

# FISHERIES (AMENDMENT) ACT 1983

## LONG TITLE

An Act to make further provision as regards sea-fishing and for that purpose to amend and extend the Fisheries acts, 1959 to 1980, and to make certain provisions regarding registration under the Mercantile Marine Act, 1955, and entry in the fishing boat register under Part IV of the Merchant Shipping Act, 1894. [19th July, 1983]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

### 1 Definitions.

SECT 1.—In this Act— "the Act of 1894" means the Merchant Shipping Act, 1894; "the Act of 1955" means the Mercantile Marine Act, 1955; "the Act of 1972" means the European Communities Act, 1972; "the Act of 1978" means the Fisheries (Amendment) Act, 1978; "the European Communities" has the meaning assigned to it by section 1 of the Act of 1972; "national of a Member State" has the meaning it has in the treaties; "the treaties" means the treaties, convention and decisions mentioned in section 1 (1) of the Act of 1972, as amended by section 1 of the European Communities (Amendment) Act, 1977 and section 1 of the European Communities (Amendment) Act, 1979.

### 2 Fishing by certain sea-fishing boats restricted.

SECT 2.—Chapter II of Part XIII of the Principal Act is hereby amended by the insertion of the following section after section 222A (inserted by section 7 of the Act of 1978): "222B. (1) This section applies to any sea-fishing boat which is— ( a ) a fishing boat within the meaning of Part IV of the Act of 1894 and which— (i) is entered in the fishing boat register, or (ii) is required by section 373, as amended by the Act of 1983, of the Act of 1894 to be so entered, or (iii) but for the passing of the Act of 1983 would, by the said section 373, be required to be so entered, or ( b ) a ship which— (i) is registered under the Act of 1955, or (ii) is required by section 18, as amended by the Act of 1983, of the Act of 1955 to be so registered, or (iii) but for section 8 (1) of the Act of 1983 would be required to be or might be so registered, or (iv) may be so registered. (2) Subject to subsection (4) (b) of this section, a sea-fishing boat to which this section applies shall not be used for sea-fishing (whether within the exclusive fishery limits of the State or otherwise) nor shall a person on board such a boat fish for sea-fish or attempt so to fish, save under and in accordance with a licence granted for the purposes of this section and in relation to the boat by the Minister. (3) ( a ) The Minister may grant licences for the purposes of this section. ( b ) An application for a licence for the purposes of this section shall be in such form, shall contain such particulars as the Minister may reasonably require and shall be made to the Minister by or on behalf of the owner of the boat in respect of which the application is made. ( c ) Where an application is made for a licence for the purposes of this section, subject to subsection (4) (a) of this section, the Minister may allow or refuse the application. (4) ( a ) The Minister shall not grant a licence for the purposes of this section unless the sea-fishing boat in relation to which the licence is granted is wholly owned by an Irish citizen or a body corporate established under and subject to the law of the State and having its principal place of business in the State. ( b ) The Minister may by regulations provide that sea-fishing boats which are of a class or description specified in the regulations shall be exempt from the provisions of subsection (2) of this section, and in case regulations under this subsection are for the time being in force, subsection (2) of this section shall be construed and have effect subject to the terms of the regulations. (5) ( a ) The Minister may attach to a licence granted for the purposes of this section such terms (including terms specifying the period during which the licence is to remain in force or an event or other circumstance on the occurrence of which the licence is to come into force) and conditions (including conditions precedent to the licence's becoming operative) as he shall think fit and he may also attach further conditions to or vary the conditions already attached to such a licence or remove any such condition. ( b ) Without prejudice to the generality of paragraph ( a ) of this subsection, a condition attached to a licence granted for the purposes of this section may— (i) restrict sea-fishing by the boat to which the licence relates in a manner specified in the condition, (ii) require that for so long as the licence is in force the members of the crew of such boat, or of any proportion of such members specified in the condition, shall be of a

nationality specified in the condition, (iii) specify an event or other circumstance on the occurrence of which the licence shall cease to be in force. ( c ) Where the Minister is satisfied that a person has fished in contravention of a condition attached to a licence granted for the purposes of this section or that a person has attempted so to fish, he may, if he thinks fit, revoke the licence. (6) Without prejudice to the generality of subsection (3) (c) of this section, where the Minister receives an application for a licence for the purposes of this section and— ( a ) the application relates to a sea-fishing boat which is owned by a body corporate and the Minister is not satisfied that the body corporate is under the control of, beneficially owned by or under the control of and beneficially owned by a person or persons who, or, as may be appropriate, each of whom, is either a qualified individual or a qualified body, or ( b ) the Minister is satisfied that the applicant has previously used or attempted to use a sea-fishing boat for sea-fishing in contravention of, or that he has fished for sea-fish or has attempted so to fish contrary to, subsection (2) of this section, he may refuse the application. (7) ( a ) A person who uses or attempts to use a sea-fishing boat in contravention of subsection (2) of this section shall be guilty of an offence. ( b ) A person who, while on board a sea-fishing boat, fishes for sea-fish or attempts so to fish in contravention of subsection (2) of this section shall be guilty of an offence. (8) In this section— 'the Act of 1983' means the Fisheries (Amendment) Act, 1983; 'a qualified body' means a body corporate in which all of the shares are beneficially owned, or the body is otherwise controlled, by one or more individuals who, or, as may be appropriate, each of whom is, a qualified individual; 'a qualified individual' means an individual person who is a national of a Member State."

### 3 Regulations requiring sea-fishing comply with certain conditions.

SECT 3.—Chapter II of Part XIII of the Principal Act is hereby amended by the insertion of the following section after section 222B (inserted by section 2 of this Act): "222C. (1) Subject to subsection (2) of this section, the Minister may by regulations specify conditions which shall be complied with by sea-fishing boats to which the regulations apply in relation to ( a ) fishing for sea-fish within the exclusive fishery limits of the State, or ( b ) the landing in the State of fish from such boats, or ( c ) the trans-shipment of fish to or from such sea-fishing boats, whether in port or otherwise, within such limits. (2) Without prejudice to the generality of subsection (1) of this section, conditions specified in regulations under this section may ( a ) require that a sea-fishing boat to which the condition applies shall not be used to fish for sea-fish, be used to land fish or be used for the trans-shipment of fish unless the nationality of members of the crew of such boat, or of any proportion of such members specified in the condition, complies with requirements in that regard so specified, ( b ) apply in relation to— (i) fishing for sea-fish generally or for sea-fish of a particular class or description so specified, (ii) the landing of fish generally or of fish of a particular such class or description, (iii) the trans-shipment of fish generally or of fish of a particular such class or description, ( c ) apply to sea-fishing boats generally or to sea-fishing boats which are registered in a particular country or territory (including the State) specified in the regulations or in any of two or more such countries or territories so specified or to sea-fishing boats which are of any other such class or description. (3) A person who is on board a sea-fishing boat which does not comply with conditions specified in regulations under this section and which apply to her shall not fish, land or trans-ship fish in contravention of any such condition, or attempt so to fish or to land or trans-ship fish. (4) A person who contravenes subsection (3) of this section shall be guilty of an offence. (5) A person guilty of an offence under this section shall be liable, on conviction on indictment, to a fine not exceeding £200,000, and, as a statutory consequence of the conviction, to forfeiture of all of the following found on the boat to which the offence relates: 5 ( a ) any fish, ( b ) any fishing gear."

### 4 Conservation of fish stocks and rational exploitation of fisheries.

SECT 4.—(1) Chapter II of Part XIII of the Principal Act is hereby amended by the substitution of the following subsections for subsection (1) of section 223A (inserted by section 9 of the Act of 1978): "(1) The Minister may, as he shall think proper, by order prescribe and adopt either or both of the following measures, namely, measures of conservation of fish stocks and measures of rational exploitation of fisheries. (1A) Without prejudice to the generality of subsection (1) of this section, an order under this section may— ( a ) relate— (i) generally to sea-fishing or to sea-fishing which is of a specified class or description, (ii) generally to fishing other than sea-fishing or to such fishing which is of such a class or description, (iii) generally to fisheries other than sea-fisheries or to such fisheries which are of such a

class or description, (iv) generally to fishing boats (including sea-fishing boats) or to fishing boats which are of such a class or description, (v) to boats, other than fishing boats, which are of such a class or description, ( b ) for the purpose of enabling the order to have full effect, extend any or all of— (i) the powers conferred by this Act on a sea fisheries protection officer for the purposes of this Act, (ii) the powers so conferred on an authorised person within the meaning of Part XVIII of this Act, (iii) the powers so conferred on authorised officers within the meaning of section 301 of this Act, ( c ) include such incidental, supplementary and consequential provisions as the Minister considers appropriate, and in case provisions are included in such an order by virtue of paragraph (b) of this subsection, this Act shall be construed and have effect in accordance with the terms of the order.". (2) An order under subsection (1) of section 223A (inserted by section 9 of the Act of 1978) of the Principal Act and which immediately before the commencement of this section had neither expired nor been revoked shall be deemed to have been made under the first of the subsections inserted in the said section 223A by subsection (1) of this section and may be revoked or amended as if it had been so made.

5 Minister may make regulations to give effect to certain matters relating to European Communities.

SECT 5.—Chapter II of Part XIII of the Principal Act is hereby amended by the insertion of the following section after section 224A (inserted by section 10 of the Act of 1978): "224B. (1) Without prejudice to the generality of section 3 (1) of the Act of 1972, the Minister may by regulations make provision to give effect within the exclusive fishery limits of the State to any provision either of the treaties or of any act adopted by an institution of the European Communities which authorises any or all of the Member States of the European Communities to restrict, or otherwise regulate in a manner specified in the provision, fishing in waters, or in part of waters, under its or their sovereignty or jurisdiction. (2) Regulations under this section may include such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations (including provisions repealing, amending or applying, with or without modification, other law, exclusive of this Act). (3) A person who fishes or attempts to fish in contravention of regulations under this section shall be guilty of an offence and shall be liable on conviction on indictment to a fine not exceeding £100,000, and, as a statutory consequence of the conviction, to forfeiture of all or any of the following found on the boat to which the offence relates: ( a ) any fish, ( b ) any fishing gear."

6 Amendment of Tables I and II to section 2 of Act of 1978.

SECT 6.—Section 2 of the Act of 1978 is hereby amended by— ( a ) the addition of the following entry to Table I to that section: " 7.Section 222B of Principal Act (fishing by certain sea-fishing boats restricted).Fine not exceeding £10,000Forfeiture, as a statutory consequence of conviction of the offence under the said section 222B, of all of the following found on the boat to which the said offence relates: (a) any fish, (b) any fishing gear. "; and ( b ) the addition of the following entry to Table II to that section: " 7.Section 222B of Principal Act fishing by certain sea-fishing boats restricted).Fine not exceeding £500 Forfeiture, as a statutory consequence of conviction of the offence under the said section 222B, of all of the following found on the boat to which the 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. "

7 Forfeiture of boats used in commission of certain offences.

SECT 7.—The Act of 1978 is hereby amended by the substitution of the following section for section 4: "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, 222B, 222C, 223, 223A, 224B, 226 and 227 ( a ) the conviction is a second or subsequent conviction on indictment for an offence under any of those sections committed on board the same ship whether the person convicted is or is not the same person on each occasion, and ( b ) the ship 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 ship on the occasion of the commission of the previous offence, or, as may be appropriate, 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 ship to be forfeited."

## 8 Restriction on registration under Act of 1955 and entry in fishing boat register of certain ships.

SECT 8.—(1) ( a ) Section 18 (1) of the Act of 1955 shall, as respects a ship to which this section applies, apply only if the ship is the subject of a licence granted for the purposes of section 222B of the Principal Act and which is for the time being in force or, if it is not so in force, is to come into force on the registration under the Act of 1955 of the ship. ( b ) After the passing of this Act a ship to which this section applies shall not be registered under the Act of 1955 unless, at the time of the registration, there is in relation to the ship a licence granted for the purposes of section 222B of the Principal Act and which is for the time being in force or, if it is not so in force, is to come into force on the ship's being so registered. ( c ) After the passing of this Act a ship which is a fishing boat within the meaning of Part IV of the Act of 1894 shall not be entered in the fishing boat register unless at the time of the entry there is in relation to the boat a licence granted for the purposes of section 222B of the Principal Act and which is for the time being in force or, if it is not so in force, is to come into force on the boat's being so registered. (2) Where a licence granted for the purposes of section 222B of the Principal Act is revoked by the Minister or otherwise ceases to be in force, the Minister for Transport may, after consultation with the Minister, if he thinks fit, give a direction in writing in relation to the ship to which the licence relates, and in case the Minister for Transport gives a direction under this section— ( a ) in case the ship to which the direction relates is for the time being registered under the Act of 1955, she shall thereupon cease to be so registered, ( b ) in case such ship is for the time being entered under section 373 of the Act of 1894 in the fishing boat register, she shall thereupon cease to be so entered. (3) For so long as a ship which but for subsection (1) of this section would be required to be registered under the Act of 1955 is not so registered, subsection (3) of section 18 of that Act shall apply in relation to her as if she were required by subsection (1) of the said section 18 to be so registered. (4) This section applies to any ship which is a sea-fishing boat within the meaning of Chapter II of Part XIII of the Principal Act.

## 20 Amendment of section 19 of Act of 1955.

SECT 20.—An order under section 19 of the Act of 1955 may provide that the citizens, subjects or nationals or bodies corporate established under and subject to the laws of a state specified in the order (being a state declared under the said section 19 to be a reciprocating state) shall— ( a ) be qualified to own only a registered ship within the meaning of the Act of 1955 (or a share therein) which is of a particular class or description specified in the order, ( b ) not be qualified to own such a registered ship (or a share therein) which is of a class or description so specified, and in case an order under the said section 19 which is for the time being in force contains any provision included by virtue of this section, subsection (2) of the said section 19 shall be construed and have effect subject to the terms of the order.

## 10 Construction etc. of Act of 1955 and section 373 (2) of Act of 1894.

SECT 10.—(1) The Act of 1955 shall be construed and have effect subject 35 to subsections (1) and (2) of section 8 of this Act. (2) Section 373 (2) of the Act of 1894 shall be construed and have effect subject to subsections (1) and (2) of section 8 of this Act.

## 11 Repeals.

SECT 11.—Sections 9 of the Sea Fisheries Act, 1952, are hereby repealed.

## 12 Short title, collective citations and construction.

SECT 12.—(1) This Act may be cited as the Fisheries (Amendment) Act, 1983. (2) The Fisheries Acts, 1959 to 1980, and this Act may be cited together as the Fisheries Acts, 1959 to 1983. (3) The Fisheries Acts, 1959 to 1980, and this Act shall be construed together as one. (4) The Mercantile Marine Act, 1955, and section 8, in so far as it amends the Act of 1955, and sections 9 and 10 (1) of this Act may be cited together as the Mercantile Marine Acts, 1955 to 1983. (5) The collective citation "the Merchant Shipping Acts, 1894 to 1983," shall include section 8, in so far as it amends the Act of 1894, and section 10 (2) of this Act and without prejudice to the generality of this provision, references in the Merchant Shipping

Acts, 1894 to 1981, to the Merchant Shipping Acts shall be construed as including 1 a reference to the said section 8, in so far as it so amends, and section 10 (2).