



**AN BILLE UM IMEALL TRÁ AGUS UM DHUMPÁIL AR
FARRAIGE (LEASÚ) 2009
FORESHORE AND DUMPING AT SEA (AMENDMENT)
BILL 2009**

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

The main provisions of the Bill are—

To provide for a division of the responsibilities for Foreshore functions in the Foreshore Acts 1933 to 2005 between the Minister for Agriculture, Fisheries and Food and the Minister for the Environment, Heritage and Local Government, based on the nature of the application.

To provide for the transfer of those sections of the Foreshore Acts which concern coastal zone management functions to the Minister for the Environment, Heritage and Local Government.

To provide for consultation between the Minister for Agriculture, Fisheries and Food and the Minister for the Environment, Heritage and Local Government when determining an application for a Foreshore consent.

To enable the Minister for the Environment, Heritage and Local Government to make regulations to define consultees and to prescribe a statutory time-limit for such consultations. These regulations will also provide the means by which the Minister for the Environment, Heritage and Local Government will make the Environmental Protection Agency (EPA) a statutory consultee for all Foreshore licence/lease applications with a statutory time-limit.

To amend the Fisheries (Amendment) Act 2003 so that the Minister may set a fee for applications and for consents under the Foreshore Acts.

To amend the Dumping at Sea Acts so that the functions of the Minister for Agriculture, Fisheries and Food are transferred to the Environmental Protection Agency.

The Bill comprises 3 Parts and 2 Schedules.

Provisions of the Bill

PART 1

PRELIMINARY AND GENERAL

Section 1 provides for the short title of the Bill when enacted, provides for commencement and, for ease of reference, provides collective citations for the Acts as amended. This section also provides that the aspects of the Bill relating to Foreshore are to come into operation one month after enactment and that the aspects relating to dumping at sea are to come into operation two months after enactment.

PART 2

FORESHORE

CHAPTER 1

DEFINITIONS

(Part 2)

Section 2 contains the definitions of the Act of 1933, Act of 1992, and commencement date.

CHAPTER 2

TRANSFER AND VESTING OF, AND ADDITIONAL, FORESHORE FUNCTIONS

Section 3 provides for a commencement date upon which certain functions under the Foreshore Acts 1933 to 2005 will transfer from the Minister for Agriculture, Fisheries and Food to and vest in the Minister for the Environment, Heritage and Local Government.

Section 4 provides for the vesting of additional Foreshore functions in the Minister for the Environment, Heritage and Local Government and related matters.

CHAPTER 3

AMENDMENTS TO FORESHORE ACTS 1933 TO 2005

Section 5 contains amendments and additions to the definitions in section 1 of the Foreshore Act 1933.

Section 6 contains an amendment to the 1933 Foreshore Act which sets out the respective Foreshore functions exercisable by the Minister for the Environment, Heritage and Local Government and the Minister for Agriculture, Fisheries and Food. Generally speaking, Foreshore functions relating to, the development of fishery harbour centres, aquaculture and sea-fishing will remain the responsibility of the Minister for Agriculture, Fisheries and Food while the Minister for the Environment, Heritage and Local Government will have responsibility for Foreshore functions relating to the development of harbours/ports, developments intended for commercial trade, off-shore energy generation projects, extraction of natural resources, waste disposal, treatment and water quality.

Section 7 contains an amendment to section 2 of the 1933 Foreshore Act which provides that the Minister for the Environment, Heritage and Local Government and the Minister for Agriculture, Fisheries and Food shall consult one another where either is considering making a lease of Foreshore. This section also provides for an increase in the annual lease payment which requires the sanction of the Minister for Finance to €63,250.

Section 8 contains an amendment to section 3 of the 1933 Act which provides that the Minister for the Environment, Heritage and Local Government and the Minister for Agriculture, Fisheries and Food shall consult one another where either is considering granting a licence of Foreshore. This section also provides for an increase in the annual licence payment which requires the sanction of the Minister for Finance to €63,250.

Section 9 substitutes the wording “judge of the District Court” for “Justice of the District Court” in section 12 of the 1933 Foreshore Act.

Section 10 amends section 13A of the 1933 Foreshore Act to empower either the Minister for the Environment, Heritage and Local Government or the Minister for Agriculture, Fisheries and Food (following consultation with the Minister for the Environment, Heritage and Local Government in view of that Minister’s role under the Environmental Impact Assessment regulations), as appropriate, to exempt an application for Foreshore consent from the requirement to prepare an environmental impact statement. The amended section sets out what action the relevant Minister must take where such an exemption is granted.

Section 11 provides for the deletion of reference to the Irish Land Commission in the Foreshore Act 1933.

Section 12 contains an amendment to section 18 of the Foreshore Act 1933 which allows the Minister for the Environment, Heritage and Local Government (following consultation with the Minister for Agriculture, Fisheries and Food) to make regulations, prescribing bodies for the purposes of submitting observations to either Minister or both in relation to the applications specified, setting time limits for the receipt of observations generally in relation to those applications and concerning related matters.

Sections 13 and 14 contain amendments of sections 19A and 19B of the Foreshore Act 1933 to extend the obligations of public notification and public consultation in relation to Foreshore applications which require an environmental impact statement, to the Minister for the Environment, Heritage and Local Government.

Section 15 amends section 21A of the Foreshore Act 1933 to require the Minister for the Environment, Heritage and Local Government to publish details of decisions made by that Minister in relation to Foreshore applications which require an environmental impact statement.

Section 16 provides for a revision of the definition of a local authority and the deletion of the definition of the Minister in section 1 of the Foreshore (Amendment) Act 1992.

Section 17 contains an amendment to section 5 of the Foreshore (Amendment) Act 1992 to confer on the Minister for the Environment, Heritage and Local Government the right to apply to the High Court to prohibit continuance of certain contraventions of the 1933 Foreshore Act.

Section 18 contains an amendment to section 6 of the Foreshore (Amendment) Act 1992 to provide for the allocation of ministerial powers in relation to mitigating and remedying the effects of the contravention of certain orders and notices, etc. to the Minister for the Environment, Heritage and Local Government.

Section 19 contains an amendment to section 7 of the Foreshore (Amendment) Act 1992 to give the Minister for the Environment, Heritage and Local Government the power of prosecution of summary offences.

Section 20 contains an amendment to section 1 (interpretation) of the Fisheries and Foreshore (Amendment) Act 1998 which provides for the insertion of a definition for Minister, which is the Minister for Agriculture, Fisheries and Food.

Section 21 contains an amendment to section 32 of the Fisheries (Amendment) Act 2003 to allow both the Minister for Agriculture, Fisheries and Food and the Minister for the Environment, Heritage and Local Government to prescribe Foreshore application and other fees in relation to their respective legislative functions.

CHAPTER 4

TRANSITIONAL PROVISIONS RELATING TO *FORESHORE ACTS 1933 TO 2009*

Section 22 provides for the preservation of certain continuing contracts and the adaptation of certain references to the Minister for Agriculture, Fisheries and Food in certain documents in relation to the transfer of Foreshore functions to the Minister for the Environment, Heritage and Local Government.

Section 23 provides for the saving and amendment of certain statutory instruments made by the Minister for Agriculture, Fisheries and Food in relation to functions to be taken over by the Minister for the Environment, Heritage and Local Government.

Section 24 provides for the transfer of certain property and liabilities of the Minister for Agriculture, Fisheries and Food to the Minister for the Environment, Heritage and Local Government which are connected with the functions being transferred.

Section 25 deals with the effect of the transfer of Foreshore functions on certain acts performed and documents which relate to the matters so transferred.

Section 26 provides for the substitution or addition of the name of the Minister for the Environment, Heritage and Local Government to any pending legal proceedings to enable those proceedings to continue.

Section 27 provides for completion by the Minister for the Environment, Heritage and Local Government, in relation to functions transferred, of matters commenced by the Minister for Agriculture, Fisheries and Food.

PART 3

CHAPTER 1

PRELIMINARY AND GENERAL

(Part 3)

Section 28 contains definitions for the Agency (The Environmental Protection Agency), the Act of 1996 (The Dumping at Sea Act 1996) and the commencement date (two months after enactment of the legislation) for this part of the Bill.

CHAPTER 2

TRANSFER AND VESTING OF DUMPING AT SEA FUNCTIONS

Section 29 provides for the transfer of the functions under the Dumping at Sea Acts from the Minister for Agriculture, Fisheries and Food to the Environmental Protection Agency and for the vesting of those functions in the Environmental Protection Agency.

CHAPTER 3

AMENDMENTS TO ACT OF 1996

Section 30 amends the definitions in section 1 of the Dumping at Sea Act 1996. The “Agency” is defined as the Environmental Protection Agency, the definition of “Minister” is deleted and there is a consequential amendment to the definition of a “harbour authority” which refers to Fishery Harbour Centres.

Section 31 contains an amendment to section 2 of the 1996 Act to require masters of vessels and pilots in command of aircraft to report to the Environmental Protection Agency instead of to the Minister any instances of dumping at sea necessitated for safety reasons.

Section 32 amends section 4 of the 1996 Act to provide for the Radiological Protection Institute instead of the Minister to prescribe radioactive substances or material as below low level following consultation with the Environmental Protection Agency. The Agency will be required to publish notice in the *Iris Oifigiúil* of the radioactive substances or material below low level so prescribed. As a transitional measure the existing low level standing prescribed for radioactive substances or material will remain in force.

Section 33 provides for the substitution of the Environmental Protection Agency for the Minister in various instances throughout section 5 of the 1996 Act. It adds the Minister for Agriculture, Fisheries and Food to the list of statutory consultees with whom the Agency must consult in relation to applications for permits to dump at sea. Also subsection 11 of section 5 of the 1996 Act has been deleted because it is not consistent with current legislative practice.

Section 34 amends section 6 of the Dumping at Sea Act 1996 to update the powers of authorised officers in accordance with current legislative best practice.

Section 35 enacts Schedule 2 of the Bill which lists by section of the Dumping at Sea Act 1996 where the Environmental Protection Agency is substituted for the Minister for Agriculture, Fisheries and

Food and where the Minister for the Environment, Heritage and Local Government and a Minister of Government are substituted as specified in that schedule.

Section 36 amends section 7 of the 1996 Act to enable the Environmental Protection Agency to bring summary proceedings in respect of offences.

Section 37 repeals section 13 of the 1996 Act. The effect of this repeal is that fees which heretofore would have been paid into the Exchequer will now be retained by the Environmental Protection Agency.

CHAPTER 4

TRANSITIONAL PROVISION RELATING TO DUMPING AT SEA ACTS 1996 TO 2009

Section 38 contains transitional measures for dumping at sea permit applications and permits granted before the commencement date and for the continuation of existing authorised officers post enactment. It also provides that the Environmental Protection Agency will be substituted for the Minister for Agriculture, Fisheries and Food in any pending legal proceedings.

Exchequer and Financial Implications

On enactment of this Bill, certain Foreshore administration and Dumping at Sea functions will transfer from the Department of Agriculture, Fisheries and Food to the Department of the Environment, Heritage and Local Government and the Environmental Protection Agency respectively. The resulting staffing and support requirements have been agreed between the Departments concerned.

A Regulatory Impact Analysis has been undertaken on the Bill. The proposed amendment will be carried out in an exchequer neutral manner. There are no significant policy proposals contained in the Bill.

*Oifig an Aire Talmhaíochta, Iascaigh agus Bia,
Samhain 2009.*