



AN BILLE UM SHÁBHÁILTEACHT MHUIRÍ 2004
MARITIME SAFETY BILL 2004

(as passed by Seanad Éireann 4 May 2005)

MEABHRÁN MÍNITHEACH AGUS AIRGEADAIS
EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

The purposes of this Bill are to strengthen the law against improper use of certain recreational craft [**PART 2**], to outlaw reckless behaviour in operating or on board vessels generally and to promote good practice in operating vessels generally [**PART 3**], to update safety regulation-making provisions for passenger boats, fishing vessels and pleasure craft [**PART 4**] and to update penalty and other provisions of certain related Acts [**PART 5**].

PART 1 of this Bill contains standard technical provisions for short title and collective citation and interpretation of the Bill, **for repeal of superseded provisions of the Merchant Shipping Act 1992 (as amended) and for the Exchequer to bear the cost of administration of the Bill by certain Ministers.**

PART 2 strengthens the law against improper use of mechanically propelled personal watercraft (e.g. jet skis) and other recreational craft (of not more than 24 metres in length) in waters in the State or in seas around it, in the interests of public safety and to prevent nuisance in public recreational areas and to protect natural and other heritage areas. It confers clear Bye-law making powers to regulate and control the operation of craft of the types in question, which is of considerable concern, on the following:

- (a) county councils and city councils in respect of waters not under the jurisdiction of (b) to (f) below [**but in the case of (c), they only can make bye-laws where (c) agrees**];
- (b) **Waterways Ireland, in relation to waters under its control or management;**
- (c) **harbour authorities (to which the Harbours Acts 1946 to 1976 apply);**
- (d) harbour companies (within the meaning of the Harbours Acts 1996 and 2000);
- (e) the Minister for Communications, Marine and Natural Resources in relation to the 5 Fishery Harbour Centres (Howth, Dunmore East, Castletownbere, Ros a'Mhíl and Killybegs);

(f) Iarnród Éireann (in relation to e.g. Rosslare Harbour).

Fines of up to €2,000 on summary conviction for offences under the Bye-laws are provided for, as well as fixed payment notices (“on-the-spot-fines”), and provision is also made for the seizure, detention and forfeiture of craft involved in offences and for disqualification of serious offenders from operating craft of the types in question, in the interest of public safety, etc.

PROVISIONS OF BILL

PART 1 (SECTIONS 1 TO 4)

PRELIMINARY AND GENERAL

Section 1 is a standard feature. It gives the short title of this Bill, for ease of reference, and provides for collective referencing of relevant provisions of this Bill with the Merchant Shipping Acts 1894 to 2000, **the Harbours Acts 1946 to 1976**, the Fishery Harbour Centres Acts 1968 to 1998, **the Canals Act 1986**, **the Shannon Navigation Act 1990** and the Harbours Acts 1996 and 2000, as appropriate.

It also creates a new collective citation — **Maritime Safety Acts 1992 to 2005** — for related statutory provisions, to facilitate restatement of related primary legislation provisions in a consolidated form for ease of access for the public and for ease of administration, in line with the Government’s 2004 White Paper “**REGULATING BETTER**”.

Section 2 is also a standard feature. It defines certain terms and references so as to avoid unnecessary duplication of definitions and references elsewhere in this Bill. Certain terms and references used in *PART 2* of this Bill are defined in *section 5* of this Bill.

NEW SECTION 3 provides for the repeal of 5 sections of the merchant Shipping Act 1992 (No. 2) as amended by the Merchant Shipping (Investigation of Marine Casualties) Act 2000 (No. 14) which are superseded by provisions in PARTS 3 and 4 of the Bill.

NEW SECTION 4 is a standard provision for the Exchequer to bear the cost of administration of the Bill by the Minister for Communications, Marine and Natural Resources and the Minister for the Environment, Heritage and Local Government.

PART 2 (SECTIONS 5 TO 19)

PERSONAL WATERCRAFT AND RECREATIONAL CRAFT

Section 5 defines certain terms and references used in *PART 2* of this Bill, so as to avoid unnecessary repetition of definitions and references in that Part.

Section 6 confers Bye-law making powers to regulate or control the operation of mechanically propelled personal watercraft and other recreational craft on the following —

- (a) county councils and city councils in respect of waters not under jurisdiction of (b) to (f) below **[but in the case of (c), they only can make bye-laws where (c) agrees];**

- (b) **Waterways Ireland, in relation to waters under its control or management;**
- (c) **harbour authorities (to which the Harbours Acts 1946 to 1976 apply);**
- (d) harbour companies (within the meaning of the Harbours Acts 1996 and 2000);
- (e) the Minister for Communications, Marine and Natural Resources in relation to the 5 Fishery Harbour Centres (Howth, Dunmore East, Castletownbere, Ros a'Mhíl and Killybegs);
- (f) Iarnród Éireann (in relation to e.g. Rosslare Harbour).

Subsection (2) creates an offence for breach of a Bye-law under *subsection (1)* prohibiting the use of specified waters or part thereof, subject to a fine on summary conviction not exceeding €1,000 for a first offence or €2,000 for a second or subsequent offence.

Subsection (3) creates an offence for breach of a Bye-law under *subsection (1)* relating to launching, mooring or berthing craft, conditions to be complied with in operating craft, or maximum speed limits for craft, subject to a fine not exceeding €1,000 on summary conviction for any such offence.

Subsection (4) makes it an offence, subject to a fine not exceeding €1,000 on summary conviction, for a person allowing himself or herself to be carried on or towed by a craft in an area prohibited by a Bye-law under *subsection (1)*.

Subsection (5) obliges an authority which makes a Bye-law under *subsection (1)* prohibiting the use of specified waters or part thereof to position and maintain a Notice of the prohibition in conspicuous places on or near the waters concerned.

Subsection (6) makes it clear that it is only the elected members who can make Bye-laws under this section on behalf of a county council or city council.

Subsection (7) requires an authority to consult with the Minister for the Environment, Heritage and Local Government before making Bye-laws regulating or controlling the operation of craft of the types in question in, or adjacent to, a natural heritage area or a monument or wreck protected under the National Monuments Acts 1930 to **2004**.

Section 7 sets out standard procedural requirements for the making of Bye-laws under *section 6* of this Bill by any of the authorities specified in *section 5* of this Bill.

Subsection (1) requires the publication by the relevant authority of a statutory Notice of its intention to make Bye-laws and the intended purpose thereof, where and when a draft of the Bye-laws is freely available for public inspection for at least one month, the availability of a copy of the draft Bye-laws on payment of such fee as the authority may have fixed, and the period (not less than 7 days after the end of the period for public inspection of the draft) within which interested persons may make a submission to the authority in relation to the draft Bye-laws.

Subsection (2) copperfastens *subsection (1)* by specifically obliging the relevant authority to have the draft of the proposed Bye-laws available for public inspection and to arrange for the supply of a copy on request from any interested person.

Subsection (3) obliges the authority to duly consider submissions about proposed Bye-laws made to it under *subsection (1)* and empowers it to proceed afterwards with the making of Bye-laws as it may decide.

Subsection (4) provides that Bye-laws under *section 6* shall come into operation on such day as is specified in the Bye-laws or, if no such date is specified therein, 30 days after the date on which the Bye-laws are made.

Subsection (5) provides for the production and certification of Bye-laws for the purposes of their admissibility in court proceedings.

Subsection (6) obliges each authority which makes Bye-laws to publish a copy in the *Iris Oifigiúil* and to publish a newspaper Notice (in the detail required by *subsection (7)*) advising of the making of the Bye-laws and of where a copy thereof may be purchased or inspected.

Subsection (8) obliges each authority to make the necessary arrangements for the public to inspect and obtain a copy of the Bye-laws made by it.

Subsection (9) ensures that Bye-laws would not be invalidated by an authority's failure to publish a Notice required under *subsection (6)* and *(7)* or to make a copy of the Bye-laws available.

Subsection (10) obliges the authority concerned to maintain a publicly-accessible Register of all Bye-laws made by it under *section 6*.

Subsection (11) is a technical interpretation provision to signify that all references in this section to bye-laws mean bye-laws made under this section.

Section 8 is a necessary enforcement provision for authorised persons and members of the Garda Síochána to stop the operation and secure the removal from the water of craft of the types in question in a prohibited area or believed to be in breach of Bye-laws under *section 6* of this Bill when enacted, or is being operated without due consideration or carelessly or dangerously (*subsection (1)*).

Subsection (2) makes it an offence, subject to a fine on summary conviction not exceeding €2,000, for a person to unreasonably fail to stop the operation or to remove a craft from the water under *subsection (1)*.

Section 9 is a further enforcement provision to permit the seizure and detention, in the public interest, of craft suspected to be involved in serious offences under this Bill, or being carelessly or dangerously operated (which is an offence under **provisions of the Merchant Shipping Act 1992 which are being updated and restated in NEW SECTIONS 22 and 23 of the Bill**) (*subsection (1)*).

Subsection (2) ensures that the release of any craft seized or detained under *subsection (1)* can be made conditional on payment of a charge to cover the reasonable costs to the relevant authority or Garda Síochána in relation to that seizure or detention.

Section 10 prohibits the operation of craft of the types in question without reasonable consideration or at unreasonable speed (*subsection (1)*), and makes it an offence to ignore the prohibition, subject to a fine on summary conviction not exceeding €1,000 (*subsection (2)*).

Section 11 makes clear provision for the stopping, boarding and inspection of craft of the types in question by authorised persons or a member of the Garda Síochána and penalises failure to cooperate with them in the matter.

Subsection (1) provides the necessary stopping, boarding and inspection powers.

Subsection (2) obliges a person who is stopped under *subsection (1)* to furnish his or her name and address.

Subsection (3) makes it an offence for a person to unreasonably fail to comply with *subsection (1)* or *(2)*, subject to a fine on summary conviction not exceeding €1,000 for a first offence, or €2,000 for a second or subsequent offence.

Section 12 makes it an offence, subject to a fine on summary conviction not exceeding €5,000 and/or imprisonment for a term not exceeding 3 months, for a person to obstruct an authorised person or a member of the Garda Síochána exercising functions under this Bill (*subsection (1)*), and provides that a member of the Garda Síochána may arrest a person without warrant if there are reasonable grounds to believe that that person is committing or has committed an offence under this section (*subsection (2)*).

NEW SECTION 13 provides power of arrest without warrant of suspected offenders to Gardaí and “authorised persons” with requisite training. “Authorised persons” will be obliged to hand-over an arrested person to a member of the Garda Síochána as soon as possible to be dealt with according to law. The powers for “authorised persons” are closely modelled on those in section 54(3) of the Harbours Act 1996 (No. 11) for the “harbour police” of Dublin Port Company and Dun Laoghaire Port Company.

Section 14 supplements the penalties prescribed for the offence of dangerous operation of craft of the types in question by empowering the Court to also order the forfeiture of that craft, for the benefit of the **authority within whose functional area the offence was committed**, on the conviction of the owner or operator for that offence on indictment (*subsection (1)*).

Subsection (2) provides for the giving effect to the forfeiture of craft pursuant to the court order by an authorised person or a member of the Garda Síochána, as may be appropriate.

Subsection (3) ensures that the possessor of craft under a hire-purchase or letting agreement is included in the term “owner.”

Section 15 which provides for the automatic disqualification for a period of up to 2 years (but more where dangerous operation is involved) of convicted offenders from operating craft of the types in question, is a further necessary supplementation of the penalties imposed by the Court for the offence of dangerous operation of a craft, or for an offence under this Bill.

Subsection (1) provides for automatic disqualification from operating craft by a convicted offender, for a period not exceeding 2 years

where careless operation of craft is involved, or where a second or subsequent offence under this Bill is committed within 2 consecutive years but disqualification for more than 2 years would automatically apply where dangerous operation is involved, subject to *subsection (2)*.

Subsection (2) enables a person disqualified for more than 6 months from operating craft to request the court in question to review the period of disqualification; that court may refuse the application or decide to alter the period of disqualification but not so as to reduce the period of disqualification below 6 months.

Subsection (3) rules out a further application for review of a disqualification until after 6 months have elapsed since the court refused an application.

Subsection (4) makes it an offence, subject to a fine on summary conviction not exceeding €5,000 and/or imprisonment for a term not exceeding 3 months, for a person to operate craft of the types in question while disqualified from doing so.

Section 16 makes enabling provision for fixed payment notices (“on-the-spot-fine”) as an alternative to prosecution for certain offences under *PART 2* of this Bill when enacted, if appropriate.

Subsection (1) sets out the procedure for an authorised person or member of the Garda Síochána to serve fixed payment notices on offenders and also the content of such notices, and specifies a non-recoverable fixed payment of €150 for any one of the more serious offences mentioned, or €50 for any one of the lesser ones mentioned in the subsection, which payment if made to the relevant authority specified in *section 5* of this Bill within the period of 21 days, beginning on the date of the notice, would avoid prosecution of the person concerned for the offence in question. The fixed payment amounts may be increased by Ministerial Regulations, which, under *subsection (4)*, are subject to the statutory requirement to be presented to both Dáil Éireann and Seanad Éireann, either of which could resolve to annul the Regulations within 21 days after the Regulations are presented to it.

Subsection (2) copperfastens the fixed payment notice facility afforded under *subsection (1)* by requiring the relevant authorities to acknowledge receipt of the appropriate fixed payment made within the 21 day period allowed and not to prosecute the offender for the offence in question.

Subsection (3) requires the person prosecuted for an offence under *PART 2* of this Bill to prove that the required fixed payment was, in fact, paid.

Subsection (5) ensures that moneys received by the Minister for Communications, Marine and Natural Resources in relation to Fishery Harbour Centres go into the statutory Fishery Harbour Centres Fund.

Section 17 makes provision for authorised persons (other than members of the Garda Síochána who have general law enforcement powers as well as specific ones set out in the Bill) to give effect to the regulation and control of operation of craft of the types in question under this Bill.

Subsection (1) specifically empowers the authorities specified in *section 5* of this Bill when enacted to appoint authorised persons to act on their behalf.

Subsection (2) empowers the Minister for Communications, Marine and Natural Resources to appoint persons to enforce the Bill in any Irish waters.

Subsection (3) ensures that authorised persons appointed by a city or county council can act on behalf of that city or county council within the functional area of that city or county council.

***Subsection (4)* ensures that authorised persons appointed by Waterways Ireland can enforce this Bill in relation to waters under its control or management.**

***Subsection (5)* ensures that authorised persons appointed by harbour authorities (to which the Harbours Acts 1946 to 1976 apply) can enforce this Bill in the harbours of those authorities.**

***Subsection (6)* ensures that authorised persons appointed by harbour companies (within the meaning of the Harbours Acts 1996 and 2000) can enforce this Bill in the harbours of those harbour companies.**

Subsection (7) empowers the Minister for Communications, Marine and Natural Resources to appoint authorised persons in relation to the 5 Fisheries Harbour Centres under the management of the Minister.

Subsection (8) ensures that authorised persons appointed by Iarnród Éireann can act on its behalf under this Bill when enacted in relation to any harbour under its control or management.

Subsection (9) provides for authorised persons to be issued with a warrant of appointment to be presented on request when they are on duty.

Subsection (10) ensures that an authorised person can be assisted by other persons as may be necessary for the authorised person to function under this Bill.

***Subsection (11)* makes it clear that in enforcing this Bill authorised persons appointed by the Minister for Communications, Marine and Natural Resources and members of the Garda Síochána may enter any Irish waters and adjoining land, because of their essential nationwide remit.**

***Subsection (12)* is designed to ensure that efficient and effective enforcement arrangements could be agreed by neighbouring authorities.**

Section 18 ensures that the Bill's provisions for the regulation and control of the operation of craft of the types in question do not apply to craft operated in the course of duty by any of the authorities specified in *section 5* of the Bill or by the law enforcement agencies of the State or by the Central Fisheries Board or the 7 Regional Fisheries Boards or by the Irish Coast Guard or the Commissioners of Irish Lights or by the Royal National Lifeboat Institution, or used *bona fide* in law enforcement, emergency or rescue missions.

Section 19 makes provision for the prosecution by the relevant authority of summary offences under *PART 2* of this Bill and recovery of costs by and payment of fines to that authority in relation to successful prosecutions. Prosecutions in the case of indictable offences may only be taken by or at the suit of the Director of Public Prosecutions in accordance with the Prosecution of Offences Act 1974 (No. 22).

Subsection (1) authorises the relevant authority specified in *section 5* of the Bill to bring proceedings for summary offences under *PART 2* of this Bill.

Subsection (2) provides for the recovery by the authority concerned of costs incurred by it in any successful prosecutions under *subsection (1)* while

Subsection (3) ensures that that authority gets the benefit of any fines imposed on conviction of the offence prosecuted by it.

Subsection (4) ensures that fines received by the Minister for Communications, Marine and Natural Resources in relation to a Fishery Harbour Centre go into the statutory Fishery Harbour Centres Fund.

NEW PART 3 (SECTIONS 20 TO 41)

PROHIBITIONS RELATING TO VESSELS — CODES OF PRACTICE FOR THE SAFE OPERATION OF VESSELS

NEW SECTION 20 prohibits the sailing of unseaworthy vessels. It makes it an offence for the person in command or in charge (*subsection (1)*) and the owner or hirer (*subsection (2)*) of such a vessel being operated on the water if they know or should have discovered by ordinary care that the vessel is unseaworthy. *Subsection (3)* provides for a fine and / or imprisonment on conviction by the Court for such offences. *Subsection (4)* is a standard defence provision to allow for actions taken in good faith.

NEW SECTION 21 provides for the seizure of unseaworthy vessels by the Gardaí and other authorised persons (*subsection (1)*). *Subsection (2)* allows for the recoupment of reasonable costs involved in seizing and detaining and surveying any such vessel as a condition for the release of the vessel.

NEW SECTION 22 updates and restates section 35 of the Merchant Shipping Act 1992, as inserted by section 44(11) of the Merchant Shipping (Investigation of Marine Casualties) Act 2000, to outlaw the careless navigation or operation of vessels generally.

NEW SECTION 23 updates and restates section 36 of the Merchant Shipping Act 1992, as inserted by section 44(11) of the Merchant Shipping (Investigation of Marine Casualties) Act 2000, to outlaw the dangerous navigation or operation of vessels generally.

NEW SECTION 24 ensures that in the case of a yacht or sailing boat powered wholly or mainly by sail, a charge of careless or dangerous navigation or operation could not be made against a crew member who is neither the skipper nor another person helming the yacht or sailing boat.

NEW SECTION 25 ensures that a person would not be regarded as committing an offence of careless or dangerous navigation or

operation of a vessel if he or she was acting under direct instructions from the person in command or in charge of the vessel and it was not unreasonable in the circumstances to so act, or was directed to perform tasks which could not be reasonably performed in the circumstances or without proper instruction.

NEW SECTION 26 makes it an offence for a person to endanger persons on board a vessel through recklessness or lack of seamanship (*subsection (1)*). *Subsection (2)* is a standard defence to allow for action taken in good faith. *Subsection (3)* provides for a fine and/or imprisonment on conviction by the Court for such an offence.

NEW SECTION 27 makes clear provision in primary legislation for prohibiting (*subsection (1)*) and penalising (*subsection (2)*) the operation of any vessels in Irish waters and any Irish ships in waters anywhere by any person under the influence of alcohol or drugs or both. These provisions are being made in primary legislation so as to avoid challenge to the prohibition.

NEW SECTION 28 complements *NEW SECTION 27*. It makes clear provision in primary legislation for prohibiting persons while on board any vessel in Irish waters or on board any Irish ship in waters anywhere from consuming alcohol or drugs or both which could endanger other persons on board the vessel or on the water or cause a nuisance (*subsection (1)*). The person in command or charge of the vessel is obliged to ensure compliance with that prohibition (*subsection (2)*). *Subsection (3)* provides for a fine and/or imprisonment on conviction by the Court for an offence under *subsection (1)*. These provisions are being made in primary legislation so as to avoid challenge to the prohibition.

NEW SECTION 29 prohibits and penalises disruptive behaviour on board any vessel in Irish waters or on board any Irish ship in waters anywhere. It is modelled on section 65(2)(3) of the Air Navigation and Transport Act 1998 (No. 24).

NEW SECTION 30 makes it an offence for anyone on board any vessel in Irish waters or on board any Irish ship in waters anywhere to endanger the vessel or persons on board (*subsection (1)*), subject to specific penalties on conviction by the Court for the offence (*subsection (2)*).

NEW SECTION 31 makes it an offence for anyone to wilfully disrupt safety, etc., procedures on board any vessel in Irish waters or on board any Irish ship in waters anywhere (*subsection (1)*), subject to specific penalties on conviction by the Court for the offence (*subsection (2)*).

NEW SECTION 32 makes it an offence to disobey proper and reasonable instructions to safeguard life given on a passenger boat or passenger ship, subject to specific penalties on conviction by the Court for the offence.

NEW SECTION 33 authorises the Minister for Communications, Marine and Natural Resources to prepare and publish Safety Codes and to revise or revoke them as necessary following public consultation (*subsections (1), (2) and (4)*). *Subsection (3)* requires the Minister to publish notice in the *Iris Oifigiúil* about any Safety Codes published or amended, while *subsection (5)* requires a similar notice for any revocations: this is a standard requirement for public notification of statutory documents. *Subsection (6)* requires the availability of all current Safety Codes for inspection on the Department's WEBSITE (www.dcmnr.gov.ie) and principal office and other

suitable locations. *Subsection (7)* obliges persons in charge of, or crewing, vessels to be aware of and to follow any current Safety Codes relating to their vessels.

NEW SECTION 34 ensures that, while it would not be an offence for a person to fail to comply with a Safety Code, the Court may, when trying an alleged offender for any of a variety of serious offences involving vessels, be guided by any current Safety Codes applicable as to the appropriate course of action to be followed in the particular circumstance (*subsection (1)*). *Subsection (2)* is a standard provision to secure the admissibility of current Safety Codes in Court proceedings referred to in *subsection (1)*.

NEW SECTION 35 makes comprehensive provision for the appointment by the Minister for Communications, Marine and Natural Resources of authorised persons for the purposes of this Part. *Subsection (1)* is the main provision. *Subsection (2)* is a standard provision for enforcement personnel to be accompanied by any back-up personnel needed. *Subsection (3)* requires the furnishing of warrants of appointment under this Section to persons other than members of the Defence Forces and dispenses with the requirement on any uniformed authorised persons to produce the warrant or a copy of it to any person affected. *Subsection (4)* makes it an offence subject to fine and / or imprisonment for obstructing persons authorised to function under this Part of the Bill.

NEW SECTION 36 provides for the stopping, boarding and inspection of vessels for the purposes of enforcing NEW PART 3 of the Bill (*subsection (1)*). *Subsection (2)* authorises authorised persons and Gardaí to request the names and addresses of suspected offenders on board the vessel concerned. *Subsection (3)* provides penalties for the Court to impose on conviction of a person for an offence of obstruction or non-cooperation under *subsection (1)* or (*2*).

NEW SECTION 37 provides power of arrest of suspected offenders, without warrant, for the Gardaí and authorised persons who are commissioned naval officers of the Defence Forces (*subsection (1)*). *Subsection (2)* extends the power of arrest of suspected offenders without warrant to the person in command or in charge of a vessel or a person authorised by him or by her or the owner or hirer of the vessel provided that the arrest is made by a person in uniform who is suitably trained for the purpose. *Subsection (3)* obliges an arresting person (other than a Garda) to hand the arrested person over to a member of the Garda Síochána as soon as possible to be dealt with according to law.

NEW SECTION 38 is a standard provision to empower the Minister for Communications, Marine and Natural Resources to prosecute summary offences under PART 3 of the Bill. Similar provision is made in section 19 for summary offences under PART 2 of the Bill.

NEW SECTION 39 is designed to replace section 37 of the 1992 Merchant Shipping Act (as inserted by section 44(11) of the Merchant Shipping (Investigation of Marine Casualties) Act 2000), by providing for recoupment of the Minister's costs in relation to the successful prosecution of persons for any offence under PART 3 of the Bill and not only in relation to offences under **NEW SECTIONS 22** and **23** (which replace sections 35 and 36 of the 1992 Act to which section 37 of the 1992 Act only applies). It is clearly appropriate to entitle the Minister to recoup such costs. Section 19 of the Bill makes

similar provision for recoupment of costs in successful prosecutions under PART 2 of the Bill in the case of improper use of certain craft.

NEW SECTION 40 makes it clear that PART 3 of the Bill is designed to promote the safe operation of all vessels other than a limited number of dedicated vessels, namely, vessels in the service of the Defence Forces, customs, coast guard or rescue services for which there are already separate provisions in place to ensure that proper practices will be followed. The section mirrors Section 18 of the Bill which specifically excludes from the scope of Bye-laws to regulate or control certain craft, any craft operated in the course of duty by the Defence Forces, Gardaí, Irish Coast Guard, etc., and craft engaged in *bona fide* law enforcement, emergency or rescue missions.

NEW SECTION 41 is purely a technical one, to define certain terms used in *NEW PART 3* and avoid unnecessary verbiage.

NEW PART 4 (SECTION 42)

SAFETY REGULATIONS — PASSENGER BOATS, FISHING VESSELS AND PLEASURE CRAFT

NEW SECTION 42 updates and restates, for ease of reference and administration, Ministerial Regulation-making sections 18 (passenger boats), 19 (fishing vessels) and 20 (pleasure craft) and section 27 (fixed payment notices) of the Merchant Shipping Act 1992 (No. 2) as substantially amended by the Merchant Shipping (Investigation of Marine Casualties) Act 2000 (No. 14). *Subsection (3)* of the *NEW SECTION 42* provides on standard lines for the continuance in force of existing Regulations as if made under the relevant section of the 1992 Act as now being updated and restated, until such time as new Ministerial Regulations are made to revoke, replace or amend them.

PART 5 (SECTIONS 43 TO 47)

AMENDMENT OF CERTAIN ENACTMENTS

NEW SECTION 43 — AMENDMENT OF HARBOURS ACT 1946

This section amends the Harbours Act 1946 (No. 9) in three respects:

Firstly (paragraph (a)), it replaces section 48 of the 1946 Act to make it clear that harbour authorities are subject to the relevant law (e.g. Dumping at Sea and Planning and Development Acts) when maintaining and improving their harbours and approaches thereto.

Secondly (paragraph (b)(i)), it increases to €5,000, the fine on summary conviction for breach of bye-laws made by harbour authorities. The current maximum is €12.70 or less if specified in the bye-laws, and is clearly outdated.

Thirdly (paragraph (b)(ii)), it provides for fixed payment notices (“on-the-spot-fines”) — €150 — for breaches of harbour authorities’ bye-law, on the lines of the provisions in section 16 of the Bill, if appropriate. It will be a matter for the harbour authorities to use or

not to use this facility, depending on the gravity or otherwise of the bye-law breach in question.

Section 44 amends the Fishery Harbour Centres Act 1968 (No. 18) in two respects, for consistency with *PART 2* of the Bill:

Firstly (*paragraph (a)*), it increases from €634.87 (as increased by section 2 of the Fishery Harbour Centres Act 1980 (No. 22)) to **€5,000** (the current maximum fine for summary offences) the maximum fine which may be imposed on summary conviction for breach of any order or bye-law made by the Minister for Communications, Marine and Natural Resources under section 4 of the 1968 Act.

Secondly (*paragraph (b)*), provides for fixed payment notices (“on-the-spot-fines”) for offences under the 1968 Act, on the lines of the provisions in *section 16* of this Bill for fixed payment notices in relation to offences under *PART 2* of this Bill.

NEW SECTION 45 — AMENDMENT OF CANALS ACT 1986

This section amends the Canals Act 1986 (No. 3) in three respects:

Firstly (*paragraph (a)*), it requires a standard public consultation process to be entered into by Waterways Ireland before making Canals bye-laws, in line with the Government’s 2004 White Paper “REGULATING BETTER”.

Secondly (*paragraph (b)*), it increases, to €5,000, the maximum summary offences penalty for breaches of Canals bye-laws in line with current practice, for deterrence purposes, and provides for recovery of sums due (rather than as an offence).

Thirdly (*paragraph (c)*), it provides for fixed payment notices (“on-the-spot-fines”) — €150 — for breaches of Canals bye-laws, on the lines of the provisions in *section 16* of the Bill, if appropriate. It will be a matter for Waterways Ireland to use or not to use this facility depending on the gravity or otherwise of the bye-law breach in question.

NEW SECTION 46 — AMENDMENT OF SHANNON NAVIGATION ACT 1990

This section amends the Shannon Navigation Act 1990 (No. 20) in three respects:

Firstly (*paragraph (a)*), it requires a standard public consultation process to be entered into by Waterways Ireland before making bye-laws in relation to the Shannon Navigation and other associated waters, in line with the Government’s 2004 White Paper “REGULATING BETTER” and *paragraph (c)* of original *section 20* of the Bill (now *SECTION 47*) in the case of Harbour Companies.

Secondly (*paragraph (b)*), it increases, to €5,000, the maximum summary offence penalty for breaches of such bye-laws in line with current practice, for deterrence purposes, and provides for recovery of sums due (rather than as an offence).

Thirdly (*paragraph (c)*), it provides for fixed payment Notices (“on-the-spot-fines”) — €150 — for breaches of such bye-laws, on the lines of the provisions in *section 16* of the Bill, if appropriate. It will be a matter for Waterways Ireland to use or not to use this

facility, depending on the gravity or otherwise of the bye-law breach in question.

Section 47 amends the Harbours Act 1996 in three respects, for consistency with *PART 2* of the Bill:

Paragraph (a) increases to **€5,000** (from £1,500) the maximum fine and reduces to 6 months (from 12 months) the term of imprisonment which the court can impose for a summary offence for the contravention of any directions given by a harbour master and other serious offences under sections 46, 50, 52, 53, 60 or 77 of the 1996 Act which endanger persons or property, and increases the maximum fine imposed on conviction on indictment to €1,000,000 (from £100,000).

Paragraph (b) inserts a new subsection 6A after section 6 of the 1996 Act, enabling the issue (if appropriate) of fixed payment notices (“on-the-spot-fines”) by harbour police for offences under the 1996 Act, on the lines of the provisions in *section 16* of the Bill for fixed payment notices in relation to offences under *PART 2* of the Bill.

Paragraph (c) imposes the standard public consultation requirement on harbour companies proposing to make bye-laws in relation to their harbours, in accordance with the Government’s 2004 White Paper **“REGULATING BETTER”**.

FINANCIAL IMPLICATIONS

The Bill is Exchequer-neutral.

The proposed strengthening of the law against the improper operation of fast powered watercraft of the types in question in Irish waters will significantly enhance public safety and amenity and protect natural and other heritage areas. Tourism and leisure businesses will also benefit from the stopping of nuisance by such craft.

The outlawing of reckless behaviour in operating or on board vessels generally, together with the promotion of good practice in the operation of vessels generally, is expected to considerably enhance safety on waters and public enjoyment of waters, and reduce calls on rescue services.

An Roinn Cumarsáide, Mara agus Acmhainní Nádurtha
Bealtaine, 2005.