

FISHERIES (AMENDMENT) ACT 1978

LONG TITLE

An Act to amend and extend the Fisheries Acts 1959 to 1976 [4th July, 1978]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1 "Principal Act".

SECT 1.—In this Act "the Principal Act" means the Fisheries (Consolidation) Act, 1959.

2 Indictable and summary proceedings for certain offences.

SECT 2.—(1) A person guilty, of an offence under any section of the Principal Act specified in Table 1 to this section shall be liable, on conviction on indictment, to the fine specified in column (3) of Table 1 to this section at the reference number at which that section is specified and to the forfeiture specified in column (4) of that Table at that reference number. (2) A District Justice shall have jurisdiction to try summarily any offence referred to in subsection (1) of this section if— (a) the Justice is of opinion that the facts proved against the defendant so charged constitute a minor offence fit to be tried summarily, (b) the Attorney General consents, and (c) the defendant (on being informed by the Justice of his right to be tried by a jury) does not object to being tried summarily. and, upon conviction under this subsection, the said defendant shall be liable to the fine specified in column (3) of Table II to this section at the reference number at which the section of the Principal Act to which the offence relates is specified and to the forfeiture (if any) specified in column (4) of that Table at that reference number. (3) A person guilty of an offence under section 222A (inserted by this Act) of the Principal Act shall be liable, on conviction on indictment to the fine specified in column (3) of Table III to this section and to the forfeiture specified in column (4) of that Table. (4) Section 13 of the Criminal Procedure Act, 1967, shall apply in relation to an offence referred to in subsection (1) of this section as if the reference in subsection (2) (a) of that section to the penalties provided for in subsection (3) of that section were a reference to the penalty and the forfeiture (if any) provided for in relation to that offence when tried summarily by subsection (2) of and Table II to this section. (5) (a) section 310 of the Principal Act shall not apply to an order dismissing proceedings for an offence under any section of the Principal Act specified in the Tables to this section. (b) Part XIX of the Principal Act shall apply to the fines and forfeitures provided for by this section and the Tables to this section as it applies to the fines and forfeitures referred to in that Part and references in sections 316 and 317 of the Principal Act to a District Justice and the District Court shall, in the case of a conviction by a court other than the District Court, be construed as references to that other court.

TABLE I CONVICTION ON INDICTMENT

Reference Number Section of Principal Act Fine Forfeiture

(1)(2)(3)(4)1:Section 221 of Principal Act (restriction on foreign sea-fishing boats entering exclusive fishery limits of State).Fine not exceeding £10,000Forfeiture, at the discretion of the Court, of all of the following found on the boat to which the offence under the said section 221 relates:

(a) any fish,

(b) any fishing gear.2.Section 222 of Principal Act (provisions in relation to foreign sea-fishing boats lawfully entering exclusive fishery limits of State).Fine not exceeding £10,000Forfeiture, at the discretion of the Court, of all of the following found on the boat to which the offence under the said section 222 relates: (a) any fish, (b) any fishing gear.3.Section 223 of Principal Act (prohibition of certain methods of fishing within exclusive fishery limits of State).Fine not exceeding £10,000Forfeiture, as a statutory consequence of conviction of the offence under the said section 223, of all of the following found on the boat to which the said offence relates:

(a) any fish,

(b) any fishing gear.4.Section 223A of Principal Act (conservation of fish stocks and rational exploitation of fisheries).Fine not exceeding £10,000Forfeiture, as a statutory consequence of conviction of the

offence under the said section 223A, of all of the following found on the boat to which the said offence relates:

(a) any fish,
(b) any fishing gear.5. Section 226 of Principal Act (restriction on carriage of certain nets on board sea-fishing boats). Fine not exceeding £10,000 Forfeiture, as a statutory consequence of conviction of the offence under the said section 226, of all of the following found on the boat to which the said offence relates:

(a) any fish,
(b) any fishing gear.6. Section 227 of Principal Act (restriction on carriage of devices for obstructing meshes of net). Fine not exceeding £10,000 Forfeiture, as a statutory consequence of conviction of the offence under the said section 227 of all of the following found on the boat to which the said offence relates: (a) any fish, (b) any fishing gear.

TABLE II SUMMARY CONVICTION

Reference Number Section of Principal Act Fine Forfeiture(1)(2)(3)(4)1:

Section 221 of Principal Act (restriction on foreign sea-fishing boats entering exclusive fishery limits of State). Fine not exceeding £500.—2. Section 222 of Principal Act (provisions in relation to foreign sea-fishing boats lawfully entering exclusive fishery limits of State). Fine not exceeding £500—3. Section 223 of Principal Act (prohibition of certain methods of fishing within exclusive fishery limits of State). Fine not exceeding £500 Forfeiture, as a statutory consequence of conviction of the offence under the said section 223, of all of the following found on the boat to which the said offence relates:

(a) any fish unlawfully caught,
(b) any fishing gear used in the commission of the said offence.4. Section 223A of Principal Act (conservation of fish stocks and rational exploitation of fisheries). Fine not exceeding £500 Forfeiture, as a statutory consequence of conviction of the offence under the said section 223A. of all of the following found on the boat to which the said offence relates: (a) any fish unlawfully caught, (b) any fishing gear used in the commission of the said offence or to which the said offence relates.5. Section 226 of Principal Act (restriction on carriage of certain fishing nets on board sea-fishing boats). Fine not exceeding £500 Forfeiture. as a statutory consequence of conviction of the offence under the said section 226, of any fishing net to which the said offence relates found on the boat to which the said offence relates.6. Section 227 of Principal Act (restriction on carriage of devices for obstructing meshes of net). Fine not exceeding £500 Forfeiture, as a statutory consequence of conviction of the offence under the said section 227, of any device to which the said offence relates found on the boat to which the said offence relates.

TABLE III CONVICTION ON INDICTMENT OF OFFENCE UNDER SECTION 222A

Reference Number Section of Principal Act Fine Forfeiture(1)(2)(3)(4)1.

Section 222A (fishing while on board foreign sea-fishing boat within exclusive fishery limits of State). Fine not exceeding £100,000 Forfeiture, as a statutory consequence of conviction of the offence under the said section 222A, of all of the following found on the boat to which the said offence relates: (a) any fish, (b) any fishing gear.

3 Increase of certain summary fines.

SECT 3.—The fine to which a person convicted of an offence under section 224, 228, 229, 231, 233 or 236 of the Principal Act shall be liable shall, in lieu of the fine provided for in the section under which he is convicted, be a fine not exceeding £500.

4 Forfeiture of boats used in commission of certain offences.

SECT 4.—Where, on conviction on indictment of a person for an offence under any of the following sections of the Principal Act, that is to say sections 221, 222, 222A, 223, 223A, 226 and 227— (a) the conviction is a second or subsequent conviction on indictment under any of those sections committed on board the same boat. whether the person convicted is or is not the same person on each occasion, and (b)

the boat is at the time of the commission of the offence owned or part owned by a person who was the owner or part owner of the boat on the occasion of the commission of any of the previous offences, the Court may, at its discretion, in addition to any other fines and forfeitures to which the person may be liable. order the boat to be forfeited.

5 Restriction on foreign sea-fishing boats entering exclusive fishery limits of State.

SECT 5.—Chapter II of Part XIII of the Principal Act is hereby amended by the substitution of the following section for section 221: "221. (1) It shall not be lawful for any foreign sea-fishing boat to enter within the exclusive fishery limits of the State except for— (a) a purpose recognised by international law, or (b) a purpose recognised by any convention, treaty or arrangement for the time being in force between the State and the country to which such boat belongs, or (c) any other lawful purpose. (2) If a foreign sea-fishing boat enters within the exclusive fishery limits of the State in contravention of subsection (1), the master of the boat shall be guilty of an offence."

6 Provisions in relation to foreign sea-fishing boats lawfully entering exclusive fishery limits of State.

SECT 6.—Chapter II of Part XIII of the Principal Act is hereby amended by the substitution of the following section for section 222: "222. (1) If a foreign sea-fishing boat enters within the exclusive fishery limits of the State for— (a) a purpose recognised by international law, or (b) a purpose recognised by any convention, treaty or arrangement for the time being in force between the State and the country to which such boat belongs, or (c) any other lawful purpose, then— (i) the boat shall leave the exclusive fishery limits of the State as soon as the purpose for which the boat so entered has been answered, (ii) any regulations made under subsection (2) and for time being in force shall be duly observed. (2) The Minister may make regulations in relation to the maintenance of good order amongst foreign sea-fishing boats for the time being within the exclusive fishery limits of the State and the persons on board such boats. (3) If there has been, in relation to a foreign sea-fishing boat which has lawfully entered within the exclusive fishery limits of the State or in relation to the persons on board her, a contravention (whether by commission or omission) of subsection (1) of this section, then, the master of the boat shall be guilty of an offence."

7 Fishing while on board foreign sea-fishing boat within exclusive fishery limits of State.

SECT 7.—Chapter II of Part XIII of the Principal Act is hereby amended by the insertion of the following section after section 222: "222A. (1) A person on board a foreign sea-fishing boat shall not fish or attempt to fish while the boat is within the exclusive fishery limits of the State unless he is authorised by law to do so. (2) A person who contravenes subsection (1) of this section shall be guilty of an offence."

8 Prohibition of certain methods of fishing within exclusive fishery limits of State.

SECT 8.—Chapter II of Part XIII of the Principal Act is hereby amended by the substitution of the following section for section 223: "223. (1) The Minister may from time to time by bye-law prohibit or restrict (at the option of the Minister either, as may be specified in the bye-law absolutely or unless such conditions as the Minister thinks fit to insert in the bye-law are complied with) the use, within the waters of any specified area (being an area within the exclusive fishery limits of the State), in or from either, as may be specified in the bye-law, any boat or any boat of a specified class, of any method of fishing (including trawling, seining and fishing by means of any kind of net hauled along the bottom of the sea whether by a moving boat or by any mechanical appliance in an anchored boat) and different bye-laws may be made in respect of different classes of boats and different methods of fishing. (2) A person who acts or attempts to act in contravention of any bye-law made under this section shall be guilty of an offence."

9 Conservation of fish stocks and rational exploitation of fisheries.

SECT 9.—Chapter II of Part XIII of the Principal Act is hereby amended by the insertion after section 223 of the following section: "223A. (1) The Minister may by order prescribe and adopt such measures of

conservation of fish stocks and rational exploitation of fisheries as the Minister thinks proper. (2) A person who contravenes or attempts to contravene an order under this section shall be guilty of an offence. (3) The Minister may by order revoke or amend an order under this section including an order under this subsection."

10 Regulations for giving effect to the Convention on the Conduct of Fishing Operations in the North Atlantic.

SECT 10.—Chapter II of Part XIII of the Principal Act is hereby amended by the insertion of the following section after section 224: "224A. (1) Without prejudice to the provisions of any other enactment, the Minister may, with the consent of the Minister for Tourism and Transport, make such provision by regulations as appears to him to be necessary or expedient for the purpose of carrying out the Convention on the Conduct of Fishing Operations in the North Atlantic made at London on the 17th day of March, 1967, or any convention amending or replacing that convention, and for giving effect thereto or to any of the provisions thereof. (2) A person who contravenes a regulation under this section shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding £500."

11 Extension of powers of detention of boats to boats found in port.

SECT 11.—Section 233 of the Principal Act shall apply in relation to a sea-fishing boat which is found in a port as it applies to the other sea-fishing boats referred to in that section and, accordingly, the following paragraphs shall be substituted for paragraphs (a) and (g), respectively, of subsection (1) of section 233: "(a) if the boat is under way, he may order it to be stopped for the purpose of identification or of allowing him to go on board it; (g) if he suspects that there has been a contravention by any person on board the boat of the provisions of Chapter II or III of this Part, he may without summons, warrant or other process— (i) if the boat is not in a port, take the boat and all persons on board to the nearest or most convenient port, and pending the taking by him of the steps required by section 233A or 234, as may be appropriate, detain the boat and the persons on board, and (ii) if the boat is in a port, detain the boat and the persons on board at that port or take it and them to a more convenient port and there detain it and them, pending (in either case) the taking of the steps aforesaid;"

12 Detention of boats and persons on board for 48 hours where certain offences suspected.

SECT 12.—Chapter IV of Part XIII of the Principal Act is hereby amended by the insertion of the following section after section 233: "233A. Where a sea fisheries protection officer has, in the exercise of the powers conferred on him by section 233, detained a boat and the persons on board the boat at a port, the officer shall (unless he is proceeding under section 234), as soon as may be, apply to a District Justice or, where no District Justice is immediately available, a Peace Commissioner for an order authorising the continued detention of the boat and those persons and the District Justice or Peace Commissioner may grant an order authorising such detention for a period of 48 hours if he is satisfied that a contravention of a provision of Chapter II or III of Part XIII of the Principal Act by a person on board the boat is suspected by the sea fisheries protection officer: upon the expiration of the period of 48 hours— (a) the boat shall be released unless an order providing for its further detention has been made under section 234 before the expiration of the said period of 48 hours, and (b) each person on board the boat shall be released unless an order providing for his further detention has been made under the said section before the expiration of the said period."

13 Detention of boats and persons charged or to be charged pending prosecution.

SECT 13.—Chapter IV of Part XIII of the Principal Act is hereby amended by the substitution of the following section for section 234: "234.—(1) Where a sea fisheries protection officer has in exercise of the powers conferred on him by section 233 detained a boat and the persons on board the boat at a port he shall, as soon as may be, bring the master of the boat and any other persons on board the boat against whom proceedings for an offence under a provision of Chapter II or III of this Part have been or are about to be instituted before a District Justice or, where no District Justice is immediately available, a Peace Commissioner, and thereupon the District Justice or Peace Commissioner (as the case may be) shall, if he

is satisfied that such proceedings have been or are about to be instituted against the master and those other persons or any one or more of them, by order directed to a sea fisheries protection officer require the officer to detain at a specified port in the State the boat and each person (including the master) aforesaid in respect of whom he is so satisfied until such proceedings have been adjudicated upon by a District Justice under section 8 of the Criminal Procedure Act, 1967, or under section 2 (2) of the Fisheries (Amendment) Act, 1978, or otherwise in the exercise of his summary jurisdiction. (2) Notwithstanding subsection (1), the District Justice concerned may, in his discretion, order the release on bail of a person against whom proceedings for any such offence as aforesaid have been instituted before those proceedings have been adjudicated upon as aforesaid by the District Justice."

14 Detention of boats pending determination of any proceedings (including appeals) under Chapter II or III of Part XIII of Principal Act.

SECT 14.—Chapter IV of Part XIII of the Principal Act is hereby amended by the substitution of the following section for section 235: "235 (1) (a) Where a person is convicted by a District Justice of an offence under a provision of Chapter II or III of this Part, or proceedings in relation to such an offence are dismissed by a District Justice. and the boat on which the person committed the offence has been detained under section 234, the Justice shall, by order directed to a sea fisheries protection officer, require the officer in the event of an appeal from, or any other proceedings in relation to the order of the District Court or the order of any other court to which the case is brought, whether by way of appeal or otherwise, to detain the boat further pending the determination of the appeal or other proceedings (and any proceedings consequent upon the appeal or the other proceedings) at a specified port in the State. (b) Where a person is sent forward for trial or for sentence by a District Justice to a court other than the District Court charged with an offence under a provision of the said Part II or Part III and the boat on which the person committed, or is alleged to have committed, the offence has been detained under section 234 of this Act, the Justice shall, by order directed to a sea fisheries protection officer, require the officer to detain the boat further at a specified port in the State pending the determination of the case in that other court. and in the event of an appeal from, or other proceedings in relation to the order of the District Court or of the court to which the person is sent forward under this paragraph or of any other court to which the case is brought, whether by way of appeal or otherwise, to detain the boat further pending the determination of the appeal or the other proceedings (and any proceedings consequent upon the appeal or the other proceedings) at a specified port in the State. (c) Where a District Justice makes an order under section 8 of the Criminal Procedure Act, 1967. for the discharge of a person as to an offence under a provision of Chapter II or III of this Part and the boat on which the person committed the offence has been detained under section 234, the Justice shall, on the application of the Attorney General, by order directed to a sea fisheries protection officer, require the officer to detain the boat further for a period of one week at a specified port in the State, and, if a direction in relation to the defendant has been given under section 62 of the Courts of Justice Act, 1936, before the expiration of the said period of one week, to detain the boat further pending the determination of the proceedings (and any appeal or proceedings consequent upon any appeal) consequent upon the said direction at a specified port in the State. (2) (a) Where, in respect of an offence or offences under a provision of Chapter II or III of this Part, an order is made under subsection (1) of section 234 or subsection (1) of this section in relation to a sea-fishing boat, a District Justice may, at his discretion, by order directed to a sea fisheries protection officer, require the boat to be released if security, which in the opinion of the Justice is satisfactory, is given for payment, in the event of conviction of the defendant in respect of the offence or offences or in the event of his failure to attend before any court when such attendance is required for the purposes of any preliminary examinations under the Criminal Procedure Act, 1967, in relation to the offence or offences or any trials, appeals or other proceedings in relation to the offence or offences, of a sum that in the opinion of the Justice is sufficient to provide for— (i) payment of the maximum fine or fines ordered, or which may be ordered, to be paid in respect of the offence or offences, (ii) the estimated amount of the costs (if any) of any trials, appeals or other proceedings in relation to the offence or offences awarded, or which may be awarded, against the defendant concerned, and (iii) the estimated value of any forfeitures ordered, or

which may be ordered, to be made upon the final determination of any trials, appeals or other proceedings in relation to the offence or offences. (b) The security provided for in paragraph (a) is in addition to and not in substitution for any other bond or recognisance which the defendant concerned may be required to enter into by the District Justice concerned in relation to any trials, appeals or other proceedings in respect of the offence concerned. (3) Where an order is made under this section for the detention or release of a sea-fishing boat, the boat shall be detained or released, as the case may be, in accordance with its terms."

15 Provisions in relation to cases in District Court.

SECT 15.—(1) Subsection (1) of section 309 of the Principal Act, in so far as it enables an offence to be heard and determined summarily shall not apply in relation to an offence under a section of that Act specified in a Table to section 2 of this Act. (2) The said section 309 of the Principal Act is hereby amended by the substitution of the following subsection for subsection (2): "(2) (a) Where— (i) a sea fisheries protection officer has in exercise of the powers conferred on him by section 233 detained a boat and the persons on board it at a port in the State, and (ii) a person (being one of the said persons) is alleged to have committed an offence under a provision of Chapter II or III of Part XIII, the person may be brought before the appropriate District Justice and— (I) if the offence is not an offence under a section specified in a Table to section 2 of the Fisheries (Amendment) Act, 1978, that Justice may hear and determine the case, and (II) if the offence is an offence under a section specified in a Table to the said section 2, that Justice shall have jurisdiction to deal with the case under the Criminal Procedure Act, 1967, or under section 2 (2) of the Fisheries (Amendment) Act, 1978, as may be appropriate. (b) In this subsection 'the appropriate District Justice' means the District Justice for the time being assigned to the district court district in which is situated the port in which the boat and persons concerned are detained. (c) Paragraph (a) shall not be construed as affecting section 79 of the Courts of Justice Act, 1924."

16 Amendment of definition of "fish".

SECT 16.—Section 3 (1) of the Principal Act is hereby amended by the insertion in the definition of "fish" after "includes" of "all marine invertebrates", and the said definition, as so amended, is set out in the Table to this section. TABLE the word "fish" includes all marine invertebrates all crustaceans and molluscs found in the sea, and brood and spawn of fish, and references to a fish shall be construed as including references to part of that fish;

17 Amendment of definition of "net".

SECT 17.—Section 219 of the Principal Act is hereby amended by the substitution in the definition of "net" of "in the sea, whether on or near the bottom thereof or otherwise" for "on or near the bottom of the sea" and the said definition, as so amended, is set out in the Table to this section. TABLE the word "net" means any trawl, seine or other net towed or hauled or intended to be towed or hauled, in the sea, whether on or near the bottom thereof or otherwise;

18 Prosecution of offences by Minister and Attorney General.

SECT 18.—(1) A summary offence under any provision of the Fisheries Acts, 1959 to 1978 (other than a section specified in the Tables to section 2 of this Act) may be prosecuted by the Minister. (2) (a) Section 3 of the Prosecution of Offences Act, 1974, shall not apply to the prosecution of an offence under a section specified in the Tables to section 2 of this Act or to any functions in relation to that matter to which, but for this subsection, it would apply. (b) References in Part II of the Criminal Procedure Act, 1967, section 62 of the Courts of Justice Act, 1936, and section 6 of the Courts Act, 1964, to the Director of Public Prosecutions shall, in so far as that Part and those sections apply in relation to the offences referred to in paragraph (a) of this subsection or to any functions referred to in that paragraph, be construed as references to the Attorney General. (c) The Minister may by regulations make such adaptations and modifications of any statute, or instrument made under statute, in force at the commencement of this Act as he considers necessary or expedient for the purpose of enabling this subsection to have full effect.

19 Service of documents.

SECT 19.—(1) Where a District Justice proposes to make an order for the release on bail of a defendant before him charged with an offence under a provision of Part II or III of Chapter XIII of the Principal Act who is ordinarily resident outside the State, he shall (unless he is satisfied that all documents (including an indictment) required by law to be served on the defendant in connection with or for the purpose of the charge or of any proceedings arising out of or connected with the charge can be duly served on the defendant in the State) direct that those documents may, in lieu of being served on the defendant, be served on a person specified in the direction who is ordinarily resident in the State. (2) Where a District Justice who has given a direction under subsection (1) of this section or under this subsection or another District Justice acting in his place is satisfied that, owing to the death or absence from the State of a person specified in the direction or for any other reason, a document referred to in the said subsection (1) cannot be served on that person, the Justice shall direct that the document may be served on another person specified in the direction who is ordinarily resident in the State. (3) Service of a document referred to in this section on a person specified in a direction under this section shall be deemed for all purposes to be service on the defendant concerned.

20 Saver.

SECT 20.—This Act shall not have effect as respects offences committed before its commencement.

21 Continuance of certain instruments.

SECT 21.—Each of the following instruments that was in force immediately before the commencement of this Act: (a) regulations under section 222 of the Principal Act. (b) bye-laws under section 223 (1) of the Principal Act, and (c) orders under section 35 of the Fisheries (Amendment) Act, 1962. shall, on and after such commencement, continue in force and be deemed to have been made under the corresponding sections of the Principal Act inserted by this Act.

22 Repeals.

SECT 22.—Each enactment specified in column (2) of the Schedule to this Act is hereby repealed to the extent specified in column (3) of that Schedule.

23 Short title, construction and collective citation.

SECT 23.—(1) This Act may be cited as the Fisheries (Amendment) Act, 1978. (2) The Fisheries Acts, 1959 to 1976 and this Act may be cited together as the Fisheries Acts, 1959 to 1978. (3) The Fisheries Acts, 1959 to 1976. and this Act shall be construed together as one. Section 22.

SCHEDULE ENACTMENTS REPEALED

Short Title	Extent of Repeal
Fisheries (Consolidation) Act, 1959	Section 226, in subsection (3) the words "under this section and shall be liable on summary conviction thereof to a fine not exceeding fifty pounds" and sub-section (4);Section 227, in subsection (2), the words "under this section and shall be liable on summary conviction thereof to a fine not exceeding fifty pounds- and sub-section (3);Section 312.
Fisheries(Amendment) Act, 1962	Section 35.