



AN BILL EASCAIGH, 1979

FISHERIES BILL, 1979

EXPLANATORY MEMORANDUM

1. The object of this Bill is to secure the more effective conservation, management and development of inland fisheries through the reorganisation and strengthening of the existing administrative structure. At present there are seventeen Boards of Conservators which are responsible for the day to day work of conservation and protection of inland fisheries. In addition, the Inland Fisheries Trust conducts large-scale development work on brown trout, coarse fish and sea angling.

2. The proposals in the Bill are based on the Report of the Inland Fisheries Commission which was published in July 1975 (Prl 4712). The Bill was prepared following consideration by the Government of that Report and of the comments thereon received from interested bodies.

3. The Bill proposes to:—

- dissolve the existing seventeen Boards of Conservators and the Inland Fisheries Trust and to replace them by seven regional fisheries boards and a Central Board;
- prescribe the functions of these boards;
- provide for the election of members of the regional boards and for the constitution of the Central Board;
- transfer the staff and property of the Boards of Conservators and the Trust to the regional boards and Central Board respectively;
- empower the acquisition by the Central Board of fisheries and rights of way to fisheries either by agreement or compulsorily subject to the right of appeal and payment of fair compensation;
- provide for a system of registration of trout and coarse fish anglers who voluntarily make an annual contribution to the cost of conservation and development of inland fisheries;
- provide an up to date legislative framework for the promotion of aquaculture;
- increase penalties for fishery offences;
- provide for the payment of a levy on the first sale of salmon.

4. Sections 1 to 5 set out the short title of the Bill, define terms which are of general application throughout the Bill, enable the Minister to make orders settling the appointed day for the purposes of the Bill and bringing the fishery year into line with the calendar year and repeal so much of the Principal Act as is specified in the First Schedule to the Bill and portion of section 33 (b) of the 1962 Act.

5. Sections 6 and 7 establish the Central Board and prescribe its functions. These functions include the co-ordination and if necessary

direction of the work of the regional boards, the formulation of a development programme for the Minister's consideration, the provision of education courses for field and protection staff and the carrying out of such research work as is necessary for its development work. The Central Board may also make recommendations to the Minister on such matters as the level of fishery rates, licence duties and rate of first sales levy. The Minister may authorise the Board to engage in the processing and marketing of fish and can assign to it further functions.

6. Section 8 provides for the transfer to the Central Board of fish hatcheries held by Boards of Conservators.

7. Section 9 empowers the Minister to create by order seven fisheries regions and, with the consent of the Minister for the Public Service, to extend or reduce this number. Orders creating fisheries regions will establish a regional fisheries board for each region, specify the number of members to be comprised in each board as well as the number to be elected and the number to be appointed by the Minister, specify the boundaries of each region and convey to each board the property (apart from hatcheries) the contracts, debts etc. of those Boards of Conservators of which it is constituted.

8. Section 10 prescribes the functions of and makes other provisions relating to the regional boards. Each regional board is required to enforce the fishery laws. It must prepare and submit to the Central Board each year an inland fisheries development programme in respect of its region. A regional board must promote and encourage the management, conservation, protection, development and improvement of the fisheries in its region. Powers in relation to the collection of rates and the issue of fishing licences are assigned to regional boards. The Minister may authorise a regional board to engage in the processing and marketing of fish.

9. Section 11 provides for the holding of elections of members of regional boards. The Minister may make Regulations providing for the nomination of different classes of candidates for election and for their election by different classes of electors. A person may be nominated as a candidate of one class only and a person may vote only once at an election. The Minister will by order fix the first election year.

10. Section 12 entitles the following persons to vote at an election of members of regional boards:—

- (1) a holder of a current ordinary fishing licence or oyster fishing licence;
- (2) in the case of the first election a person registered in the Register of Trout and Coarse Fish Anglers, in the case of any other election a person registered for three consecutive years;
- (3) a holder of a special local licence and
- (4) a fishery rate payer or his agent.

A person so entitled may vote only in the election to the regional board issuing the licence, maintaining the register or to which the fishery rate is paid.

11. Section 13 specifies the categories of persons who are disqualified from membership of regional boards.

12. Section 14 enables the Minister by order to postpone elections of members of regional boards. If such an order is made subsequent elections will be held in each fifth successive year to the year fixed by the order.

13. *Section 15* provides that if no members are elected to a regional board in an election year the existing elected members will continue in office and if the full number of elected members are not elected the board may co-opt members.

14. *Section 16* provides for the disqualification of a member of a regional board from membership if he fails to attend any meeting of the board in six consecutive months. The Minister may extend this six month period.

15. *Section 17* grants certain powers to the Central and regional boards for the purpose of improving fisheries. They may regulate the stock of fish in any fishery, monitor water quality and take materials from any watercourse. They may also carry out certain other works, enter on land and if necessary construct bridges, roads or pathways subject to the required consents.

16. *Section 18* requires each regional board to make an annual report of its proceedings to the Central Board and requires the Central Board to make an annual report in respect of its own operations and those of each regional board to the Minister. Copies of the Central Board's report must be laid before each House of the Oireachtas.

17. *Section 19* requires the Central Board and regional boards to prepare each year estimates of their proposed expenditure in the coming year, all of which are submitted to the Minister by the Central Board. The Minister may accept, modify or reject the estimate. In the event of rejection of an estimate a fresh estimate requires to be submitted. The Central Board or a regional board may not incur any expenditure other than that included in an estimate and confirmed by the Minister.

18. *Section 20* enables the Minister to pay grants to the Central Board out of moneys provided by the Oireachtas and out of the Salmon Conservancy Fund. The Central Board is enabled to pay such amounts to regional boards as the Minister may approve. Grants to regional boards will have regard to the amount of contributions paid on registration by trout and coarse fish anglers and the Central Board may specify the maximum amount that may be spent by any regional board in the development of trout and coarse fish waters.

19. *Section 21* requires the Central and regional boards to keep accounts which must be submitted annually to the Comptroller and Auditor General. Regional boards must submit their accounts and the Comptroller and Auditor General's report thereon to the Central Board. The Central Board must submit its own and the regional boards' accounts with the reports of the Comptroller and Auditor General thereon to the Minister. The Minister will lay the accounts before each House of the Oireachtas.

20. *Section 22* enables the Central and regional boards to borrow money by bank overdraft or otherwise with the consent of the Minister and the Minister for Finance. A regional board must make any application to borrow through the Central Board.

21. *Section 23* enables the Minister to remove all members of the Central Board or any regional board for non-compliance with his directions or if after an inquiry he is satisfied that the performance of its functions by any board has been unsatisfactory. The Minister may then appoint in writing a person or persons to exercise the functions of such a board and he may at any time cause a new election of members to be held.

22. *Section 24* enables the Central and regional boards to appoint such number of staff as are necessary and determine the conditions of service of staff, other than those of Chief Officers of boards, subject to the approval of the Minister and the Minister for the Public Service. These Ministers will determine the conditions of service of Chief Officers of boards. The appointment of Chief Officers will.

subject to the provisions of sections 26 and 27, be made by the Boards concerned with the concurrence of the Minister.

23. Section 25 provides that the instrument of appointment of an officer of the Central or any regional board must be on the prescribed form and sealed with the seal of the board. An instrument prepared in such manner will be admissible as *prima facie* evidence of the appointment in any legal proceedings.

24. Section 26 provides that the following offices will be filled through the Local Appointments Commission:—

- (1) Chief Officer of the Central and regional boards:
- (2) Professional posts in the Central and regional boards:
- (3) Such other posts as the Minister with the concurrence of the Minister for the Public Service and the Local Appointments Commissioners may designate.

25. Section 27 enables the Minister to appoint the first Chief Officers of the Central and regional boards on the recommendation of the Local Appointments Commission.

26. Section 28 provides for the transfer of the whole-time staff of the Inland Fisheries Trust to the Central Board without any worsening of their remuneration or conditions of service. Provision is also made for the transfer of staff from the Central Board to the regional boards. The same conditions of service, restrictions, requirements and obligations to which an employee was subject before his transfer will apply, until a staff scheme under Section 31 comes into force. The Central Board after consultation with any recognised staff associations or trade unions concerned may redistribute the duties assigned to particular grades or classes of staff.

27. Section 29 provides for the transfer of the whole-time staff of Boards of Conservators to regional boards without any worsening of their remuneration or conditions of service. The remuneration and conditions of service of employees transferred from the Central Board to a regional board who were on the whole-time staff of the Inland Fisheries Trust are also subject to the same protection. The same conditions of service, restrictions, requirements and obligations to which an employee was subject before his transfer will apply until a staff scheme under section 31 comes into force. A regional board after consultation with any recognised staff associations or trade unions concerned may redistribute the duties assigned to particular grades or classes of staff. Provision is also made for the transfer of staff from a regional board to the Central Board.

28. Section 30 provides that, where a former staff member of the Inland Fisheries Trust or of a Board of Conservators is in the service of the Central or any regional board, his superannuation allowances will not be worsened.

29. Section 31 provides for the preparation of a staff scheme by the Central Board following consultation with regional boards and any recognised staff associations or trade unions concerned and for its implementation subject to the approval of the Minister and the Minister for the Public Service. The scheme will provide for the regulation, control and management of staff of the Central Board and regional boards, the transfer of staff between boards and will indicate the remuneration, tenure of office, qualifications for appointment and conditions of service in respect of different grades of staff.

30. Section 32 provides for the preparation of a superannuation scheme or schemes by the Central Board following consultation with the regional boards and for its implementation, if approved by the Minister and the Minister for the Public Service. Disputes in relation to a claim of any person to, or the amount of, any allowance payable

will be determined by the Minister and the Minister for the Public Service. Every approved scheme will be laid before each House of the Oireachtas and may be annulled by resolution within twenty one days.

31. Section 33 provides for the dissolution of Boards of Conservators and the termination of the appointment of the administrators of the Cork and Drogheda Districts.

32. Section 34 provides for the dissolution of the Inland Fisheries Trust and the transfer of its property, contracts, debts, liabilities etc. to the Central Board. It provides also for the continuation in force of the Trust's superannuation schemes.

33. Section 35 preserves the right of the ordinary subscribing member of the Trust to fish in Trust fisheries for the remainder of the period to which the last annual subscription paid by him to the Trust would have related.

34. Section 36 provides that the Minister may with the consent of the Minister for Finance and after consulting any other Minister concerned authorise the acquisition by the Central Board of a fishery to enable a development programme to be carried out or if it is expedient for the purpose of managing, operating, protecting, conserving and developing the fishery in accordance with the programme. A fishery in respect of which an authorisation is given may be acquired by agreement by the Central Board or in default of agreement by order. A person aggrieved by an authorisation or an order may appeal to the Arbitrator referred to in section 43.

35. Section 37 enables the Minister to make an order transferring to himself or the Central Board the bed and soil of a river or lake which is contiguous to a freshwater weir fishery owned by the Minister or the Central Board and which appears necessary for the maintenance of such fishery. A copy of an order under this section must be served on the owner of the bed and soil of the river or lake affected.

36. Section 38 provides that the Central or a regional board may apply to the Minister for an order to acquire compulsorily rights of way to fisheries. The Minister may, if he considers it necessary to enable the applicant to perform a function under this Act or to enable fishermen to gain access to fishing waters, make an order creating the required right of way or a right of way by another route or he may refuse the application. The owner of property affected may appeal to the Arbitrator. The Arbitrator may confirm the order as made, confirm the order but alter the route or revoke the order. If the Minister refuses to make an order the applicant may appeal to the Arbitrator who may confirm the refusal or make an order creating either the required right of way or a right of way by another route. If the Minister makes an order creating a right of way other than the right of way sought, the applicant may appeal to the Arbitrator who may confirm the order or vary the order creating a right of way different from that specified in the order.

37. Section 39 enables the Commissioners of Public Works by order to transfer its fisheries and any related rights to the Minister or to the Central Board with the approval of the Minister and the Minister for Finance.

38. Section 40 enables the Land Commission by order to transfer its fisheries and any related right to the Minister or to the Central Board with the approval of the Minister and the Minister for Finance.

39. Section 41 enables the Minister with the consent of the Minister for Finance to transfer his fisheries to the Central Board.

40. *Section 42* provides for the payment of compensation and such interest thereon as may be fixed by the Minister for Finance, in respect of any fishery or a related right acquired under this Act and in respect of any diminution in the value of any right in relation to a property caused by such acquisition. Where agreement in relation to the amount of the compensation is not reached, arbitration procedures under the Acquisition of Land (Assessment of Compensation) Act, 1919 will be adopted. In the case of an acquisition under section 36, the official arbitrator under that Act or the Central Board will have regard to the value and profitability of the fishery in fixing the amount of compensation.

41. *Section 43* provides for the appointment of an Arbitrator to hear appeals under this Act (other than under section 42).

42. *Section 44* enables the Minister to sell any fishery or fishing right or any business ancillary to the operation of a fishery, such sale and sale price to be subject to the concurrence of the Minister for Finance and the proceeds to be disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

43. *Section 45* provides that offences under certain sections of the Fisheries Acts may be tried on indictment.

44. *Section 46* enables District Courts and Circuit Courts to hear and determine proceedings in relation to certain offences which are not committed in their areas of jurisdiction.

45. *Section 47* provides for the amendment of Section 309 of the Principal Act which arises out of the provisions of the Fisheries (Amendment) Act, 1978 and this Bill, enabling certain offences to be tried summarily.

46. *Section 48* increases the penalties for offences under the Principal Act and the Fisheries (Amendment) Act, 1962.

47. *Section 49* extends section 90 of the Principal Act, which enables the Court to disqualify a person convicted of any fishery offence from holding a fishing licence, so as to direct the Court to make an order disqualifying a person from holding a commercial licence for three years on conviction for a third or subsequent offence under specified sections of the Fisheries Acts.

48. *Section 50* enables authorised officers to take a boat believed to contain unlawfully captured salmon to port, to detain the boat and its occupants until it is searched and to use such force as is necessary in bringing the boat to port. A District Justice or Peace Commissioner is enabled to order the detention of the boat and the person or persons brought before him until they have been tried in a District Court if he is satisfied that proceedings are or are about to be instituted.

49. *Section 51* makes it an offence to engage in aquaculture save in accordance with a fish culture licence, an oyster bed licence or an oyster fishery order under the Principal Act or in accordance with a licence under this section. If the Minister is satisfied that it would be in the public interest to do so following consideration of views, he may make an order designating an area where aquaculture may be carried out in accordance with a licence under this section. An appeal against the order may be made to the High Court within twenty eight days of its being made. An order may be revoked in the public interest. The Minister may issue a licence with such conditions attached as he sees fit enabling a person to engage in aquaculture. A licence fee may be charged with the consent of the Minister for Finance. A licence may be revoked or amended in the public interest and may also be revoked if its conditions are not complied with. If

a licence is revoked compensation may be paid and be determined in default of agreement in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919.

50. Section 52 enables the Minister to make an order providing for the payment to him of a levy on the first or only sale of salmon. Where the first or only sale is by a licensee under a fishing licence to a licensed salmon dealer or to the proprietor of a hotel or restaurant the levy shall be paid by such dealer or proprietor and in any other case by the seller on the first or only sale. The sale of salmon by a licensed fisherman to a person for his own personal use is exempt. The Minister may after consultation with the Minister for Finance by regulations prescribe the rate of levy to be paid and, in the case of sales where the purchaser is a purchaser outside the State, determine the prices to be attributed to such sales. The Minister may also make regulations requiring a person by whom levy is payable to keep records of the weight of salmon handled by him and the price paid by him or to him therefor. A person must allow these records to be examined and furnish such returns as may be required. If the Minister believes that a higher price was paid for a salmon than the price recorded he may determine a higher price for the purpose of assessment of levy. Any levy which is unpaid can be recoverable in a Court of competent jurisdiction and a certificate that such sum has not been paid can be *prima facie* evidence of the liability.

51. Section 53 provides that each regional board will establish a Register of Trout and Coarse Fish Anglers. Persons who pay an annual subscription, which will be fixed by the Minister with the approval of the Minister for Finance, and former life members of the Inland Fisheries Trust will be registered in the Register as a trout angler or a coarse fish angler depending on the category they request. If no category is requested they will be registered as non-voting.

52. Section 54 entitles persons registered in the Register of Trout and Coarse Fish Anglers to fish in any fishery of the regional board maintaining the register or in any Central Board fishery in that regional board's region. It also entitles former life members of the Inland Fisheries Trust to fish in former Trust fisheries which have been transferred to the Central Board.

53. Section 55 empowers the Minister to do all things he considers necessary to operate, as a commercial undertaking, a fishery owned by him.

54. Section 56 indemnifies the Minister and Central Board against any claim for flooding or consequential damage caused by any structure which is part of a fishery acquired by or vested in him or the Central Board unless its height has been increased or any of its openings closed to an extent to which they could not have been lawfully closed.

55. Section 57 provides that the vesting of property in the Central Board or any regional board shall be exempt from stamp duties.

56. Section 58 extends the power of the Minister in the Principal Act to grant licences for the culture of fish by enabling him to charge fees prescribed by regulations with the consent of the Minister for Finance, in respect of the licences. This section also makes it an offence to engage in the culture of fish without a fish culture licence.

57. Section 59 adapts the power of the Minister under the Principal Act to order inquiries into the performance of any Board of Conservators to apply to the Central Board or any regional board.

58. Section 60 amends the Principal Act, so as to invalidate commercial fishing for salmon and eels where the fishing is being carried out by a person other than the licensee.

59. *Section 61* amends subsection (9) of section 67 of the Principal Act so as to enable provision to be made for inclusion on the face of each commercial licence issued, of details (name and address) of one nominee of the licensee who, with the approval of the Board that issued the licence, would be entitled to fish the licence.

60. *Section 62* amends the Principal Act so as to increase the licence duty in respect of fishing in scheduled trout waters. The original provisions, however, have not been brought into operation.

61. *Section 63* amends the Principal Act so as to increase to £25 the fee payable for a salmon dealer's licence and a salmon exporter's licence and provides that this fee is no longer an excise duty.

62. *Section 64* amends the Principal Act so as to remove the obligation on the Minister to hold a public inquiry in the case of an amendment to an oyster fishery order.

63. *Section 65* limits the power of the Minister under the Principal Act to prosecute offences to apply only to the prosecution of offences summarily.

64. *Section 66* is a drafting amendment to the Fisheries (Amendment) Act, 1978 which extends the grounds on which a District Justice may determine whether the offence at issue constitutes a minor offence fit to be tried summarily.

65. The Bill has five schedules.

- (1) The First Schedule indicates the enactments being repealed under section 5.
- (2) The Second Schedule sets out provisions relating to the constitution and procedure of the Central Board and regional boards and conditions and term of office of their members.
- (3) The Third Schedule gives details of the properties transferred to the Central Board by section 8.
- (4) The Fourth Schedule adapts various sections of the Principal Act and the Fisheries (Amendment) Act, 1962 to apply to the proposed new regime.
- (5) The Fifth Schedule sets out procedures and various provisions in relation to the acquisition of fisheries and rights of way under sections 36, 37 and 38.

*An Roinn Iascaigh agus Foraoiseachta,
Feabhra, 1979.*

56. *Section 28* extends the power of the Minister in the Principal Act to grant licences for the culture of fish by enabling him to charge fees prescribed by regulations with the consent of the Minister for Finance in respect of the licences. This section also makes it an offence to engage in the culture of fish without a fish culture licence.

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