

FISHERIES BILL

Delegated Powers Memorandum

DELEGATED POWERS MEMORANDUM PURPOSE

- 1 This memorandum has been prepared by the Department of Agriculture and Rural Development in accordance with paragraph 18 of “Guidance to Ministers and Departments on Dealing with Legislation” as agreed by the Executive on 20 November 2008. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory and Financial Memorandum for the Bill.
- 2 The contents of this Memorandum are entirely the responsibility of the Department of Agriculture and Rural Development and have not been endorsed by the NI Assembly.

OUTLINE OF BILL PROVISIONS

- 3 The main purpose of the Fisheries Bill is to update fisheries legislation to modernise inland and sea-fisheries enforcement powers and to allow the Department to comply fully and directly with EU legislation and statutory duties. The Bill amends the Fisheries (Northern Ireland) Act 1966, the Sea Fish (Conservation) Act 1967 and the Fisheries Act 1981.
- 4 The Bill contains 19 Clauses.
- 5 More detailed information about the Fisheries Bill is provided in the Explanatory and Financial Memorandum which is published separately.

DELEGATED POWERS

- 6 The Bill confers a number of powers on the Minister and the Department which are set out below.

DELEGATED POWERS

Clause: **Clause 1 (sea fisheries).**

Power conferred on: **The Department.**

Power exercisable by: **Regulations.**

Assembly procedure: **Negative.**

Provision

Clause 1 of the Bill (sea fisheries) extends section 124 of the Fisheries Act (Northern Ireland) 1966 to specifically allow for regulations that would prohibit or restrict fishing for sea-fish without a permit issued by the Department. The clause 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.

The clause 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.

Reason for taking power

Under section 124 of the 1966 Act, DARD may make regulations for the management, conservation, protection, improvement or increase of sea fisheries in inshore waters or in the Northern Ireland Zone. The Bill amends section 124 to make it clear that regulations made under section 124(1) can specifically prohibit or restrict sea-fishing without a permit issued by the Department. Further details on the powers are set out in a new section 124A and these powers broadly parallel existing regulatory powers under section 124, and also the licensing powers which already apply to sea fishing vessels across the UK, under the Sea Fish (Conservation) Act 1967. This will enable the Department to allow fishing subject to detailed conditions and to limit the number of permits issued in order to protect stocks and sensitive marine environments and allow the Department to revoke a permit where there has been a breach of the permit conditions.

This is necessary as there are likely to be occasions when environmental or fisheries Directives might impose requirements relating to the marine environment or fish conservation that would require the Department to limit activity in this way. Without the scope for permitting, in some cases it may be necessary to prohibit fishing entirely.

This is not a new regulation making power but is an amendment of an existing power.

Choice of procedure

The current regulation making power under section 124 of the 1966 Act is subject to Assembly scrutiny under the negative procedure and therefore it is appropriate that this remains the position under the amended power. This is an appropriate control given that the subject matter of regulations made under this provision is technical and administrative in nature.

Furthermore, the clause requires that the Department consults on the conditions that would apply to any permit schemes introduced under this regulatory power and is unlikely to be controversial.

Clause: **Clause 2 (Size limits for sea fish).**

Power conferred on: **The Department.**

Power exercisable by: **Order.**

Assembly procedure: **Negative.**

Provision

Clause 2 (size limits for sea fish) extends the Department's power to prescribe, by order under section 127 of the Fisheries Act (Northern Ireland) 1966, the landing etc. of fish over a maximum size.

Reason for taking power

Section 127 of the Fisheries Act (Northern Ireland) 1966, provides powers to make subordinate legislation setting minimum size limits for sea fish, and to prohibit any person from bringing to land, landing, selling, offering or exposing for sale, having in his possession for the purpose of sale, sea fish (including preserved sea fish). The Bill amends section 127 to allow the subordinate legislation to apply to any requirements as to size, rather than to minimum size limits only. This will allow the Department to make legislation setting a minimum or a maximum size limit for sea fish or a size range outside which no fish may be landed, sold or carried etc., rather than limiting this to minimum sizes as is currently the case.

Such powers could be used, for example, to require larger shellfish to be returned to the sea to breed and could therefore allow for an additional protection of stock levels. This power aligns with changes made in Britain.

This is not a new order making power but an amendment of an existing power.

Choice of procedure

The current order making power under section 127(1) of the 1966 Act is subject to Assembly scrutiny under the negative procedure and therefore it is appropriate that this remains the position under the amended power, given its technical nature.

The power under this clause would only be used where there is scientific evidence that such an order is necessary to protect fish stocks, is technical in nature, and is unlikely to be controversial.

Clause: **Clause 14 (Fixed penalty notices).**

Power conferred on: **The Department.**

Power exercisable by: **Regulations.**

Assembly procedure: **Draft Affirmative.**

Provision

Clause 14 of the Bill (Fixed penalty notices) empowers the Department to make regulations in connection with giving fixed penalty notices in relation to inland and sea fisheries offences. The clause sets out the detail of the provision which may be made in the regulations, including the offences that would apply, the content of the penalty notice, the minimum and maximum amount of the penalty and matters as to payment. Under clause 15 (Fixed penalty notices: effect on prosecution), where a person is given a fixed penalty notice under clause 14, they may not be prosecuted before any period set out in a fixed penalty notice has expired or if the fixed penalty is paid within that period.

Reason for taking power

This power will provide the option of paying an administrative penalty as an alternative to a report being submitted for prosecution. This will provide for the possibility of avoiding a criminal record for minor or technical offences and reduce the administrative burden of attending court. It will also allow for more targeted enforcement action in relation to more serious offences. In terms of sea fisheries, such a power already exists in relation to EU related offences, such that this change is needed to extend this to all non EU/Common Fisheries Policy sea fisheries offences.

As noted fixed penalties remove the risk of criminal record, reduce costs and time for fishermen in relation to the legal process and are widely accepted to improve compliance in a cost-effective manner.

Choice of procedure

A regulation made under this provision of the Bill will be subject to the draft affirmative procedure. This procedure is considered appropriate as, alongside a general requirement to consult on the level of penalty, it allows thorough scrutiny of any proposal to increase or decrease penalty levels which may potentially be divisive.

Clause:	Clause 17 (Power to make consequential amendments).
Power Conferred on:	The Department.
Power exercisable by	Regulations.
Assembly Procedure:	Draft Affirmative (clause 17(2) and Negative (clause 17(3)).

Provision

Under this clause, the Department may by regulations make such amendments of statutory provisions as it considers appropriate in consequence of this Bill, should this be necessary (that is if any unforeseen circumstance has been overlooked).

Choice of procedure

Where any regulations made under this power amend primary legislation, it is appropriate that they be made via the draft affirmative procedure.

Otherwise, it is appropriate that the regulations be subject to negative resolution.

Clause: **Clause 18 (Commencement).**

Power conferred on: **The Department.**

Power exercisable by: **Regulations.**

Assembly procedure: **Negative.**

Provision

Clause 18 (Commencement) empowers the Department to make transitional, transitory or saving provisions in connection with the coming into operation of any provision of the Bill.

Choice of procedure

This is routine and non controversial so it is appropriate that the regulations be subject to negative resolution.