river watchers.	New.
56	Appointment of river watchers by persons interested in fisheries.	1842, S. 82.
57	Limitations on exercise of Powers ..	1842, S. 84; 1848, S. 19.
58	Warrant for exercise of powers ..	1891, S. 7.
59	General powers	1842, Ss. 84 and 89; 1844, S. 1; 1848, S. 34.
60	Power of Peace Commissioner to grant warrant to enter certain places.	1842, S. 85.
61	Boarding and examination of vessels	1842, Ss. 86 and 90; 1848, S. 34.
62	Apprehension of offenders Subsection (1)	1842, Ss. 87, 88 and 89; 1844, S. 1; 1848, S. 34; 1949 (No. 27), S. 36.
	Subsections (2) and (3) ..	New.
63	Powers in relation to fishing engines, etc.	1845, S. 10; 1949 (No. 27), S. 37.
64	Powers of inspection, examination and detention.	1925, S. 24; 1949 (No. 27), S. 38.
65	Procedure consequent upon seizure of unlawful fishing engines and lawful fishing engines unlawfully used.	1949 (No. 18), S. 13; 1949 (No. 27), S. 35.
66	Protection of authorised persons ..	1925, S. 24.
67	Penalty for assaulting or obstructing authorised persons.	1842, S. 90; 1925, S. 24.
PART VIII.—LEGAL PROCEEDINGS		
68	Application of penal provisions of Act	New.
69	Penalties for offences	New.
70	Saving for acts done for artificial propagation, etc.	1949 (No. 27), S. 8.
71	Residence of body corporate ..	New.
72	Offences by body corporate	1949 (No. 27), S. 41.
73	Trial of offences	1939, S. 101.
74	Evidence of mouths of rivers, etc. ..	New.
75	Forfeiture of licences	1939, S. 13.
76	Forfeiture of fishing engines, etc., as statutory consequence of conviction.	1949 (No. 18), S. 11.
77	Non-obligation of Court to pronounce or record forfeiture.	1949 (No. 18), S. 12.
78	Disposal of fines	1949 (No. 18), S. 9.
79	Payments to Commission and Garda Síochána Reward Fund in respect of fines.	1949 (No. 18), S. 10.
80	Disposal of forfeitures and payments to Commission and Garda Síochána Reward Fund.	1949 (No. 18), Ss. 14 and 15.
81	Proof of regulations, bye-laws, etc. ..	1939, S. 102.
82	Inquiries	1842, S. 111; 1939, S. 50.
83	Powers in relation to inquiry ..	1939, S. 50.

Abbreviations used :

1842	= Fisheries (Ireland) Act, 1842.
1845	= Fisheries (Ireland) Act, 1845.
1848	= Fisheries (Ireland) Act, 1848.
1850	= Fisheries (Ireland) Act, 1850.
1863	= Salmon Fishery (Ireland) Act, 1863.
1925	= Fisheries Act, 1925.
1939	= Fisheries Act, 1939.
1949 (No. 18)	= Fisheries (Amendment) Act, 1949.
1949 (No. 27)	= Fisheries (Statute Law Revision) Act, 1949.

Roinn Talmhaíochta.

(Brainse Iascaigh).

Feabhra, 1952.