



Number 54 of 1998

Fisheries and Foreshore (Amendment) Act 1998

REVISED

Updated to 2 July 2015

This Revised Act is an administrative consolidation of *Fisheries and Foreshore (Amendment) Act 1998*. It is prepared by the Law Reform Commission in accordance with its function under *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 *Communications Regulation (Postal Services) (Amendment) Act 2015 (20/2015)*, enacted 2 July 2015, and all statutory instruments up to and including *ETB Teachers Superannuation Scheme 2015 (S.I. No. 292 of 2015)*, made 2 July 2015, 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 passed.

Related legislation

Aquaculture Acts 1997 to 2006: this Act, ss. 2, 3 and 4, is one of a group of Acts included in this collective citation, to be construed together as one (*Sea-Fisheries and Maritime Jurisdiction Act 2006* (8/2006), s. 1(3)). The Acts in this group are:

- *Fisheries (Amendment) Act 1997* (23/1997)
- *Fisheries and Foreshore (Amendment) Act 1998* (54/1998), ss. 2, 3 and 4
- *Fisheries (Amendment) Act 2001* (40/2001)
- *Sea-Fisheries and Maritime Jurisdiction Act 2000* (60/2006), s. 101

Fisheries Acts 1959 to 2007: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Water Services Act 2007* (21/2007), s. 1(5)). The Acts in this group are:

- *Fisheries (Consolidation) Act 1959* (14/1959)
- *Fisheries (Amendment) Act 1962* (31/1962)
- *Fisheries (Amendment) Act 1964* (23/1964)
- *Fisheries (Amendment) Act 1976* (23/1976)
- *Fisheries Act 1980* (1/1980)
- *Fisheries (Amendment) Act 1987* (14/1987)
- *Fisheries (Amendment) (No. 2) Act 1987* (32/1987)
- *Local Government (Water Pollution) (Amendment) Act 1990* (21/1990), ss. 23, 25 and 28 in so far as they relate to *Fisheries Acts 1959 to 1987*
- *Fisheries (Amendment) Act 1991* (26/1991)
- *Fisheries (Amendment) Act 1994* (23/1994)
- *Fisheries (Amendment) Act 1995* (27/1995)
- *Fisheries (Commissions) Act 1997* (1/1997)
- *Fisheries (Amendment) Act 1997* (23/1997)
- *Fisheries and Foreshore (Amendment) Act 1998* (54/1998), ss. 2-4 and, in so far as they relate to those sections, ss. 1 and 7(2)
- *Fisheries (Amendment) Act 1999* (35/1999)
- *Fisheries (Amendment) Act 2001* (40/2001)
- *Fisheries (Amendment) Act 2003* (21/2003), other than s. 32 and s. 2 in so far as it relates to s. 32

- *Sea-Fisheries and Maritime Jurisdiction Act 2006* (8/2006), other than Part 3 and ss. 100, 102-104
- *Water Services Act 2007* (30/2007), ss. 1(5) and 111

Fishery Harbour Centres Acts 1968 to 2015: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Vehicle Clamping Act 2015* (13/2015), s. 1(4)). The Acts in this group are:

- *Fishery Harbour Centres Act 1968* (18/1968)
- *Fishery Harbour Centres Act 1980* (22/1980)
- *Fishery Harbour Centres (Amendment) Act 1992* (10/1992)
- *Fishery Harbour Centres (Amendment) Act 1998* (54/1988), s. 6 and, in so far as they relate to that section, ss. 1 and 7(4)
- *Maritime Safety Act 2005* (11/2005), s. 54
- *Sea-Fisheries and Maritime Jurisdiction Act 2006* (8/2006), s. 102
- *Vehicle Clamping Act 2015* (13/2015), s. 35

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* (1/2014), s. 1(13)). The Acts in this group are:

- *Foreshore Act 1933* (12/1933)
- *Foreshore (Amendment) Act 1992* (17/1992)
- *Fisheries and Foreshore (Amendment) Act 1998* (54/1998), ss. 1 and 7(3) insofar as they relate to s. 5
- *Fisheries (Amendment) Act 2003* (21/2003), s. 32 and s. 2 insofar 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 ss. 1(3) and 1(5), Part 3 and Schedule 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 Schedule 2, Part 6

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

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.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1999, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Foreshore (Amendment) Act 2011* (11/2011)
- *Foreshore and Dumping at Sea (Amendment) Act 2009* (39/2009)
- *Planning and Development Act 2000* (30/2000)
- *Foreshore Act 1933* (12/1933)

All Acts up to and including *Communications Regulation (Postal Services) (Amendment) Act 2015* (20/2015), enacted 2 July 2015, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011)
- *European Communities Environmental Objectives (Freshwater Pearl Mussel) Regulations 2009* (S.I. No. 296 of 2009)
- *European Communities Environmental Objectives (Surface Waters) Regulations 2009* (S.I. No. 272 of 2009)
- *European Communities (Health of Aquaculture Animals and Products) Regulations 2008* (S.I. No. 261 of 2008)
- *Sea Fisheries, Foreshore and Dumping at Sea (Transfer of Departmental Administration and Ministerial Functions) Order 2007* (S.I. No. 707 of 2007)

All statutory instruments up to and including *ETB Teachers Superannuation Scheme 2015* (S.I. No. 292 of 2015), made 2 July 2015, were considered in the preparation of this revision.



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FISHERIES AND FORESHORE (AMENDMENT) ACT 1998

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Applications for certain aquaculture licences.
3. Provisions relating to certain aquaculture licences.
4. Persons not to engage in aquaculture in anticipation of grant of licence.
5. Amendment of Act of 1933.
6. Amendment of Fishery Harbour Centres Act, 1968.
7. Short title, collective citation and construction.

ACTS REFERRED TO

Fisheries Act, 1980	1980, No. 1
Fisheries Acts, 1959 to 1997	
Fisheries (Amendment) Act, 1997	1997, No. 23
Fisheries (Consolidation) Act, 1959	1959, No. 14
Fishery Harbour Centres Act, 1968	1968, No. 18
Fishery Harbour Centres Acts, 1968 to 1992	
Foreshore Act, 1933	1933, No. 12
Foreshore Acts, 1933 and 1992	



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FISHERIES AND FORESHORE (AMENDMENT) ACT 1998

AN ACT TO AMEND AND EXTEND THE FISHERIES ACTS, 1959 TO 1997, THE FORESHORE ACT, 1933, AND THE FISHERY HARBOUR CENTRES ACT, 1968, AND TO PROVIDE FOR CONNECTED MATTERS. [23rd December, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

- C1** Application of Act and collectively cited *Aquaculture Acts 1997 to 2006, Fisheries Acts 1959 to 2003, Fisheries Harbour Centres Acts 1968 and 1980 and Foreshore Acts 1933 to 2011* affected (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), regs. 42(22), 46(3), 63(2) and sch. 2, in effect as per reg. 1(3).

Screening for Appropriate Assessment and Appropriate Assessment of implications for European Sites

42. ...

(22) Notwithstanding any provision of any statute listed in the Second Schedule that provides for the consent for a plan or project to which this Regulation applies to be obtained by default on the failure of the public authority to provide a response within a specified timescale or otherwise, that provision shall not have effect in respect of any plan or project to which this Regulation applies

...

Review of existing plans

46. ...

(3) For the purposes of this Regulation, a decision, including a decision to adopt or undertake, or give approval for a plan, may include those adopted, undertaken or approved pursuant to any of the enactments set out in the Second Schedule to these Regulations.

...

General provisions regarding licences etc

63. ...

(2) A licence, consent, permission, permit, derogation or other authorisation given under these Regulations or under any of the enactments referred to in the Second Schedule may include conditions requiring compliance with any guideline or code of practice issued under Regulation 71 or such provisions thereof as may be specified in the conditions.

...

SECOND SCHEDULE

Number	Year	Short Title/Citation
...
...	...	Aquaculture Acts 1997 to 2006
...
...	...	Fisheries Acts 1959 to 2003
54	1998	Fisheries and Foreshore (Amendment) Act 1998
...	...	Fisheries Harbour Centres Acts 1968 and 1980
...	...	Foreshore Acts 1933 to 2011
...

- C2** Certain functions under collectively cited *Foreshore Acts 1933 to 2009* transferred (7.07.2011) by *Foreshore (Amendment) Act 2011* (11/2011), s. 1, commenced on enactment, subject to transitional provisions in ss. 3-9.

Transfer and vesting of certain foreshore functions.

1.— (1) Except as provided for by *subsection (2)*, the functions, immediately before the passing of this Act, of the Minister for Agriculture, Fisheries and Food under the *Foreshore Acts 1933 to 2009* are, on such passing, transferred to the Minister for the Environment, Community and Local Government and this subsection has effect for the purpose of vesting in the Minister for the Environment, Community and Local Government the functions so transferred.

(2) The following functions of the Minister for Agriculture, Fisheries and Food under the *Foreshore Acts 1933 to 2009* remain with and continue to be functions of that Minister:

(a) any function in relation to a fishery harbour centre,

(b) any function in respect of—

- (i) an activity which is wholly or primarily for the use, development or support of aquaculture, or
- (ii) an activity which is wholly or primarily for the use, development or support of sea-fishing including the processing and sale of sea-fish and manufacture of products derived from sea-fish.

(3) The administration and business in connection with the performance of any functions transferred to the Minister for the Environment, Community and Local Government from the Minister for Agriculture, Fisheries and Food by *subsection (1)* are, on the passing of this Act, transferred to the Department of the Environment, Community and Local Government.

- C3** Certain functions under collectively cited *Foreshore Acts 1933 to 2005* transferred and additional functions vested (15.01.2010) by *Foreshore and Dumping at Sea (Amendment) Act 2009* (39/2009), ss. 3 and 4, commenced as per s. 1(4).

Transfer and vesting of certain foreshore functions

3.— (1) Such of the functions, immediately before the commencement date, of the Minister for Agriculture, Fisheries and Food under the *Foreshore Acts 1933 to 2005* to which this Part and *Schedule 1* relate are, on that date, transferred to the Minister for the Environment, Heritage and Local Government in accordance with and to the extent provided for by this Part and that Schedule and those provisions have effect for the purpose of vesting in the Minister for the Environment, Heritage and Local Government the functions so transferred.

(2) The administration and business in connection with the performance of any functions transferred to the Minister for the Environment, Heritage and Local Government from the Minister for Agriculture, Fisheries and Food by subsection (1) are, on the commencement date, transferred to the Department of the Environment, Heritage and Local Government.

Vesting of additional foreshore functions in Minister for the Environment, Heritage and Local Government, etc.

4.— (1) The functions of the Minister for the Environment, Heritage and Local Government and the Minister for Agriculture, Fisheries and Food under the Foreshore Acts 1933 to 2009 and to which section 1B (inserted by *section 6*) of the Act of 1933 relates may be vested in the same Minister of the Government pursuant to an order under section 6(1) of the Ministers and Secretaries (Amendment) Act 1939.

(2) In relation to the functions of the Minister for the Environment, Heritage and Local Government under the Foreshore Acts 1933 to 2009, any function vested in another Minister of the Government by or under any provision of any other Act, where that function relates or corresponds to functions of the Minister for the Environment, Heritage and Local Government under the Foreshore Acts 1933 to 2009, may be transferred under section 6(1) of the Ministers and Secretaries (Amendment) Act 1939 to the Minister for the Environment, Heritage and Local Government.

...

- C4** Certain references in collectively cited *Foreshore Acts 1933 to 2009* construed by *Foreshore Act 1933* (12/1933), s. 1C, as inserted (15.01.2010) by *Foreshore and Dumping at Sea (Amendment) Act 2009* (39/2009), s. 6(1), commenced as per s. 1(4).

[References to foreshore in Foreshore Acts 1933 to 2009.]

1C.— References in the Foreshore Acts 1933 to 2009 to foreshore belonging to the State shall be construed as references to foreshore which for the time being belongs to the State, including foreshore so belonging whether by virtue of Article 10.2 of the Constitution or otherwise.]

- C5** Application of collectively cited *Aquaculture Acts* restricted (1.08.2008) by *European Communities (Health of Aquaculture Animals and Products) Regulations 2008* (S.I. No. 261 of 2008), reg. 43(2)(b), in effect as per reg. 1.

Revocations, amendment, etc.

43. ...

(2) If there is a conflict between— ...

(b) between the Aquaculture Acts and these Regulations, these Regulations prevail.

- C6** Functions transferred and references to “Department of Communications, Marine and Natural Resources” and “Minister for Communications, Marine and Natural Resources” construed (19.10.2007) by *Sea Fisheries, Foreshore and Dumping at Sea (Transfer of Departmental Administration and Ministerial Functions) Order 2007* (S.I. No. 707 of 2007), arts. 2 and 3, in effect as per art. 1, subject to transitional provisions in arts. 4-8.

2. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by Article 3 are transferred to the Department of Agriculture and Food.

(2) A reference to the Department of Communications, Marine and Natural Resources contained in any Act or instrument made thereunder and relating to any administration and business transferred by paragraph (1) shall be construed as a reference to the Department of Agriculture and Food.

3. (1) A function vested in the Minister for Communications, Marine and Natural Resources by or under—

(a) an enactment cited in Part 1 of the Schedule to this Order, and

...

is transferred to the Minister for Agriculture and Food.

(2) A reference to the Minister for Communications, Marine and Natural Resources contained in an enactment or instrument made under an enactment and relating to a function transferred by this Article shall be construed as a reference to the Minister for Agriculture and Food.

...

SCHEDULE

PART 1

...

Fishery Harbour Centres Acts 1968 to 2006

...

Aquaculture Acts 1997 to 2006

...

Foreshore Acts 1933 to 2005

...

- C7** Application of collectively cited *Foreshore Acts 1933 to 2005* restricted by *Planning and Development Act 2000* (30/2000), s. 227(8), as substituted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 44, S.I. No. 525 of 2006.

Amendment of section 227 of Principal Act.

44.— Section 227 of the Principal Act is amended—

...

(b) by substituting the following subsection for subsection (8):

“(8) (a) Subject to paragraph (b), the Foreshore Acts 1933 to 2005 shall not apply in relation to any application to the Board under section 226, or matters to which subsection (5)(b) applies or a scheme submitted under section 49 of the Roads Act 1993. ”

...

Editorial Notes:

- E1** Applications for authorisations for discharges and reviews of existing authorisations under collectively cited *Foreshore Acts 1933-1992* and *Fisheries Acts 1959-2003* made subject to certain requirements (30.07.2009) by *European Communities Environmental Objectives (Surface Waters) Regulations 2009* (S.I. No. 272 of 2009), arts. 7 and 9, in effect as per art. 1(2).
- E2** Applications for authorisations for discharges under collectively cited *Fisheries Acts 1959-2003* may be made subject to emission limit values as provided (27.07.2009) by *European Communities Environmental Objectives (Freshwater Pearl Mussel) Regulations 2009* (S.I. No. 296 of 2009), reg. 12. Note: in the absence of a commencement date in reg. 1(2), the instrument appears to have taken effect on signature.
- E3** Previous affecting provision: application of collectively cited *Foreshore Acts 1933 to 2005* restricted (11.03.2002) by *Planning and Development Act 2000* (30/2000), s. 227(8); substituted as pre C-note above.

Interpretation.

1.—(1) In this Act—

“the Act of 1933” means the Foreshore Act, 1933;

“the Act of 1980” means the Fisheries Act, 1980;

“the Act of 1997” means the Fisheries (Amendment) Act, 1997;

F1[“ Minister ” means the Minister for Agriculture, Fisheries and Food;]

“the Principal Act” means the Fisheries (Consolidation) Act, 1959.

(2) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act.

Annotations

Amendments:

- F1** Inserted (15.01.2010) by *Foreshore and Dumping at Sea (Amendment) Act 2009* (39/2009), s. 20, commenced as per s. 1(4).

Applications for certain aquaculture licences.

2.—(1) Where before the commencement of section 74 of the Act of 1997 an application was made for a fish culture licence under section 15 of the Principal Act such application shall—

(a) be deemed always to have been capable of being so made under the said section 15 notwithstanding the enactment of section 54 of the Act of 1980, and

(b) be determined in accordance with the said section 74.

(2) Where pursuant to section 19 of the Act of 1933 the Minister has caused notice of an application for a licence for the purposes of aquaculture to be published in accordance with the said section 19, then such notice shall be deemed to be a public notice for the purposes of subsection (3) of section 74 of the Act of 1997.

Provisions relating to certain aquaculture licences.

3.—(1) Subject to *subsection (2)* of this section, where before the commencement of section 75 of the Act of 1997 there was purported to be granted—

(a) a foreshore licence for aquaculture purposes under the Act of 1933, or

(b) a fish culture licence under section 15 of the Principal Act,

then such purported grant of the licence concerned shall be deemed to have been duly made and, accordingly, shall be deemed by virtue of the said section 75 to be an aquaculture licence granted under the Act of 1997.

(2) Where a foreshore licence is deemed to be an aquaculture licence under *subsection (1)* of this section then the following shall apply:

(a) the Minister shall, as soon as practicable, issue a draft aquaculture licence to the licensee concerned and shall give by post to the licensee not less than 28 days notice in writing stating that the Minister proposes to grant the licence subject to such terms and conditions as are contained in the draft licence;

(b) the Minister shall consider any representations in relation to the draft licence made to the Minister by the licensee before the expiration of the notice;

(c) the Minister shall notify the licensee in writing of his or her decision in respect of the draft licence and shall publish notice of the decision—

(i) as soon as practicable after making the decision in a newspaper circulating in the vicinity of the aquaculture, and

(ii) in addition, in the *Iris Oifigiúil* if an environmental impact statement was required;

(d) section 14 and Chapter II of the Act of 1997 shall apply to the decision of the Minister in respect of the draft licence as if it was a determination or a decision in respect of an application for an aquaculture licence.

(3) Where a licence is deemed to be an aquaculture licence under—

(a) subsection (1) of this section, or

(b) section 75 of the Act of 1997,

then the licensee shall be liable for such fees as are prescribed by the Minister under the Act of 1997 including fees payable—

(i) on each anniversary of the granting of the licence while the licence is in force,

(ii) in respect of an application for the renewal of the licence, and

(iii) in respect of an application under section 70 of the Act of 1997 for a review of the licence.

(4) Notwithstanding subsection (1) of this section, in the case of a foreshore licence which is deemed to be an aquaculture licence under the said subsection (1), the provisions of the Foreshore Acts, 1933 and 1992, shall apply to such foreshore licence.

(5) Where a licence is deemed under subsection (1) of this section to be an aquaculture licence and such deeming would, but for this subsection, conflict with a constitutional right of any person, then the licence concerned shall be subject to such limitation as is necessary to secure that it does not so conflict but shall be otherwise of full force and effect.

Persons not to engage in aquaculture in anticipation of grant of licence.

4.—(1) On and from the 10th day of December, 1998, an application for an aquaculture licence shall not be accepted, or if accepted shall not be determined, if the applicant or any person on behalf of the applicant commences to engage in aquaculture at the place or waters to which the application relates before a licence is granted under the Act of 1997.

(2) Section 11 of the Act of 1997 is hereby repealed.

Amendment of Act of 1933.

5.—(1) The Act of 1933 is hereby amended—

(a) in section 12, by the deletion of paragraph (b) of subsection (2), and

(b) in section 14, by the insertion after subsection (2) of the following subsections:

“(3) Whenever a person is convicted of an offence under subsection (2) of this section, the Court by whom such person is so convicted may, if appropriate in the circumstances and such Court so thinks proper, make an order requiring such person, within a specified time—

(a) to remove the article concerned from the place where it would or might cause injury to a person to whom subsection (1) of this section relates, or

(b) to remove such material or substance from a place where it would or might be injurious or offensive to a person to whom subsection (1) of this section relates.

(4) If any person in respect of whom an order has been made under subsection (3) of this section fails to comply with such order, such person shall be guilty of an offence under this subsection and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding two years, or to both.”.

(2) A person who is guilty of an offence under subsection (2) or (4) of section 13, or subsection (2) of section 14 of the Act of 1933 shall, in lieu of the penalties provided under each of those subsections, be liable—

(a) on summary conviction, to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding two years, or to both.

Amendment of Fishery Harbour Centres Act, 1968,

6.—The Fishery Harbour Centres Act, 1968, is hereby amended by the substitution of the following for section 5:

“Use of property vested in Minister by this Act.

5.—The Minister shall have, and be deemed always to have had, power—

(a) to use any property vested in the Minister by this Act for—

(i) (A) any purpose connected with the improvement and development of the fishing industry, or

(B) the provision, improvement and development of services and facilities ancillary to or connected with the fishing industry,

which the Minister considers appropriate, and

(ii) any other purpose, including the provision, improvement and development of leisure or amenity facilities or for facilitating or promoting the social or economic development of the area in which the fishery harbour centre is located, which the Minister considers advantageous and appropriate in respect of the operation or development of the fishery harbour centre,

and

(b) to sell, lease, let, exchange, grant easements over, *profits à prendre* in respect of or permit the use of any land so vested for any of those purposes which the Minister considers appropriate.”.

Short title, collective citation and construction.

7.—(1) This Act may be cited as the Fisheries and Foreshore (Amendment) Act, 1998.

(2) The Fisheries Acts, 1959 to 1997, sections 2 to 4 of this Act and, in so far as they relate to those sections, section 1 of this Act and this section may be cited together as the Fisheries Acts, 1959 to 1998, and shall be construed together as one Act.

(3) The Foreshore Acts, 1933 and 1992, section 5 of this Act and, in so far as they relate to that section, section 1 of this Act and this section may be cited together as the Foreshore Acts, 1933 to 1998, and shall be construed together as one Act.

(4) The Fishery Harbour Centres Acts, 1968 to 1992, section 6 of this Act and, in so far as they relate to that section, section 1 of this Act and this section may be cited together as the Fishery Harbour Centres Acts, 1968 to 1998, and shall be construed together as one Act.