



FISHERIES BILL 2010

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Mr P A Gawne, MHK

General Note

This Bill initially promoted by the Department for Agriculture, Fisheries and Forestry and, from 1st April 2010 by the Department of Environment, Food and Agriculture, is intended to replace existing legislation regulating fisheries and fish-farming in both territorial waters and inland waters of the Isle of Man.

Part 1 (clauses 1 to 4) of the Bill is introductory.

CLAUSE 1

Gives the Bill its "short title".

CLAUSE 2

Sets out the commencement provisions for the Bill; its substantive provisions will come into operation on a day or days appointed by Order.

CLAUSE 3

Sets out the definitions of terms used in the Bill.

CLAUSE 4

Enables the Department by Order to define boundaries for the purposes of the Bill, in particular the boundaries between waters subject to inland fishery licensing and waters subject to sea fishery licensing.

Part 2 (clauses 5 to 8) of the Bill contains general provisions relating to the Department's functions.

CLAUSE 5

Sets out the Department's responsibilities and the matters to be taken into account in exercising its functions.

CLAUSE 6

Provides for the appointment of 'fishery officers' (who will be members of the Isle of Man Civil Service) and voluntary 'fishery watchers' (previously 'river watchers') to enforce the controls of the Bill, in inland waters or the sea or both..

CLAUSE 7

Enables the Department to undertake research, inquiries and investigations in relation to inland or sea fisheries in order to inform action in respect of management, conservation, protection or improvement of those fisheries.

CLAUSE 8

Enables the Department to grant general licences, permits and authorisations under the Bill.

Part 3 (clauses 9 to 21) of the Bill makes provision for inland fisheries.

CLAUSE 9

Enables the Department to stock any inland waters for the purpose of developing or improving those waters.

CLAUSE 10

Empowers the Department to improve inland fisheries of any type, either at its own expense or, by agreement, at the expense of others.

CLAUSE 11

Enables the Department to authorise the removal of natural obstructions in both rivers and the sea in order to enable the free passage of migratory fish .

CLAUSE 12

Requires that where a dam has been constructed in any waters, the owner of the dam must construct a fish pass which will permit the free passage of fish unless the Department grants an exemption. (Transitional provision for existing dams is made by Schedule 2 paragraph 3.)

CLAUSE 13

Makes it an offence to take fish from a fish pass.

CLAUSE 14

Makes it an offence to fish with anything other than rod and line within 200 metres of a dam.

CLAUSE 15 and Schedule 1

Impose controls on fishing in mill-pools and leats, and on the use of mill sluices.

CLAUSE 16

Makes it an offence to introduce any live fish into inland waters, or to possess fish for the purpose of introduction, without the Department's consent..

CLAUSE 17

Makes it an offence to use or possess explosives, anaesthetics or other deleterious matter for the purposes of catching, destroying or injuring fish.

CLAUSE 18

Makes it an offence to remove material from the bed of any river without the consent of the Department.

CLAUSE 19

Empowers the Department to direct persons to place and maintain gratings across cuts, leats or channels where fish are liable to be diverted from inland waters. The gratings must be of the size and specification as stipulated by the Department.

CLAUSE 20

Enables the Department to require by notice a minimum flow of water below any dam which is constructed in any inland waters. The Department is required to consult certain parties including the dam owner, Department of Infrastructure and the Water and Sewerage Authority.

CLAUSE 21

Enables the Department to make regulations for the prevention of disease, controlling the importation, removal and movement of fish in the Island, protecting inland waters from predators and prohibiting practices which impede the lawful capture of fish.

Part 4 (clauses 22 to 35) of the Bill concerns the regulation of fishing in inland waters.

CLAUSE 22

Makes it an offence to fish for, take or kill fish without a fishing licence.

CLAUSE 23

Enables the Department to make regulations providing for the granting of fishing licences to fish in inland waters. The regulations may include provision for applications for licences, the form, conditions and term of licences, and their renewal, amendment, suspension and cancellation. They may also require the keeping of and

submission of records of catch to the Department. Provision is made for appeals against the refusal, suspension or cancellation of licences.

CLAUSE 24

Imposes restrictions on the use of information submitted through returns to the Department.

CLAUSE 25

Provides that angling licences are not to be transferable.

CLAUSE 26

Clarifies the effect of fishing licences; in particular it does not confer a right to fish in private waters.

CLAUSE 27

Makes misuse or falsification of a fishing licence an offence.

CLAUSE 28

Prohibits certain methods of fishing using certain devices or equipment, eg. lights or electrical equipment.

CLAUSE 29

Makes it an offence to use a net or fishing weir in inland waters (other than a landing net for the purpose of angling).

CLAUSE 30

Makes possession or control of any device referred to in clauses 28 and 29 an offence.

CLAUSE 31

Makes it an offence to locate, disturb, take or kill salmon, sea trout and eels in inland waters by specified methods, including throwing stones or using cross lines or dams.

CLAUSE 32

Makes it an offence to take spawn or fry of salmon, sea trout or trout.

CLAUSE 33

Makes it an offence to chase, injure or disturb spawning fish on spawning beds, with exemptions for disturbance caused by certain authorised or emergency works.

CLAUSE 34

Makes it an offence to obstruct another person lawfully engaged in fishing.

CLAUSE 35

Makes it an offence to take or attempt to take fish in any private waters without the authority of the owner or occupier of those waters.

Part 5 (clauses 36 to 47) of the Bill concerns the regulation of sea fishing.

CLAUSE 36

Empowers the Department to make regulations imposing prohibitions or restrictions in respect of any area of the sea within territorial waters. The Department may prohibit fishing for all or certain species of sea fish, specify quotas of sea-fish that may be taken in specified periods, and restrict methods of fishing, the size or number of vessels that may fish, the gear that may be used in fishing and the landing and sale of fish. Regulations may also establish advisory bodies.

CLAUSE 37

Enables the Department to make regulations providing for the licensing of fishing boats engaged in commercial fishing activities within the territorial sea. Regulations may provide for applications for sea fishing licences, the form, conditions and term of licences, their renewal, cancellation, suspension and variation of such licences, and the keeping of records of catch and landings. Provision is made for appeals against the refusal, suspension or cancellation of licences.

CLAUSE 38

Makes further provision with respect to sea fishing licences under clause 37, including their scope and the conditions which may be included in them.

CLAUSE 39

Requires fish caught in contravention of regulations under clause 36 or 37 to be returned to the sea.

CLAUSE 40

Enables the Department to make regulations controlling the trans-shipping of sea-fish within Manx territorial waters and providing for the issue of licences.

CLAUSE 41

Provides for penalties for offences under clauses 36 to 40 (including a fine of up to £50,000 on summary conviction).

CLAUSE 42

Provides that data obtained through the use of automatic recording equipment may be used as evidence.

CLAUSE 43

Enables the Department to make regulations requiring buyers of fish in the Island to be registered and to keep and produce records of fish purchased .

CLAUSE 44

Enables the Department to obtain statistics on sea-fish landings, including details of the quantities of sea-fish, the areas in which these sea-fish were caught and the methods of fishing for those sea-fish.

CLAUSE 45

Enables the Department to make regulations for the control and licensing of recreational sea fishing. Regulations may provide for applications for recreational sea fishing licences, the form, conditions and term of licences, and their renewal, cancellation, suspension and variation, The Department is required to grant a general licence for sea angling.

CLAUSE 46

Enables the Department by Order to apply or extend United Kingdom and European legislation relating to sea-fisheries.

CLAUSE 47

Makes it an offence to use or possess explosives, anaesthetics or other deleterious matter for the purposes of catching, destroying or injuring fish.

Part 6 (clauses 48 to 52) of the Bill contains miscellaneous restrictions.

CLAUSE 48

Enables the Department to specify an annual close season for salmon, sea trout or any species of freshwater fish, and makes it an offence to take fish during the close season.

CLAUSE 49

makes it an offence for a person to buy, sell, offer for sale or expose for sale any fish between the third day and the end of the close season.

CLAUSE 50

Makes it an offence to take "unseasonable" salmon, trout or sea trout (ie. at spawning time)

CLAUSE 51

makes it an offence to buy, sell, offer or expose for sale unlawfully taken salmon, sea trout or freshwater fish, a fish taken by rod and line, unseasonable fish and undersized fish.

CLAUSE 52

makes it an offence to take salmon, trout or sea trout injured or killed by unlawful means or found dead.

Part 7 (clauses 53 to 58) of the Bill concerns aquaculture (fish farming).

CLAUSE 53

Enables the Department to engage in aquaculture for the purpose of stocking or restocking waters under clause 9.

CLAUSE 54

Provides that aquaculture must be undertaken in accordance with a licence issued by the Department.

CLAUSE 55

Enables the Department to grant aquaculture licences in respect of inland waters and the sea. Provision is made for the conditions and term of an aquaculture licence.

CLAUSE 56

Enables the Department to amend or revoke an aquaculture licence on specified grounds.

CLAUSE 57

Makes supplementary provision in respect of aquaculture licences, including power for authorised persons to inspect and take samples.

CLAUSE 58

Empowers the Department to apply by Order any United Kingdom or European Community legislation relating to aquaculture in order to ensure the Island meets its obligations in regard to fish health.

Part 8 (clauses 59 to 72) of the Bill contains enforcement provisions.

CLAUSE 59

Requires persons authorised to exercise any powers under the Bill to produce evidence of their authority to act.

CLAUSE 60

Enables authorised persons to board vessels and to exercise other powers in relation to either inland or sea fisheries.

CLAUSE 61

gives additional powers in respect of searching persons, premises, vehicles, packages or containers where an offence is suspected of being committed, with powers of seizure.

CLAUSE 62

Enables authorised persons to arrest alleged offenders, who must be delivered into the custody of the police as soon as practicable.

CLAUSE 63

Empowers an authorised officer to seek a warrant from a Justice of the Peace to enter and search premises where there are reasonable grounds for suspecting that an offence has been committed.

CLAUSE 64

prevents a constable or authorised officer entering upon land or inland waters to enforce fishing rights unless those rights are vested in a Department or Statutory Board or an offence under the Bill is suspected.

CLAUSE 65

Provides for the procedure for the appointment of private water bailiffs.

CLAUSE 66

Gives additional powers of access to land or watercourses to investigate alleged offences under the Bill.

CLAUSE 67

provides that a Justice of the Peace may issue a warrant to enter land or waters for the purposes of clause 61 or 66.

CLAUSE 68

Enables an authorised officer to remove certain obstructions, provided no damage is caused by doing so.

CLAUSE 69

Requires a person to produce a licence or permit when requested to do so by an authorised person.

CLAUSE 70

Makes it an offence to obstruct an authorised person when undertaking their duties under the Bill.

CLAUSE 71

Makes it an offence to warn a person fishing illegally of the approach of an authorised person.

CLAUSE 72

Indemnifies an authorised person against liability for loss or damage caused in the exercise of their functions, unless they acted in bad faith.

CLAUSE 73

Enables the Department by regulations to specify fees payable for the grant or renewal of any licence under the Bill.

CLAUSE 74

Enables the Department by regulations to provide for the gathering of data through the tagging of salmon or sea trout.

CLAUSE 75

Provides for an exemption by the issue of a permit for artificial propagation or transplantation of fish, for stocking, restocking or improvement of a fishery or for some scientific purpose either in the sea or inland waters.

CLAUSE 76

Provides that byelaws restricting fishing within a marine nature reserve declared under the Wildlife Act 1990 may be enforced in the same way as sea fishery legislation.

CLAUSE 77

Provides for officers and members of bodies corporate to be liable for offences committed by those bodies, and for the venue for summary proceedings.

CLAUSE 78

Enables the court to order the forfeiture of any fish, boat, fishing gear, fishing engine or other thing where a person is convicted of an offence under the Bill.

CLAUSE 79

Provides for the disposal of fish which has been seized or detained .

CLAUSE 80

Provides that an authorised officer may apply for a court order for the disposal or forfeiture of any boat, fishing gear or fishing engine which has been seized, even if no-one is charged with an offence.

CLAUSE 81

Provides for anything forfeited under the Bill to be disposed of in accordance with the directions of the Department.

CLAUSE 82

Enables a court, on convicting the holder of a licence of an offence under the Bill, to cancel or suspend the licence, for up to one year for a first offence or up to 5 years for a subsequent offence. A court may also disqualify a person from holding a licence for the same periods.

CLAUSE 83

Deals with the procedure for making orders and regulations made under the Bill. Consultation with certain bodies is required, and provision is made for approval or annulment by Tynwald.

CLAUSE 84, Schedule 2 and Schedule 3

Makes transitional provisions in accordance with Schedule 2, and repeals the enactments listed in Schedule 3.