



Number 17 of 1992

FORESHORE (AMENDMENT) ACT 1992

REVISED

Updated to 13 April 2017

This Revised Act is an administrative consolidation of the *Foreshore (Amendment) Act 1992*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Knowledge Development Box (Certification of Inventions) Act 2017 (6/2017)*, enacted 12 April 2017, and all statutory instruments up to and including *Social Housing Assessments (Summary) Regulations 2013 (Revocation) Regulations 2017 (S.I. No. 161 of 2017)*, made 13 April 2017, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was first passed.

Related legislation

Foreshore Acts 1933 to 2014: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Local Government Reform Act 2014*, s. 1(13)). The Acts in the group are:

- *Foreshore Act 1933* (12/1933)
- *Foreshore (Amendment) Act 1992* (17/1992)
- *Fisheries and Foreshore (Amendment) Act 1998* (54/1998), s. 5 and ss. 1 and 7 in so far as they relate to s. 5
- *Fisheries (Amendment) Act 2003* (21/2003), s. 32 and s. 2 in so far as it relates to s. 32
- *Maritime Safety Act 2005* (11/2005), Part 6
- *Foyle and Carlingford Fisheries Act 2007* (17/2007), s. 35
- *Foreshore and Dumping at Sea (Amendment) Act 2009* (39/2009), (other than s. 1(3) and (5), Part 3 and sch. 2)
- *Foreshore (Amendment) Act 2011* (11/2011)
- *Local Government Reform Act 2014* (1/2014), s. 1(13) and the amendment to the *Foreshore (Amendment) Act 1992* provided for in s. 5(6) and sch. 2 pt. 6

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1996, may be found linked from the page of the Act or statutory instrument at

www.irishstatutebook.ie.



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ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Amendment of section 3 of Principal Act.
3. Amendment of section 6 of Principal Act.
4. Notice prohibiting removal of beach material from foreshore.
5. High Court's power to prohibit continuance of certain contraventions of Principal Act.
6. Powers of courts, Minister, local authorities, etc., in relation to mitigating and remedying effects of contravention of certain orders and notices, etc.
7. Provisions relating to prosecution of summary offences.
8. Offences committed by body corporate.
9. Savings.
10. Short title, collective citation and construction.

ACTS REFERRED TO

Foreshore Act, 1933

1933, No. 12

Petty Sessions (Ireland) Act, 1851

14 & 15 Vict. c. 52



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AN ACT TO MAKE FURTHER PROVISION, IN ACCORDANCE WITH THE EXIGENCIES OF THE COMMON GOOD, FOR THE PROTECTION AND PRESERVATION OF THE FORESHORE AND THE SEASHORE IN THE STATE AND FOR THAT AND OTHER PURPOSES TO AMEND AND EXTEND THE FORESHORE ACT, 1933. [20th July, 1992]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—In this Act—

['local authority' means a local authority for the purposes of the Local Government Act 2001 (as amended by the Local Government Reform Act 2014) and any reference to the functional area of a local authority shall be construed accordingly;]

[...]

"the Principal Act" means the Foreshore Act, 1933.

Amendment of section 3 of Principal Act.

2.—Section 3 of the Principal Act is hereby amended in subsection (1) by the substitution of "to remove any beach material from, or disturb any beach material in, such foreshore" for "to remove any beach material from such foreshore".

Amendment of section 6 of Principal Act.

3.—Section 6 of the Principal Act is hereby amended:

(a) in subsection (1), by the substitution of "prohibiting the removal of beach material from, or disturbance of beach material in, an area of seashore" for "prohibiting the removal of beach material from an area of seashore",

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

"(2) Whenever the Minister is of the opinion that, in relation to beach material or any kind or kinds of beach material—

(a) the removal, the unrestricted removal or the removal by specified means from, or

(b) the disturbance or the disturbance in one or more than one specified manner in,

any particular area, or class or classes of areas, of seashore—

- (i) has affected or is likely to affect prejudicially any flora or fauna of such area or areas, as the case may be, of seashore or of any area in the neighbourhood thereof, or
- (ii) has affected or is likely to affect prejudicially any amenities or public rights in respect of such area or areas, as the case may be, of seashore or any lands or water in the neighbourhood thereof, or
- (iii) has caused or is likely to cause injury to any land or to any building, wall, pier or other structure,

the Minister may prohibit by order any such removal or disturbance by any person of beach material either (as the case may require) of any kind or of the said particular kind or kinds from or in (as appropriate) the said area or classes of area of seashore.”,

(c) by the substitution of the following for subsection (5):

“(5) Every person who removes any beach material from, or disturbs any beach material in, any foreshore or seashore in contravention of a prohibitory order shall be guilty of an offence under this section and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding six months, or to both,

(b) on conviction on indictment, to a fine not exceeding—

(i) £100,000, in the case of a first offence under this section, and

(ii) £200,000 in the case of a second or subsequent offence under this section,

or to imprisonment for a term not exceeding five years, or to both.”,

and

(d) by the substitution of the following for subsection (7):

“(7) A prohibitory order shall not operate to prevent the granting under this Act of a licence to remove beach material from, or disturb beach material in, foreshore to which such order applies or to prevent such removal or disturbance under and in accordance with a licence granted (whether before or after the making of such order) under this Act.

(8) In this section—

‘fauna’ means all wild animals (both aquatic and terrestrial) and includes in particular wild birds, wild mammals, reptiles, non-aquatic invertebrate animals and amphibians, and all such wild animals’ eggs, larvae, pupae or other immature stage and young;

‘flora’ means all plants (both aquatic and terrestrial) which occur in the wild (whether within or outside the State) and are not trees, shrubs or other plants being grown in the course of agriculture, forestry or horticulture, and includes in particular lichens, mosses, liverworts, fungi, algae and vascular plants, namely flowering plants, ferns and fern-allied plants and any community of such plants.”.

Notice prohibiting removal of beach material from foreshore.

4.—The Principal Act is hereby amended by the substitution of the following for section 7:

“7.—(1) Whenever the Minister is of the opinion that the removal of beach material from, or the disturbance of beach material in, any area of foreshore

belonging to the State in respect of which no prohibitory order is in force should be restricted or controlled, the Minister may serve on any person a notice (in this Act referred to as a prohibitory notice) in writing prohibiting such person from—

(a) removing or removing by specified means, or

(b) disturbing or disturbing in one or more than one specified manner,

beach material of any kind or of any specified kind or kinds from or in (as appropriate) the said area of foreshore.

(2) It shall not be lawful for any person on whom a prohibitory notice has been served—

(a) to remove or disturb, or

(b) cause to be removed or disturbed,

otherwise than in accordance with a licence granted under this Act, any beach material to which such notice applies from or in (as appropriate) the area of foreshore to which such notice applies.

(3) Every person who removes any beach material from, or disturbs any beach material in, any foreshore in contravention of a prohibitory notice, or connives in such contravention, shall be guilty of an offence under this section and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding six months, or to both,

(b) on conviction on indictment, to a fine not exceeding—

(i) £100,000 in the case of a first offence under this section, and

(ii) £200,000 in the case of a second or subsequent offence under this section,

or to imprisonment for a term not exceeding five years, or to both.”.

High Court’s
power to prohibit
continuance of
certain contraven-
tions of Principal
Act.

5.—(1) Where, on application to the High Court by—

(a) [the Minister for the Environment, Heritage and Local Government,]

(b) a local authority in respect of any area of seashore which is in whole or in part within its functional area or contiguous thereto, or

(c) any other person, whether or not that person has an interest in the seashore concerned,

that Court is satisfied that there has occurred, is occurring or is likely to occur any removal or disturbance of beach material or any kind or kinds of beach material in contravention of—

(i) a licence granted under section 3 of the Principal Act,

(ii) a prohibitory order under section 6 of the Principal Act, or

(iii) a prohibitory notice under section 7 of the Principal Act,

the High Court may by order—

(I) prohibit any person from removing or disturbing beach material or any kind or kinds of beach material in contravention of the licence, prohibitory order or prohibitory notice concerned,

(II) for the purpose of preventing, or preventing the continuance or recurrence of such a contravention, require any person concerned to do, refrain from or cease doing any specified act or to refrain from or cease making any specified omission, and

(III) make such other provision as that Court considers appropriate.

(2) An application may be brought under *subsection (1)* of this section notwithstanding that a prosecution under the Principal Act has not been brought in respect of the matters to which the application relates.

(3) An application for an order under this section shall be in a summary manner, and the High Court when considering the matter may make such interim or interlocutory order as it considers appropriate.

(4) The order by which an application under this section may be determined may contain such terms and conditions as to payment of costs as the High Court considers appropriate.

Powers of courts, Minister, local authorities, etc., in relation to mitigating and remedying effects of contravention of certain orders and notices, etc.

6.—(1) (a) Where, on application to the appropriate court by—

- (i) [the Minister for the Environment, Heritage and Local Government],
- (ii) a local authority in respect of any area of seashore which is in whole or in part within its functional area or contiguous thereto, or
- (iii) any other person, whether or not that person has an interest in the seashore concerned,

that court is satisfied that there has occurred or is occurring any removal or disturbance of beach material or any kind or kinds of beach material by another person (in this paragraph referred to as “the second-mentioned person”) in contravention of—

- (I) a licence granted under section 3 of the Principal Act,
- (II) a prohibitory order under section 6 of the Principal Act, or
- (III) a prohibitory notice under section 7 of that Act,

that court may make an order directing the second-mentioned person to do any one or more of the following, that is to say—

- (A) to refrain from or cease such removal or disturbance within such period as may be specified in the order, or
- (B) to mitigate or remedy any effects of such removal or disturbance in such manner and within such period as may be specified in the order, or
- (C) to pay to the applicant or such other person as may be specified in the order a specified amount to defray all or part of any costs incurred by the applicant or that other person in investigating, mitigating or remedying the effects of such removal or disturbance.

(b) In this subsection “appropriate court”, in relation to an application under *paragraph (a)* of this subsection, means—

- (i) in case the estimated cost of complying with the order to which the application relates does not exceed [€15,000], the District Court,
- (ii) in case the estimated cost aforesaid does not exceed [€75,000], the Circuit Court
- (iii) in any case, the High Court.

(c) (i) If, in relation to an application under this section to the District Court, that court becomes of opinion during the hearing of the application that the estimated cost aforesaid will exceed [€15,000], it may, if it so thinks fit, transfer the application to the Circuit Court or the High Court, whichever it considers appropriate having regard to the estimated costs aforesaid.

(ii) If, in relation to an application under this section to the Circuit Court, that court becomes of opinion during the hearing of the application that the estimated cost aforesaid will exceed [€75,000], it may, if it so thinks fit, by order transfer the application to the High Court.

(d) An application under this section shall be brought in a summary manner.

(e) A court may, if it so thinks fit, make such interim or interlocutory order as it considers appropriate in proceedings under this section and, where an application is transferred under *paragraph (c)* of this subsection, the court to which it is transferred shall be deemed to have made any order made under this paragraph by the court from which it is so transferred in the proceedings in relation to the application.

(2) Without prejudice to any power of a court to enforce orders made by it, a person who does not comply with an order under *subsection (1)* of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or imprisonment for a term not exceeding 6 months, or to both.

(3) (a) An order shall not be made by a court under this section unless the person named in the order has been given an opportunity of being heard by the court in the proceedings relating to the application for the order.

(b) The court concerned may make such order as to the costs of the parties to or heard by the court in proceedings relating to an application for an order under this section as it considers appropriate.

(4) (a) Where a person does not comply with an order under *subsection (1)* of this section—

(i) [the Minister for the Environment, Heritage and Local Government], or

(ii) the local authority in whose functional area the whole or any part of the seashore concerned is situated or contiguous thereto,

may take any steps specified in the order to mitigate or remedy the effects of the removal or disturbance of beachmaterial or any kind or kinds of beach material to which the order relates.

(b) The amount of any expenditure incurred by [the Minister for the Environment, Heritage and Local Government] or a local authority in relation to steps taken by him or the authority under *paragraph (a)* of this subsection shall be a simple contract debt owed by the person in respect of whom the order under *subsection (1)* of this section was made to [that Minister] or the authority, as the case may be, and may be recovered by him or the authority from the person as a simple contract debt in any court of competent jurisdiction.

(5) (a) An application under *subsection (1)* of this section to the District Court shall be made to the judge of the District Court for the District Court district in which the seashore concerned is in whole or in part situated or in which the defendant ordinarily resides.

(b) An application under *subsection (1)* of this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the seashore concerned is in whole or in part situated or in which the defendant ordinarily resides.

(6) The provisions of section 16 of the Principal Act shall not apply in respect of proceedings to which this section relates.

(7) An application may be made under *subsection (1)* of this section notwithstanding that a prosecution under the Principal Act has not been brought in respect of the matters to which the application relates.

Provisions relating to prosecution of summary offences.

7.— (1) A summary offence under the *Foreshore Acts 1933 to 2009* may be prosecuted by—

- (a) so far as relates to an offence under section 6, 7, 13 or 14 of the Act of 1933, or section 6 of this Act, the Minister for the Environment, Heritage and Local Government,
- (b) so far as relates to an offence under section 8(2) of the Act of 1933, the appropriate Minister, or
- (c) a local authority in respect of any area of seashore which is in whole or in part within its functional area or contiguous thereto.]

(2) Notwithstanding the provisions of section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be commenced at any time within twelve months from the date on which the offence was committed.

Offences committed by body corporate.

8.—(1) Where an offence under the *Foreshore Acts, 1933 and 1992*, has been committed by a body corporate and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* of this section shall apply in relation to the acts and defaults of a member in connection with the functions of management as if he were a director or manager of the body corporate.

Savings.

9.—Every licence granted under section 3 of the Principal Act, every prohibitory order made under section 6 of that Act and every prohibitory notice served under section 7 of that Act, which is a subsisting licence, order or notice (as the case may be) immediately before the commencement of this Act shall, as respects acts committed or omissions after the commencement of this Act which contravene such a licence, order or notice (as the case may be), continue in force as if granted, made or served under the said section 3, 6 or 7 (as the case may be) as amended by this Act.

Short title, collective citation and construction.

10.—(1) This Act may be cited as the *Foreshore (Amendment) Act, 1992*.

(2) The Principal Act and this Act may be cited together as the *Foreshore Acts, 1933 and 1992*, and shall be construed together as one.