

FOYLE FISHERIES (AMENDMENT) ACT 1961

LONGTITLE

An Act to amend the Foyle Fisheries Act, 1952. [20th December, 1961.]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:—

1 Modifications of Foyle Fisheries Act, 1952. 1952. No. 5.

SECT 1.—The Foyle Fisheries Act, 1952 (herein referred to as "the Principal Act"), shall have effect with the modifications (including additions, substitutions and deletions) thereof respectively specified in the succeeding provisions of this Act.

2 Definitions.

SECT 2.—(1) The following definitions shall be included, in appropriate alphabetical order, amongst the definitions in section 2 of the Principal Act. "deleterious matter" means any substance (including an explosive) the entry or discharge of which into any waters is liable to render those or any other waters poisonous or injurious to fish spawning grounds or the food of any fish or to injure fish in their value as human food or to impair the usefulness of the bed and soil of any waters as spawning grounds or their capacity to produce the food of fish; "fish" includes spawn and fry; "the Minister" means the Minister for Lands; "substance" includes any liquid or gas; "waters" includes any river, watercourse or part of the sea. (2) The definition of "the Minister" in section 2 of the Principal Act shall be deleted.

3 Deleterious matter.

SECT 3.—For sections 41 and 42 of the Principal Act (which relate to the use or possession of explosives or deleterious matter) the following section shall be substituted:— "Penalty for use or possession of deleterious matter. 41. (1) If any person uses in any waters any deleterious matter for the capture, destruction or injury of fish he shall be guilty of an offence against this Act. (2) If any person being on the bank of or near any waters has in his possession or under his control any deleterious matter he shall be guilty of an offence against this Act. (3) It shall be a good defence to a charge under subsection (2) for the defendant to prove that the deleterious matter was in his possession or under his control for an innocent purpose. (4) Every person guilty of an offence under this section shall be liable— (a) on summary conviction, to a fine not exceeding one hundred pounds, or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment; (b) on conviction on indictment to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment. (5) Subsection (1) of section 1 of the Probation of Offenders Act, 1907, shall not apply in relation to an offence under this section."

4 Unlawful use of tailers and snares.

SECT 4.—In section 43 of the Principal Act (which penalises the unlawful use or possession of certain devices for taking fish)— (a) after the word "otter" in subsection (2) there shall be inserted the words "tailer or snare"; (b) after the word "gaff" in paragraphs (a) and (b) of subsection (3) there shall be inserted the words "or tailer".

5 Penalty for unlawful use of boat or vehicle.

SECT 5.—The following new section shall be inserted after section 52 of the Principal Act:
"Use of boat or vehicle as aid to commission of Offence. 52A. (1) If any person uses a boat or vehicle as an aid to the commission of an offence against this Act or, within the Foyle Area, against the provisions of the Fisheries (Consolidation) Act, 1959, or the corresponding law of Northern Ireland he shall be guilty of an offence against this Act. (2) Every person guilty of an offence under this section shall be liable— (a) on summary conviction, to a fine not exceeding one hundred pounds, or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment; (b) on conviction on indictment, to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment. (3) If the offence under this section is committed in respect of a vehicle section 76 of this Act shall not apply in relation to the vehicle but, upon conviction on indictment, the court may order the vehicle to be forfeited."

6 Extended powers of entry and detention.

SECT 6.—In subsection (1) of section 64 of the Principal Act (which authorises certain inspections, examinations and detentions)— (a) the following subparagraph shall be added after subparagraph (v) of paragraph (b) — "or (vi) any hotel, guest house, restaurant or other premises or place at which board and lodging or meals are provided for reward;" (b) in paragraph (c) before the words "this Act" there shall be inserted the words "the Fisheries (Consolidation) Act, 1959, or"; and (c) in paragraph (f) for the words "or any article" there shall be substituted the words "boat, vehicle or article".

7 Application for forfeiture.

SECT 7.—For section 65 of the Principal Act the following section shall be substituted:
"Procedure for disposal of boat or fishing engine seized. 65. Where a person, in exercise of the powers conferred on him by this Part, seizes in the State any boat or fishing engine, he shall, as soon as may be, apply to the District Justice in whose district it was seized for an order for its disposal under this section, and thereupon the following provisions shall have effect: (a) if, in the case of a boat, the Justice finds that, at the time of its seizure, it had been, was being, or was about to be, used for a purpose which under this Act is unlawful, he shall order it to be forfeited; (b) if, in the case of a fishing engine, the Justice finds that it is one the use of which is prohibited by law, he shall order it to be forfeited and destroyed; (c) if, in the case of a fishing engine, the Justice finds that it is a lawful fishing engine which at the time of its seizure had been, was being, or was about to be, unlawfully used in any part of the Foyle Area., he shall order it to be forfeited; (d) in any other case, the Justice shall order the boat or fishing engine to be returned to the person who appears to him to be the owner thereof."

8 Forfeiture of boat on conviction.

SECT 8.—In section 76 of the Principal Act (which provides forfeiture as a statutory consequence of conviction), before the words "fishing engine" there shall be inserted the words "boat or".

9 Amendments as to powers, etc., of the Commission.

SECT 9.—In the Third Schedule to the Principal Act (which contains provisions respecting the Foyle Fisheries Commission)— (a) at the end of subparagraph (a) of paragraph 2 there

shall be added the words "or, in the Foyle area, of any law with respect to fisheries"; (b) at the beginning of subparagraph (2) of paragraph 8 there shall be inserted the words "The Commission may, with the approval of the Minister and the Ministry, appoint or remove a secretary and, if no secretary is for the time being appointed,"; (c) at the end of subparagraph (3) of paragraph 16 there shall be added the following subparagraphs— "(4) The Commission may, with the approval of the Minister and the Ministry, make a scheme (in this paragraph referred to as a pension scheme) for the provision of pensions or gratuities, or pensions and gratuities, in respect of the service of such officers or servants of the Commission as it may think fit, and any scheme so made shall be carried out by the Commission. (5) The Commission may, with the approval of the Minister and the Ministry, at any time by a subsequent pension scheme (in this paragraph referred to as an amending scheme) amend a pension scheme or a previous amending scheme, and any such amending scheme may be expressed to operate retrospectively. (6) Where an amending scheme amends a pension scheme, an officer or servant to whom such pension scheme applies or applied may, within six months after the coming into operation of the amending scheme, elect not to have the amending scheme apply to him and, if he does so elect, the amending scheme shall not apply to him. (7) An amending scheme shall not terminate or reduce any pension which was, immediately before the coming into force of such amending scheme, payable under the scheme thereby amended. (8) In this paragraph "service", in relation to an officer or servant, means service with the Commission from the date of his employment by the Commission and, in the case of a person who became an officer or servant of the Commission by virtue of an employment Mentioned in subparagraph (3), may include his service in that employment."

10 Application of Fisheries (consolidation) Act, 1959, to Moville Area, 1959 No. 14.

SECT 10.—(1) The provisions of the Fisheries (Consolidation) Act, 1959, indicated in the Table to this section shall, notwithstanding section 325 of that Act, extend to the Moville Area with the Substitution, for references to boards of conservators, of references to the Commission and, for references to a fishery district, of references to the Moville Area and subject also to the modifications mentioned in the Table. (2) The provisions of the Fisheries Acts, 1842 to 1958, corresponding to the said extended provisions of the Fisheries (Consolidation) Act, 1959, shall, in so far as they continued to be in force in the Moville Area by reason of the operation of section 325 of that Act, cease to be in force. (3) References in the Principal Act to the Fisheries Acts shall be construed as references to the Fisheries (Consolidation) Act, 1959. (4) In consequence of the foregoing provisions of this section the Principal Act is hereby amended as follows:— (a) by the substitution in subsection (1) of section 79, for the words "section 10 of the Fisheries (Amendment) Act, 1949 (No. 18 of 1949)" of the words "section 315 of the Fisheries (Consolidation) Act, 1959"; (b) by the substitution in subsection (3) of section 80, for the words "section 15 of the Fisheries (Amendment) Act, 1949 (No. 18 of 1949)" of the words "section 318 of the Fisheries (Consolidation) Act, 1959"; (c) by the deletion of section 4, subsection (4) of section 23, section 36 and the First Schedule.

TABLE. PROVISIONS OF FISHERIES (CONSOLIDATION) ACT, 1959, EXTENDED TO MOVILLE AREA.

PART II - Miscellaneous Powers and Duties of the Minister.

Sections 15 and 17. PART IV Boards of Conservators. Section 49, except subsection (6). PART V Rates on Fisheries. Sections 55 (4) (7), 56, 57: with the modification that references to a rate shall be read as references to a rate under section 23 of the Principal Act. PART VII Regulations as to Nets. Section 93. PART VIII Fixed Engines Fishing Weirs, Fishing Mill Dams and other Obstructions to the Passage of Fish. Sections 97 to 100, 109, 115 to 125.

PART IX (Chapter I, Divisions II and III.) Prohibition of Export of Salmon and Capture, Sale, etc., of Trout at Certain Times. Sections 135 and 136. PART X. Restrictions on Sale and Export for Sale of Salmon and Trout. Sections 154 to 163: with the modifications that references to the clerk to a Board of Conservators shall be read as references to an officer of the commission, and that sections 156 (1) and 157 (1) shall be read as if "the Foyle Fisheries Commission" were inserted after "the Minister". PART XI Miscellaneous Provisions in relation to Salmon and Freshwater Fisheries. Sections 168, 171, 172, 177 to 181, 183. PART XII Transfer to the Minister of Certain Fisheries. Sections 192, except subsection (1), 193, 194 except subsection (2), 197, 210 to 215, 217: with the modification that "transferable fishery" shall not include a fishery Tested in the Minister and the Ministry or in the Commission. PART XVIII Powers of Water Keepers, Officers and Servants of Boards of Conservators, Garda Síochána and other Persons. Sections 295 to 297, 301: with the modifications that references to "conservators' water keepers" and "private water keepers" shall be read, respectively, as including references to river watchers and private river watchers under the Principal Act and that references to "instruments of appointment" shall be read as including references to instruments of appointment under the Principal Act. PART XIX Legal Proceedings, Fines, Forfeitures, Evidence, Inquiries and Service of Documents. Sections 309 (1) (3), 310 to 314, 316, 317, 319, 320, 324.

11 Short title, collective citation and commencement.

SECT 11.—(1) This Act may be cited as the Foyle Fisheries (Amendment) Act, 1961. (2) This Act and the Principal Act may be cited together as the Foyle Fisheries Acts, 1952 and 1961. (3) The foregoing sections shall come into operation on such day as the Minister may by order appoint.