

SLANEY RIVER TRUST SEMINAR
SATURDAY 5TH MARCH 2011 BUNCLODY, CO. WEXFORD.

*“LEGAL AND PRACTICAL BACKGROUND TO
PRIVATE WATER KEEPER
WARRENTS AND IMPLICATIONS OF RECENT
FISHERIES LEGISLATION”*

Eamon Cusack

Special adviser on Fisheries Management & Stakeholder engagement

Content

- Legislation background
- Appointment of Private Water keepers
- Powers of Private Water keepers
- Practical actions

Legislation background

- Statute of Westminster 1285
- Provided close season for salmon April – June and enforcement provisions
- Fisheries Statute of 1395 provided for the enforcement of fisheries laws by justices of the peace and “under conservators”. It lasted for nearly 500 years finally replaced by a provision in the Fisheries Act 1842 and by the creation of the Boards of Conservators in 1848.
- **The form of appointment for Private Water keepers dates from Fisheries Ireland Act 1842**

All the Fisheries Acts were brought together in the Fisheries (Consolidation) Act 1959

They have been amended many times over the years

Fisheries (Amendment) Act 1962
Fisheries (Amendment) Act 1964
Fisheries (Amendment) Act 1976
Fisheries Act 1980
Fisheries (Amendment) Act 1987
Fisheries (Amendment) (No. 2) Act 1987

Fisheries (Amendment) Act 1991
Fisheries (Amendment) Act 1994
Fisheries (Amendment) Act 1995
Fisheries (Amendment) Act 1995
Fisheries (Amendment) Act 1997
Fisheries (Amendment) Act 1999
Fisheries (Amendment) Act 2000
Inland Fisheries Act 2010

Primary and secondary legislation

- Acts of the Oireachtas
- Statutory Instruments
- Bye-laws
- EU Legislation/regulation
- The Constitution of the Irish Republic
- International agreements
- Rules of a Fishery - Must have a process

Sources of information

- www.irlgov.ie
- www.irishstatutebook.ie All Acts and S.I.'s
- www.dcenr.gov.ie for the latest Fisheries legislation including recent legislation, including Bye laws.
- Also see AGs and Oireachtas site for Dail Reports
- *Oris Offigiul*
- H.C. and S.C. case reports on the Courts site.

Appointment of Water keepers

294 (**a**) any **person interested** in the preservation of the fish of any river or lake

(**b**) any **persons** who have **united themselves** into a society for the preservation of any Fishery in any river or lake,

(**c**) the **owner** of any fishery in any river or lake,

(**d**) the **owner** of any salmon fishery **on the sea coast**,

(2A) (**a**) An appointment shall **not be confirmed** unless the person concerned has been issued by Inland Fisheries Ireland with a **certificate of suitability for appointment**.

- Period shall be **five years**
- A District Justice may **upon complaint revoke** the appointment

Appointment process

- Apply for a **Certificate of Suitability** from IFI
- Receive warrant from **District Court**
- **IFI has no responsibility** and any action taken is not on behalf IFI
- Do not say you were appointed as a Water keeper by the IFI

Appointment of Water keepers

- IFI welcomes assistance from all members of the Public
- Recognition of the work of anglers and Clubs
- Both working with common goals
- Should be based on respect of work of both groups
- The need for a system of trained volunteers to assist in Fisheries work

Inland Fisheries Ireland revised requirements for Certificate of Suitability

1. Complete an Application Form
2. Two Passport photographs
3. Name and Address & Phone Number
4. Which category
 - (a) person interested in the preservation of the fish of any river or lake
 - (b) persons who have united themselves into a society for the preservation of any Fishery in any river or lake,
 - (c) the owner of any fishery in any river or lake,
 - (d) the owner of any salmon fishery on the sea coast,
5. A declaration of any criminal offence
6. A declaration of any fisheries offence
7. A map and details of the waters to be patrolled
8. Garda vetting by IFI
9. Waterkeeper - Voluntary or paid

Inland Fisheries Ireland revised requirements for Letter of Suitability

5. Applicant set out how they will acquaint themselves with Fisheries Laws
6. Applicant to confirm that they will take responsibility for compliance with any relevant statutory requirements including Health and Safety and have appropriate Insurance.
7. Indemnify the Inland Fisheries Ireland
8. Applicant s should attend in Court application
9. All costs associated with the application must be borne by the applicant
10. Copy of Notice of Appointment to be sent to IFI

Instrument of appointment

295.—(1) The production by a conservators' water keeper or other officer of a board of conservators of his instrument of appointment shall be a sufficient warrant for his exercising the powers conferred on an authorised person by this Act, but the production of such instrument by him shall not be necessary in exercising those powers unless he has been first required to produce it.

(2) The production by a private water keeper of the instrument of his appointment endorsed in the manner provided by section 294 shall be sufficient warrant for his exercising the powers conferred, on a private water keeper by this Act.

Powers of an authorised person

- 296.**—(1) Any authorised person may, for the purposes of the protection of the fisheries, do all or any of the following things:—
- (a) **enter into and pass** through or along the banks or borders of any lakes or rivers frequented by salmon or trout or of the tributaries thereof,
 - (b) **with boats** or otherwise **enter** upon any such lakes or rivers,
 - (c) enter upon and **examine all weirs**, sluices, mill dams, mill races and watercourses communicating with such lakes or rivers
 - (d) **enter any boat** engaged or about to engage in fishing,
 - (e) **examine all** standing, floating or other **nets** whatsoever,
 - (f) **seize any unlawful fishing engine** or any lawful fishing engine which is being unlawfully used,
 - (g) **do all such other acts** and things as he is authorised to do by or under this Act.

Limits on powers of an authorised person

296 (2) Nothing in this section shall be construed as authorising any authorised person to enter any enclosed **garden or any dwelling** house or the curtilage thereof except where the ordinary road or passage to any weir, dam or dyke is through such garden or curtilage.

Search Warrants

297...71.—Section 297 is hereby amended by—

(a) the substitution of "authorised person" for "water keeper or any officer appointed by the Minister" in subsection (1); and

(b) the substitution of the following for subsection (2):

"(2) (a) Subject to subsection (3) of this section, a warrant issued under this section shall operate to authorise the person to whom it is issued (and named therein) at any reasonable time or times within seven days of the issue of the warrant to—

No express powers provided for a Private Water keeper to do the following:

- Seize unlawfully captured fish
- Pick up fish found dead
- Enforce the tags and quota regulations
- Search places property or people
- Issue On the Spot Fines
- Take samples of fish
- Take invertebrate samples
- Enforce sea fishery offences

Powers to inspect weirs

300.—Where any authorised person finds—

(a) during the annual close season for salmon and trout or the weekly close time—

(i) any passage in any fishing weir, fishing mill dam, fixed engine, net or contrivance closed or obstructed, or

(ii) any net or other contrivance whatsoever placed or used in contravention of this Act or any instrument made thereunder, or

(b) at any time, any obstruction in the free gap of a fishing weir or in a fish pass or,

(c) at any time, any obstruction in the waste gate appurtenant to any mill or factory when such waste gate is required by section 122, to be open,

he may open such passages and remove such obstructions, doing no unnecessary damage, and seize and remove all things so found or used contrary to the provisions of this Act or any instrument made there under.

307.—An authorised person can inspect fish passes at any times

Checking licences

303.—(1) In this section the expression "authorised person" includes a member of a Inland Fisheries Ireland .

(2) Any person using any scheduled engine or having any scheduled engine erected or found with a scheduled engine in his possession in or near any fishing place, or going or returning from fishing **shall on demand produce, to any authorised person the ordinary licence for such engine**, and, in default, such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine of not less than the ordinary licence duty payable in respect of an ordinary fishing licence to use such engine and not more than double such ordinary licence duty.

Assault or obstruction

308.—If any person assaults or obstructs any person exercising any power conferred on him by this Part, such first-mentioned person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding ten pounds (amended by Fisheries (Amendment) Act 1994, a fine not exceeding £1,000

2010 F Act: A fine not exceeding €2,000 or imprisonment for a term not exceeding 6 months or both

Procedure for disposal of boat or fishing engine seized

26.—The following section is hereby substituted for section 302 of the Principal Act: " 302. Where a person, in exercise of the powers conferred on him by this Part, **seizes any boat or fishing engine**, he shall, as soon as may be, **apply to the District Justice** in whose district it was seized for an order for its disposal under this section and thereupon the following provisions shall have effect.

- Issue Receipt
- Place in secure lock-up
- Advise Inland Fisheries Ireland

Power of arrest

299 2 (a) any authorised person may require the offender to do the following things—

(i) desist from such offence, and

(ii) tell his name and his address,

(b) if the offender, after being so required, wilfully continues such offence or refuses to tell his name and address, the authorised person and any other persons acting under his directions **may apprehend the offender,**

(c) where the offender is apprehended under this section, the authorised person **shall forthwith deliver him into the custody of a member of the Garda Síochána** to be dealt with according to law.

Power to prosecute

“309 (1) Notwithstanding anything contained in any other enactment, an offence under the *Fisheries Acts 1959 to 2010*, other than the *Sea-Fisheries Acts 2003 and 2006*, may be heard and determined in a summary way by a judge of the District Court upon the complaint, verbal or otherwise, of a member of the Garda Síochána, the IFI, an officer or employee of IFI, a **private waterkeeper** (within the meaning of Part XVIII) or any other person.”.

Sundry Offences

Offences involved when exercising powers;

- 285A The use of a boat or vehicle to aid in the commission of an offence
- 286 Intimidation by three or more persons
- 291 Warning others of the presence of water keepers
- 166 Strokehauling
- 164 Use of poison
- 165 The use of lamps or light
- 178 The protection of private fisheries

296 (f) seize any unlawful fishing engine

- Nets
- Spears
- Strokehauls
- Traps
- Gaffs
- Landing nets without a rod

296 (f) seize any lawful fishing engine which is being unlawfully used

- Rods used out of season
- Used in breach of any law
- Used to capture undersized fish or unseasonable fish etc.
- Used in an unlawful manner for example strokehauling
- Used in conjunction with banned bait

Pollution control

171.—(1) Any person who—

(a) steeps in any waters any flax or hemp, or

(b) **throws, empties, permits or causes to fall into any waters any deleterious matter,**

shall, unless such act is done under and in accordance with a licence granted by the Minister under this section, be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding twenty-five pounds or at the discretion of the court to imprisonment for a term not exceeding six months or to both such fine and such imprisonment...

Pollution Protocols

Bye Laws

- Provisions to enable the protection of fisheries
- Protection of young and spawning fish
- Creation of fish sanctuaries
- Local regulation - Close seasons
- Limits on fishing methods
- Size limits and bag limits
- Species specific provisions
- **Blue Book**
- 824, 2007 – single barbless hooks and no worms for Catch and Release
- 809, 2006 – conservation of pike
- 592, 1977 – live bait illegal

Court

- Most Offences are tried in the District Court..... up to €6,000
- Some Offences can be taken to Circuit Court..... up to €38,000
- Fines were increased under the 2010 Inland Fisheries Act. Section 77

Practical Actions

Regulation Enforcement

Protect fish and their habitat through ensuring compliance and enforcement of regulations

- Know the area your working, lands traversing
- Know the legislation on that fishery
- Carry warrants at all time
- Carry notebook and pencil
- Work in pairs

Meeting people

- Introduce yourself
- Show your warrant
- Be polite and courteous
- Be fair
- Give Caution

Surveillance

- Intelligence lead policing
- Gathering information
- Over time build up information
- All ways be alert to what is going on around
- Take Photos
- Share information with IFI
- Do not embellish the information

Interviewing tips

- Agree beforehand that one person is doing talking
- Ask open questions...who, what, where, when, why, describe
- Listen actively
- Take notes if necessary

Conflict situations

- Be aware of your own safety
- Keep exit clear
- Let someone know when you are on patrol when you intend to return and as you are approaching someone
- Be aware of body language
- Talk slowly and calmly

Dealing with an offence

- Explain what law is being breached
- Explain what course you are taking
- Do not make assumptions

Note taking

- Names and addresses of those present
- Date and time
- Note exactly where you are
- Description of individual

Report writing

- Within 24 hours of incident
- Individual statement, Signed and Dated
- In first person, I saw, I asked...
- Simple language
- Caution
- Date, location, townland
- Mark location on map

Contacting authorities

- First port is local Fisheries Assistant Inspector
- Gardai
- Other agencies – Local authorities for pollution, NPWS for Wildlife, EPA

Going to court

- Burden of proof
- Beyond reasonable doubt
- Chain of custody
- Summons
- Cost
- Appeal

Interaction with IFI staff

- Make yourselves known and develop a relationship with local Fisheries Officers
- Gathering of intelligence and bringing to attention of IFI staff is a key role
- Ideally advise on patrol plans to maximise resources

Useful Links

Institute of Fisheries Management

- <http://www.ifm.org.uk/>
- <http://www.irishstatutebook.ie>
- <http://www.dcenr.gov.ie/Natural/Inland+Fisheries+Division/Inland+Fisheries+Division.htm>
- www.fisheriesireland.ie **1890 34 74 24** or for easier recall **1890 FISH 24**
- www.recreationalanglingireland.com



Certificate Course

Units

The following units are available within the Certificate...

<p>1. Freshwater Biology <u>Topics:</u> living things; different waters; food and fish productivity; fish classification; anatomy and physiology; fish populations. This unit contains information that would be useful in units 3 and 5 and it is recommended that you take this unit first, or at the same time. Exams in January</p>	<p>4. Fishing Methods <u>Topics:</u> nets, fixed nets, hook and line, electric fishing, chemicals, explosives, other methods. Exams in June</p>
<p>2. Water Quality <u>Topics:</u> properties of water; chemical parameters of water; factors affecting chemistry; biological effects, pollution, pollution control. This unit contains information that would be useful in units 3 and 5 and it is recommended that you take this unit first, or at the same time. Exams in January</p>	<p>5. Fisheries Maintenance & Improvement <u>Topics:</u> fishery types, improving fish stocks, improving angling conditions, monitoring, legal requirements, political considerations. Exams in June</p>
<p>3. Fish Propagation <u>Topics:</u> Atlantic Salmon – life cycle, propagation methods, hatchery records, stocking methods, tagging. Trout – species farmed, water supply, farming systems, feeding, grading, diseases, transport. Induced spawning. Exams in January</p>	<p>6. Fishery Law (England & Wales) <u>Topics:</u> responsibilities for enforcement, Salmon & Freshwater Fisheries Act (1975), Theft Act (1968), Diseases of Fish Acts (1937 & 1983), Salmon Act (1986), Import of Live Fish Act (1980), Water Resources Act (1991) Exams in June</p>
<p>8. Scottish Bailiffing & Fishery Law There is a tailored certificate course on fishery law & bailiffing for people in Scotland. Contact: Brian Davidson, ASFB, 24 Canning St., Edinburgh. EH3 8EG. Tel. 0131 272 2797</p>	<p>7. Bailiffing & Keeping <u>Topics:</u> relationship with fishermen, dress & equipment, routine, notebook, bailiffs' powers, keepers' powers, arrest, code of practice, evidence, offences, fishing licences, enforcement tactics, offence reports, court procedures, keeping duties. This unit is about applying Fishery Law so we recommended you take that unit first, or at the same time. Exams in June</p>

Useful Links

Institute of Fisheries Management

- <http://www.ifm.org.uk/>
- <http://www.irishstatutebook.ie>
- <http://www.dcenr.gov.ie/Natural/Inland+Fisheries+Division/Inland+Fisheries+Division.htm>
- www.fisheriesireland.ie **1890 34 74 24** or for easier recall **1890 FISH 24**
- www.recreationalanglingireland.com



Thank You

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