

FISHERIES BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department of Agriculture and Rural Development and the Department of Culture, Arts and Leisure in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Department of Agriculture and Rural Development currently has responsibility for sea fisheries and aquaculture and the Department of Culture, Arts and Leisure is responsible for inland and salmon fisheries. Both Departments currently have powers under the Fisheries Act (Northern Ireland) 1966 and as such amendments are being made via a single Bill, rather than through two separate Bills.

Sea Fishing

4. The licensed sea fishing sector is primarily concentrated at three east coast fishing ports of Ardglass, Kilkeel and Portavogie. A significant number of small (under 10 metres) vessels also operate from other harbours around the north coast.
5. The trend in sea fishing over several years has been one of decline and a critical issue is uncertainty of supply of fish and other seafood. However, alongside this and as a result of restructuring over the past decade, activity in the inshore has more than doubled in size and has become much more prominent and valuable to fishing communities along the entire coastline.
6. The nature of the sea fishing industry (and the difficulty in regulating much of the activity as it takes place at sea), means there is a requirement for strong regulation and a high degree of enforcement activity in order to deter wrongdoing. Legislation is required to ensure protection of vulnerable fish stocks and to protect

vulnerable environments. Industry is generally keen on the retention of strong enforcement powers as it is the only way to ensure that law abiding fishermen and businesses can compete.

7. Fishing for the main commercially exploited species is regulated through the European Common Fisheries Policy (CFP). The Sea Fish (Conservation) Act 1967 regulates the commercial use of, fishing for and landing of sea fish, and gives powers of enforcement to authorised fisheries officers, including the enforcement of EU Regulations under the CFP. Inshore fishing, which covers fishing vessels that mainly target shellfish such as crab, lobster and shrimps by potting, is regulated by the Fisheries Act (Northern Ireland) 1966 (the 1966 Act).
8. Through the Fisheries Forum in 2010 sea fishery industry stakeholders recognised the need to review primary legislation recommending that legislation “should be reviewed and where appropriate brought into line with recent changes in primary fisheries legislation elsewhere”, and specifically by the Marine and Coastal Access Act 2009 (2009 Act) in England and Wales. In developing proposals, Department of Agriculture and Rural Development officials held discussions with a number of key stakeholder representatives. Separate consultation on a ‘Sustainable Development Strategy for Northern Ireland’s In-shore Fisheries’ called for increased enforcement in the inshore area, recognising the increased pressures in this area over recent years, and this was also considered in developing policy for the Bill.

Inland Fisheries

9. The Fisheries (Northern Ireland) Act 1966 gives broad powers to the Department of Culture, Arts and Leisure to regulate for the conservation, protection, promotion and development of salmon and inland fisheries. These powers were initially given to the Fisheries Conservancy Board but transferred to the Department of Culture, Arts and Leisure in 2009 when the Board was abolished.
10. Through the Salmon and Inland Fisheries Forum and the Assembly, inland fisheries stakeholders articulated their concerns about the effectiveness of the Fisheries (Northern Ireland) Act 1966 in light of changes in inland fisheries management practice and environmental and European obligations. In its review of the Fisheries (Northern Ireland) Act 1966 the Department of Culture, Arts and Leisure officials engaged extensively with the Salmon and Inland Fisheries Forum.
11. There is a need to modernise enforcement activity and to re-align the Fisheries (Northern Ireland) Act 1966 with obligations under EU Directives such as the Water Framework Directive and the EU Services Directive. There is a need to modernise enforcement activity and to ensure it is proportionate to the seriousness of any given offence so that resources can be directed toward those offences which pose the greatest risk. Certain provisions of the Fisheries (Northern Ireland)

Act 1966 need updated to mitigate against barriers to free passage of fish and to modernise requirements regarding access to Fish Dealer's Licences as required by the EU Services Directive.

12. Having reviewed the current legislative position, the two Departments identified a range of proposals to amend a number of fishery Acts including the Fisheries (Northern Ireland) Act 1966 and the Sea Fish (Conservation) Act 1967. The aim is to ensure that legislation remains fit for purpose in order that it provides adequate protection for sensitive marine and inland fishery environments and limited fish-stocks. The aim is also to ensure legislation is compliant with EU obligations. The Bill will also modernise enforcement powers and allow effective and proportionate enforcement of fisheries regulations.
13. The Bill will align sea fisheries enforcement powers with certain powers introduced for England and Wales by the Marine and Coastal Access Act 2009. As the Department of Agriculture and Rural Development's fisheries inspection vessel takes part in joint deployment in various areas around Britain, Sea Fisheries Officers require the same powers as those of their British counterparts.

CONSULTATION

14. Consultation on proposals opened on 18 August 2014 and closed on 10 November 2014. The consultation sought views on a range of inland fisheries, sea fisheries and aquaculture proposals that would modernise and update enforcement and allow full compliance with EU rules and ensure that environmental commitments can continue to be fully met. Notification of the consultation was sent to more than 1800 individuals and organisations including all registered fish dealers and fish culture licensees, as well as all registered fishing vessels and a number of other groups and individuals, including a number of environmental organisations and interests. The consultation was also advertised in local press and was published on the Departments' websites. In order to explain the proposals and to encourage responses, Department of Agriculture and Rural Development officials followed up on earlier discussions held with some key stakeholders.
15. 57 written responses to the consultation were received, covering a number of different sectoral interests. There was broad support across all sectors for the majority of proposals. In terms of sea-fisheries there was little support for plans to increase the level of penalties for sea fisheries offences, although all respondents accepted the need for an increase in the deterrent. As some respondents suggested that the proposed levels were too high and others said they were too low, the proposals seem therefore to represent an adequate compromise.
16. A major concern for the aquaculture industry related to the complexity and time involved in aquaculture licensing with industry representatives critical that the policy proposals would do little to change this. However, this is not unique to the north and is indeed an issue across Europe and there are a number of reasons why

the process can be delayed. However, much of this is beyond the scope of fisheries legislation. While no provisions in relation to aquaculture are included in the Bill at this point, it is hoped that amendments that will introduce a single aquaculture licence will be taken forward sometime in the future.

17. While some minor changes were made to the final policy in relation to fish passages as a result of consultation responses, given the widespread support to the proposals overall, the Fisheries Bill broadly follows the proposals included in public consultation in most respects, whilst detail drafting has sought to deal with other minor concerns raised during the consultation. A summary of the outcome of the consultation, and the Departments' response to the comments can be found at <http://www.dardni.gov.uk/index/consultations/closed-consultations/consultation-on-proposals-for-a-fisheries-bill.htm>.

OPTIONS CONSIDERED

18. Three options were considered in developing the policy, namely
 - (1) do nothing;
 - (2) deregulate fishing; and
 - (3) bring forward a Fisheries Bill to update existing legislation.
19. Option 1. Do Nothing.

The first policy option considered was to do nothing, and by doing so leave the current legislative framework as it is. In order to protect fish stocks and aquatic environments it is recognised that there is already a wide range of powers to regulate fisheries, emanating both from the EU and from local legislature. Continuing to work under those would allow the Departments to continue to manage fisheries to some degree, and therefore the first option is not to introduce a Fisheries Bill and to make no amendments to current legislation. Under this option fisheries enforcement would continue to rely on existing powers to manage fish stocks and the impact of fishing on the environment.

20. However, taking this approach would mean that gaps identified in the legislation could not be addressed. This would mean the Departments would not be able to fully meet their EU obligations and comply with certain EU Directives. There would be a risk the Government would not be able to provide adequate protection for sensitive marine and inland fishery environments and limited fish-stocks. Enforcement powers would risk not being entirely fit for purpose, ineffective or not proportionate.
21. Leaving gaps in the tools with which to manage fisheries and the marine environment could lead to a decline in marine biodiversity and fish and shellfish stocks. This could in turn lead to reduced profitability and viability of fisheries related businesses. In addition, an opportunity would be missed to reduce the risk

of infraction proceedings by the European Commission by putting compliance with European Communities (EC) law beyond in doubt.

22. Option 2. Deregulate Fisheries.

The second option, which was to deregulate fisheries and allow them to be managed on a more voluntary basis, considered the scope to reduce Government intervention, which would only be justified in the first place where the market could not deliver on policy objectives. While fish stocks are renewable, they are also finite. Therefore without regulation of some sort, open access can result in overfishing and individuals may not take account of the effect of their activity on the ability of others to catch fish and this can have a very detrimental effect on fish stocks for the future.

23. For example, the nature of the sea fishing industry and the difficulty in regulating much of the activity as it takes place at sea means there is a requirement for a regulatory/ enforcement activity. Legislation is therefore required. Increased activity in inshore fisheries means there is an even greater need for effective regulation and enforcement of fish conservation measures.

24. With regard to inland fisheries, there is increased pressure to conserve protected fish species while accommodating the interests of those in the hydro industry and maintaining sustainable stocks at levels required to be attractive to local and tourist anglers. As such, regulation is required to manage the various competing interests.

25. Option 3. Bring forward a Fisheries Bill.

The third option, to bring forward a Fisheries Bill to update existing legislation, considered the costs and benefits of introducing a Bill which would modernise fisheries enforcement and seek to ensure legislation remained fit for purpose. The policy consultation document sought views on a range of such proposals that could be contained in a new Fisheries Bill.

26. The Departments consider that to do nothing or to deregulate for fisheries would risk their competency to manage fisheries. Therefore the third option, to bring forward a Fisheries Bill to update existing legislation, is the preferred option.

OVERVIEW

27. The Fisheries Bill contains 19 clauses. The Bill makes provision regarding regulation of sea and inland fisheries and includes powers to allow fisheries offences to be dealt with through fixed administrative penalties and to align sea fisheries enforcement powers with those already in place in Britain. The Bill amends the Sea Fisheries (Conservation) Act 1967, the Fisheries Act 1981 and the Fisheries (Northern Ireland) Act 1966.

COMMENTARY ON CLAUSES

Sea Fisheries

Clause 1 – Sea-fishing

This clause extends section 124 of the Fisheries Act (NI) 1966 to specifically allow for regulations that would prohibit or restrict fishing for sea-fish without a permit issued by the Department.

Subsection (2) makes further provision about permit regulations by introducing a new section 124A (Sea-Fishing regulations: permits) which sets out where permit regulations may apply and to whom they may apply. It details the provisions that new regulations may include. The clause sets out the activities that may be authorised by a permit, and sets out the conditions that may be attached to a permit, including general conditions that would apply to all permits, or to specified permits. It requires that the Department consults and publishes the general conditions. The clause further provides that regulations made under this clause can include an offence of breaching permit conditions. Subsection (2) also introduces a new section 124B (Further provisions about permits) to the Fisheries (Northern Ireland) Act 1966 to provide that permits can be varied, revoked or suspended. The new section 124B provides for an appeal against a decision of the Department to refuse an application for a permit, to attach conditions to a permit or to revoke or suspend or vary a permit. (But there is no appeal against attaching or varying general conditions.) Finally, the new section also creates an offence of giving false information for the purpose of obtaining a permit.

Clause 2 - Size limits for sea fish

This clause amends section 127 of the Fisheries (Northern Ireland) Act 1966 in relation to order making powers under that section. Instead of limiting these powers to minimum sizes of fish, the clause amends section 127 so that subordinate legislation can be made in relation to any size of fish so that offences under section 127(8) apply to any prescribed size of sea fish and not just undersized sea fish.

Clause 3 - Grant of licences subject to conditions imposed for environmental purposes

This clause amends section 4 of the Sea Fish (Conservation) Act 1967 which provides powers to prohibit fishing by fishing boats in any specified area without a licence. Section 4(6) of that Act provides that licences may authorise fishing subject to certain conditions and this clause amends that section to include conditions in relation to marine environmental purposes.

Clause 4 - Powers of British sea-fishery officers to enforce sea fisheries legislation

This clause provides that for the purposes of enforcing sea fisheries legislation, authorised officers have the common and fisheries enforcement powers set out in Chapter 8 of Part 2 and Chapter 4 Part 8 respectively of the Marine and Coastal Access Act 2009.

Clause 5 - Section 4: interpretation etc

This clause sets out interpretation of the terms and phrases used in Clause 4 of the Bill.

Clause 6 - Enforcement of EU rules

This clause amends section 30(1) of the Fisheries Act 1981 so that it applies both to enforceable EU restrictions and enforceable EU obligations. The clause makes it an offence to catch have fish caught in contravention of any such restriction or to fail to comply with any such obligation. The clause provides that these restrictions and obligations are directly applicable and enforceable against all relevant fishing boats and to persons in Northern Ireland.

Clause 7 - Penalties for certain offences under the 1966 Act

This clause amends the Fisheries (Northern Ireland) Act 1966 to increase the maximum level of fine applicable for anyone found guilty of certain sea-fisheries offences under that Act.

Subsection (2) amends the maximum penalties in relation to the offences of contravening a regulation made under section 124 (Sea fishing regulations), landing etc. fish caught in contravention of a regulation made under section. Subsection (3) amends the maximum penalties in relation to the offences of landing etc. fish caught in contravention of a regulation made under section 124. Subsection (4) amends the maximum penalties for contravening section 127 of the 1966 Act (sizes of sea-fish). Subsection (5) increases the maximum penalty for assault of an authorised person and obstruction of an authorised person.

Clause 8 - Penalties for offences under the Sea Fish (Conservation) Act 1967

This clause amends the maximum level of fine applicable for anyone found guilty of offences under specified sections of the Sea Fish (Conservation) Act 1967. Subsection (2) amends the maximum penalty in each case in relation to the offences of:

- carrying by a fishing boat, sea fish of which are less than the minimum size prescribed under Section 1(3) of the Sea Fish (Conservation) Act 1967;
- carrying nets or other fishing gear on a fishing boat in contravention of an order under section 3(1) of the Sea Fish (Conservation) Act 1967;

- failing to return fish to sea fish caught in contravention of a prohibition on fishing in a specified area for a specified description of sea fish (section 4(9A) of the Sea Fish (Conservation) Act 1967);
- failing to return fish to the sea where an order is made in respect of a description of sea fish and when in the course of any fishing operation such fish are caught (section 5(6) of the Sea Fish (Conservation) Act 1967);
- landing any sea fish (except salmon or migratory trout) from a vessel in contravention of an order made under section 6(1) (section 6(5) of the Sea Fish (Conservation) Act 1967); and
- trans-shipping from a vessel any sea fish (except salmon or migratory trout) caught in contravention of an order made under section 6(1A) (section 6(5A)(b) of the Sea Fish (Conservation) Act 1967), where trans-shipping into a vessel in contravention of such an order.

Subsection (2) amends section 15 of the Sea Fish (Conservation) Act 1967 by replacing the offence of assaulting or wilfully obstructing an officer (section 15(2C)(b)) which currently attracts a maximum penalty of £5,000 on summary conviction, to provide for two separate offences of obstructing and assaulting an enforcement officer in the exercise of his duties with a maximum penalty of £20,000 and £50,000 (on summary conviction) respectively.

Clause 9 - offences by directors, partners etc.

This clause replaces section 12 of the Sea Fish (Conservation) Act 1967 and provides that where certain offences under that Act have been committed by a body corporate, then any officer, as defined, of the body corporate may be found to be guilty of that offence and liable to proceedings and fines. Officers will be liable in this way only where the offence has been committed with their consent or connivance or through their neglect.

Inland fisheries

Clause 10 - Fish dealer's licence: no need for certificate of Justice of the Peace

This clause amends section 114 of the Fisheries (Northern Ireland) Act 1966 to remove the need for an application for a fish dealer's licence to be accompanied by a certificate from a Justice of the Peace stating that the applicant is a fit and proper person to hold such a licence.

Clause 11 - Restriction of removal of material from bed of lake

This clause amends section 48 (taking etc. of spawn or fry of salmon, trout or eels) of the Fisheries (Northern Ireland) Act 1966 to extend the restriction to include lakes as well as rivers.

Clause 12 - Dams in rivers: fish passes etc.

This clause amends section 54 (Construction of fish passes in dams in rivers) of the Fisheries (Northern Ireland) Act 1966. Section 54 requires dam owners to provide and maintain fish passage for salmon, trout and eels and subsection (3) adds lampreys are added to this list of protected species.

Subsection (4) empowers the Department to remove dams which are a barrier to fish passage where an owner cannot be identified. The Department can also enter land for the purposes of carrying out this work.

Clause 13 - Gratings in certain watercourses

This clause amends section 59 of the Fisheries (Northern Ireland) Act 1966 to require anyone taking water from a river to fit a grill of not more than 10mm at the entrance and exit of watercourses to protect the entry of small fish into these watercourses. This requirement will only apply to new installations and exemptions will be permitted where the Department is satisfied that sufficient arrangements will be made by means other than a 10mm grill size.

Fixed Penalty Notices

Clause 14 - Fixed penalty notices

This clause empowers DARD to make regulations in connection with giving fixed penalty notices in relation to sea fisheries offences and DCAL to make regulations in connection with giving fixed penalty for inland fisheries offences. The clause sets out the detail of the provision which may be made in the regulations, including the content of the penalty notice, the minimum and maximum amount of the penalty and matters as to payment.

Clause 15 - Fixed penalty notices: effect on prosecution

This clause provides that proceedings against a person in respect of the offence may not be brought within the notice period (unless the fixed penalty notice is withdrawn or unless the recipient of the fixed penalty gives written notice under clause 14(3)(i) that they do not intend to pay the fixed penalty.

The clause also provides that if the fixed penalty is paid before the end of the notice period, the person may not be convicted of the offence unless the fixed penalty notice is withdrawn or the circumstances are of a kind prescribed by virtue of clause 14(3)(j)).

General

Clause 16 – Interpretation

This clause sets out interpretations of the terms used in the Bill.

Clause 17 - Power to make consequential amendments

This clause makes provision for the Department to make consequential amendments by regulations.

Clause 18 – Commencement

This clause makes provision about the commencement of provisions in the Bill. It also makes provision for regulations with regard to transitional, transitory or saving provisions.

Clause 19 - Short title

This clause provides the short Title for the Act, namely The Fisheries (Northern Ireland) Act 2016.

FINANCIAL EFFECTS OF THE BILL

28. Policy and legislation development costs are approximately £160,000 per annum in staff costs. The Department of Agriculture and Rural Development has the budgetary cover for the policy and legislation development up to March 2016. The Department of Culture, Arts and Leisure is providing input to policy development within existing resources.
29. Existing legislation already gives enforcement powers to authorised officers (both at sea and inland) and it is not therefore envisaged that the powers in the Bill will have any significant additional financial implications to Government from enforcing the updated rules.
30. A draft partial Regulatory Impact Assessment (RIA) that accompanied consultation on the proposals concluded that there were no direct nor substantial financial implications from the policy proposals, and that any costs were outweighed by the benefits. Consultees were asked to comment on these conclusions and no major issues were raised. The RIA was updated to reflect changes in the proposals stemming from the consultation, but its conclusion remained the same.

HUMAN RIGHTS ISSUES

31. During consultation, stakeholders were asked to comment on the Departments' assumptions in relation to impact on human rights and no comments were received that resulted in a change to the Departments' initial conclusion that it had no adverse impact.

EQUALITY IMPACT ASSESSMENT

32. An Equality Impact Assessment carried out by the Department of Agriculture and Rural Development Fisheries Division in 2005 on all areas of its business concluded that its policies were in compliance with the statutory duty. In accordance with their duty under section 75 of the Northern Ireland Act 1998 and prior to consultation, the policy proposals were screened by the Department of Agriculture and Rural Development and the Department of Culture, Arts and Leisure for potential differential impacts on groups. Section 75 groups and other stakeholders were asked to comment on the conclusion that the proposals had no differential impact during consultation and as no comments were received that resulted in a change to the Departments' initial conclusion to screen out the proposals.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

33. Many of the new powers simply clarify or regularise existing rules and therefore have no direct or substantive impact. Some powers, such as the direct enforcement of EU obligations or the power to include protection of the environment on sea fishing licence conditions will in time provide savings in making subordinate legislation (which in turn would free up resources to, for example, seek to address a stakeholder requirement to improve regulation and enforcement in the inshore area).
34. There may be some negligible and short term costs in training officers, in issuing guidance and in drafting new subordinate legislation to reflect the policy contained in the Bill.
35. Powers to charge for sea fishing permits are likely to have some impact in the longer term, but this will not be as a direct result of the Bill. This would only become an issue if and when new subordinate powers are exercised. Currently no decision has been taken to introduce such schemes/charges and any such costs would therefore fall outside the current budget period. Bringing forward any new permit schemes will require further consideration of the regulatory impact in a future budget period.
36. The new requirement for 10mm grills to be fitted on the entrance and exits of watercourses may result in additional material costs during manufacture and may require more regular cleansing of debris. However, mill owners will no longer

have to manufacture and affix wire meshes to these grids during springtime when fry are at their most vulnerable. Exemptions may also be available for other approved compliant mechanisms such as Archimedean Screw Turbines and electric fish barriers. Schemes will be assessed on a site by site basis and exemptions permitted where the Department is satisfied that sufficient arrangements will be made by means other than a 10mm grille size. In addition, all schemes operating prior to the passing of this draft Fisheries Bill will be excluded from the new 10mm specification. It would be unfair to implement the new requirements retrospectively although these prior-established schemes will still be required to attach wire lattices in the spring.

37. The powers in relation to fixed administrative penalties will reduce financial burdens and uncertainty for fishermen/anglers accused of offences. As fixed monetary penalties require the same (criminal) standard of proof as for prosecution cases, there is little additional cost for enforcers, but there are clear potential savings for Government from not having to take some cases through courts.
38. There are potential savings for industry from the powers to issue bonds and for the Department of Agriculture and Rural Development in being able to sell seized fish. There are also potential cost savings to applicants for Fish Dealer's Licences as they will no longer have to seek independent verification from a Justice of the Peace.
39. The draft partial Regulatory Impact Assessment that accompanied consultation on the proposals concluded that there were no direct or substantial financial implications from the policy proposals. No major issues were raised to change this conclusion. It was therefore concluded that the benefits justify any costs.

LEGISLATIVE COMPETENCE

40. The Minister of Agriculture and Rural Development had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Fisheries Bill would be within the legislative competence of the Northern Ireland Assembly.”