

FISHERIES (AMENDMENT) ACT 1995

LONGTITLE

An Act to amend and extend the Fisheries Acts, 1959 to 1994. [6th November, 1995]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Definitions.

1.—In this Act— "the Act of 1980" means the Fisheries Act, 1980; "board" means the Central Fisheries Board or a regional board established under the Act of 1980; "commission" has the meaning assigned to it by section 3 of this Act.

2 Report with respect to a board.

2.—(1) The Minister may cause to be prepared, by such person or persons as he or she appoints for the purpose, a report in relation to the management and organisation of a board and the performance by it of its functions generally or, as the Minister may consider appropriate, of any specified function or functions of it. (2) A board in respect of which a report is being prepared under this section and each of its officers (including its Chief Officer) and each of the persons otherwise in its employment shall afford to the person or persons preparing the report every facility that person or those persons may reasonably require for the purpose of preparing the report. (3) Without prejudice to the generality of subsection (2) of this section, the board concerned and each of the officers and persons as aforesaid shall permit the said person or persons to inspect any records or documents in its or his or her possession or control and, if the said person or persons so requests or request, to take copies of or extracts from any such records or documents. (4) The Minister may pay such fees and expenses as may be determined by him or her to a person or persons in respect of the preparation by the person or persons of a report under this section. (5) The Minister may require a board in respect of which a report has been prepared under this section to pay to him or her such sum as he or she specifies to be the sum that will defray any fees or expenses paid by him or her to the person or persons concerned under subsection (4) of this section in respect of the preparation of the report and the board shall comply with such a requirement. (6) Any sum payable by a board to the Minister under subsection (5) of this section shall be paid out of the revenues of the board and shall be deemed to form part of the expenses of the board in performing its functions.

3 Functions of board may be performed by a commission.

3.—(1) Subject to the provisions of this Act, the Minister may— (a) on a request in writing being made to him or her by a board for the establishment of a commission under this section to perform one or more of the functions of the board, or (b) if, after the consideration by him or her of a report prepared under section 2 of this Act in respect of a board, he or she is satisfied that the affairs of the board are not being, or, in any period following the preparation of the report are not likely to be, managed in an effective manner, by order— (i) establish a commission (which shall be known by the title assigned to it by the order and is in this Act referred to as a "commission"), and (ii) confer on the said commission such one or more of the functions of the board as the Minister determines and specifies in the order, and functions so conferred on the said commission shall, accordingly, be performable by it. (2) For so long as an order under this section remains in force— (a) the function or functions conferred on the commission established by the order shall not be performable by the board concerned, (b) the said commission shall be a body corporate (including in a case where the number of persons appointed under section 5 of this Act to be members thereof is 1) and may sue and be sued in its corporate name. (3) The determination referred to in paragraph (ii) of subsection (1) of this section shall, in the case of an order under this section that is made at the request of a board under paragraph (a) of the said subsection, be made with the concurrence of the said board. (4) An order under this section shall remain in force for such period as is specified in the order. (5) In the case of an order under this section that is not made at the request of a board under subsection (1) (a) of this section, the period specified as aforesaid shall not exceed 2 years. (6) The period for which an order under this section is to remain in force may be extended or further

extended by an order under section 9 (1) of this Act but such an order shall not be made at a time which is earlier than 6 months before the date on which the order concerned under this section is due to expire. (7) Nothing in subsection (6) of this section shall be construed as preventing the Minister from making a second or further order under this section in relation to a board where the requirements specified in subsection (1) of this section for the making of such an order are fulfilled.

4 Representations by board in relation to a proposed order under section 3.

4.—(1) Where the Minister proposes to make an order under section 3 of this Act, otherwise than at the request of a board under subsection (1) (a) of that section, he or she shall give notice in writing of that proposal to the board concerned and such a notice shall indicate the terms of the order proposed to be made. (2) A board to which a notice aforesaid is given may, within the period of 14 days beginning on the date on which the notice is given to it, make representations in writing to the Minister as to why, in its opinion, the order concerned should not be made and the Minister shall have regard to any such representations.

5 Membership of commission.

5.—(1) A commission shall consist of one or more members as the Minister may determine. (2) The member or members of a commission shall be appointed by the Minister. (3) A person appointed to be a member of a commission shall hold office as such member for such period and upon and subject to such terms and conditions (including terms and conditions relating to remuneration and allowances) as may be specified by the Minister at the time of the appointment. (4) A member of a commission may at any time resign from office by letter addressed to the Minister. (5) Where a casual vacancy occurs in the office of any member of a commission, the Minister may appoint a person to fill such a vacancy. (6) The Minister may remove from office a member of a commission if, in the opinion of the Minister, the member has become incapable through ill health of effectively performing his or her duties or has committed stated misbehaviour or his or her removal appears to the Minister to be necessary or desirable for the effective performance by the commission of its functions. (7) A person may be re-appointed to be a member of a commission. (8) Where the number of persons appointed to be members thereof is more than one, a commission may act notwithstanding one or, as the case may be, more than one vacancy among those members. (9) Subject to the provisions of the order establishing it, a commission shall regulate its procedure and business. (10) Subsections (4) and (5) of section 24 of the Act of 1980 shall apply to a member of a commission as these provisions apply to a person appointed under subsection (2) of that section to perform the functions of a board.

6 Co-ordination of functions of board and commission.

6.—(1) Where an order under section 3 of this Act confers one or more but not all of the functions of a board on a commission, the commission shall take such steps as it considers appropriate to co-ordinate the performance by it and the board of their respective functions. (2) For the purposes of this section a commission may give such directions to the board concerned as it considers appropriate and the board shall comply with any such directions. (3) A commission may by direction amend or revoke a direction given by it under this section (including a direction under this subsection). (4) If a dispute or disagreement arises between a board and a commission as to whether any steps taken by the commission under this section (including the giving of directions under this section) are appropriate steps to be taken, the dispute or disagreement shall be referred to the Minister for his or her determination and the decision of the Minister in the matter shall be final. In the case of a dispute or disagreement concerning a direction that is referred to the Minister under this subsection, the reference of the dispute or disagreement to the Minister shall not operate to relieve the board concerned of its obligation to comply with the direction pending the decision of the Minister in the matter. (5) For the purposes of subsection (4) of this section the Minister may affirm, cancel or vary any direction given by the commission concerned which is the subject of a reference to him or her under that subsection. (6) In the case of a direction aforesaid that is so varied by the Minister the board concerned shall comply with the direction as so varied.

7 Requirement to provide information.

7.—A commission may, for the purposes of performing any of its functions, request the board concerned or any of its officers (including its Chief Officer) or persons otherwise in its employment to furnish such information (including documents) in its or his or her possession or control relating to the management of the affairs of the board as is specified by the commission and the board or person shall comply with any such request.

8 Removal from office of a member of board in certain circumstances.

8.—(1) The Minister may remove from office a member of a board who is responsible for a failure by that board to comply with a requirement or request made of it under subsection (2) or (3) of section 2, or section 7 of this Act. (2) This section is without prejudice to the following provisions of the Act of 1980, namely, section 24 (1), Article 7 of Part I of the Second Schedule and Article 11 of Part II of the said Schedule. (3) References in the Act of 1980 to the said Article 7 or 11 shall be construed as including references to this section.

9 Orders.

9.—(1) The Minister may by order amend or revoke an order under this Act (including an order under this subsection). (2) An order under this Act may contain such incidental, consequential, supplementary or transitional provisions as appear to the Minister to be necessary or expedient. (3) Without prejudice to subsection (2) of this section, an order under this Act may include provisions adapting any provision of the Fisheries Acts, 1959 to 1994, that relates to a function of a board concerned where such adaptation appears to the Minister to be necessary to remove any difficulty that arises as respect the performance of that function by the commission concerned. (4) Where it is proposed to make an order under this Act, a draft of the order shall be laid before each House of the Oireachtas and, subject to subsection (5) of this section, the order shall not be made until a resolution approving of the draft has been passed by each such House. (5) Where either House of the Oireachtas fails to pass such a resolution in respect of a draft aforesaid within the period of 28 days after the draft is laid before it, the order concerned may, notwithstanding subsection (4) of this section, be made after the expiration of such period. (6) An order made under this Act, not being an order a draft of which has been approved by a resolution passed by each House of the Oireachtas within the period referred to in subsection (5) of this section, shall be laid before each such House as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next subsequent 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder. (7) Where an order under subsection (1) of this section extending or further extending the period for which an order under section 3 of this Act ("the second-mentioned order") is to remain in force is proposed to be made, the draft of that order which is required by subsection (4) of this section to be laid before each House of the Oireachtas shall be so laid not later than 2 months before the date on which the second-mentioned order is due to expire.

10 Saving.

10.—The powers conferred by this Act in relation to a board are not in substitution for any other powers standing conferred on the Minister or any other person in relation to the board immediately before the passing of this Act.

11 Expenses.

11.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

12 Short title, collective citation and construction.

12.—(1) This Act may be cited as the Fisheries (Amendment) Act, 1995. (2) The Fisheries Acts, 1959 to 1994, and this Act may be cited together as the Fisheries Acts, 1959 to 1995, and shall be construed together as one.

ACTS REFERRED TO Fisheries Acts, 1959 to 1994 Fisheries Act, 1980 1980, No. 1