



AN BILLE UM IASCACH INTÍRE 2009
INLAND FISHERIES BILL 2009

EXPLANATORY MEMORANDUM

Introduction

The purpose of the Bill is to establish a single national inland fisheries body to be known as Inland Fisheries Ireland and to define its functions. Inland Fisheries Ireland will replace the existing Central Fisheries Board and seven Regional Fisheries Boards and will perform the existing functions of those bodies. The Bill also provides for the dissolution of those bodies. The Bill restates a number of provisions of the Fisheries (Consolidation) Act 1959, Fisheries Act 1980, Fisheries (Amendment) Act 1999 and the Fisheries (Amendment) Act 2000 which deal with administrative and legal matters concerning inland fisheries. The Bill also updates the penalties applicable for offences under existing inland fisheries legislation so that their monetary values are brought up to date. Following the enactment of the Bill the National Salmon Commission and the eight Fisheries Co-operative Societies will cease to exist and their functions will be subsumed by Inland Fisheries Ireland. More generally, the Bill updates and amends the Fisheries Acts 1959 - 2007 and a number of other existing statutes in order to take account of changes to the management of the sector.

Financial Implications

There are no Exchequer costs associated with the Bill. The replacement of the Central Fisheries Board and seven Regional Fisheries Boards along with the elimination of the National Salmon Commission and the eight Fisheries Co-operative Societies should result in some savings and a better use of existing resources.

Staffing Implications

Over 400 staff are currently employed by the State in the existing structures of the Central Fisheries Board and the seven Regional Fisheries Boards. The staffing needs of the new structure will be met through existing resources and there will be no increase in the overall staff numbers in the inland fisheries service.

Provisions of the Bill

There are 5 Parts in the Bill which contain a total of 80 sections and 5 Schedules.

PART 1

PRELIMINARY AND GENERAL MATTERS

Section 1 is a standard provision and provides for the short title of the Act and collective citation.

Section 2 provides for definitions for a number of terms used throughout the general scheme.

Section 3 is a standard provision on the payment of expenses incurred in the administration of the Bill out of monies provided by the Oireachtas.

Section 4 is a standard provision and provides for the repeal of the enactments specified in *Schedule 1*.

Section 5 provides for the making of an order by the Minister to set a day for the establishment of Inland Fisheries Ireland (IFI).

PART 2

ESTABLISHMENT OF INLAND FISHERIES IRELAND

Chapter 1 — Inland Fisheries Ireland

Section 6 contains standard provisions in relation to the establishment of IFI and gives it a legal basis. It also sets out the area within which IFI will conduct its operations.

Section 7 sets out the general and specific functions of IFI which include the protection and conservation of the inland fisheries resource and to promote, support, facilitate and advise the Minister on the conservation, protection, management, development and improvement of inland fisheries including sea angling. In addition to the existing functions of the Central Fisheries Board and the Regional Fisheries Boards, IFI will also be required to establish a National Inland Fisheries Forum, the terms of reference of which will be set with the agreement of the Minister.

Section 8 provides that from the establishment day IFI will carry out all of the functions conferred on the Central Fisheries Board and the Regional Fisheries Boards or the CEO's of those Boards under existing legislation. It also gives effect to the textual amendments to existing enactments and regulations as set out in *Schedules 2* and *3*.

Section 9 provides that for the purpose of performing its functions, IFI shall manage and report its business on the basis of six River Basin Districts as defined in the European Communities (Water Policy) Regulations 2003 (S.I. No. 722 of 2003). It also allows the Minister to modify this arrangement by order following consultation with IFI and such other bodies as he or she deems appropriate.

Section 10 provides that the Minister may give policy directions to IFI and that IFI must comply with such directions.

Section 11 provides that IFI shall have a seal and that the seal shall be authenticated by either the chairperson, a member of IFI, or a member of staff of IFI duly authorised. It also provides that judicial notice shall be taken of the seal of IFI.

Section 12 provides for the appointment by the Minister of the members of IFI. It provides that IFI shall consist of 9 members including persons nominated by the Minister for the Environment, Heritage and Local Government and the Minister for Community, Rural and Gaeltacht Affairs. One member of IFI is to be appointed as a staff representative following an election process. The Minister shall have regard to the advice of the Joint Oireachtas Committee with responsibility for inland fisheries matters in respect of 3 of the remaining appointments. The remaining 3 appointments will be made by the Minister, one of which will be the Chairperson of IFI. The section also provides for gender balance in respect of membership of IFI.

Section 13 sets out the process for the election of a staff member to be appointed to IFI.

Section 14 provides for the term of office of persons appointed to IFI.

Section 15 sets out the arrangements in respect of the chairperson of IFI.

Section 16 provides for IFI to delegate functions to the chief executive and requires IFI to bring certain matters to the attention of the Minister.

Section 17 sets out the conditions of office and contains standard provisions regarding removal and cessation of membership of IFI.

Section 18 allows the Minister to remove all of the members of IFI in certain circumstances. It also makes provision to allow the Minister to appoint a person or persons to carry out the functions of IFI in circumstances where all members of IFI are removed.

Section 19 contains standard provisions regarding the resignation of members of IFI and the filling of casual vacancies.

Section 20 sets out the arrangements for meetings and procedures of IFI, including quorum and voting arrangements.

Section 21 empowers IFI to establish committees to advise and assist it in the performance of its functions.

Section 22 provides for the remuneration and allowances for expenses for members of IFI and committees of IFI.

Section 23 provides for the appointment of a chief executive officer. The chief executive will be appointed by IFI with the consent of the Minister and will hold office subject to the terms and conditions that may be determined by IFI with the consent of the Minister and the Minister for Finance. Where a competition for the post of chief executive is held prior to the establishment of IFI, the successful candidate will be appointed by the Minister as chief executive designate and will become chief executive on the establishment of IFI.

Section 24 sets out the functions of the chief executive and provides for the appointment by IFI of a person to act as deputy chief executive where the chief executive is absent or the position is vacant.

Section 25 allows the chief executive to delegate functions and to authorise their sub-delegation to other employees of IFI and specifies the procedures governing this.

Section 26 specifies the effect of delegation and sub-delegation of functions by IFI, the chief executive or another person authorised to sub-delegate functions.

Section 27 provides that certain legal certificates shall be accepted in any legal proceedings as proof of delegation or sub-delegation of functions of IFI, or of the chief executive, as appropriate.

Section 28 provides that the chief executive of IFI must attend before the Committee of Public Accounts in respect of the expenditure of IFI.

Section 29 contains standard provisions relating to the attendance of the chief executive before other Oireachtas Committees. This includes provisions for procedures to be followed in the event of the chief executive being of the opinion that a matter on which he or she has been asked to give an account is or has been or may in the future be, the subject of proceedings before a court or tribunal. The chief executive may not, in the context of attendance at an Oireachtas Committee, question or express an opinion on matters of Government policy.

Section 30 allows IFI to appoint its employees and determine their duties subject to the approval of the Minister given with the consent of the Minister for Finance.

Section 31 restates sections 292 and 293 of the Fisheries (Consolidation) Act 1959 and section 26 of the Fisheries Act 1980 which set out the procedures in relation to the appointment of authorised persons and the instruments of appointment for authorised persons.

Section 32 is a standard provision dealing with superannuation arrangements for the staff of IFI.

Section 33 provides that IFI shall, following consultation with any recognised trade union or staff association, prepare and submit to the Minister a staff scheme providing for the regulation, control and management of the staff of IFI. This is a restatement of section 32 of the Fisheries Act 1980.

Section 34 is a standard provision allowing IFI to engage consultants or advisers.

Section 35 requires members of IFI and its committees, the chief executive, IFI's employees, advisers and their employees to maintain appropriate standards of integrity and conduct. IFI is required to issue codes of conduct for the guidance of all of these parties.

Section 36 prohibits the unauthorised disclosure of confidential information by a member of IFI or of a committee, an employee, adviser or member of their staff and allows IFI to determine appropriate action where a person fails to comply with a requirement of this section.

Section 37 contains standard provisions in respect of members, the chief executive or employees of IFI holding political office, either at local, national or European level and also provides for secondment arrangements where staff of IFI attains office at those levels.

Section 38 sets out the requirements regarding the preparation by IFI of a 5 year rolling corporate plan, its submission to the Minister and approval and amendment arrangements.

Section 39 specifies the requirements regarding publication and implementation of an approved corporate plan. IFI is required to produce progress reports on the implementation of an approved corporate plan annually or at such other intervals as the Minister may direct.

Section 40 enables IFI, with the consent of the Minister and the Minister for Finance, to borrow money for the purpose of performing its functions.

Section 41 requires IFI to submit estimates of its income and expenditure to the Minister as well as any other information he or she may require in relation to those estimates.

Section 42 provides that the Minister may pay grants to IFI of such amounts as may be sanctioned by the Minister for Finance out of monies provided by the Oireachtas.

Section 43 requires IFI to maintain financial records and accounts and for such accounts to be subject to audit by the Comptroller and Auditor General. The audited accounts shall be submitted to the Minister who shall ensure that a copy is laid before the Houses of the Oireachtas.

Section 44 requires IFI to prepare and submit to the Minister an annual report in relation to its activities during the preceding year. The Minister must lay the report before the Houses of the Oireachtas.

Chapter 2 — Transitional Arrangements

Section 45 provides for the dissolution of the Central Fisheries Board and each of the Regional Fisheries Boards on the establishment of IFI.

Section 46 facilitates the transfer of employees of the Central Fisheries Board and the Regional Fisheries Boards to IFI on terms and conditions of employment no less favourable than those they enjoyed immediately prior to the transfer. Employees of IFI will be covered by a broad range of employment protections under employment law.

Section 47 provides for IFI to assume the superannuation liabilities of the Central Fisheries Board and the Regional Fisheries Boards in respect of their former employees.

Section 48 provides that all property, assets, rights and liabilities which vested in the Central Fisheries Board and the Regional Fisheries Boards prior to the establishment day shall from the establishment day vest in IFI.

Section 49 provides that every contract, agreement or other arrangement made by the Central Fisheries Board or a Regional Fisheries Board and in force immediately before the establishment day will be continued in the name of IFI.

Section 50 provides that IFI shall be substituted for the Central Fisheries Board or a Regional Fisheries Board in any legal proceedings or court order in which such a body is named a party.

Section 51 provides for the continuation, in the name of IFI, of any resolution, notice, rule, licence, permit or record made by the Central Fisheries Board or a Regional Fisheries Board and which is in force on the establishment day.

Section 52 provides for the preparation, audit and laying before the Houses of the Oireachtas the final accounts of the Central Fisheries Board and the Regional Fisheries Boards.

Section 53 requires IFI to prepare a final annual report in respect of the Central Fisheries Board and the Regional Fisheries Boards.

In the interest of better regulation and to ensure that as many provisions as possible pertaining to IFI are contained in a single statute, provisions of the Fisheries (Consolidation) Act 1959, Fisheries Act 1980, Fisheries (Amendment) Act 1999 and Fisheries (Amendment) Act 2000 have been restated in the following Parts and those Acts repealed where appropriate. The provisions are unaltered apart from amendments to ensure they apply to IFI and some minor drafting changes. Monetary penalties for offences under existing inland fisheries legislation have been increased in line with the consumer price index since first introduced to bring them in line with current values.

PART 3

INLAND FISHERIES ADMINISTRATION

Chapter 1 — Power of Minister to make Bye-laws

Section 54 restates section 9 of the Fisheries (Consolidation) Act 1959 (as amended) which confers powers on the Minister to make bye-laws for the government, management, protection and improvement of fisheries and sets out the procedures to be followed in making such bye-laws. This section also incorporates the provisions of sections 46 and 50 of the Fisheries Act 1980 insofar as they deal with penalties applicable for failure to comply with bye-laws. The monetary value of the fines set out in these provisions has been increased to bring them in line with current values.

Chapter 2 — Fishery Year

Section 55 restates section 4 of the Fisheries Act 1980 which provides that the Minister may by order specify that any reference to a fishery year in the Principal Act will be construed as reference to a period which is co-extensive to a calendar year.

Chapter 3 — Fishery Improvement

Section 56 restates section 18 of the Fisheries Act 1980 which sets out the powers of IFI in relation to the improvement of fisheries.

Chapter 4 — Acquisition and Transfer of Fisheries etc.

Section 57 restates section 37 of the Fisheries Act 1980 which sets out the procedures for the acquisition of fisheries by IFI.

Section 58 restates section 38 of the Fisheries Act 1980 which provides for the acquisition of portions of rivers or lake contiguous to certain weir (freshwater) fisheries in certain circumstances and the procedures to be followed in such acquisitions.

Section 59 restates section 39 of the Fisheries Act 1980 which provides that IFI can apply to the Minister for an order for the compulsory acquisition of a right of way over any land and the procedures to be followed in the case of such applications.

Section 60 restates section 40 of the Fisheries Act 1980 which provides for the transfer of fisheries to the Minister or IFI by the Commissioners of Public Works in Ireland (OPW).

Section 61 restates section 42 of the Fisheries Act 1980 (as amended by the Fisheries (Amendment) Act 1999) which provides for the transfer of certain fisheries or fishing rights to IFI.

Section 62 restates section 43 of the Fisheries Act 1980 (as amended by the Fisheries (Amendment) Act 1999) which makes provision for the payment of compensation in respect of the exercise of any powers under sections 56, 57, 58 or 59 of the Bill.

Section 63 restates section 44 of the Fisheries Act 1980 which provides for the appointment by the Minister of a person to be an arbitrator for the purposes of appeals under sections 57, 58(3) or 59 or when proposing to amend an order under sections 57, 58 or 59.

Section 64 restates section 5(2) of the Fisheries Act 1980 which sets out the procedures to be followed where it is proposed to amend an order made under sections 57, 58, 59 or 60.

Section 65 restates section 45 of the Fisheries Act 1980 (as amended by the Fisheries (Amendment) Act 1999) which provides for the sale of certain fisheries, fishing rights and businesses by the Minister.

Chapter 5 — Wild Salmon and Sea Trout Tagging Scheme

Section 66 restates section 24 of the Fisheries (Amendment) Act 1999 as amended by the Fisheries (Amendment) Act 2000 which provides for a national scheme of tagging of wild salmon and sea trout and enforcement of the scheme. The fines set out in the Act of 1999 have been updated to bring them in line with current values.

Section 67 restates section 25 of the Fisheries (Amendment) Act 1999 (as amended by the Fisheries (Amendment) Act 2000) which makes provision for on the spot fines in relation to offences under the tagging scheme. It amends the existing provisions by providing that the amount of the fixed charge shall be prescribed and that different amounts may be prescribed in respect of different contraventions.

Chapter 6 — Prohibitions

Section 68 restates section 56 of the Fisheries Act 1980 which allows the Minister, by order, to prohibit the sale of certain fish.

Section 69 restates section 57 of the Fisheries Act 1980 which allows the Minister, by order, to prohibit the sale of certain nets or netting.

Chapter 7 — Register of Sea Anglers

Section 70 restates section 58 of the Fisheries Act 1980 (as amended by the Fisheries (Amendment) (No. 2) Act 1987) which provides for the establishment and maintenance of a register of sea anglers by IFI. Provision is also made for the continuation of the information kept in those registers maintained by the Regional Fisheries Boards under the Fisheries Act 1980.

Chapter 8 — Issue of licences for Fishing of a Specified Class and Description

Section 71 restates section 11(6)(b) of the Fisheries Act 1980 which allows the Minister, by order, to authorise the issue by IFI of licences for fishing of a specified class or description.

PART 4

LEGAL PROCEEDINGS, PENALTIES ETC.

Section 72 restates section 46 of the Fisheries Act 1980 which provides for certain offences under the Fisheries (Consolidation) Act 1959 and the Fisheries (Amendment) Act 1962 to be tried on indictment.

Section 73 restates section 47 of the Fisheries Act 1980 which makes provision in respect of the jurisdiction of the District and Circuit Courts to hear offences under certain sections of existing inland fisheries legislation.

Section 74 restates section 50 of the Fisheries Act 1980 which increases the levels of penalties for inland fisheries offences. These penalties have been increased in line with the consumer price index from the levels set in 1980 to current values.

Section 75 restates section 51 of the Fisheries Act 1980 (as amended by the Fisheries (Amendment) Act 1999 and the Fisheries (Amendment) Act 2000) which deals with consequential disqualification orders applicable in respect of licences for commercial fishing engines for salmon and eels.

Section 76 restates section 52 of the Fisheries Act 1980 which provides for the payment of certain fines under section 253 or 265 of the Fisheries (Consolidation) Act 1959 as compensation to persons who suffered loss or damage resulting from the offence.

Section 77 restates section 2 of the Fisheries (Amendment) Act 2000 which provides for a regime of on the spot fines in relation to minor inland fisheries offences. The existing provisions have been amended by providing that the amount of the fixed charge shall be prescribed and that different amounts may be prescribed in respect of different contraventions. The applicable offences are set out in *Schedule 5* to the Act which restates the Schedule to the Fisheries (Amendment) Act 2000.

PART 5

MISCELLANEOUS

Section 78 restates section 59 of the Fisheries Act 1980 which provides for the continuation of certain fishing rights for former life members of the Inland Fisheries Trust. These rights were originally conferred on the former life members on the dissolution of the Trust in 1980 and this provision ensures that they are continued with the changeover to the new structures.

Section 79 restates section 60 of the Fisheries Act 1980 which confers certain powers on the Minister for the purpose of operating a fishery owned by him or her.

Section 80 restates section 61 of the Fisheries Act 1980 which protects the Minister and IFI from liability for flooding or other consequential damage due to the continued existence of any structure.

SCHEDULES

Schedule 1 sets out the existing enactments to be repealed.

Schedule 2 details amendments to existing enactments required as a result of the establishment of IFI.

Schedule 3 details amendments to instruments made under existing enactments required as a result of the establishment of IFI.

Schedule 4 details provisions applicable in respect of procedures to be followed when exercising powers under sections 57, 58 and 59 (this is a restatement of the Fifth Schedule to the Fisheries Act 1980).

Schedule 5 details the offences to which on the spot fines under section 77 are applicable (this is a restatement of the Schedule to the Fisheries (Amendment) Act 2000).

*An Roinn Cumarsáide, Fuinnimh agus Acmhainní Nadurtha,
Samhain, 2009.*