

FISHERIES BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department of Agriculture and Rural Development (DARD) 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. DARD currently has responsibility for sea fisheries and aquaculture and the Department of Culture, Arts and Leisure (DCAL) is responsible for inland and salmon fisheries.

Sea Fishing

4. Fishing for the main commercially exploited sea fish species is regulated through the European Union's (EU) Common Fisheries Policy (CFP) via annual total allowable catches and a system of quotas for each species and sea area. These rules are directly enforceable here under the Fisheries Act 1981 (the 1981 Act) or, in certain cases, are implemented through subordinate legislation using powers conferred by local Acts.
5. The majority of sea fisheries legislation is therefore EU based, and failure to have proper enforcement mechanisms in place in respect of that legislation would be a breach of EU obligations.
6. The Sea Fish (Conservation) Act 1967 (the 1967 Act) regulates commercial sea fishing, including the regulation of gear and nets and the licensing of fishing boats. The Fisheries Act (Northern Ireland) 1966 (the 1966 Act) regulates in-shore fishing (primarily the 6 mile strip of sea adjacent to the coast) which covers fishing vessels that mainly target shell-fish by potting. The 1966 Act also regulates fish farming and inland fisheries.

7. 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 in England and Wales. 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 new primary legislation.

Inland Fisheries

8. The 1966 Act gives broad powers to DCAL to regulate the conservation, protection, promotion and development of salmon and inland fisheries. These powers were initially given to the Fisheries Conservancy Board but transferred to DCAL in 2009 when the Board was abolished.
9. Through the Salmon and Inland Fisheries Forum and the Assembly, inland fisheries stakeholders articulated their concerns about the effectiveness of the 1966 Act in light of changes in inland fisheries management practice and environmental and European obligations.

Proposals for a Fisheries Bill

10. Having reviewed the current legislative position, DARD and DCAL identified a range of proposals to amend the 1966 Act, the 1967 Act and the 1981 Act. The aim was to ensure that legislation remained fit for purpose in order that it provided adequate protection for sensitive marine and inland fishery environments and limited fish-stocks. The proposals would seek to ensure legislation remained compliant with certain EU and other statutory obligations, and in particular would ensure that CFP rules were directly enforceable in the north without the need for additional legislation. This is a requirement of the EU Commission. The proposals would also ensure enforcement activity remained proportionate to the seriousness of any given offence so that resources can be directed toward those offences which pose the greatest risk.
11. Following public consultation on the range of proposals, a Bill was introduced in the Assembly on 7 December 2015. However, given the finite amount of Assembly time remaining in the current mandate, the DARD Minister agreed to only bring forward to enactment those clauses that the Committee for Agriculture and Rural Development confirmed that it was content that it had time to fully consider during its scrutiny of the Bill.
12. As a result only one key substantive clause was progressed at Consideration Stage. The aim of that clause is to amend Section 30 of the 1981 Act to ensure

that it is clear that both ‘enforceable Community restrictions’ and ‘enforceable Community obligations’ could be directly enforced without the need for additional domestic subordinate legislation. This would achieve the main aim of ensuring EU legislation was directly enforced and therefore Northern Ireland would remain compliant with EU obligations under the CFP.

CONSULTATION

13. Consultation on policy proposals for a Fisheries Bill opened on 18 August 2014 and closed on 10 November 2014.
14. 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 DARD website. In order to explain the proposals and to encourage responses, DARD officials carried out follow-up engagement 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 on which the Department consulted, including the proposal to allow DARD to directly enforce most EU regulations under the CFP.
16. A summary of the outcome of the consultation on the full set of proposals, and the Government 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

17. 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.
18. Option 1. Do Nothing.

The first policy option considered was to do nothing and, by doing so, leave the current primary legislative framework as it is. In order to protect fish stocks and aquatic

environments 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 DARD to continue to manage fisheries to some degree, and therefore the first option was not to introduce a Fisheries Bill and to make no amendments to current primary powers. Under this option, fisheries enforcement would continue to rely on existing powers to manage fish stocks and the impact of fishing on the environment.

Subordinate legislation made under existing powers would be drafted in order to enforce new EU rules under the CFP. However, there would be a risk that such legislation would not be brought in by EU deadlines, and the EU Commission would be critical about the lack of direct enforcement of certain EU fisheries legislation immediately that it came into operation.

Given the amount of new CFP legislation on the horizon, it is likely that any short term fix would only serve to store up problems for the future as EU legislation is continually being introduced and updated. Northern Ireland would therefore continue to live under the real threat of EU sanction.

Therefore doing nothing would mean that gaps identified in the legislation would not be addressed. In particular, this would mean DARD would not be able to fully and directly meet its EU obligations under the CFP. Not bringing forward new legislation would mean a risk of infraction proceedings by the EU Commission.

19. 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. 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. This would also mean that DARD would be unable to meet its obligations under the CFP or other statutory regimes.

20. Option 3. Bring forward a Fisheries Bill to update existing legislation.

The third option, to bring forward a Fisheries Bill to update existing legislation, considered the costs and benefits of introducing a Bill which would seek to ensure legislation remained fit for purpose and would fully comply with EU obligations. The policy consultation document sought views on a range of such proposals that could be contained in a Fisheries Bill and most of these proposals were included in a Bill that was introduced in the Assembly on 7 December 2015.

DARD considers that to do nothing or to deregulate fisheries would risk its competency to manage fisheries and would risk infraction for non compliance with the CFP. Therefore the third option, to bring forward a Fisheries Bill to update existing

legislation and, in particular, to enable DARD to fully meet its EU obligations, is the preferred option.

The Bill, as introduced, included a range of provisions in relation to sea and inland fisheries. The provisions in the Bill sought to meet the objectives of ensuring that both DARD and DCAL could meet their EU, and other, obligations in the longer term, and would ensure that legislation would remain fit for purpose. However, as a result of the Assembly's scrutiny, the Bill that completed Consideration Stage contained one key clause in relation to the direct enforcement of EU legislation. This clause would ensure that the Bill met its key objective of ensuring compliance with EU CFP rules.

OVERVIEW

21. The Fisheries Bill contains 2 clauses and amends the Fisheries Act 1981.

COMMENTARY ON CLAUSES

Clause 1 - 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 fish in contravention of any such restriction or to fail to comply with any such obligation. The clause allows such restrictions and obligations to be directly enforced against all fishing boats within the Northern Ireland Zone and Northern Ireland fishing boats outside that Zone, as well as persons in Northern Ireland.

The clause amends order making powers under section 30(2) of the Fisheries Act 1981 so that an order may apply to Northern Ireland fishing boats outside the Northern Ireland Zone and to persons on board a Northern Ireland fishing boat outside the Northern Ireland Zone.

Clause 2 - Short title

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

FINANCIAL EFFECTS OF THE BILL

22. Policy and legislation development costs were approximately £160,000 per annum in staff costs. DARD has the budgetary cover within existing baselines for the policy and legislation development up to March 2016, when the Bill completes its Assembly stages.
23. Any costs relating to the new powers to directly enforce EU rules under the CFP will be minor and would form part of the normal key business activities of DARD

fisheries work, and these would be built into the Departmental business planning exercise. These small costs will be further offset by savings accruing from not having to bring forward separate regulations to enforce EU legislation.

24. Existing legislation already gives enforcement powers to authorised officers and therefore the enactment of the Bill will have no additional or ongoing financial implications.
25. A draft partial Regulatory Impact Assessment (RIA) that accompanied consultation on the original proposals concluded that there were no significant (i.e. negligible) direct financial implications from the policy proposals, and that any negligible or small one-off costs were outweighed by the benefits. Consultees were asked to comment on these general conclusions and no major issues were raised. The RIA was updated to reflect changes in the proposals stemming from the consultation, but its overall conclusion remained the same.

HUMAN RIGHTS ISSUES

26. During consultation stakeholders were asked to comment on the Department's assumptions in relation to impact on human rights of the wider proposals and no comments were received that resulted in a change to the initial conclusion that it had no adverse impact including in relation to the direct enforcement of EU rules.

EQUALITY IMPACT ASSESSMENT

27. An Equality Impact Assessment carried out by DARD Fisheries Division in 2005 on all areas of its business concluded that its policies were in compliance with the statutory duty. In accordance with the duty under section 75 of the Northern Ireland Act 1998, and prior to consultation, the original policy proposals were screened for potential differential impacts. Section 75 groups and other stakeholders were asked to comment on the conclusion that the wider consultation proposals, including the proposal to allow for the direct enforcement of EU rules, had no differential impact and no comments were received that resulted in a change to the initial conclusion to screen out the proposals.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

28. The broad conclusion of the draft partial RIA that accompanied consultation on the wider proposals was that there were no significant regulatory implications, and no issues were raised to change this overall conclusion. The Bill amends Section 30 of the 1981 Act to ensure that it is clear that both 'enforceable Community restrictions' and 'enforceable Community obligations' can be directly enforced without the need for additional domestic subordinate legislation. The new power simply changes how some EU fisheries regulations are enforced in Northern Ireland and therefore has no regulatory impact.

LEGISLATIVE COMPETENCE

29. 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.”