



Number 54 of 1998

FISHERIES AND FORESHORE (AMENDMENT) ACT, 1998

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[No. 54.] *Fisheries and Foreshore (Amendment)* [1998.]
Act, 1998.

Acts Referred to

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Number 54 of 1998

FISHERIES AND FORESHORE (AMENDMENT) ACT, 1998

AN ACT TO AMEND AND EXTEND THE FISHERIES ACTS, 1959 TO 1997, THE FORESHORE ACT, 1933, AND THE FISHERY HARBOUR CENTRES ACT, 1968, AND TO PROVIDE FOR CONNECTED MATTERS.

[23rd December, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“the Act of 1933” means the Foreshore Act, 1933;

“the Act of 1980” means the Fisheries Act, 1980;

“the Act of 1997” means the Fisheries (Amendment) Act, 1997;

“the Principal Act” means the Fisheries (Consolidation) Act, 1959.

(2) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act.

2.—(1) Where before the commencement of section 74 of the Act of 1997 an application was made for a fish culture licence under section 15 of the Principal Act such application shall—

Applications for certain aquaculture licences.

(a) be deemed always to have been capable of being so made under the said section 15 notwithstanding the enactment of section 54 of the Act of 1980, and

(b) be determined in accordance with the said section 74.

(2) Where pursuant to section 19 of the Act of 1933 the Minister has caused notice of an application for a licence for the purposes of aquaculture to be published in accordance with the said section 19, then such notice shall be deemed to be a public notice for the purposes of subsection (3) of section 74 of the Act of 1997.

3.—(1) Subject to *subsection (2)* of this section, where before the commencement of section 75 of the Act of 1997 there was purported to be granted—

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(a) a foreshore licence for aquaculture purposes under the Act of 1933, or

(b) a fish culture licence under section 15 of the Principal Act,

then such purported grant of the licence concerned shall be deemed to have been duly made and, accordingly, shall be deemed by virtue of the said section 75 to be an aquaculture licence granted under the Act of 1997.

(2) Where a foreshore licence is deemed to be an aquaculture licence under *subsection (1)* of this section then the following shall apply:

(a) the Minister shall, as soon as practicable, issue a draft aquaculture licence to the licensee concerned and shall give by post to the licensee not less than 28 days notice in writing stating that the Minister proposes to grant the licence subject to such terms and conditions as are contained in the draft licence;

(b) the Minister shall consider any representations in relation to the draft licence made to the Minister by the licensee before the expiration of the notice;

(c) the Minister shall notify the licensee in writing of his or her decision in respect of the draft licence and shall publish notice of the decision—

(i) as soon as practicable after making the decision in a newspaper circulating in the vicinity of the aquaculture, and

(ii) in addition, in the *Iris Oifigiúil* if an environmental impact statement was required;

(d) section 14 and Chapter II of the Act of 1997 shall apply to the decision of the Minister in respect of the draft licence as if it was a determination or a decision in respect of an application for an aquaculture licence.

(3) Where a licence is deemed to be an aquaculture licence under—

(a) *subsection (1)* of this section, or

(b) section 75 of the Act of 1997,

then the licensee shall be liable for such fees as are prescribed by the Minister under the Act of 1997 including fees payable—

(i) on each anniversary of the granting of the licence while the licence is in force,

(ii) in respect of an application for the renewal of the licence, and

(iii) in respect of an application under section 70 of the Act of 1997 for a review of the licence.

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(4) Notwithstanding *subsection (1)* of this section, in the case of a foreshore licence which is deemed to be an aquaculture licence under the said *subsection (1)*, the provisions of the Foreshore Acts, 1933 and 1992, shall apply to such foreshore licence. S.3

(5) Where a licence is deemed under *subsection (1)* of this section to be an aquaculture licence and such deeming would, but for this subsection, conflict with a constitutional right of any person, then the licence concerned shall be subject to such limitation as is necessary to secure that it does not so conflict but shall be otherwise of full force and effect.

4.—(1) On and from the 10th day of December, 1998, an application for an aquaculture licence shall not be accepted, or if accepted shall not be determined, if the applicant or any person on behalf of the applicant commences to engage in aquaculture at the place or waters to which the application relates before a licence is granted under the Act of 1997.

Persons not to engage in aquaculture in anticipation of grant of licence.

(2) Section 11 of the Act of 1997 is hereby repealed.

5.—(1) The Act of 1933 is hereby amended—

Amendment of Act of 1933.

(a) in section 12, by the deletion of paragraph (b) of subsection (2), and

(b) in section 14, by the insertion after subsection (2) of the following subsections:

“(3) Whenever a person is convicted of an offence under subsection (2) of this section, the Court by whom such person is so convicted may, if appropriate in the circumstances and such Court so thinks proper, make an order requiring such person, within a specified time—

(a) to remove the article concerned from the place where it would or might cause injury to a person to whom subsection (1) of this section relates, or

(b) to remove such material or substance from a place where it would or might be injurious or offensive to a person to whom subsection (1) of this section relates.

(4) If any person in respect of whom an order has been made under subsection (3) of this section fails to comply with such order, such person shall be guilty of an offence under this subsection and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding two years, or to both.”.

(2) A person who is guilty of an offence under subsection (2) or (4) of section 13, or subsection (2) of section 14 of the Act of 1933 shall, in lieu of the penalties provided under each of those subsections, be liable—

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- (a) on summary conviction, to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or to both, or
 - (b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding two years, or to both.

Amendment of Fishery Harbour Centres Act, 1968.

6.—The Fishery Harbour Centres Act, 1968, is hereby amended by the substitution of the following for section 5:

“Use of property vested in Minister by this Act.

5.—The Minister shall have, and be deemed always to have had, power—

(a) to use any property vested in the Minister by this Act for—

(i) (A) any purpose connected with the improvement and development of the fishing industry, or

(B) the provision, improvement and development of services and facilities ancillary to or connected with the fishing industry,

which the Minister considers appropriate, and

(ii) any other purpose, including the provision, improvement and development of leisure or amenity facilities or for facilitating or promoting the social or economic development of the area in which the fishery harbour centre is located, which the Minister considers advantageous and appropriate in respect of the operation or development of the fishery harbour centre,

and

(b) to sell, lease, let, exchange, grant easements over, *profits à prendre* in respect of or permit the use of any land so vested for any of those purposes which the Minister considers appropriate.”.

Short title, collective citation and construction.

7.—(1) This Act may be cited as the Fisheries and Foreshore (Amendment) Act, 1998.

(2) The Fisheries Acts, 1959 to 1997, *sections 2 to 4* of this Act and, in so far as they relate to those sections, *section 1* of this Act and this section may be cited together as the Fisheries Acts, 1959 to 1998, and shall be construed together as one Act.

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(3) The Foreshore Acts, 1933 and 1992, *section 5* of this Act and, S.7 in so far as they relate to that section, *section 1* of this Act and this section may be cited together as the Foreshore Acts, 1933 to 1998, and shall be construed together as one Act.

(4) The Fishery Harbour Centres Acts, 1968 to 1992, *section 6* of this Act and, in so far as they relate to that section, *section 1* of this Act and this section may be cited together as the Fishery Harbour Centres Acts, 1968 to 1998, and shall be construed together as one Act.