



Number 38 of 2000

WILDLIFE (AMENDMENT) ACT, 2000

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY AND GENERAL

Section

1. Short title, collective citation and construction.
2. Commencement.
3. Interpretation.
4. Saver for orders, etc.
5. Repeals.

PART II

AMENDMENT OF PART I OF PRINCIPAL ACT
AND OF FUNCTIONS OF MINISTER

6. Amendment of section 2 (definitions) of Principal Act.
7. Amendment of section 8 (regulations and orders) of Principal Act.
8. Licences.
9. Amendment of section 11 (functions of Minister in relation to wildlife) of Principal Act.

PART III

LAND AND WATERS

CHAPTER I

Acquisition of Land and Rights

10. Arbitrator.

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Section

11. Acquisition of land and rights by agreement.
12. Creation of rights of way.
13. Extinguishment of easements.
14. Amendment of section 55 (land purchase orders) of Principal Act.

CHAPTER II

Natural Heritage Areas

15. Interpretation (*Chapter II*).
16. Intention to designate natural heritage areas.
17. Decision not to make natural heritage area order.
18. Natural heritage area order.
19. Restriction on carrying out certain works.
20. Prohibition of works on lands in natural heritage areas.
21. Restoration of land in natural heritage area.
22. Compensation.
23. Registration of natural heritage area order as burden on land.
24. Provisions relating to section 12 (obligations in relation to nature reserves and refuges) of Principal Act.

CHAPTER III

Nature Reserves and Refuges

25. Erection of notices.
26. Amendment of section 15 (nature reserves on lands owned by the Minister or by the State) of Principal Act.
27. Amendment of section 16 (nature reserves on land other than land to which section 15 applies) of Principal Act.
28. Amendment of section 17 (refuges for fauna) of Principal Act.

PART IV

WILDLIFE CONSERVATION AND PROTECTION

CHAPTER I

Protection of Flora, Wild Birds and Wild Animals

29. Amendment of section 21 (protection of flora) of Principal Act.

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

Section

30. Amendment of section 22 (enforcement of protection of wild birds) of Principal Act.
31. Amendment of section 23 (enforcement of protection of wild animals (other than wild birds)) of Principal Act.
32. Exclusion of certain wild animals.
33. Amendment of section 24 (open seasons for certain protected wild birds) of Principal Act.
34. Amendment of section 25 (open seasons for certain wild mammals) of Principal Act.
35. Amendment of section 26 (licences to hunt otters or deer and to hunt or course hares) of Principal Act.

CHAPTER II

Restrictions to protect wildlife

36. Regulation of commercial shoot operators.
37. Amendment of section 28 (general restriction as regards hunting or killing with firearms certain exempted wild mammals and certain protected wild birds) of Principal Act.
38. Hunting restricted on or over foreshore belonging to State and certain land so belonging.
39. Amendment of section 31 (sale, purchase and possession of certain perching birds prohibited) of Principal Act.
40. Amendment of section 32 (ringing and marking, and possession of cannon-nets, etc. restricted) of Principal Act.
41. Amendment of section 33 (restriction on use of certain firearms etc.) of Principal Act.
42. Amendment of section 34 (certain use of traps, snares etc. prohibited) of Principal Act.
43. Amendment of section 35 (certain use of scarecrows, decoys, birdcalls and calls of wild mammals restricted) of Principal Act.
44. Amendment of section 36 (use of mechanically-propelled vehicles, vessels and aircraft in hunting prohibited) of Principal Act.
45. Use of lamps, mirrors etc. in hunting prohibited.
46. Amendment of section 40 (destruction of vegetation on uncultivated land restricted) of Principal Act.

CHAPTER III

Miscellaneous

Section

47. Amendment of section 41 (falconry etc.) of Principal Act.
48. Amendment of section 42 (damage by wild birds etc.) of Principal Act.
49. Amendment of section 43 (land drainage schemes) of Principal Act.
50. Amendment of section 44 (unlawful hunting or entry on land and other miscellaneous matters) of Principal Act.

PART V

REGULATION AND CONTROL OF WILDLIFE DEALING

51. Amendment of section 45 (sale, purchase and possession of fauna restricted) of Principal Act.
52. Amendment of section 46 (regulation and control of wildlife dealing) of Principal Act.
53. Wildlife dealer's licence.
54. Amendment of section 49 (revocation of wildlife dealer's licence) of Principal Act.
55. Amendment of section 51 (transport of packages etc. containing certain fauna) of Principal Act.
56. Amendment of section 52 (import of fauna and flora) of Principal Act.
57. Amendment of section 53 (export of fauna and flora) of Principal Act.
58. Regulation of trade in wild flora and fauna and CITES Regulations.
59. Saver in interest of public health and safety.

PART VI

MISCELLANEOUS

60. Amendment of section 56 (management etc. of certain land acquired, held or used by the Minister) of Principal Act.
61. Amendment of section 58 (right to hunt on or over territorial seas of State vested in State) of Principal Act.
62. Amendment of section 59 (regulations permitting and regulating public access to certain land) of Principal Act.
63. Amendment of section 69 (attempts etc. and miscellaneous other offences) of Principal Act.

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

Section

64. Amendment of section 70 (prosecution of offences) of Principal Act.
65. Amendment of section 72 (powers of Garda Síochána and authorised persons) of Principal Act.
66. Inspection of land.
67. Amendment of section 73 (search warrants) of Principal Act.
68. Amendment of section 74 (penalties) of Principal Act.
69. Amendment of section 76 (forfeiture) of Principal Act.
70. Amendment of section 77 (appeal against seizures) of Principal Act.
71. Amendment of section 78 (disposal of things seized) of Principal Act.

PART VII

MISCELLANEOUS AMENDMENT OF ENACTMENTS

72. Amendment of Forestry Act, 1946.
73. Amendment of Registration of Title Act, 1964.
74. Amendment of State Property Act, 1954.
75. Amendment of European Communities (Natural Habitats) Regulations, 1997.

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

ACTS REFERRED TO

Arterial Drainage Act, 1945	1945, No. 3
Arterial Drainage Acts, 1945 and 1995	
Firearms Acts, 1925 to 2000	
Fisheries Acts, 1959 to 1999	
Forestry Act, 1946	1946, No. 13
Forestry Act, 1956	1956, No. 6
Lands Clauses Consolidation Act, 1845	8 & 9 Vict. c.18
Ministers and Secretaries (Amendment) Act, 1939	1939, No. 36
Planning and Development Act, 2000	2000, No. 30
Protection of Animals (Amendment) Act, 1965	1965, No. 10
Registration of Title Act, 1964	1964, No. 16
Road Traffic Act, 1961	1961, No. 24
State Property Act, 1954	1954, No. 25
Wildlife Act, 1976	1976, No. 39



Number 30 of 2000

WILDLIFE (AMENDMENT) ACT, 2000

AN ACT TO AMEND AND EXTEND THE WILDLIFE ACT,
1976, AND TO PROVIDE FOR CONNECTED MATTERS.
[18th December, 2000]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Wildlife (Amendment) Act, 2000. Short title, collective citation and construction.

(2) The Principal Act, as amended by the Regulations of 1985, and this Act (other than *paragraphs (a) and (b) of section 5 and Part VII*) may be cited together as the Wildlife Acts, 1976 and 2000, and shall be construed together as one.

2.—This Act shall come into operation on such day or days as may be fixed therefor by order or orders of the Minister, either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions of the Act. Commencement.

3.—(1) In this Act— Interpretation.

“the Arbitrator” means a person appointed under, and for the purposes referred to in, *section 10*;

“the Minister” means the Minister for Arts, Heritage, Gaeltacht and the Islands;

“the Principal Act” means the Wildlife Act, 1976;

“the Regulations of 1985” means the European Communities (Wildlife Act, 1976) (Amendment) Regulations, 1985 (S.I. No. 397 of 1985).

(2) (a) A reference in this Act to a section is a reference to a section of this Act unless it is indicated that a reference to some other Act is intended.

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pt.I S.3

- (b) A reference in this Act to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

Saver for orders, etc.

4.—No repeal or amendment by this Act shall be construed so as to affect the continuance, in accordance with its terms and conditions, of any order or designation, or licence granted under the Wildlife Act, 1976, which was subsisting at the time of commencement of the relevant provision of this Act.

Repeals.

5.—The following are hereby repealed:

- (a) in the Forestry Act, 1946, Part III (sections 12 to 34) and section 60,
(b) the Forestry Act, 1956,
(c) sections 7, 42(7), 60 and 61, subsections (1) to (4) of section 63 and section 68 of the Wildlife Act, 1976.

PART II

AMENDMENT OF PART I OF PRINCIPAL ACT AND OF FUNCTIONS OF MINISTER

Amendment of section 2 (definitions) of Principal Act.

6.—(1) Section 2 of the Principal Act is hereby amended in subsection (1)—

- (a) by the insertion of the following after the definition of “building operation”:

“‘the CITES Convention’ means the Convention on International Trade in Endangered Species of Wild Fauna and Flora done at Washington on the 3rd day of March, 1973, as subsequently duly amended;

‘the CITES Regulations’ means, where appropriate, either or both Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein⁽¹⁾, which relates to the CITES Convention, and Commission Regulation (EC) No. 939/97 of 26 May 1997 laying down detailed rules concerning the implementation of Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating trade therein⁽²⁾, together with any amendments to or replacements of those Regulations;”

- (b) by the insertion of the following after the definition of “the Commissioners”:

“‘communities’ means any naturally occurring group of organisms that occupy a common environment;”

- (c) by the substitution of the following for the interpretation given to “conservation”:

⁽¹⁾O.J. No. L 61, 3 March 1997, page 1

⁽²⁾O.J. No. L 140, 30 May 1997, page 9

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

“‘conservation’ includes measures to maintain or enhance or restore the quality, value or diversity of species, habitats, communities, geological features or geomorphological features;”, Pr.II S.6

- (d) by the insertion of the following after the meaning assigned to “‘exempted wild mammal’”:

“‘export’, where the context so admits, includes re-export and cognate words shall be construed accordingly;”,

- (e) by the substitution, in the definition of “‘falconry’”, of “‘orders *Accipitriformes*, *Falconiformes* and *Strigiformes*” for “‘order *Falconiformes*” and the said definition, as so amended, is set out in the Table to this section,

- (f) by the substitution of the following for the interpretation given to “‘fauna’”:

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

- (g) by the insertion, in the definition of “‘flora’”, of “‘, aquaculture, forestry’” after “‘agriculture’” and of “‘conifers,’” after “‘flowering plants,’”, and the said definition, as so amended, is set out in the Table to this section,

- (h) by the insertion of the following after the definition of “‘foreshore’”:

“‘fossil’ includes the remains or imprints, in whole or in part, of animals, plants or any other organisms of uncertain affinity, or of their activities, which are preserved in rocks or deposits at the surface, or beneath the surface, of land;”,

- (i) by the insertion of the following after the interpretation given to “‘functions’”:

“‘geology’ includes—

- (a) the study of the Earth (as a whole or in part), the materials of which it is made, the processes that act and have acted upon those materials and the products and structures formed by such action, and

- (b) the physical and biological history of the Earth since its origin including the history of rock sequences as well as the history of life preserved as fossils in rocks and deposits at the surface, or in layers beneath the surface, of land;

‘geomorphology’ includes the configuration of the Earth’s surface and its particular landforms generated by natural processes, such as cliffs, eskers, drumlins, caves, turloughs or other features of the landscape formed by natural processes;

‘habitat’ includes—

- (a) the abode or natural home and the locality thereto of—

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

- (i) a particular species or population of a particular species, at any stage of life, or
- (ii) a community of organisms,
- (b) a distinctive type of terrain, site or location, distinguished by physical, geographical, vegetational or other features;
- (c) a specific locality where a particular fossil, mineral, geological or geomorphological feature is to be found;”,
- (j) in the definition of “hunt”, by the deletion of all words from “but does not in this Act include” down to “photographic or other pictures.”, and the said definition, as so amended, is set out in the Table to this section,
- (k) by the insertion of the following after the definition of “hunt”:

“‘import’, where the context so admits, includes re-import and cognate words shall be construed accordingly;”,
- (l) by the insertion of the following after the definition of “local authority”:

“‘mechanically-propelled vehicle’ has the same meaning as it has in the Road Traffic Act, 1961;

‘mineral’ includes any naturally occurring organic or inorganic element or chemical compound of set composition, internal structure and physical properties and occurring generally, but not always, in crystal form;”,
- (m) by the insertion of the following after the definition of “the Minister”:

“‘natural heritage area’ means an area which is worthy of conservation for one or more species, communities, habitats, landforms or geological or geomorphological features, or for its diversity of natural attributes;

‘natural heritage area order’ means an order made under section 18 of the *Wildlife (Amendment) Act, 2000*;

‘nature reserve’ means an area managed primarily for conservation of one or more species, communities, habitats or for any feature of geological, geomorphological or other natural interest which is provided for by the Minister in accordance with the *Wildlife Acts, 1976 and 2000*;”,
- (n) by the insertion of the following after the definition of “ornithology” (inserted by the Regulations of 1985):

“‘orphaned’, in relation to any wild bird or any wild animal, includes a dependant young wild bird or dependant young wild animal which has been abandoned and which, in the circumstances, would be unlikely to survive unaided in the wild;”,

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

(o) by the substitution of the following for the interpretation Pr.II S.6 given to “species”:

“‘species’ means any species, except man, and includes subspecies and varieties, hybrids and populations thereof;”

(p) by the insertion of the following after the definition of “the territorial seas of the State”:

“‘wild animal’ includes an individual of a population which primarily lives independent of human husbandry but does not include—

(a) wild birds, or

(b) species of fish or aquatic invertebrate animals (or their eggs or spawn or other immature stage or brood or young) which are of a species specified in regulations made by the Minister with the prior consent of the Minister for the Marine and Natural Resources under section 32 of the *Wildlife (Amendment) Act, 2000*;”

(q) in the definition of “wild bird”, by the insertion of “eggs and” after “includes the”, and the said definition, as so amended, is set out in the Table to this section.

(2) Section 2 of the Principal Act is hereby amended by the substitution of the following for subsection (3):

“(3) For the purposes of this Act the business of wildlife dealing means the business of buying for resale any wild birds or wild animals whether alive or dead, or any part, product or derivative of such birds or animals and includes engaging in taxidermy in respect of such birds or animals.”

TABLE

“falconry” means hunting by means of birds of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes* which are trained to hawk for sport;

“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, aquaculture, forestry or horticulture and includes in particular lichens, mosses, liverworts, fungi, algae and vascular plants, namely flowering plants, conifers, ferns and fern allied plants and any community of such plants;

“hunt” means stalk, pursue, chase, drive, flush, capture, course, attract, follow, search for, lie in wait for, take, trap or shoot by any means whether with or without dogs, and, except in sections 28 and 29 of this Act, includes killing in the course of hunting and kindred words shall be construed accordingly;

“wild bird” includes the eggs and unflown young of a wild bird;

7.—Section 8 of the Principal Act is hereby amended by the insertion of the following after subsection (1):

“(1A) The Minister may make such regulations as appear to the Minister to be necessary or expedient to implement the provisions of the *Wildlife Acts, 1976 and 2000*.

Amendment of section 8 (regulations and orders) of Principal Act.

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pr.II S.7

(1B) Any regulation made by the Minister under this Act may contain such incidental or consequential provisions as appear to the Minister to be necessary or expedient for the purpose of implementing the provisions of the *Wildlife Acts, 1976 and 2000.*”.

Licences.

8.—The Principal Act is hereby amended by the substitution of the following for section 9:

“9.—(1) The Minister may—

(a) attach conditions to any licence granted or permit issued for any of the purposes of the *Wildlife Acts, 1976 and 2000,*

(b) vary such conditions, and

(c) revoke any such licence other than a licence granted by the Minister under section 29 of the Principal Act or withdraw any such permit.

(2) Subject to section 32(5) of this Act, a licence granted or a permit issued by the Minister under the *Wildlife Acts, 1976 and 2000,* shall, if so expressed, operate to authorise the doing by any person who is of a class or description specified in the licence or permit of—

(a) anything allowed to be done by the licence or permit, or

(b) anything which is a thing so allowed to be done and is of a class or description so specified.

(3) The Minister may, with the consent of the Minister for Finance, prescribe fees payable in respect of licences granted or permits issued by the Minister under the *Wildlife Acts, 1976 and 2000,* and different fees may be prescribed for different classes of licences or permits.

(4) Regulations prescribing matters to which this section relates may provide for such incidental or related matters as are, in the opinion of the Minister, necessary to give effect to such fees.”.

Amendment of section 11 (functions of Minister in relation to wildlife) of Principal Act.

9.—Section 11 of the Principal Act is hereby amended—

(a) in subsection (1), by the insertion of “and to promote the conservation of biological diversity” after “wildlife” and the said subsection (1), as so amended, is set out in the Table to this section, and

(b) by the insertion of the following after subsection (4):

“(5) In this section ‘biological diversity’ means the variability among living organisms from all sources, including terrestrial, marine and other aquatic ecosystems, and the ecological complexes of which they are part and ‘diversity’ includes diversity within species, between species and of ecosystems.”.

(1) It shall be a function of the Minister to secure the conservation of wildlife and to promote the conservation of biological diversity.

PART III

LAND AND WATERS

CHAPTER I

Acquisition of Land and Rights

10.—(1) Where the Minister intends to make an order under *section 12* or *13*, the Minister shall appoint a person, who shall be a barrister or a solicitor of not less than 7 years standing, to be an Arbitrator for the purposes of hearing and determining the matter.

(2) In hearing and determining a matter the Arbitrator shall perform the functions assigned to him or her by *section 12* or, in the case of a matter to which *section 13* relates, by *section 12* as applied by *section 13(2)*.

(3) The Arbitrator shall be paid such remuneration (if any) and allowances for expenses incurred by him or her as the Minister, with the consent of the Minister for Finance, may determine.

11.—(1) Where the Minister considers it desirable for the purposes of the *Wildlife Acts, 1976 and 2000*, to acquire or take on lease any land or interest in land, the Minister may, with the consent of the Minister for Finance, purchase or take on lease or otherwise acquire such land by agreement.

Acquisition of land and rights by agreement.

(2) The Minister may with the consent of the Minister for Finance—

(a) sell or let any land vested in the Minister in connection with functions under the *Wildlife Acts, 1976 and 2000*, or

(b) exchange any such land for any other land, or

(c) otherwise dispose of any such land,

and such consent may be given—

(i) generally, including to a particular class or classes of transaction, for all or a class or classes of land so vested or for transactions not exceeding a particular monetary amount, or

(ii) particularly to a particular transaction or group of related transactions.

(3) (a) Notwithstanding *subsection (1)* and without prejudice to the generality of *subsection (2)*, the Minister may, with the consent of the Minister for Finance, construct, alter, demolish, purchase or take on lease any buildings or other structures or carry out any development required in connection with the exercise of the Minister's functions under the *Wildlife Acts, 1976 and 2000*, and such consent may be given—

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pr.III S.11

- (i) generally, including to a particular class or classes of transaction, for all or a class or classes of land so vested or for transactions not exceeding a particular monetary amount, or
- (ii) particularly to a particular transaction or group of related transactions.

(b) For the purposes of *paragraph (a)*, the reference to buildings or other structures and to development in that paragraph includes any land reasonably required for use with the building or structure concerned or for the development concerned.

Creation of rights of way.

12.—(1) Where the Minister requires, in connection with any land held by the Minister, for the purposes of the *Wildlife Acts, 1976 and 2000*, or partly for those purposes, a right of way by a particular route over any other land, the Minister may make an order (in this section referred to as “a right of way order”) creating such a right of way.

(2) Where the Minister proposes to make an order under *subsection (1)*, the following provisions shall apply:

- (a) the Minister shall as soon as may be give notice in writing of his or her intention to make the order to the Arbitrator who shall cause to be published a notice of the Minister’s intention in such newspapers and in such manner as the Arbitrator shall determine;
- (b) the Minister shall give notice in writing of his or her intention to make the order to—
 - (i) every occupier of the land concerned,
 - (ii) every owner of the land concerned, and
 - (iii) every other person having a legal or equitable interest in the land,

where it is proposed to create the right of way;

- (c) the Minister shall not make the order unless a draft thereof has been submitted to and approved of under this subsection by the Arbitrator;
- (d) the Arbitrator shall not determine an application under this subsection by the Minister before the expiration of the period of 30 days beginning on the day on which the relevant notice is published pursuant to this subsection or, in case such publication is made on different days, the day of the first such publication;
- (e) any one or more of the following may, within the said period of 30 days or such longer period as the Arbitrator may determine, who objects to the making of the order serve on the Minister a notice of his or her intention to make an application to the Arbitrator in relation to the proposed order, namely:
 - (i) every occupier of the land concerned,

- (ii) every owner of the land concerned,
- (iii) every other person having a legal or equitable interest in the land,

where it is proposed to create the right of way;

- (f) in case a notice is served on the Minister pursuant to this section the Arbitrator shall, before deciding whether or not to approve of the proposed order, give the person by whom the notice was served an opportunity of being heard, either in person or through counsel or a solicitor;
- (g) the Arbitrator may, in determining the matter, approve of the draft of the order in the form proposed by the Minister, approve of such draft subject to such amendments as the Arbitrator shall specify or refuse to give his or her approval to the draft.

(3) If, in relation to the making of an order under this section, the Arbitrator is satisfied after diligent inquiry that a person to whom notice is required by *subsection (2)(b)* to be given by the Minister cannot be found or ascertained, the Arbitrator may determine the application, notwithstanding the fact that such person cannot be found or ascertained.

(4) Where, in relation to a proposed right of way, the Minister proposes that, in making the order under this section, the right of way, if created, is to be expressed as including and operating to confer on the Minister the power to permit either or both—

- (a) the public generally, and
- (b) any particular class of the public which may stand specified from time to time by the Minister,

to pass and repass at all times or at such times as the Minister may permit, and with or without vehicles or animals as the Minister may so specify, over the land over which the right of way will be exercisable, the following shall have effect:

- (i) the Minister shall refer to the proposal in any notice given under this section, and
- (ii) if the Arbitrator decides to allow the proposal in whole or in part, the order made shall be so expressed and shall operate accordingly.

(5) Any person who has an interest in or over land specified in a notice published pursuant to this section shall be entitled to be paid compensation by the Minister in respect of any diminution in the value of his or her interest in or over the land consequent upon the making of the order to which the notice relates and—

- (a) the amount of any compensation to be paid under this subsection shall, in default of agreement, be determined under and in accordance with the Lands Clauses Acts and, for the purposes of those Acts, the Minister shall be deemed to be the promoter of the undertaking and this section and that order shall be deemed to be the special Act and, for the purposes of such determination, those Acts shall apply with any other necessary modifications

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pr.III S.12

and are incorporated (except in so far as they are inconsistent with and subject to any amendments or modification, express or implied, thereof effected by this Act) with this section,

(b) sections 69 to 83 of the Lands Clauses Consolidation Act, 1845, shall apply to any compensation payable by virtue of this subsection, and for the purposes of such application the Minister shall be deemed to be the promoter of the undertaking, and

(c) where money is paid into court by the Minister under section 69, as applied by this subsection, of the Lands Clauses Consolidation Act, 1845, no costs shall be payable by the Minister to any person in respect of any proceedings for the investment, payment of income or payment of capital of such money.

Extinguishment of easements.

13.—(1) Where any land held by the Minister for the purposes of either or both the Principal Act and this Act or partly for any of those purposes is subject to any easements, the Minister may, whenever the Minister thinks proper, make an order (in this section referred to as an “extinguishment order”) extinguishing such easements or any one or more of them.

(2) The provisions of *section 12* shall, with any necessary modifications, apply in relation to any extinguishment order proposed to be made by the Minister under *subsection (1)* in the same manner as if the Minister were creating a right of way over such land under that section.

(3) In this section, the word “easement” includes any *profit à prendre* or other right in or over land.

Amendment of section 55 (land purchase orders) of Principal Act.

14.—Section 55 of the Principal Act is hereby amended—

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

“(b) the purpose for which the Minister proposes to use the land is a purpose of the *Wildlife Acts, 1976 and 2000*, and”,

and

(b) by the substitution of the following for subsection (8):

“(8) (a) Compensation payable by the Minister pursuant to subsection (7) of this section shall, in default of agreement, be determined under and in accordance with the Lands Clauses Acts and, for the purposes of those Acts, the Minister shall be deemed to be the promoter of the undertaking and this section and the order under this section shall be deemed to be the special Act and, for the purposes of such determination, those Acts shall apply with any other necessary modifications and are incorporated (except in so far as they are inconsistent with and subject to any amendments or modification, express or implied, thereof effected by this Act) with this section.

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

(b) Sections 69 to 83 of the Lands Clauses Consolidation Act, 1845, shall apply to any compensation payable by virtue of this subsection, and for the purposes of such application the Minister shall be deemed to be the promoter of the undertaking. Pr.III S.14

(c) Where money is paid into court by the Minister under section 69, as applied by this subsection, of the Lands Clauses Consolidation Act, 1845, no costs shall be payable by the Minister to any person in respect of any proceedings for the investment, payment of income or payment of capital of such money.”.

CHAPTER II

Natural Heritage Areas

15.—In this Chapter—

Interpretation
(Chapter II).

“user” has the meaning assigned by *section 19(1)(a)(ii)*;

“works” includes any activity which destroys or which significantly alters, damages or interferes with the integrity of—

(a) a site, or

(b) any of its species, communities or habitats,

either intentionally or unintentionally, or any activity which has a significant impact on the site or on any of its species, communities or habitats, or on its landforms or geological or geomorphological features, or on its diversity of natural attributes, other than development by a local authority or development which is not exempted development for the purposes of the Planning and Development Act, 2000.

16.—(1) Where the Minister is of the opinion, having regard to *subsection (6)(a)*, that any land forms, or is part of, a natural heritage area the Minister shall publish or cause to be published in the *Iris Oifigiúil*, and in at least one newspaper circulating in the locality in which the land is situate, a notice in the prescribed form of the Minister’s intention to make an order designating the land as a natural heritage area. Intention to designate natural heritage areas.

(2) Before the publication of a notice in accordance with *subsection (1)*, the Minister shall—

(a) seek the observations of the Minister for Agriculture, Food and Rural Development, the Minister for the Environment and Local Government, the Minister for Public Enterprise, the Minister for the Marine and Natural Resources, and such other Minister of the Government as the Minister considers appropriate in the circumstances, the Commissioners and any planning authority in whose functional area the land is situate, and

(b) serve on the owner or occupier of such land and any holder of a valid prospecting licence or exploration licence duly

issued under any enactment which relates to such land notice of the proposed particulars to be contained in the order the Minister proposes to make.

(3) A notice served under *subsection (2)(b)* shall—

- (a) be accompanied by a map of an appropriate scale in the circumstances issued by or under the superintendence of the Ordnance Survey Office, upon which is marked, so as to identify clearly, the land to which the notice relates and the boundaries thereof,
- (b) outline the reason the site is of special scientific interest and indicate the works which the Minister considers would be liable to destroy or to significantly alter, damage or interfere with the integrity of the proposed natural heritage area,
- (c) indicate the protective measures the Minister proposes to include in the proposed order for the protection of the natural heritage area, and
- (d) indicate the procedures by which a person may object.

(4) The Minister may amend a notice served under *subsection (2)(b)* in respect of any of the matters mentioned in *paragraphs (a), (b) and (c)* of *subsection (3)*, and where the Minister is of the opinion that any notice published under *subsection (1)*, observation sought under *subsection (2)(a)* or notice served under *subsection (2)(b)* is materially affected by an amendment under this subsection, the Minister shall, in relation to the amendment, publish or cause to be published a notice under *subsection (1)* or bring it or cause it to be brought to the attention of any person so affected and to whom *paragraph (a) or (b)* of *subsection (2)* relates.

(5) Notwithstanding section 3(1)(d) of the Principal Act, where the address of any person to whom *subsection (2)(b)* relates cannot be found after reasonable inquiry, notices and maps showing the areas to be designated shall be displayed in a conspicuous place—

- (a) at one or more Garda Síochána stations, local offices of the Department of Social, Community and Family Affairs, local authority offices, local offices of the Department of Agriculture, Food and Rural Development and offices of Teagasc, which are situated within or contiguous to the area to be designated, or
- (b) where in any case there is no such station or office so located, at one or more of each such station or office within the vicinity or closest to such area,

and advertisements shall be broadcast on at least one radio station broadcasting in the locality of the area concerned and be placed in at least one newspaper circulating in the area, and every such notice and advertisement shall request any person affected by the proposed designation to contact the Department of Arts, Heritage, Gaeltacht and the Islands.

- (6) (a) The Minister, in publishing or causing to be published a notice under *subsection (1)*, shall have regard to whether, on the basis of the scientific advice available to the Minister at a particular time, the area is worthy of conservation by virtue of its special scientific

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

interest for one or more species, communities, habitats, landforms or geological or geomorphological features, or for its diversity of natural attributes. Pr.III S.16

- (b) The scientific advice referred to in *paragraph (a)* shall take account of the size of the site, its location, the type of natural feature or features contained in it and the degree of negative human impact.

(7) Not later than 3 months after publication in the *Iris Oifigiúil* of a notice pursuant to *subsection (1)*, a person on whom a notice is served under *subsection (2)(b)* or pursuant to any amendment to such notice or any person claiming to have or to be entitled to an interest in or over the land or part thereof may object on scientific grounds to the making of the order in the manner specified in the notice.

17.—(1) Where the Minister decides, after publication in the *Iris Oifigiúil* of a notice pursuant to *section 16*, not to make a natural heritage area order relating to the lands concerned, every person on whom that notice was served under *subsection (2)(b)* of that section shall be informed accordingly by the Minister. Decision not to make natural heritage area order.

(2) The Minister shall, when informing a person under *subsection (1)*, state the scientific grounds on which the decision was made.

18.—(1) The Minister shall, after considering any objections duly made in relation to the notice served under *subsection (2)(b)* of *section 16* or pursuant to any amendment to such notice and if the Minister thinks fit, make in relation to the land specified in the notice published pursuant to that section or any part of such land, an order (in this Act referred to as a “natural heritage area order”) designating that land, or any part thereof, a natural heritage area and the order may include such provisions as the Minister thinks fit which relate to protective measures so specified. Natural heritage area order.

(2) The Minister shall cause a copy of every natural heritage area order to be sent to every person to whom *section 16(2)* relates in respect of the land concerned.

(3) The Minister may, subject to *subsection (4)*, by order amend any provision of a natural heritage area order, including the delineation of the boundaries, or revoke a natural heritage area order if the site concerned no longer retains its scientific value.

(4) Where the Minister proposes to amend or revoke a natural heritage area order—

(a) the Minister shall publish, or cause to be published, in the *Iris Oifigiúil* and in at least one newspaper circulating in the locality in which the land to which the order applies is situate a notice of the Minister’s intention to do so, and

(b) the provisions of *subsections (2), (4) and (5)* of *section 16* shall apply to a proposed amendment or revocation under this section of a natural heritage area order as if references in those subsections to *subsection (1)* of *section 16* were references to *paragraph (a)* and with any other necessary modifications.

Pt.III
Restriction on
carrying out certain
works.

19.—(1) Where there is a subsisting natural heritage area order in respect of any land, no person shall carry out, or cause or permit to be carried out, on that land any works specified in the order or any works which are liable to destroy or to significantly alter, damage or interfere with the features by reason of which the designation order was made unless—

- (a) (i) the owner or occupier of that land has given to the Minister notice in writing of his or her intention to carry out the works specifying the nature of the works and the land, or part thereof, on which it is proposed to carry them out, or
 - (ii) where the consent of the owner or occupier of that land is not required, the person who is to carry out or cause to be carried out the works (in this Chapter referred to as “the user”) has applied in writing to the Minister for permission to carry out the works,
- and
- (b) (i) the works are carried out with the consent in writing of the Minister, or
 - (ii) the works are carried out in accordance with the terms of an agreement under section 11 or 18 of the Principal Act, or
 - (iii) 6 months have expired from the date of the notice under *paragraph (a)* and the Minister has not refused consent in writing to the works being carried out.

(2) Notwithstanding *subsection (1)*, where a notice has been served under *section 16(2)(b)* in respect of any land, no person shall carry out, or cause or permit to be carried out, on that land any works specified in that notice, being works which are liable to destroy or to significantly alter, damage, or interfere with the features by reason of which the notice was served, without giving the Minister not less than 3 months’ prior notice in writing of his or her intention to carry out such works.

(3) Where the Minister is satisfied that the carrying out of the works are necessary for imperative reasons of overriding public interest, which interest may be of a social or economic nature, and, in the absence of an alternative and viable solution, the Minister may decide to give the owner, occupier or user consent to undertake the works.

(4) Where the Minister decides to give consent to the carrying out of works to which *subsection (1)* relates, the Minister may—

- (a) attach such conditions to the consent as the Minister deems appropriate, or
- (b) at any time vary such conditions as the Minister deems appropriate, or
- (c) revoke such consent to works if in the opinion of the Minister the conditions attached to such consent have been breached, or the continuation of such consent would be liable to destroy, or significantly alter, damage or interfere with the features by reason of which the designation order was made,

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

and the Minister shall communicate in writing his or her decision to the person concerned (being the owner, occupier or user of the land concerned). Pr.III S.19

(5) Where the Minister decides to give consent to the carrying out of works to which *subsection (3)* relates, the Minister may—

- (a) attach such conditions to the consent as the Minister deems appropriate, or
- (b) at any time vary such conditions as the Minister deems appropriate, or
- (c) revoke such consent to works if in the opinion of the Minister the conditions attached to such consent have been breached,

and the Minister shall communicate in writing his or her decision to the person concerned (being the owner, occupier or user of the land concerned).

(6) Where the Minister decides to refuse to give consent to the carrying out of works in respect of which *subsection (1)* relates, the Minister shall give his or her reasons in writing to the person concerned (being the owner, occupier or user of the land concerned).

(7) (a) Where the Minister decides—

- (i) to refuse to give consent to the carrying out of works in respect of which *subsection (1)* relates, or
- (ii) to give such consent subject to conditions, or
- (iii) to vary such conditions, or
- (iv) to revoke such consent to the carrying out of works,

then, the person concerned (being the owner, occupier or user of the land concerned) may, not later than 30 days after the day on which the decision is given by the Minister, serve notice of appeal on the Minister against that decision.

(b) Where in circumstances to which *paragraph (a)* relates, the Minister shall appoint a person, who shall be a barrister or a solicitor of not less than 7 years standing, to be an arbitrator for the purposes of hearing and determining the appeal and, where the arbitrator makes a determination in relation to an appeal under *subsection (7)(a)*, the Minister shall act in accordance with such determination.

(c) An arbitrator appointed under *paragraph (b)* shall be paid such remuneration (if any) and allowances for expenses incurred by him or her as the Minister, with the consent of the Minister for Finance, may determine.

(8) Where the Minister has entered into negotiations with an owner or occupier to—

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pr.III S.19

- (a) acquire land or possession thereof to which a natural heritage area order relates, or
- (b) enter an agreement under section 18 of the Principal Act in respect of the land,

and such negotiations have not concluded by the expiration of the period mentioned in *subsection (1)(b)(iii)*, the Minister may extend that period by a further period and when so extended the Minister shall inform the owner or occupier as the case may be.

(9) A person who contravenes *subsection (1) or (2)* shall be guilty of an offence.

Prohibition of works on lands in natural heritage areas.

20.—(1) Where the Minister considers that works to which *section 16(3)(b)* relates are being carried out or are proposed to be carried out on land which, in the opinion of the Minister, comprises or forms part of a natural heritage area and is the subject of a notice served under *section 16(2)(b)*, the Minister may make an application to a court of competent jurisdiction to prohibit the continuance of the works pending a completion of the procedures provided for by *section 16*.

(2) Where the Minister considers that works are being carried out or are proposed to be carried out on land comprising or forming part of a natural heritage area in contravention of any provision in a natural heritage area order, the Minister may make an application to a court of competent jurisdiction to prohibit the continuance of the works.

(3) Where works are being carried out that are not within an area to which *subsection (1) or (2)* relates but are liable to have an adverse effect on the integrity of such area, the Minister may make an application to a court of competent jurisdiction for an order to prohibit—

- (a) in a case to which *subsection (1)* relates, the continuance of the works pending the completion of the procedures provided for by *section 16*,
- (b) in a case to which *subsection (2)* relates, the continuance of the works.

(4) An application to a court of competent jurisdiction for an order under this section shall be in a summary manner and the court, when considering the matter, may make such interim or interlocutory order (if any) as it considers appropriate.

(5) In this section, “court of competent jurisdiction” means either a Judge of the Circuit Court within whose circuit the lands or any part of the lands are situated or the High Court.

Restoration of land in natural heritage area.

21.—(1) Where works have been carried out on land, designated as a natural heritage area under *section 18*, or where works have been carried out on land which at the time of the carrying out of such works was the subject of a notice served under *section 16(2)(b)* and which was subsequently designated as a natural heritage area, the Minister may, by direction issued in writing, require the owner, occupier, or user of the land which is so designated, or the person who carried out or caused to be carried out the works, to restore the land in accordance with the direction.

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

(2) Every direction shall specify the period within which the land concerned is to be restored. Pr.III S.21

(3) If within the period specified in a direction under this section or within such extended period as the Minister may allow, any steps required by the direction to be taken have not been taken, the Minister may take such action as the Minister considers necessary, including authorising a person to enter on the land and take those steps, and may recover as a simple contract debt in any court of competent jurisdiction from the person to whom the direction was made any expenses reasonably incurred by the Minister in that behalf.

(4) (a) Any person who fails to comply with a direction under *subsection (1)* shall be guilty of an offence.

(b) Any person who by act or omission impedes or obstructs an authorised person entering on land for the purposes of carrying out any required works under this section shall be guilty of an offence.

22.—(1) Where the Minister refuses consent to works under *section 19*, the Minister shall, save for the reasons set out in *subsections (5) and (6)*, pay to the owner or occupier or user as the case may be by way of compensation an amount equal to the loss suffered by the owner, occupier or user by the depreciation of an interest in the land to which he or she is entitled. Compensation.

(2) (a) The amount of compensation payable by the Minister under *subsection (1)* shall be determined by reference to the difference between the antecedent and subsequent value of the land or of an interest in the land consequent on the refusal of consent, which amount shall be offset by the value of any amounts which the owner, occupier or user is receiving under the scheme operated by the Minister for Agriculture, Food and Rural Development and known as the Rural Environment Protection Scheme, or any amendment to, or replacement of that scheme.

(b) For the purposes of *paragraph (a)*, any amounts which the proposed works would have attracted by way of grant aid from any Minister of the Government or any body established or regulated by or under a statute, if consent had been given under *section 19*, shall not be taken into account in assessing the difference between the antecedent and subsequent value of the land.

(3) (a) Any claims for payment of compensation under this section shall, in default of agreement, be determined under and in accordance with the Lands Clauses Acts and, for the purposes of those Acts, the Minister shall be deemed to be the promoter of the undertaking and this section shall be deemed to be the special Act and, for the purposes of such determination, those Acts shall apply with any other necessary modifications and are incorporated (except in so far as they are inconsistent with and subject to any amendments or modification, express or implied, thereof effected by this Act) with this section.

(b) Sections 69 to 83 of the Lands Clauses Consolidation Act, 1845, shall apply to any compensation payable by virtue

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pr.III S.22

of this subsection, and for the purposes of such application the Minister shall be deemed to be the promoter of the undertaking.

- (c) Where money is paid into court by the Minister under section 69, as applied by this subsection, of the Lands Clauses Consolidation Act, 1845, no costs shall be payable by the Minister to any person in respect of any proceedings for the investment, payment of income or payment of capital of such money.

(4) A claim for compensation under this section shall be made not later than 6 months from the date of issue of the decision by the Minister under *section 19*.

(5) Compensation under this section shall not be payable for any loss arising from a refusal of consent for works for as long as—

- (a) the Minister is in negotiation with the owner or occupier, as the case may be, for the purchase by agreement of the land, or
- (b) the Minister is in negotiation with the owner or occupier, as the case may be, to enter into a management agreement under section 18 of the Principal Act.

(6) (a) Save where the refusal of consent results in the discontinuance of the use to which the land has been put by the person concerned in the period of 5 years immediately preceding—

- (i) such refusal, or
- (ii) the curtailment of such use of land,

compensation will not be payable where the proposed works would significantly adversely affect a site, its species, communities or habitats, or have a significant impact on the site or on its species, communities or habitats, or landforms or geological or geomorphological features, or on its diversity of natural attributes.

- (b) Where the Minister has refused consent to works under *section 19*, the Minister may, where he or she considers appropriate, make a determination that it would not be just and reasonable in the particular circumstances that payment of compensation should be prevented by the provisions of *paragraph (a)*.

(7) Any compensation payable under this section may be made by the Minister either by way of a single payment or by way of payment of an annual sum to a person having, or claiming to be entitled to, an interest in or over the land on which the compensation is payable.

Registration of natural heritage area order as burden on land.

23.—A natural heritage area order and any amendment or revocation thereof may be registered under the Registration of Title Act, 1964 (as amended by *section 73*), in the appropriate register maintained under that Act, as a burden on the land.

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

24.—(1) Subsections (2) and (3) of section 12 of the Principal Act shall apply to land to which a natural heritage area order or a notice served under *section 16(2)(b)* relates in the same manner as it applies to land to which an establishment order, a recognition order or a designation order relates, or to which an agreement under section 18 of the Principal Act relates.

Pr.III
Provisions relating to section 12 (obligations in relation to nature reserves and refuges) of Principal Act.

(2) Subsection (3)(b) of section 12 of the Principal Act is hereby repealed.

CHAPTER III

Nature Reserves and Refuges

25.—(1) The Minister may cause to be erected at a suitable place within, or on the boundary of, or near any land in respect of which—

Erection of notices.

- (a) an establishment order, a recognition order or a designation order to which section 15, 16 or 17, respectively, of the Principal Act applies, or
- (b) an agreement under section 18 of the Principal Act applies, or
- (c) a natural heritage area order applies, or
- (d) there is no subsisting order in operation under section 24 or 25 of the Principal Act or there is such an order in operation but it is of restricted application in respect of that land (which land is, in either case, referred to in this section as a “fauna sanctuary order”),

a notice of the existence of the establishment order, recognition order, designation order, agreement, natural heritage area order or fauna sanctuary order, as the case may be, and for that purpose any person, duly authorised by the Minister in that behalf, may enter on such land and any other land.

(2) Any person who impedes an authorised person in carrying out his or her duties under this section or who wilfully or negligently destroys, alters, defaces, disfigures, marks or otherwise interferes with any notice referred to in *subsection (1)* shall be guilty of an offence.

26.—Section 15 of the Principal Act is hereby amended—

Amendment of section 15 (nature reserves on lands owned by the Minister or by the State) of Principal Act.

- (a) by the substitution of the following for paragraph (a) of subsection (2):

“(a) land to which this section applies—

- (i) includes the habitat or forms, or is capable of being made to form, the habitat or part of the habitat of one or more species or community, being a species or community which is of scientific interest, or
- (ii) includes or forms an ecosystem, or part of an ecosystem, which is of scientific interest, or

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

(iii) contains features of geological, geomorphological or other natural interest,

and that in the case of such habitat or ecosystem, or such part of the ecosystem, or geological, geomorphological or other natural interest is likely to benefit if measures are taken for its protection,”,

and

(b) by the substitution, in subsection (5), of “, characteristics or boundaries” for “or characteristics”,

and the said subsection (5), as so amended, is set out in the Table to this section.

TABLE

(5) The Minister shall not amend an establishment order unless he considers that the objectives, as regards which the relevant nature reserve was established, require revision because of changes in the features, characteristics or boundaries of the reserve or in any other circumstance which affects the reserve.

Amendment of section 16 (nature reserves on land other than land to which section 15 applies) of Principal Act.

27.—Section 16 of the Principal Act is hereby amended—

(a) by the insertion, in paragraph (a) of subsection (1), of “or forms, or is capable of being made to form, a habitat” after “includes a habitat” and of “as amended by this Act,” after “section 15 (2) of this Act” and by the insertion of “or contains features of geological, geomorphological or other natural interest” after “ecosystem”,

and

(b) by the insertion of the following after subsection (3):

“(3A) The Minister shall not amend a recognition order unless the Minister considers that the objectives, as regards which the relevant nature reserve was recognised, require revision because of changes in the features, characteristics or boundaries of the reserve, or because of any other circumstance which in the Minister’s opinion affects the reserve.”,

and the said paragraph (a), as so amended, is set out in the Table to this section.

TABLE

(a) the land includes a habitat or forms, or is capable of being made to form, a habitat or part of a habitat or an ecosystem or contains features of geological, geomorphological or other natural interest described in paragraph (a) of section 15(2) of the Principal Act, as amended by this Act.

Amendment of section 17 (refuges for fauna) of Principal Act.

28.—Section 17 of the Principal Act is hereby amended—

(a) by the substitution, in subsection (1), of “either or both fauna and flora” for “fauna” where it first occurs and of “fauna and flora” for “fauna” where it last occurs,

(b) by the substitution, in subsection (4), of “every species of fauna and flora” for “any species of fauna” and of “fauna and flora” for “fauna”,

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

(c) by the insertion, in paragraph (a) of subsection (9), of “or Pr.III S.28
flora” after “fauna”, and

(d) by the insertion, in subsection (12), of “or flora” after
“fauna”,

and the said subsections (1) and (4), the said paragraph (a) and the
said subsection (12), as so amended, are set out in the Table to this
section.

TABLE

(1) Where the Minister considers that a particular species, or particular species,
of either or both fauna and flora should be specially protected on any land which
is, or is contiguous to, a habitat of the species, then, subject to subsection (5) of
this section, he may publish in the *Iris Oifigiúil* and in at least one newspaper
circulating in the locality in which the land is situate a notice of his intention to
make an order (in this Act referred to as a designation order) designating the
land as a refuge for such fauna and flora.

(4) A notice published pursuant to this section shall indicate every species of
fauna and flora which the Minister proposes by the provisions of the proposed
order to which the notice relates to protect, the land to which the proposed desig-
nation order or amending order, as the case may be, will apply and the protective
measures which he proposes to include in the proposed order, including any
measures he proposes to take for the protection of the habitat requirements of
such fauna and flora.

(a) a designation order designating that land, or any part thereof, as, and
establishing thereon, a refuge for all or any of the fauna or flora indi-
cated in the notice, or

(12) Any compensation under this section shall be assessed and payable only
in respect of diminution in value, loss or disadvantage arising from the measures
contained in the relevant order for the protection of the habitat requirements of
the fauna or flora to which the order relates.

PART IV

WILDLIFE CONSERVATION AND PROTECTION

CHAPTER I

Protection of Flora, Wild Birds and Wild Animals

29.—Section 21 of the Principal Act is hereby amended—

Amendment of
section 21
(protection of flora)
of Principal Act.

(a) in subsection (3), by the substitution of the following for
paragraphs (a) and (b):

“(a) cut, pick, collect, uproot or otherwise take, injure,
damage, or destroy any specimen to which this
section applies or the flowers, roots, seeds, spores
or other part of such specimen,

(b) purchase, sell, keep for sale, transport for sale or
exchange, offer for sale or exchange or be in pos-
session of any such specimen whether alive or
dead or the flowers, roots, seeds, spores or any
part, product or derivative thereof,”

(b) in subsection (5), by the substitution of the following for
paragraph (a):

“(a) to cut, pick, collect, uproot or otherwise take flora
of a species specified in the licence and which is of
a species to which an order under this section for

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pt.IV S.29

the time being applies or the flowers, roots, seeds, spores or other part of a specimen of the species so specified,”

(c) in subsection (6), by the substitution of the following for paragraphs (a) and (b):

“(a) sold a plant whether alive or dead or the flowers, roots, seeds, spores or any part, product or derivative of a plant, which is of the same species as the plant, flowers, roots, seeds, spores or any part, product or derivative of a plant, as the case may be, to which the alleged offence relates, and

(b) claimed, either expressly or by implication and whether by advertising or otherwise, that the plant, flowers, roots, seeds, spores or any other part, product or derivative sold came from or was wholly or partly grown in a particular place, and the place is in an area to which an order under this section applied at the time when the alleged offence was committed,”

(d) in subsection (7), by the insertion of “, seeds or spores” after “roots”, and

(e) by the insertion of the following after subsection (8):

“(8A) In order to control the trade and collection of wild flora the Minister may make regulations providing that a person shall not, save under and in accordance with a licence granted in that behalf by the Minister and on payment to the Minister of the prescribed fee (if any), cut, pick, collect, uproot or otherwise take, injure, damage, or destroy any specimen of a species of flora which is of a species specified in the regulations or the flowers, roots, seeds, spores or other part of such specimen or cause to be cut, picked, collected, uprooted or otherwise taken, injured, damaged or destroyed any such specimen.

(8B) Where the Minister is satisfied that it is in the interests of the conservation of any species of wild flora so to do, the Minister may by regulations prohibit, or control in such manner as the Minister considers appropriate and specify in the regulations, the trade, collection, purchase or sale of that species or any part, product or derivative thereof for such period as may be so specified.”

and the said subsection (7), as so amended, is set out in the Table to this section.

TABLE

(7) In any proceedings for an offence under this section, it shall be a defence for the defendant to show that the plant, flowers, roots, seeds or spores or other thing to which the alleged offence relates was lawfully imported.

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

30.—Section 22 of the Principal Act is hereby amended—

Pr.IV

Amendment of
section 22
(enforcement of
protection of wild
birds) of Principal
Act.

(a) in subsection (5)—

- (i) by the substitution, in paragraph (b), of “aquaculture, fishing, forestry or turbarry” for “fishing or forestry”,
- (ii) by the insertion, in paragraph (d), of “, or the orphaned and dependant young of such a bird,” after “protected wild bird” and by the deletion of the words “or with the intention of tending it and of later releasing it” after “humanely”,
- (iii) by the insertion, in paragraph (e), of “and where the bird is so injured or disabled that there is no reasonable chance of its recovering,” after “paragraph (h) of this subsection”,
- (iv) by the deletion of paragraph (f) (inserted by the Regulations of 1985),
- (v) by the insertion, in paragraph (g), of “unless the nest contains the eggs or young of a protected wild bird” after “building”, and
- (vi) by the substitution of “a licence or other permission granted or issued pursuant to the *Wildlife Acts, 1976 and 2000*, or which is duly done pursuant to any other statute” for “a statute (other than this Act)”,

(b) in subsection (9)—

- (i) by the insertion, in paragraph (d), of “examine, inspect or” before “take”, and
- (ii) by the insertion of the following after paragraph (d):
 - “(e) to take the eggs of a protected wild bird of a species specified in the licence for the purposes of having them hatched out for re-population, or re-introduction to the wild or, for such purposes, to move such eggs from the nest of a bird so specified to that of another bird of the same species or for such other purposes as the Minister considers appropriate in the circumstances in respect of the species so specified,
 - (f) to take or make photographic, video or other pictures of a protected wild bird of a species specified in the licence on or near a nest containing eggs or unflown young,
 - (g) to have in possession, for a reasonable period of time—
 - (i) an injured or disabled wild bird, or
 - (ii) one or more than one dependant young of a wild bird which is orphaned,with the intention of tending and later releasing such bird or young back into the wild

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pt.IV S.30

when and only when such bird or young, as the case may be, is no longer injured, disabled or dependant,

(h) to retain possession of a wild bird, that for reasons of disability or for other reasons deemed reasonable by the Minister, would, if released, be unlikely to survive unaided in the wild.”,

and the said subsections (5) (other than paragraphs (a), (c) and (h)) and (9) (other than paragraphs (a) to (c) and inserted paragraphs (e) to (h)), as so amended, are set out in the Table to this section.

TABLE

(5) It shall not be an offence for a person—

- (b) while so engaged or engaged in agriculture, aquaculture, fishing, forestry or turbarry unintentionally to injure or kill a protected wild bird, or
- (d) to capture an injured or disabled protected wild bird or the orphaned and dependant young of such a bird for the purpose of killing it humanely, or
- (e) to kill humanely a protected wild bird which has been injured in the manner described in paragraph (b), or captured in the manner described in paragraph (d) or injured in the circumstances described in paragraph (h) of this subsection and where the bird is so injured or disabled that there is no reasonable chance of its recovering, or
- (g) to destroy or remove any such nest which is built in or on an occupied building unless the nest contains the eggs or young of a protected wild bird, or

and nothing in this section shall make unlawful anything which is duly done pursuant to a licence or other permission granted or issued pursuant to the *Wildlife Acts, 1976 and 2000*, or which is duly done pursuant to any other statute or statutory instrument, which is permitted to be done under such a statute or instrument or which is done pursuant to and in accordance with a licence or other permission granted or issued pursuant to such a statute or instrument or anything caused by or which results from, or is consequent upon or the effect of any other act or thing which is lawfully done.

(9) The Minister may grant a licence to a person—

- (d) to examine, inspect or take the nests or eggs of protected wild birds of a species so specified for such educational, scientific or other purposes as shall be so specified.

31.—Section 23 of the Principal Act is hereby amended—

- (a) in subsection (5), by the insertion of “or resting place” after “breeding place” in paragraph (d),
- (b) by the substitution of the following for subsection (6):

“(6) The Minister may grant a licence to a person—

- (a) to take, capture or humanely kill or capture and humanely kill at any time a protected wild animal of a species specified in the licence for such educational, scientific or any other purpose as shall be specified in the licence, or

Amendment of section 23 (enforcement of protection of wild animals (other than wild birds)) of Principal Act.

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

(b) to take or make photographic, video or other pictures of a protected wild animal of a species so specified on or near the breeding place of such an animal, or

(c) to have in possession, for a reasonable period of time—

(i) an injured or disabled protected wild animal, or

(ii) one or more than one dependant young of a protected wild animal which is orphaned,

with the intention of tending and later releasing such animal or young back into the wild when and only when such animal or young, as the case may be, is no longer injured, disabled or dependant, or

(d) to retain possession of a protected wild animal, that for reasons of disability or for other reasons deemed reasonable by the Minister, would, if released, be unlikely to survive unaided in the wild.”,

(c) in subsection (7)—

(i) by the substitution, in paragraph (a), of “, aquaculture, forestry or turbarry,” for “or forestry, or in zoology or in any other scientific pursuit,”,

(ii) by the substitution, in paragraph (c), of “unintentionally to kill or injure such an animal or unintentionally to destroy or injure the breeding place or resting place” for “to kill or injure such an animal or to destroy or injure the breeding place”,

(iii) by the insertion, in paragraph (d), of “, or the orphaned and dependant young of such an animal,” after “protected wild animal” and of “when, but only when, the said animal or its dependant young, as the case may be, are no longer disabled or dependant” after “releasing it,”,

(iv) by the insertion, in paragraph (e), of “and where the animal is so injured or disabled that there is no reasonable chance of its recovering,” after “paragraph (c) of this subsection”, and

(v) by the substitution, in paragraph (iv), of “a licence or other permission granted or issued pursuant to the *Wildlife Acts, 1976 and 2000*, or which is duly done pursuant to any other statute” for “a statute (other than this Act)”,

and

(d) by the insertion of “, aquaculture, forestry or turbarry” for “or forestry” and the deletion, in subsection (9), of “, or in zoology or in another scientific pursuit”,

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pt.IV S.31

and the said subsections (5) (other than paragraphs (a), (b) and (c)), (7) (other than paragraph (b) and subparagraphs (i) to (iii)) and (9), as so amended, are set out in the Table to this section.

TABLE

- (5) Any person who—
- (d) wilfully interferes with or destroys the breeding place or resting place of any protected wild animal,
- shall be guilty of an offence.
- (7) Notwithstanding subsection (5) of this section, it shall not be an offence for a person—
- (a) while engaged in agriculture, aquaculture, fishing, forestry or turbarry, unintentionally to injure or kill a protected wild animal, or
- (c) while constructing a road or while carrying on any archaeological operation, building operation or work of engineering construction, or while constructing or carrying on such other operation or work as may be prescribed, unintentionally to kill or injure such an animal or unintentionally to destroy or injure the breeding place or resting place of such an animal, or
- (d) to capture an injured or disabled protected wild animal, or the orphaned and dependant young of such an animal, for the purpose of killing it humanely or with the intention of tending it and later releasing it when, but only when, the said animal or its dependant young, as the case may be, are no longer disabled or dependant, or
- (e) to kill humanely a protected wild animal which is either injured in the manner described in paragraph (a) of this subsection or captured in the manner described in paragraph (d) of this subsection or so to kill a protected wild animal injured in the circumstances described in paragraph (c) of this subsection and where the animal is so injured or disabled that there is no reasonable chance of its recovering,
- (iv) anything which is duly done pursuant to a licence or other permission granted or issued pursuant to the *Wildlife Acts, 1976 and 2000*, or which is duly done pursuant to any other statute or statutory instrument, which is permitted to be done under such a statute or instrument or which is done pursuant to and in accordance with a licence or other permission granted or issued pursuant to such a statute or instrument or anything caused by or which results from, or is consequent upon or the effect of any other act or thing which is lawfully done.
- (9) In any proceedings for an offence under this section it shall not be necessary for the prosecution to prove that any act constituting (whether in whole or in part) the alleged offence was done otherwise than while the defendant was engaged in agriculture, aquaculture, fishing, forestry or turbarry.

Exclusion of certain wild animals.

32.—The Minister may, with the prior consent of the Minister for the Marine and Natural Resources, make regulations to provide that an animal of a species of fish or aquatic invertebrate animal specified in the regulations shall be an animal to which the provisions of this Act shall not apply.

Amendment of section 24 (open seasons for certain protected wild birds) of Principal Act.

33.—Section 24 of the Principal Act is hereby amended in subsection (2) by the deletion of the words “by individuals” and the said subsection (2), as so amended, is set out in the Table to this section.

TABLE

- (2) An order under this section may contain different provisions in relation to different areas and different species of protected wild birds, including provisions

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

limiting the total number of any particular such species which may, during a period of days specified in the order, be killed in hunting in accordance with the order either in relation to the area as a whole to which the order applies or to part of such area.

Pt.IV S.33

34.—Section 25 of the Principal Act is hereby amended in subsection (2) by the deletion of the words “by individuals” and the said subsection (2), as so amended, is set out in the Table to this section.

Amendment of section 25 (open seasons for certain wild mammals) of Principal Act.

TABLE

(2) An order under this section may contain different provisions in relation to different areas and different species of exempted wild mammals, including provisions limiting the total number of any particular species of such mammal which may, during a period of days specified in the order, be killed in hunting in accordance with the order either in relation to the area as a whole to which the order applies or to part of such area.

35.—Section 26 of the Principal Act is hereby amended by the repeal of subsection (1)(i).

Amendment of section 26 (licences to hunt otters or deer and to hunt or course hares) of Principal Act.

CHAPTER II

Restrictions to Protect Wildlife

36.—(1) The Minister may control the activities of commercial shoot operators by permits issued under this section and accordingly the Minister may, on application being made in that behalf, if thought fit and on payment to the Minister of the prescribed fee (if any), issue a permit to a person to carry out an activity under this section and attach conditions thereto, and may amend such a permit.

Regulation of commercial shoot operators.

(2) An applicant for a permit under this section shall submit details of all shooting rights which he or she owns or has permission to use together with such other information as the Minister may require.

(3) The Minister may, in considering an application for a permit under this section, have regard to—

- (a) the ability of the applicant to comply with any regulations made under *subsection (10)* which are for the time being in force or the manner in which the applicant has complied with any such regulations while being the holder of a permit issued under this section, and
- (b) whether or not the applicant has been convicted of any offence under the *Wildlife Acts, 1976 and 2000*, or under the law of another jurisdiction which either or both corresponds to an offence under those Acts and relates to the conservation of wildlife.

(4) On the issuing of a permit under this section, the Minister may, having regard to the information to which *subsection (2)* relates and to any other information available to the Minister, limit the amount of hunting which may take place over particular land or lands in respect of which the applicant for the permit either owns shooting rights or has permission of the owner of these shooting rights, and shall include in the permit such conditions, including conditions relating to gun days, as the Minister considers appropriate.

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pt.IV S.36

(5) A permit issued by the Minister under this section shall, unless it is previously withdrawn, remain in force for any period specified by the Minister not exceeding 3 years.

(6) (a) Every applicant for the issue of a permit under this section shall have the right of appeal, to the District Court for the District in which the applicant resides, against the refusal of the Minister to issue such a permit.

(b) Where, in the case of the refusal by the Minister to issue a permit under this section, the applicant is the holder of a subsisting permit under this section, then the permit shall continue in force pending the determination of an appeal against such refusal or the appeal ceases for any other reason.

(c) The Minister shall be notified in writing by registered post by the applicant of any such appeal not less than 21 days before the hearing of the appeal and shall have the right to appear and be heard at the hearing.

(d) Where an appeal under this subsection is allowed, the Minister shall issue a permit subject to any conditions which the judge allowing the appeal may require to be attached to the permit.

(7) (a) The Minister may, having given 21 days' notice to the holder of a permit issued under this section, withdraw the permit if the holder has failed to comply with the conditions thereof or with regulations made under *subsection (10)* which are for the time being in force, and shall notify the holder of the reasons for such withdrawal.

(b) The holder of a permit issued under this section shall have the right to appeal, to the District Court for the District in which the holder of the permit resides, within a period of 21 days in respect of the notification by the Minister to withdraw the permit.

(c) Where, in the case of the notification of withdrawal by the Minister of a permit under this section, the holder of the permit appeals to the District Court in accordance with *paragraph (b)*, the permit shall continue in force pending the determination of an appeal against such withdrawal or the appeal ceases for any other reason.

(d) The Minister shall be notified in writing by registered post of any appeal to which *paragraph (b)* relates not less than 21 days before the hearing of the appeal and shall have the right to appear and be heard at the hearing.

(8) The Minister shall from time to time publish or cause to be published a list of holders of permits issued under this section.

(9) As and from such date as the Minister may by order appoint, a person shall not act as, or hold himself or herself out as, a commercial shoot operator (whether by that name or otherwise) unless he or she is in possession of a subsisting permit issued under this section.

(10) (a) The Minister may make regulations for the purposes of giving full effect to this section and may, in particular,

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

provide for procedures in relation to the making of applications for permits under this section and the consideration of applications. Pr.IV S.36

- (b) Without prejudice to the generality of *paragraph (a)*, regulations made under this subsection may—
- (i) provide for the form of applications,
 - (ii) require applicants to publish or give specified notices relating to their applications,
 - (iii) require applicants to furnish to the Minister or to an officer of the Minister duly authorised any specified information relating to their applications, including information relating to employees and agents of holders of, or applicants for, permits issued under this section,
 - (iv) provide for the availability for inspection by the Minister or by an officer of the Minister duly authorised of documents or extracts from documents relating to applications,
 - (v) provide for consultation with such bodies, including statutory bodies, as may be prescribed for that purpose,
 - (vi) provide for the making of submissions or observations to the Minister in relation to applications and the period during which such submissions or observations may be made,
 - (vii) require applicants to submit further information relating to their applications, and
 - (viii) require the production of evidence to verify particulars of information given by an applicant.

(11) A person who—

- (a) contravenes *subsection (9)* of this section, or
- (b) fails to comply with any condition or requirement of a permit, or
- (c) makes false or misleading statements or declarations, or furnishes a document or information which is false, with a view to obtaining a permit,

shall be guilty of an offence.

(12) In this section—

“commercial shoot operator” means a person who either owns shooting rights on lands or has permission of the owner of those shooting rights and who uses these rights or permissions for the purposes of providing hunting on these lands to others for reward;

“gun days” means the number of days in any hunting season in which one gun can be used to sustainably hunt over particular land or lands in respect of any class of or all wild animals or wild birds.

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pt. IV

Amendment of section 28 (general restriction as regards hunting or killing with firearms certain exempted wild mammals and certain protected wild birds) of Principal Act.

37.—Section 28 of the Principal Act is hereby amended by the insertion of the following after subsection (2):

“(2A) (a) An applicant for—

- (i) the grant of a licence under section 29 of this Act, or
- (ii) the grant or renewal of a certificate to which section 29(5) of this Act relates,

may, before the granting of any such licence or the granting or renewal of any such certificate, be required to supply satisfactory evidence that the applicant is a competent person to hold such a licence.

- (b) The evidence required under paragraph (a) of this subsection shall include the ability to identify certain species of fauna and to have a satisfactory knowledge of the relevant provisions of the *Wildlife Acts, 1976 and 2000*, and of any instruments made under those Acts.
- (c) The Minister may make regulations for the purpose of giving effect to this subsection.”.

Hunting restricted on or over foreshore belonging to State and certain land so belonging.

38.—The Principal Act is hereby amended by the substitution of the following for section 30:

“30.—(1) (a) A person shall not, without permission given in writing by the Minister, hunt protected wild animals and wild birds on or over foreshore belonging to the State or on or over land belonging to the State and which is either covered by any inland waters or comprised in the lakeshore accretion from any lake, or accretion from the sea where such land is owned by the State.

(b) The Minister may by regulations—

(i) in relation to wild birds—

(I) apply this section, either generally or by reference to one or more species, to wild birds, or

(II) apply this section generally to species of wild birds subject to the exclusion of one or more such species,

and

(ii) in relation to wild animals—

(I) apply this section, either generally or by reference to one or more species, to wild animals which are not protected wild animals, or

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

(II) apply this section generally to species of wild animals which are not protected wild animals, subject to the exclusion of one or more such species. Pr.IV S.38

(c) The Minister may attach conditions in writing to any permission given under this subsection and may at any time vary such conditions or withdraw any such permission.

(2) In determining an application for permission under this section, the Minister shall have regard to the conservation requirements of the species concerned.

(3) Any person who contravenes subsection (1) of this section or fails to comply with a condition under that subsection shall be guilty of an offence.”.

39.—Section 31 of the Principal Act is hereby amended—

Amendment of section 31 (sale, purchase and possession of certain perching birds prohibited) of Principal Act.

(a) by the addition, to subsection (1), after “bred in captivity” of “; but nothing in this subsection shall make unlawful the possession consequent upon the capture of any such bird pursuant to and in accordance with a licence or permission granted under this Act”, and

(b) by the substitution, in subsection (4), of “not later than 10 days after it has been hatched” for “while a fledgling”,

and the said subsections (1) and (4), as so amended, are set out in the Table to this section.

TABLE

(1) It shall be an offence for any person to sell, purchase or have in his possession a live perching bird to which this section applies other than a close-ringed specimen bred in captivity; but nothing in this subsection shall make unlawful the possession consequent upon the capture of any such bird pursuant to and in accordance with a licence or permission granted under this Act.

(4) In this section “close-ringed specimen” means a specimen of live perching bird (order *Passeriformes*) fitted with a continuous metal band or ring which has been slipped over its foot and on to its leg not later than 10 days after it has been hatched.

40.—Section 32 of the Principal Act is hereby amended—

Amendment of section 32 (ringing and marking, and possession of cannon-nets, etc. restricted) of Principal Act.

(a) by the substitution of the following for subsections (1) and (2):

“(1) It shall be an offence for a person, otherwise than pursuant to and in accordance with a licence granted by the Minister for the purposes of this subsection, to—

(a) mark by cutting, branding or tattooing, or

(b) attach any band, ring, microchip, tag or other marking device to,

any wild animal or wild bird or to take by net, trap or by any other means any such animal or bird for the purposes

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pt.IV S.40

of so marking it or attaching to it any band, ring, microchip, tag or other marking device.

(1A) Subject to subsection (4) of section 31 of this Act, the Minister may by regulations specify the method of marking, including the type and size of any band, ring, microchip, tag or other marking device or substance, for the purposes of either or both the said section 31 and of this section and different methods may be specified for different species.

(2) Subsection (1) of this section shall not apply to—

- (a) the close ringing of artificially reared wild birds,
- (b) captive bred birds prescribed in an open seasons order,
- (c) captive bred waterfowl collections, or
- (d) the clipping of the feathers of an artificially reared protected wild bird for purposes of the confinement prior to the release into the wild of such protected wild bird.”,

(b) in subsection (3), by the insertion after “import” of “into the State from outside the European Union”, and

(c) by the insertion of the following after subsection (3):

“(3A) The granting of a licence under subsection (3) of this section shall not be construed as restricting any application of, or removing any obligation to comply with, the Firearms Acts, 1925 to 2000.”.

Amendment of section 33 (restriction on use of certain firearms etc.) of Principal Act.

41.—Section 33 of the Principal Act is hereby amended—

- (a) in subsection (1), by the substitution of “hunt or injure in the course of hunting” for “kill or injure”,
- (b) in subsection (2), by the substitution of “hunt” for “kill”, of “animal” for “mammal” and of “any explosive other than ammunition for, and used with, a firearm” for “a floating container containing an explosive substance”,
- (c) in subsection (3), by the substitution of “hunt or injure in the course of hunting” for “kill or injure” and the insertion of “otherwise than under and in accordance with a licence granted in that behalf by the Minister” after “hare”, and
- (d) in subsection (4), by the substitution of “animals” for “mammals” in both places where it occurs,

and the said subsections (1), (2), (3) and (4), as so amended, are set out in the Table to this section.

TABLE

(1) It shall be an offence for a person to hunt or injure in the course of hunting—

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

Pt.IV S.41

(a) with a repeating or automatic shotgun (other than a repeating or automatic shotgun which is adapted or modified so as to render it incapable of carrying more than three shotgun cartridges), with an airgun, air-rifle, gas-rifle, pistol or revolver, or with any firearm fitted with a silencer device, any wild bird,

(b) with a rifle, any protected wild bird.

(2) It shall be an offence for a person to hunt or injure any wild bird or wild animal with a spring gun, or with tracer shot or with any explosive other than ammunition for, and used with, a firearm.

(3) It shall be an offence for a person to hunt or injure in the course of hunting with a shotgun a protected wild animal other than a hare otherwise than under and in accordance with a licence granted in that behalf by the Minister.

(4) Subject to the foregoing subsections of this section, the Minister may make regulations specifying the type and calibre of firearms and ammunition which may be used to hunt wild birds and wild animals and providing that firearms and ammunition of any other type and calibre shall not be used to hunt such birds or animals.

42.—Section 34 of the Principal Act is hereby amended—

Amendment of section 34 (certain use of traps, snares etc. prohibited) of Principal Act.

(a) in subsection (1), by the substitution of the following for paragraphs (a), (b) and (c):

“(a) hunt any wild bird, wild mammal or protected wild animal by means of a trap, snare, net, line, hook, arrow, dart, spear or similar device however propelled, instrument or missile, or birdlime or any substance of a like nature, or any poisonous, poisoned or stupefying bait, any gas or smoke or chemical wetting agent or any electrical device which is calculated or likely to cause death, unconsciousness or bodily injury to such bird, mammal or animal, or

(b) affix, place or set—

(i) any trap, snare or net for killing or taking a wild bird, wild mammal or protected wild animal, or

(ii) any line, hook, electrical device or other device or instrument, calculated or likely to cause death or bodily injury to any wild bird, wild mammal or protected wild animal coming in contact with it,

on any tree, pole, cairn or other structure in, or in the vicinity of, any place frequented by wild birds, wild mammals or protected wild animals, or

(c) lay any poisonous or poisoned substance or stupefying bait, or any gas or smoke or chemical wetting agent, being a substance, bait or agent which is calculated or is likely to cause injury, or facilitate the capture of, a wild bird, wild mammal or protected wild animal, in or in the vicinity of, any place mentioned in paragraph (b) of this subsection, or on any tree, pole, cairn or other structure in or in the vicinity of such place.”,

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pt.IV S.42

(b) by the substitution, in paragraph (b) of subsection (2), of “wild animal” for “wild mammal”,

(c) in subsection (3)—

(i) by the insertion, in paragraph (a), of “or wild animal” after “wild bird”,

(ii) by the insertion of the following after paragraph (c):

“(cc) the capture or killing of any wild bird or any wild animal in or on, or the removal of any such bird or animal from, any premises or other land by means of any poisoned, poisonous or stupefying substance specified in the licence, or any gas or smoke or chemical wetting agent or other devices so specified, for the purpose of stopping or preventing serious damage being caused to any thing to which section 42(1) of this Act relates,”

(iii) by the substitution of the following for paragraph (d):

“(d) the capture alive of, or the taking of dead, wild birds or wild animals, for research or other scientific or educational purposes or for removal of live wild birds or wild animals to a new habitat, or to a place specified in the licence.”

(d) by the substitution, in paragraph (a) of subsection (4), of “animals” for “mammals”,

(e) by the insertion of the following after subsection (4):

“(4A) In relation to wild animals to which this section does not otherwise apply, the Minister may by regulations—

(a) apply this section to such wild animals, either generally or by reference to one or more species, or

(b) apply this section generally to species of such wild animals, subject to the exclusion of one or more such species.”

(f) by the substitution of the following for subsection (6):

“(6) Any person who imports into the State from outside the European Union, or has in his possession other than pursuant to and in accordance with a licence granted by the Minister in that behalf, or who in the course of his trade or business sells or offers for sale a trap, snare or net which pursuant to subsection (4) of this section is for the time being declared by the Minister to be a trap, snare or net to which this subsection applies shall be guilty of an offence.”

and

(g) by the addition of the following after subsection (7):

“(8) The other provisions of this section are without prejudice to sections 7 and 14 of the Protection of Animals (Amendment) Act, 1965.”

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

and the said subsections (2) (other than paragraph (a)), (3) (other than paragraphs (b) to (d)) and (4) (other than paragraph (b)), as so amended, are set out in the Table to this section. Pr.IV S.42

TABLE

(2) Subsection (1) of this section shall not apply to or render unlawful—

- (b) the taking or killing by means of any such trap, snare or net of any wild bird which is not a protected wild bird or any wild animal which is not a protected wild animal,

and nothing in the said subsection shall make unlawful anything which is duly done pursuant to a statute (other than this Act) or statutory instrument, which is permitted to be done under such a statute or statutory instrument or which is done pursuant to and in accordance with a licence or other permission granted or issued pursuant to such a statute or statutory instrument or anything caused by or which results from, or is consequent upon or the effect of any other act or thing which is lawfully done.

(3) Subsection (1) of this section shall not apply to any of the following if done pursuant to and in accordance with a licence granted in that behalf by the Minister:

- (a) the capture alive, on land specified in the licence by means of a trap, snare or net of any species of wild bird or wild animal specified in the licence, for the purpose of propagating or of improving the quality of such species,

(4) The Minister may by regulations declare a trap, snare or net which is of a particular type, class or description specified in the regulations—

- (a) to be approved of for the purposes of this section and may, if he thinks fit, regulate its use as regards wild birds or wild animals,

43.—Section 35 of the Principal Act is hereby amended—

Amendment of section 35 (certain use of scarecrows, decoys, birdcalls and calls of wild mammals restricted) of Principal Act.

(a) in subsection (1)—

- (i) by the substitution of the following for paragraphs (a) and (b):

“(a) use, for the purpose of hunting, repelling or scaring any wild bird or any wild animal—

- (i) any live wild bird or live wild animal which is tethered or secured by braces or other similar appliance or which is confined in a cage or pen or which is blind, maimed or injured, or

- (ii) any kite, light trap, balloon, aircraft (including model aircraft) or similar device,

or

- (b) use, as a decoy for the purpose of hunting any wild bird or any wild animal, any live wild animal or live bird, or”,

- (ii) by the insertion, in paragraph (c), of “wood pigeons,” before “wild duck”,

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

PT.IV S.43

(iii) by the substitution of the following for paragraph (d):

“(d) use an electrical or other instrument or appliance (including recording apparatus) emitting sound, for the purpose of hunting any wild bird or any wild animal.”,

(b) in subsection (3)—

(i) by the substitution of the following for paragraph (a):

“(a) the use for hunting, repelling or scaring any wild bird or any wild animal of a species specified in the order of any stuffed or artificial decoy or any device, whistle, instrument or appliance which is of a particular type, class or description specified in the order, or”,

(ii) by the insertion, in paragraph (b), of “plover,” before “wild duck”,

(c) by the substitution of the following for subsection (4):

“(4) Notwithstanding the foregoing provisions of this section, a decoy, vehicle or an instrument or appliance, including electrical or other recording apparatus emitting sound for the purpose of repelling, scaring or capturing any wild bird or any wild animal, may be used, pursuant to and in accordance with a licence granted in that behalf by the Minister, for scientific research or for another purpose approved of by the Minister.

(4A) Nothing in this section shall be construed as restricting—

(a) the practice of falconry lawfully carried out in accordance with a licence or licences granted in accordance with section 41 of this Act, or

(b) the taking, killing or use of a wild animal, which is not a protected wild animal, for the purpose of, or while engaged in the practice of fishing.”,

and the said subsections (1) (other than paragraphs (a), (b) and (d)) and (3) (other than paragraph (a)), as so amended, are set out in the Table to this section.

TABLE

(1) Notwithstanding anything contained in this Act apart from this section, but subject to section 42, a person shall not—

(c) use a stuffed or artificial decoy in the form of any bird for the purpose of hunting any protected wild birds, other than wood pigeons, wild duck and wild geese, or

(3) Notwithstanding the foregoing provisions of this section, the Minister may by order prohibit throughout the State or in any particular area thereof—

(b) the use of any orally or manually operated whistle or other instrument or appliance (not being recording apparatus) which imitates, or emits calls similar to, the calls of plover, wild duck or wild geese or emits recorded such calls.

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

44.—Section 36 of the Principal Act is hereby amended—

Pr.IV

Amendment of section 36 (use of mechanically-propelled vehicles, vessels and aircraft in hunting prohibited) of Principal Act.

(a) in subsection (1)—

- (i) by the deletion of “but subject to section 42”,
- (ii) in paragraph (a), by the substitution of “wild animal” for “protected wild animal”, and
- (iii) in paragraph (b), by the substitution of “wild bird” for “protected wild bird”,

(b) by the substitution, in subsection (2), of “wild birds or wild animals” for “protected wild birds or protected wild animals”, and

(c) by the insertion of the following after subsection (4):

“(5) In this section, ‘mechanically-propelled’ includes propulsion which is electrical or partly electrical and partly mechanical.”,

and the said subsections (1) and (2), as so amended, are set out in the Table to this section.

TABLE

(1) Notwithstanding anything contained in this Act apart from this section, a person shall not hunt or disturb for the purpose of hunting—

- (a) any wild animal by means of a mechanically-propelled vehicle, vessel or aircraft, whether it is being so propelled or is stationary,
- (b) any wild bird by means of such a vehicle, vessel or aircraft, while it is being so propelled.

(2) Notwithstanding subsection (1) of this section, a mechanically-propelled vehicle, vessel or aircraft may be used to capture or kill, pursuant to and in accordance with a licence granted in that behalf by the Minister and for such educational, scientific or other purposes as are specified in the licence, wild birds or wild animals of a species so specified.

45.—The Principal Act is hereby amended by the substitution of the following for section 38:

Use of lamps, mirrors etc. in hunting prohibited.

“38.—(1) Any person who uses—

- (a) any lamp, light, torch, mirror or other artificial light-reflecting or dazzling device or appliance, or
- (b) any device for illuminating, image intensifying or heat seeking a target, or
- (c) any sighting device for night shooting, or
- (d) any device or appliance which is of a type, class or description specified in an order under subsection (2) of this section,

in hunting any protected wild bird or protected wild animal otherwise than while either—

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pt.IV S.45

(i) attaching thereto any band, ring, tag or other marking device, or

(ii) hunting for educational or scientific purposes or for any other purpose,

pursuant to and in accordance with a licence granted under this Act by the Minister, shall be guilty of an offence.

(2) (a) The Minister may by order declare a device or appliance which is of a type, class or description specified in the order to be a device or appliance to which subsection (1) of this section applies.

(b) The Minister may amend or revoke an order made under this subsection.”.

Amendment of section 40 (destruction of vegetation on uncultivated land restricted) of Principal Act.

46.—Section 40 of the Principal Act is hereby amended—

(a) by the substitution of the following for subsection (1):

“(1) (a) It shall be an offence for a person to cut, grub, burn or otherwise destroy, during the period beginning on the 1st day of March and ending on the 31st day of August in any year, any vegetation growing on any land not then cultivated.

(b) It shall be an offence for a person to cut, grub, burn or otherwise destroy any vegetation growing in any hedge or ditch during the period mentioned in paragraph (a) of this subsection.”,

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

“(c) the cutting, grubbing or destroying of vegetation in the course of any works being duly carried out for reasons of public health or safety by a Minister of the Government or a body established or regulated by or under a statute;

(cc) the clearance of vegetation in the course of fisheries development works carried out by the Central Fisheries Board or a regional fisheries board in the exercise of its functions under the Fisheries Acts, 1959 to 1999;”,

(c) by the substitution of the following for paragraph (e) of subsection (2):

“(e) the clearance of vegetation in the course of road or other construction works or in the development or preparation of sites on which any building or other structure is intended to be provided;”,

and

(d) by the addition of the following after subsection (2):

“(3) The Minister may request from the person concerned details of any works carried out under subsection (2)(c) and such details shall be furnished to the Minister

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

by that person together with a statement of the public health or safety factors involved. Pr.IV S.46

(4) In any proceedings taken in respect of a contravention of this section consisting of the doing of any act, it shall be a good defence to prove that the doing of that act was necessary for the purpose of extinguishing or preventing the spread of a fire while it was in progress or for the purpose of saving human life or was necessary in any other emergency in respect of which that act was an appropriate measure.”.

CHAPTER III

Miscellaneous

47.—Section 41 of the Principal Act is hereby amended in subsection (1): Amendment of section 41 (falconry etc.) of Principal Act.

(a) by the substitution of “Notwithstanding anything contained in section 22 or 23 of this Act, the Minister may make regulations” for “The Minister may make regulations”,

(b) by the substitution, in paragraphs (a), (b) and (c), of “owls, buzzards, kites, vultures, harriers and other birds of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes*” for “and other birds of the order *Falconiformes*”,

(c) by the insertion, in paragraph (b), of “breeding or” before “training”, and

(d) by the substitution, in paragraph (d), of the following for subparagraph (ii):

“(ii) take, have in his possession or under his control any eagle, hawk, falcon, owl, buzzard, kite, vulture, harrier or other birds of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes* or the eggs or young of any eagle, hawk, falcon, owl, buzzard, kite, vulture, harrier or other birds of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes*,

(iii) engage in breeding any eagle, hawk, falcon, owl, buzzard, kite, vulture, harrier or other bird of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes*,”,

and the said subsection (1) (other than paragraphs (e) and (f)), as so amended, is set out in the Table to this section.

TABLE

(1) Notwithstanding anything contained in section 22 or 23 of this Act, the Minister may make regulations—

(a) regulating hunting by means of eagles, hawks, falcons, owls, buzzards, kites, vultures, harriers and other birds of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes* trained to hawk for sport, or otherwise governing the practice of falconry,

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pr.IV S.47

- (b) regulating the taking of eagles, hawks, falcons, owls, buzzards, kites, vultures, harriers and other birds of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes* for breeding or training to hawk for sport,
- (c) regulating the possession, breeding, training to hawk for sport, display or exhibition of eagles, hawks, falcons, owls, buzzards, kites, vultures, harriers and other birds of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes*,
- (d) providing that a person shall not, save under and in accordance with a licence granted in that behalf by the Minister—
 - (i) engage in falconry,
 - (ii) take, have in his possession or under his control any eagle, hawk, falcon, owl, buzzard, kite, vulture, harrier or other birds of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes* or the eggs or young of any eagle, hawk, falcon, owl, buzzard, kite, vulture, harrier or other birds of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes*,
 - (iii) engage in breeding any eagle, hawk, falcon, owl, buzzard, kite, vulture, harrier or other birds of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes*,

Amendment of section 42 (damage by wild birds etc.) of Principal Act.

48.—Section 42 of the Principal Act is hereby amended—

- (a) in subsection (1)—
 - (i) by the insertion of “serious” before “damage”,
 - (ii) by the insertion, in paragraph (a), of “food (including human food products and animal feeds)” before “livestock”,
 - (iii) by the deletion of “or” after the word “plantation” in paragraph (e) and the addition of the following after paragraph (f):
 - “(g) buildings and other structures and their contents, or
 - (h) aquaculture installations,”
 - (iv) by the insertion of “scaring,” before “capture”,
- (b) by the insertion of the following after subsection (1):
 - “(1A) Any person who by act or omission impedes or obstructs a person authorised by the Minister in the lawful exercise of a power conferred by subsection (1) of this section shall be guilty of an offence.”,
- (c) by the insertion, in subsection (4), of “scare,” before “capture”,
- (d) by the deletion, in subsection (5), of “, to the forester in charge of any forest owned by the Minister”, and
- (e) by the substitution of the following for subsection (6):
 - “(6) In addition to the foregoing, the following provisions shall apply in relation to a permission granted under this section:

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

- (a) the permission shall be valid only for such period and in relation to such area as are specified therein, Pr.IV S.48
- (b) particulars of all protected wild birds and protected wild animals captured or killed pursuant to the permission shall be furnished to the Minister by the person to whom the permission is given at such times and in such form as is specified in the permission,
- (c) notwithstanding any other provision of this Act, the Minister may grant the permission subject to conditions which may include one or more of the following:
- (i) that any scaring, capture or killing pursuant to the permission is to be effected by a specified means,
 - (ii) that any wild bird or any wild animal captured or killed pursuant to the permission shall have affixed to it a tag or other mark of identification to be specified by the Minister,
 - (iii) that any wild bird or any wild animal captured pursuant to the permission shall be removed to a place specified by the Minister for subsequent release or be disposed of in such other manner as may be so specified,
 - (iv) that any wild bird or any wild animal killed pursuant to the permission shall be removed to a place specified by the Minister or be disposed of in such other manner as may be so specified,
 - (v) that the total number of any particular species of protected wild bird or protected wild animal captured or killed pursuant to the permission shall be limited to such number as is specified in the permission.”,

and the said subsections (1) (other than paragraphs (b) to (f)), (4) and (5), as so amended, are set out in the Table to this section.

TABLE

(1) Where serious damage is being caused by protected wild birds or by protected wild animals to—

- (a) food (including human food products and animal feeds), livestock, poultry or agricultural crops (including vegetables or fruit) either on pasture or on cultivated land,
- (g) buildings and other structures and their contents, or
- (h) aquaculture installations,

notwithstanding any other provision of this Act, the Minister may cause to be taken by a person authorised by him in that behalf (who is hereby empowered to take) such steps, including entering on any land and the scaring, capture or

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pr.IV S.48

killing of any such wild bird or any such wild animal, as he thinks appropriate to stop the damage.

(4) An application to the Minister for a permission under this section shall include particulars of the damage in relation to which the application is made and in case the Minister decides to grant the permission, notwithstanding any other provision of this Act, the permission shall, subject to its terms, operate to enable the owner or occupier, or any other person duly authorised to act on his behalf, to scare, capture or kill any protected wild bird or any protected wild animal which the owner, occupier or other person reasonably believes is causing the damage and to take such other steps (if any) to stop the damage as are specified in the permission.

(5) An application for a permission under this section may be made to the Minister or to any other person who is authorised for the time being by the Minister to receive such applications.

Amendment of section 43 (land drainage schemes) of Principal Act.

49.—Section 43 of the Principal Act is hereby amended in subsection (1)—

- (a) by the substitution of “Arterial Drainage Acts, 1945 and 1995” for “Arterial Drainage Act, 1945”,
- (b) by the insertion of “which is likely or liable to affect, or to interfere with, or is” before “in respect of an area”,
- (c) by the insertion of “or land particulars of which have been included in a notice or order under *Chapter II of Part III* of the *Wildlife (Amendment) Act, 2000*” after “section 18 of this Act applies”, and
- (d) by the insertion of “nature reserve, refuge, natural heritage area or area subject to a notice served under *section 16(2)(b)* of the *Wildlife (Amendment) Act, 2000*” for “nature reserve or refuge”,

and the said subsection (1), as so amended, is set out in the Table to this section.

TABLE

(1) Where the Commissioners propose to undertake either—

- (a) a drainage scheme within the meaning of the Arterial Drainage Acts, 1945 and 1995, which is one to which this section applies, or
- (b) any other land drainage scheme,

which is likely or liable to affect, or to interfere with, or is in respect of an area which includes land to which an establishment order, a recognition order or a designation order applies, or land to which an agreement made under section 18 of this Act applies or land particulars of which have been included in a notice or order under *Chapter II of Part III* of the *Wildlife (Amendment) Act, 2000*, the Commissioners shall, before commencing the scheme, consult the Minister to ascertain if and to what extent the proposed scheme if carried out would affect or interfere with the suitability of the land affected by the scheme for a nature reserve, refuge or natural heritage area, as may be appropriate, and take all practicable steps including, where appropriate, the limitation of the drainage scheme to minimise or avoid such effect or interference.

Amendment of section 44 (unlawful hunting or entry on land and other miscellaneous matters) of Principal Act.

50.—Section 44 of the Principal Act is hereby amended—

- (a) by the substitution of the following for paragraph (c) of subsection (1):

“(c) carries on the land—

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

(i) any firearm, or

Pr.IV S.50

(ii) any net, or other weapon, instrument or device capable of being used for hunting a wild bird or a wild animal,

or”,

(b) in subsection (2), by the insertion of the following after paragraph (b):

“(bb) an authorised person or a member of the Garda Síochána,”,

(c) by the insertion of the following after subsection (2):

“(2A) An authorised person or a member of the Garda Síochána in exercising a power under subsection (2) of this section may seize any firearm, other weapon or device or part thereof.”,

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

“(7) In any proceedings for an offence under this section it shall not be necessary for the prosecutor to prove that, at the time of the offence, a defendant—

(a) was on the land without lawful authority, or

(b) was not the owner or occupier of the land,

and in case a defendant claims that he was on the land with lawful authority or is either the owner or occupier of the land, the onus of proving such authority, or that he is the owner or occupier of the land, shall be on the defendant.”.

PART V

REGULATION AND CONTROL OF WILDLIFE DEALING

51.—Section 45 of the Principal Act is hereby amended—

Amendment of section 45 (sale, purchase and possession of fauna restricted) of Principal Act.

(a) by the substitution of the following for subsection (1) (inserted by the Regulations of 1985):

“(1) A person who is not a licensed wildlife dealer shall not sell, keep for sale, transport for the purpose of sale or exchange, offer for sale or exchange, purchase for resale or exchange, or engage in taxidermy in respect of—

(a) a protected wild bird or protected wild animal, at any stage of its life, whether alive or dead, or any parts, products or derivatives of such wild bird or wild animal,

(b) the eggs of a protected wild bird or the eggs or spawn of a protected wild animal, or any parts, products or derivatives thereof,

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pt.V S.51

(c) fauna, at any stage of its life, whether alive or dead, set out in Part I or II of the First Schedule to the European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94 of 1997), and being fauna within the meaning of this Act,

and shall not publish or cause to be published any advertisement, catalogue, circular or price list likely to be understood as conveying that such person buys or sells, or intends to buy or sell, or engages in taxidermy in respect of any protected wild bird or protected wild animal.”,

(b) in subsection (2)—

- (i) by the substitution of “sections 22(5), 23(7)(d), 31 and 42 of this Act” for “sections 22(5), 23(7)(d) and 42 of this Act”, and
- (ii) by the insertion, after “or the eggs of a protected wild bird”, of “or the eggs or spawn of a protected wild animal or any part, product or derivative thereof”,

(c) in subsection (3)—

- (i) by the insertion, in paragraph (a), of “, who has obtained the prior permission of the Minister in writing so to do,” after “person”,
- (ii) by the insertion, in paragraph (c), of “or captured” after “killed”,
- (iii) by the insertion of the following after paragraph (c):
“(cc) the sale by a person of any live perching bird which is a close-ringed specimen within the meaning of section 31(4) of this Act, and to which that section applies,”,

and

- (iv) by the insertion, in paragraph (d), of “or captured” after “killed”,

(d) in subsection (7) (inserted by the Regulations of 1985), by the deletion of “(11),”,

(e) in subsection (8), by the substitution of the following for paragraphs (a) and (b):

“(a) the wild bird, wild animal or any other part, product or derivative of such wild bird or wild animal had been lawfully acquired by the defendant before the 1st day of June, 1977, or that it or they had been lawfully acquired from a person who had lawfully acquired it or them,

(b) in case the alleged offence relates to a protected wild bird or a protected wild animal or to any other part, product or derivative of such a wild bird or wild animal that it or they had

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

lawfully been killed, captured or acquired by the defendant or had been lawfully acquired from a person who had lawfully killed, captured or acquired it or them.”, Pr.V S.51

(f) by the substitution of the following for subsection (9):

“(9) Subject to subsection (9A) of this section, nothing in this section shall make unlawful the possession consequent upon any other thing which is—

- (a) done pursuant to and in accordance with a licence or permission granted under this Act, or
- (b) permitted to be done by or under any statute other than this Act, or
- (c) otherwise lawfully done,

of a protected wild bird or a protected wild animal or the eggs of a protected wild bird or any eggs or spawn of a protected wild animal.

(9A) Where possession of a protected wild bird or a protected wild animal results from the unintentional capture of the bird or animal and such possession is continuing, the person in apparent possession or control of the bird or animal shall, at the direction of the Minister, release or otherwise dispose of the bird or animal in such manner as the Minister thinks fit.”,

(g) by the insertion, in subsection (10), of “, or to any other part, product or derivative,” after “flesh”,

(h) by the deletion of subsection (11) (inserted by the Regulations of 1985), and

(i) by the addition of the following after subsection (13) (inserted by the Regulations of 1985):

“(14) The Minister may by regulations—

(a) in relation to wild birds—

- (i) apply this section, either generally or by reference to one or more species, to wild birds, or
- (ii) apply this section generally to species of wild birds subject to the exclusion of one or more such species,

and

(b) in relation to wild animals—

- (i) apply this section, either generally or by reference to one or more species, to wild animals which are not protected wild animals, or
- (ii) apply this section generally to species of wild animals which are not protected wild

animals, subject to the exclusion of one or more such species.”,

and the said subsections (2), (3) (other than paragraphs (b) and (cc)), (7) and (10), as so amended, are set out in the Table to this section.

TABLE

(2) Subject to subsections (3) and (8) of this section and to sections 22(5), 23(7)(d), 31 and 42 of this Act, a person who is not a licensed wildlife dealer shall not have in his possession a protected wild bird or a protected wild animal, whether alive or dead, or the eggs of a protected wild bird or the eggs or spawn of a protected wild animal or any part, product or derivative thereof.

(3) Subsection (1) of this section shall not apply to—

- (a) the sale by a person, who has obtained the prior permission of the Minister in writing so to do, of any live specimen of a protected wild bird or protected wild animal solely for the purposes of propagating, or of improving the quality of, such species,
- (c) the sale to a licensed wildlife dealer by a person of any protected wild bird or protected wild animal lawfully killed or captured by him,
- (d) the sale by any person, who has obtained the prior permission of the Minister so to do, of any lawfully killed or captured such wild bird or wild animal.

(7) A person who contravenes subsection (1), (2), (4), (12) or (13) of this section or who fails to comply with the requirements of subsection (5) of this section shall be guilty of an offence.

(10) References in this section to a protected wild bird or a protected wild animal shall, except in relation to taxidermy, be construed as including references to the flesh, or to any other part, product or derivative, of such a bird or animal, and in relation to taxidermy the said references in this section shall be construed as including references to the skin, plumage or any other part of such a bird or animal.

Amendment of section 46 (regulation and control of wildlife dealing) of Principal Act.

52.—(1) Section 46 of the Principal Act is hereby amended—

(a) by the substitution, in subsection (1), of “wild bird or wild animal” for “protected wild bird or protected wild animal”,

(b) in subsection (3)—

(i) by the insertion of the following after paragraph (c):

“(cc) prescribe conditions with regard to the practice of taxidermy by the holder of a wildlife dealer’s licence and to species of fauna generally, or any such species as may be specified in the regulations, used for the purpose of taxidermy,”,

(ii) by the insertion of the following after paragraph (d):

“(dd) require the holder of a wildlife dealer’s licence to give to the Minister such particulars in writing from any documents kept by that holder under paragraph (d) of this subsection as the Minister may require and specify by notice in writing sent to the holder,”,

(iii) by the insertion of the following after paragraph (f):

“(ff) prohibit the dealing in wild birds or wild animals which do not have the appropriate tag or mark

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

as specified in regulations made under section Pr.V S.52
29 of the Principal Act,”

and

- (iv) by the substitution, in paragraph (g), of “a wild bird or a wild animal” for “a protected wild bird or a protected wild animal”,

and

- (c) by the addition of the following after subsection (5):

“(5A) For the avoidance of doubt it is hereby declared that this section shall not apply to domesticated, farmed or other deer which are not wild animals.”,

and the said subsections (1) and (3) (other than paragraphs (a) to (ff) and paragraph (h)), as so amended, are set out in the Table to this section.

(2) Notwithstanding *subsection (1)* of this section, any regulations made under section 46 of the Principal Act and in force immediately before the commencement of paragraphs (a) and (b) of that subsection shall continue in force until revoked.

TABLE

(1) Where the Minister is satisfied that it is in the interests of the conservation of any species of wild bird or wild animal so to do, subject to subsection (5) of this section, he may by regulations prohibit, or control in such manner as he considers appropriate and specifies in the regulations, the purchase or sale of that species for such period as may be so specified.

(3) Without prejudice to the generality of subsection (2) of this section, regulations under this section may—

- (g) provide that a wild bird or a wild animal shall not be confined, kept, or exposed for sale in a cage in such premises, or while it is being transported from one place to another by or on behalf of such dealer for purposes of display, sale or exhibition, unless the cage is of a prescribed size, type or description, and

53.—The Principal Act is hereby amended by the substitution of the following for section 48: Wildlife dealer’s licence.

“48.—(1) The Minister may, on application being made in that behalf, if thought fit and on payment of the prescribed fee (if any), grant or renew a licence (in this Act referred to as a ‘wildlife dealer’s licence’) authorising the applicant to carry on business as a wildlife dealer at premises specified in the licence.

(2) A wildlife dealer’s licence shall, unless it is previously revoked, remain in force until the 31st day of July following the year in which it was granted or renewed.

(3) The Minister may, on application being made in that behalf, from time to time and on payment of the prescribed fee (if any), renew a licence granted under subsection (1) of this section.

- (4) (a) Every applicant for the grant or renewal of a licence under this section shall have the right of appeal, to

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pr.V S.53

the District Court for the District in which the applicant resides, against the refusal of the Minister to grant or renew such a licence.

- (b) Where, in the case of the refusal by the Minister to grant or renew a licence under this section, the applicant is the holder of a subsisting licence under this section, then the licence shall continue in force pending the determination of an appeal against such refusal, or the appeal ceases for any other reason.
 - (c) The Minister shall be notified in writing by registered post by the applicant of any such appeal not less than 21 days before the hearing of the appeal and shall have the right to appear and be heard at the hearing.
 - (d) Where an appeal under this subsection is allowed, the Minister shall grant or renew, as appropriate, a licence subject to any conditions which the judge allowing the appeal may require to be attached to the licence.
- (5) The Minister may, in considering an application for the grant or renewal of a licence under this section, have regard to the following:
- (a) the suitability of the applicant, taking into account the purposes of this Act, to hold a wildlife dealer's licence,
 - (b) the suitability of the premises, taking into account all relevant legislative provisions relating to food hygiene and food safety, where the applicant proposes to carry on the business of wildlife dealing, and
 - (c) the ability of the applicant to comply with regulations made under section 46(2) of this Act which are for the time being in force.
- (6) (a) The Minister may, having given 21 days' notice to the holder of a licence issued under this section, revoke the licence if the holder has failed to comply with the conditions thereof or with regulations made under section 46(2) of this Act which are for the time being in force, and shall notify the holder of the reasons for such revocation.
- (b) The holder of a wildlife dealer's licence shall have the right to appeal, to the District Court for the District in which the applicant resides, within a period of 21 days in respect of the notification by the Minister to revoke the licence.
 - (c) Where, in the case of the notification of revocation by the Minister of a licence under this section, the holder of the licence appeals to the District Court in accordance with paragraph (b), the licence shall continue in force pending the determination of an appeal against such revocation, or the appeal ceases for any other reason.
 - (d) The Minister shall be notified in writing by registered post of any appeal to which paragraph (b) relates not

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

less than 21 days before the hearing of the appeal and shall have the right to appear and be heard at the hearing. Pr.V S.53

(7) The Minister may, on application being made in that behalf by the holder of the wildlife dealer's licence, amend a licence issued under this section."

54.—Section 49 of the Principal Act is hereby amended by the substitution, in subsection (1), of "is convicted of an offence under this Act" for "is convicted of an offence under section 31 of this Act, or an offence under section 69(2) of this Act because of a contravention of, or of a failure to comply with, regulations made under section 41 or 46 of this Act", and the said subsection (1), as so amended, is set out in the Table to this section. Amendment of section 49 (revocation of wildlife dealer's licence) of Principal Act.

TABLE

(1) Where a person who holds a wildlife dealer's licence is convicted of an offence under this Act, the court by which the person is convicted may revoke the licence and such revocation shall be in addition to any other punishment imposed by the court in respect of the offence.

55.—Section 51 of the Principal Act is hereby amended—

(a) by the insertion, in subsection (1), of the following after paragraph (c):

"(cc) any species of flora to which an order under section 21 of this Act for the time being applies.",

(b) by the substitution, in subsection (2), of the following for paragraph (a):

"(a) that the package, parcel, box or other container contains wild birds, wild animals or flora, as may be appropriate,

(aa) the number of specimens and the species, respectively, of wild birds, wild animals or flora so contained and, in respect of each specimen captured, picked or otherwise taken (as appropriate) within the State or the territorial seas of the State, the location of where it was so captured, picked or otherwise taken, and",

(c) by the substitution, in subsection (3), of "(a), (b), (c) or (cc)" for "(a), (b) or (c)",

(d) by the addition of the following after subsection (4):

"(5) The Minister may by regulations provide that this section—

(a) shall also apply to any package, parcel, box or other container which contains all or any of the following, that is to say:

(i) a wild bird of a species specified in the regulations for that purpose;

Amendment of section 51 (transport of packages etc. containing certain fauna) of Principal Act.

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pt.V S.55

(ii) a wild animal of a species specified in the regulations for that purpose;

(iii) a species of flora specified in the regulations for that purpose;

and which for the time being is not a species to which subsections (1) to (4) of this section apply,

(b) shall not apply to any package, parcel, box or other container which contains all or any of the following, that is to say:

(i) a wild bird of a species specified in the regulations for that purpose;

(ii) a wild animal of a species specified in the regulations for that purpose;

(iii) a species of flora specified in the regulations for that purpose;

and which would, but for the regulations, be a species to which subsections (1) to (4) of this section would apply,”

and the said subsection (3), as so amended, is set out in the Table to this section.

TABLE

(3) Any person who consigns or transports a package, parcel, box or other container which is not marked in the manner required by subsection (2) of this section and who knows that the package, parcel, box or other container, as the case may be, contains any thing mentioned in paragraph (a), (b), (c) or (cc) of subsection (1) of this section shall be guilty of an offence.

Amendment of section 52 (import of fauna and flora) of Principal Act.

56.—Section 52 of the Principal Act is hereby amended—

(a) in subsection (1)—

(i) by the insertion after “importation” of “into the State from outside the European Union”,

(ii) by the insertion, in paragraph (a), of “, at any stage of its life,” after “any wild animal or wild bird”,

(iii) by the substitution, in paragraph (c), of “or any product or derivative” for “or any product” and of “a part, product or derivative” for “a part or product”,

(iv) by the insertion of the following after paragraph (d):

“(dd) any part, product or derivative of the eggs or spawn of a wild animal or wild bird which is a part, product or derivative so specified,”

(v) by the insertion, in paragraph (f), of “, seeds, spores”, after “flowers”, and

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

(vi) by the insertion, in paragraph (g), of “, seeds, spores” Pr.V S.56
after “flowers” and by the substitution of “or any
product or derivative” for “or any product” and of
“a part, product or derivative” for “a part or
product”,

(b) by the insertion of the following after subsection (1):

“(1A) (a) The Minister may, and shall in the case to
which paragraph 1 of Article 12 of Council
Regulation (EC) No. 338/97 of 9
December 1996 on the protection of
species of wild fauna and flora by reg-
ulating trade therein relates, designate in
writing the ports, airports and other
places through which wild animals, wild
birds or the eggs or spawn of wild ani-
mals or wild birds or plants, flowers,
roots, seeds or spores of such plants may
be imported into the State from outside
the European Union and different places
may be prescribed for different specified
species.

(b) The Minister may designate in writing the
ports, airports and other places through
which any part, product or derivative of
wild animals, wild birds or of the eggs or
spawn of a wild animal or wild bird or of
plants, flowers, roots, seeds or spores of
such plants, of species specified in the
regulations may be imported into the
State from outside the European Union
and different places may be prescribed
for different specified species.

(c) A designation under this subsection may be
amended or revoked in writing by the
Minister.

(d) Notice of the making of a designation
under this subsection, and every amend-
ment or revocation thereof, shall be pub-
lished in the *Iris Oifigiúil* as soon as poss-
ible after it has been made, amended or
revoked, as the case may be.”,

(c) by the insertion of the following after subsection (4):

“(4A) Any officer of An Post duly authorised in that
behalf may detain and examine and, if considered neces-
sary, open for that purpose any postal packet containing,
or reasonably suspected by that officer of containing, any
thing which is being imported in contravention of this
section, and if a postal packet so detained contains any
such thing, the officer of An Post shall dispose of the
packet and its contents in accordance with the instruc-
tions of the Minister.”,

(d) by the addition of the following after subsection (5):

“(6) (a) The Minister may, if considered necessary,
by regulations prohibit the possession or

introduction of any species of wild bird, wild animal or wild flora or any part, product or derivative of such wild bird, wild animal or wild flora which may be detrimental to native species.

(b) Where non-native species of wild bird, wild animal or wild flora or any part, product or derivative of such wild bird, wild animal or wild flora have been introduced, the Minister shall, to the extent that it is feasible and appropriate, take measures to ensure that such introductions do not pose a potential hazard to native stocks.

(7) Any person who—

(a) turns loose, wilfully allows or causes to escape any species of wild animal or the spawn of such wild animal or wild bird or the eggs of such wild bird,

(b) transfers any species of wild animal or the spawn of such wild animal or wild bird or the eggs of such wild bird from any place in the State to any other place in the State for the purpose of establishing it in a wild state in such other place,

(c) plants or otherwise causes to grow in a wild state in any place in the State any species of flora, or the flowers, roots, seeds or spores of flora,

otherwise than under and in accordance with a licence granted in that behalf by the Minister shall be guilty of an offence.

(8) For the purposes of subsection (7), any reference to wild animals, wild birds, plants, flowers, roots, seeds or spores refers only to exotic species thereof.”

and the said subsection (1) (other than paragraphs (b), (d) and (e)), as so amended (including an amendment by virtue of section 6(1) of the Ministers and Secretaries (Amendment) Act, 1939), is set out in the Table to this section.

TABLE

(1) The Minister may, after consultation with the Minister for Agriculture, Food and Rural Development, by regulations prohibit the importation into the State from outside the European Union, save under and in accordance with a licence granted by or on behalf of the Minister under this section, of all or any of the following:

(a) any wild animal or wild bird, at any stage of its life, of a species specified in the regulations,

(c) any part, other than the carcase, or any product or derivative of a wild animal or wild bird which is a part, product or derivative so specified,

(f) the flowers, seeds, spores or roots of any such plant,

(g) any part, other than the flowers, seeds, spores or roots, or any product or derivative of any such plant which is a part, product or derivative so specified.

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

57.—Section 53 of the Principal Act is hereby amended—

Pt.V

Amendment of
section 53 (export
of fauna and flora)
of Principal Act.

(a) in subsection (1)—

- (i) by the insertion after “export” of “from the State to outside the European Union”,
- (ii) by the substitution, in paragraph (a), of “any wild bird or any wild animal, at any stage of its life,” for “protected wild birds or protected wild animals”,
- (iii) by the substitution, in paragraph (b), of “wild bird or wild animal” for “protected wild bird or protected wild animal”,
- (iv) by the substitution, in paragraph (c), of “or any product or derivative” for “or any product” and of “a part, product or derivative” for “a part or product”,
- (v) by the insertion of the following after paragraph (d):
 - “(dd) any part, product or derivative of the eggs or spawn of a wild animal or wild bird which is a part, product or derivative so specified,”
- (vi) by the deletion, in paragraph (e), of “and to which an order under section 21 of this Act for the time being applies”,
- (vii) by the insertion, in paragraph (f), of “, seeds, spores” after “flowers”, and
- (viii) by the insertion, in paragraph (g), of “, seeds, spores” after “flowers” and by the substitution of “or any product or derivative” for “or any product” and of “a part, product or derivative” for “a part or product”,

(b) by the insertion of the following after subsection (1):

“(1A) (a) The Minister may, and shall in the case to which paragraph 1 of Article 12 of Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein relates, designate in writing the ports, airports and other places through which wild animals, wild birds or the eggs or spawn of wild animals or wild birds or plants, flowers, roots, seeds or spores of such plants may be exported from the State to outside the European Union and different places may be prescribed for different specified species.

(b) The Minister may designate in writing the ports, airports and other places through which any part, product or derivative of wild animals, wild birds or of the eggs or spawn of a wild animal or wild bird or of plants, flowers, roots, seeds or spores of

such plants, of species specified in the regulations may be exported from the State to outside the European Union and different places may be prescribed for different specified species.

(c) A designation under this subsection may be amended or revoked in writing by the Minister.

(d) Notice of the making of a designation under this subsection, and every amendment or revocation thereof, shall be published in the *Iris Oifigiúil* as soon as possible after it has been made, amended or revoked, as the case may be.”,

(c) by the substitution of the following for subsection (4):

“(4) Any officer of An Post duly authorised in that behalf may detain and examine and if necessary open for that purpose any postal packet containing, or suspected by that officer of containing, any thing which is being exported in contravention of this section, and if a postal packet so detained contains any such thing, the officer of An Post shall dispose of the packet and its contents in accordance with the instructions of the Minister.”,

and the said subsection (1) (other than paragraphs (d) and (dd)), as so amended (including amendments by virtue of section 6(1) of the Ministers and Secretaries (Amendment) Act, 1939), is set out in the Table to this section.

TABLE

(1) Subject to section 52(5) of this Act, the Minister may, after consultation with the Minister for Agriculture, Food and Rural Development, by regulations prohibit the export from the State to outside the European Union, save under and in accordance with a licence granted by or on behalf of the Minister under this section, of all or any of the following:

- (a) any wild bird or any wild animal, at any stage of its life, of a species specified in the regulations,
- (b) the dead body or the carcase either of a wild bird or wild animal of a species so specified,
- (c) any part, other than the carcase, or any product or derivative of a wild animal or wild bird which is a part, product or derivative so specified,
- (e) wild plants which are of a species which is so specified,
- (f) the flowers, seeds, spores or roots of any such wild plant,
- (g) any part, other than the flowers, seeds, spores or roots, or any product or derivative of any such plant which is a part, product or derivative so specified.

58.—The Principal Act is hereby amended by the insertion of the following after section 53:

“53A.—(1) The Minister is hereby designated, for the purposes of paragraph 1(a) of Article 13 of Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (in this

section referred to as 'the Council Regulation'), as the management authority with primary responsibility in relation to that Regulation. Pr.V S.58

- (2) (a) The Minister may, for the purposes of paragraph 1(b) of Article 13 of the Council Regulation, designate in writing from time to time additional management authorities and other competent authorities.
- (b) The Minister shall, for the purposes of paragraph 2 of Article 13 of the Council Regulation, designate in writing from time to time one or more scientific authorities.
- (c) A designation under paragraph (a) or (b) of this subsection may be amended or revoked in writing by the Minister.
- (d) Notice of the making of a designation under this subsection, and every amendment or revocation thereof, shall be published in the *Iris Oifigiúil* as soon as possible after it has been made, amended or revoked, as the case may be.

(3) The import, export, or any attempts thereat, of any specimen of a species listed in the annexes to the CITES Regulations without the required valid permits or certificates, or with forged, altered or otherwise fraudulent permits or certificates, shall be prohibited.

- (4) (a) The Minister may make regulations to prohibit the holding or possession of any specimen of a species listed in annexes to the CITES Regulations.
- (b) It shall be an offence to hold or possess any such specimen contrary to any regulations made under paragraph (a) of this subsection.
- (5) (a) Subject to subsection (6), a person who, in contravention of the CITES Regulations—
 - (i) imports, introduces from the sea, exports, re-exports, engages in movement, holds or possesses any specimen of a species listed in annexes to the CITES Regulations without the required valid permits or certificates, or with forged, altered or otherwise fraudulent permits or certificates, or
 - (ii) purchases, offers to purchase, acquires for commercial purposes, displays to the public for commercial purposes, uses for commercial gain, sells, keeps for sale, offers for sale or transports for sale contrary to Article 8 of the Council Regulation a specimen of a species listed in Annex A to the CITES Regulations, or
 - (iii) purchases, offers to purchase, acquires for commercial purposes, displays to the public for commercial purposes, uses for commercial gain, sells, keeps for sale, offers for sale or transports for sale contrary to Article 8 of the Council Regulation a specimen of a species listed in

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Annex B to the CITES Regulations imported or acquired contrary to the CITES Regulations, or

- (iv) fails to comply with any condition or requirement of a permit or certificate, or
- (v) fails to comply with the requirements of paragraph 1, 4 or 5 of Article 9 of the Council Regulation relating to the holding or transport or movement of live specimens, or
- (vi) makes false or misleading statements or declarations with a view to obtaining a permit or certificate, or of clearing specimens for import or export, or
- (vii) furnishes a document or information which is false with a view to obtaining a permit or certificate, or falsifies or alters any permit or certificate, or uses or furnishes a false or invalid permit or certificate or one altered without authorisation, or
- (viii) fails to make an import notification or makes a false import notification contrary to Article 4 of the Council Regulation, or
- (ix) uses any specimen of a species listed in Annex A to the CITES Regulations otherwise than in accordance with the authorisation given at the time of issue of the import permit or subsequently, or
- (x) trades in artificially propagated plants contrary to the provisions of Article 7 of the Council Regulation, or
- (xi) uses a permit, certificate or import notification for any specimen other than for which it was issued, or
- (xii) fails to disclose rejection of an application for an import, export or re-export permit or certificate in accordance with Article 6 of the Council Regulation, or
- (xiii) engages in transit or transshipment of any specimen of a species listed in annexes to the CITES Regulations without the required valid permit or certificate or document, or without satisfactory proof of the existence of such permit or certificate or document, as appropriate,

shall be guilty of an offence.

- (b) A person who aids or abets the commission of an offence under subsection (4)(b) or (5)(a) shall be guilty of an offence.

(6) Nothing in this section shall make unlawful anything which is duly done under, and in accordance with the terms of,

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

any certificate or general derogation granted pursuant to the Pr.V S.58 CITES Regulations.

(7) Nothing in this section shall prevent the application of the Customs Acts to offences committed under the said Acts in relation to the import, export, or any attempt thereat, of prohibited specimens in contravention of subsection (3) of this section.

(8) (a) A word or expression that is used in this section and is also used in the CITES Regulations shall, unless the contrary intention appears, have in this section the meaning that it has in the CITES Regulations.

(b) For the purposes of this section, references to a permit or certificate include references to—

(i) an import permit of the kind referred to in Article 4 of the Council Regulation,

(ii) an export permit or a re-export certificate of the kind referred to in Article 5 of the Council Regulation,

(iii) a certificate of any of the kinds referred to in Article 10 of the Council Regulation, or

(iv) a label of the kind referred to in paragraph 4 of Article 7 of the Council Regulation.”.

59.—Nothing in Part II, or section 51, of the Principal Act shall make unlawful any thing which is done pursuant to and in accordance with a licence granted in that behalf by the Minister for the purpose of preserving public health or public safety, including air safety.

Saver in interest of public health and safety.

PART VI

MISCELLANEOUS

60.—Section 56 of the Principal Act is hereby amended by the substitution of the following for subsection (1):

Amendment of section 56 (management etc. of certain land acquired, held or used by the Minister) of Principal Act.

“(1) All land acquired or vested in the Minister under the *Wildlife Acts, 1976 and 2000*, other than land which the Minister considers to be land to which this subsection and subsection (2) of this section should not apply and in relation to which a direction (which the Minister is hereby empowered to give) that those subsections shall not apply to the land is given by the Minister and is in force, shall stand held by the Minister for the purposes of the *Wildlife Acts, 1976 and 2000*, and may, as the Minister considers appropriate, at any time be managed and used for all or any of the following purposes, namely:

(a) the conservation of wildlife;

(b) the management and exploitation of hunting and fishing resources;

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pt. VI S.60

- (c) other purposes ancillary to any of the foregoing, including the growth of forest crops, the promotion of scientific knowledge, amenity, or recreational or educational purposes.”.

Amendment of section 58 (right to hunt on or over territorial seas of State vested in State) of Principal Act.

61.—Section 58 of the Principal Act is hereby amended—

- (a) by the substitution of the following for subsection (3):

“(3) Any person who contravenes subsection (2) of this section shall—

(a) commit a trespass, and

(b) be guilty of an offence.”,

and

- (b) by the substitution of the following for subsection (4):

“(4) Nothing in paragraph (a) of subsection (3) of this section shall operate to prejudice any legal proceedings which may be instituted apart from that paragraph and a person who contravenes subsection (2) of this section may, if the Minister thinks fit, be sued by the Minister for trespass in any court of competent jurisdiction and for the purpose of giving jurisdiction under this Act the trespass shall be deemed to have been committed where the person complained against may be.”.

Amendment of section 59 (regulations permitting and regulating public access to certain land) of Principal Act.

62.—Section 59 of the Principal Act is hereby amended—

- (a) in subsection (1)—

(i) by the substitution in paragraph (c) of “whether or not the Minister has a joint or several interest in such land” for “but in which the Minister has not a joint or several interest”, and

- (ii) by the insertion of the following after paragraph (c):

“(cc) any other land held by the Minister for the purposes of the *Wildlife Acts, 1976 and 2000*,”,

- (b) in subsection (2), by the substitution of “seabed nature reserve, or to all or any other land held by the Minister for the purposes of the *Wildlife Acts, 1976 and 2000*” for “seabed nature reserve” where it last occurs, and

- (c) by the substitution of the following for subsection (3):

“(3) Regulations under this section which apply to foreshore shall regulate access to or use of such foreshore to such extent as the Minister considers necessary for the conservation of wildlife or of a wildlife habitat or of geological or geomorphological features, as the case may be, and such regulations shall be made by him only with the consent of the Minister for the Marine and Natural Resources and in addition to the foregoing, where the regulations relate to foreshore other than foreshore

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

which is held by the Minister, they shall be made only after consultation with—

(a) in case such foreshore is held by the Commissioners, the Commissioners,

(b) in any other case, the Minister of the Government by whom the foreshore is held”,

and the said subsection (1) (other than paragraphs (a), (b) and (d)), as so amended, is set out in the Table to this section.

TABLE

(1) Subject to subsections (3), (4) and (7) of this section, the Minister may make regulations permitting the public generally or any particular class or section of the public or the members of any body of persons which is of a particular class or description or the members of a particular body of persons, to have access to and use in accordance with the regulations—

(c) any land (including land covered by inland waters) to which an establishment order applies and which is land owned by the State whether or not the Minister has a joint or several interest in such land (which land is so referred to as a State land nature reserve),

63.—Section 69 of the Principal Act is hereby amended—

Amendment of section 69 (attempts etc. and miscellaneous other offences) of Principal Act.

(a) by the insertion, in subsection (3), of the following after paragraph (b):

“(c) Any person who assaults or obstructs an authorised person or a member of the Garda Síochána exercising any power or function conferred on the authorised person or member by or under the *Wildlife Acts, 1976 and 2000*, shall be guilty of an offence.”,

(b) in subsection (5), by the substitution of “any specimen of flora, fauna, fossils or minerals” for “any specimen of flora or fauna” and of “part, product or derivative” for “part or product”,

(c) in subsection (5), by the substitution of “section 72(7) or 73(1)” for “section 73(1)”,

(d) by the insertion, in subsection (6), of “or permission” after “licence”, and

(e) by the addition of the following after subsection (7):

“(7A) Where any person uses or allows or causes to be used a vessel, aircraft or mechanically propelled vehicle as an aid to the commission of an offence under the provisions of the *Wildlife Acts, 1976 and 2000*, or of any instrument made under those Acts, that person shall be guilty of an offence.”,

and the said subsections (5) and (6), as so amended, are set out in the Table to this section.

TABLE

(5) Any person who conceals from a person lawfully exercising a power under section 72 or 73 of this Act any specimen of flora, fauna, fossils or minerals or part,

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

Pr.VI S.63

product or derivative of such specimen or anything which is a thing mentioned in section 72(7) or 73(1) of this Act shall be guilty of an offence.

(6) Any person who contravenes a condition attached to a licence or permission granted by the Minister under this Act shall be guilty of an offence.

Amendment of section 70 (prosecution of offences) of Principal Act.

64.—Section 70 of the Principal Act is hereby amended—

(a) in subsection (2) by the deletion of “not below the rank of Assistant Secretary”, and

(b) by the insertion of the following after subsection (3):

“(4) Nothing in this section shall prevent the prosecution under the Customs Acts for offences committed under the said Acts in respect of a contravention of section 53A of this Act.”,

and the said subsection (2), as so amended, is set out in the Table to this section.

TABLE

(2) Subject to section 44(4) of this Act, summary proceedings for any offence under this Act may be prosecuted by a person who is neither the Minister nor a member of the Garda Síochána with the consent of the Minister or an officer of the Minister nominated by the Minister for the purpose.

Amendment of section 72 (powers of Garda Síochána and authorised persons) of Principal Act.

65.—Section 72 of the Principal Act is hereby amended—

(a) by the substitution of the following for subsections (1) and (2):

“(1) (a) The Minister may appoint in writing, and for such of the purposes of either or both this Act and the CITES Regulations as the Minister shall specify, a person to be an authorised person for the purposes so specified.

(b) In appointing a person to be an authorised person for specified purposes, the Minister may attach limitations to the exercise of functions by the authorised person by reference to all or any of the following, that is to say:

(i) the nature of the functions which such person may exercise or perform, and

(ii) the time, place and circumstances in which such person may exercise or perform such functions.

(c) Where a person has been appointed to be an authorised person under this subsection, the person shall hold office until—

(i) the appointment is terminated by the Minister, or

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

(ii) a written resignation signed by the person is received by the Minister. Pr.VI S.65

(d) The Minister may terminate the appointment of an authorised person appointed under subsection (1) of this section by giving one month's notice, in writing, to the person.

(2) A member of the Garda Síochána or an authorised person who has reasonable grounds for suspecting that a person has committed an offence under any provision of the *Wildlife Acts, 1976 and 2000*, may, at all reasonable times, stop and search any person who is suspected by such member or authorised person, as the case may be, of being in any way concerned in the offence and require the person to give his name and address and to declare and, if such member or authorised person, as the case may be, considers it necessary to produce on demand for examination—

(a) any specimen of fauna, flora, fossils or minerals or any part, product or derivative of any such specimen, or

(b) any licence or permission granted by the Minister under the *Wildlife Acts, 1976 and 2000* (including any certificate deemed, pursuant to section 29(5) of this Act, to be a licence so granted), or

(c) in the case of a person who is resident in a Member State of the European Community other than the State, any European Firearms Pass duly issued to such person to which paragraphs (4) and (5) of Regulation 7 of the European Communities (Acquisition and Possession of Weapons and Ammunition) Regulations, 1993 (S.I. No. 362 of 1993), relate or any other permit, licence, authorisation or other document duly issued by a national competent authority of such a Member State, or

(d) any permit or certificate issued for the purposes of the CITES Regulations together with any supporting documents in the person's possession and any permit or certificate to which Article 11 of Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein relates, or

(e) any thing which is mentioned in subsection (7) of this section, which is in the person's possession,

and such member or authorised person may seize and retain any specimen or part, product or derivative of a specimen or any thing so produced which appears to him to be something which might be required as evidence in proceedings for an offence under this Act.

(2A) A member of the Garda Síochána or an authorised person may, if such member or authorised person has reasonable grounds for suspecting from the activity of any person (in this subsection referred to as the ‘suspected person’) that an offence under any provision of this Act is being, or has been, committed, in the presence of such member or person, by the suspected person and that person has, or had at the time of being so suspected, in his possession, or under his control, anything which is mentioned in subsection (7) of this section or any other thing capable of being used to commit an offence, then such member or authorised person may, without prejudice to any other function exercisable by such member or person—

(a) require the suspected person—

- (i) to desist from continuing or recommencing that activity, and
- (ii) to furnish his name and address and, if requested, to verify the information given,

and

(b) arrest or cause any other person acting under direction of such member or authorised person to arrest or to assist in arresting the suspected person if that person continues or recommences that activity or fails to furnish his name or address or furnishes a name or address which in the circumstances there are reasonable grounds to suspect is false or misleading,

and where the suspected person has been so arrested by an authorised person, the authorised person shall, as soon as is practicable in the circumstances, deliver the suspected person into the custody of a member of the Garda Síochána to be dealt with according to law.”,

(b) in subsection (3)—

- (i) by the substitution of “for suspecting that a person is committing or has committed an offence under any provision of the *Wildlife Acts, 1976 and 2000*” for “for suspecting that a person has committed an offence under Part II or under section 45, 47, 51, 52 or 53 of this Act”,
- (ii) by the insertion of “enter any land (other than a dwelling) to which the suspicion relates and may also, whether on that land or otherwise” after “at all reasonable times”,
- (iii) by the substitution, in paragraph (a), of “any provision of the *Wildlife Acts, 1976 and 2000*” for “the said section 51, 52 or 53”, of “fauna, flora, fossils or minerals” for “fauna or flora” and of “vessel or aircraft or any mechanically-propelled vehicle used or suspected of being used” for “vessel or aircraft which he reasonably suspects of being used”,

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

(iv) by the insertion of the following after paragraph (d): Pr.VI S.65

“(e) seize and detain any vehicle, vessel, aircraft or mechanically-propelled vehicle which he reasonably suspects of being used in committing an offence under the *Wildlife Acts, 1976 and 2000*, and which appears to him to be something which might be required in evidence in proceedings for an offence under the *Wildlife Acts, 1976 and 2000*,

(f) require, if considered necessary in order to determine the identity or ancestry of any specimen of fauna, the taking from that specimen of a sample of blood or tissue but only if—

(i) the sample is taken by a registered veterinary surgeon, and

(ii) in the opinion of the registered veterinary surgeon the taking of such a sample will not cause lasting harm to the specimen.”,

(c) in subsection (4), by the substitution of “any dwelling” for “buildings on land” in paragraph (b), and

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

“(7) The things referred to in subsections (2) and (2A) of this section are—

(a) a dog or bird or other animal suspected of being capable of use—

(i) to hunt, pen, retrieve or otherwise be involved in the capture of fauna, or

(ii) to find or assist in the finding of flora,

(b) a firearm, trap, snare, net, line, hook, arrow, dart or spear, or a similar device, instrument or missile calculated or likely to cause death or bodily injury to or causes to be captured alive, any wild bird or wild animal coming in contact with it,

(c) birdlime or any substance of a like nature,

(d) poisonous, poisoned or stupefying bait, tracer shot or a gun or explosive mentioned in section 33(2) of this Act, or any containers of gas or smoke or chemical wetting agents mentioned in section 34(1) of this Act,

(e) a decoy or electrical or other instrument, device or appliance mentioned in section 35(1) or 38 of this Act, and

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

PT.VI S.65

(f) any type of material or form of equipment used for geological or geomorphological purposes.”,

and the said subsections (3) (down to and including paragraph (a)) and (4)(b), as so amended, are set out in the Table to this section.

TABLE

(3) A member of the Garda Síochána or an authorised person may, if he has reasonable grounds for suspecting that a person is committing or has committed an offence under any provision of the *Wildlife Acts, 1976 and 2000*, at all reasonable times enter any land (other than a dwelling) to which the suspicion relates and may also, whether on that land or otherwise—

(a) search any vehicle, vessel or aircraft or any mechanically-propelled vehicle used or suspected of being used to transport, export or import any specimen of fauna, flora, fossils or minerals or any part, product or derivative of any such specimen contrary to any provision of the *Wildlife Acts, 1976 and 2000*, and such member or authorised person, for the purpose of carrying out the search, may, if he thinks fit, require the person who for the time being is in control of the vehicle, vessel or aircraft to bring it to a stop or refrain from moving it,

(b) Paragraph (a) of this subsection shall not be construed as enabling a member of the Garda Síochána or an authorised person to enter any dwelling.

Inspection of land.

66.—(1) Without prejudice to the powers of an authorised person by virtue of section 72 of the Principal Act, any person appointed in writing by the Minister under the said section 72 to be an authorised person may at any reasonable time enter on, inspect and survey any land (other than any dwelling thereon) for any purpose (apart from the purposes mentioned in *subsection (2)*) in connection with the performance by the Minister of functions under this Act and the Principal Act.

(2) (a) An authorised person may at any reasonable time enter on and inspect any land to which a recognition order relates to ascertain whether or not the objectives indicated in the order are being, or have been, attained, or, where attained, are being maintained.

(b) An authorised person may on reasonable grounds at any reasonable time enter on, inspect and survey any land (other than any dwelling thereon) for the purpose of—

(i) ascertaining whether the lands form or are part of, or are in need of protection as, a natural heritage area, or

(ii) ascertaining whether there is any fauna or flora on the land in need of protection under section 17 of the Principal Act, or

(iii) surveying or monitoring relevant to the conservation status of habitats or species.

(3) When exercising a function conferred by this section, an authorised officer shall, if requested by any person affected, inform such person of the nature of the function being exercised and produce for inspection that officer’s certificate of authorisation.

(4) An authorised person entering on land under this section may do thereon all things reasonably necessary for the purpose for which

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

the entry is made and may be accompanied by such other persons as may be reasonably necessary in assisting him or her so to do. Pr.VI S.66

(5) Before an authorised person enters on any land for the purposes of *subsection (1)* of this section, he or she shall either obtain the consent, in the case of occupied land, of the occupier, or, in the case of unoccupied land, of the owner, or shall give to the owner or occupier, as the case may be, not less than 14 days' notice in writing of his or her intention to make the entry.

(6) A person to whom a notice of intention to enter on land has been given under this section by an authorised person may, not later than 14 days after the giving of such notice, apply, on notice to such person, to the Judge of the District Court having jurisdiction in the district court district in which the land is situate for an order prohibiting the entry, and, upon the hearing of the application, the Judge may, if he or she so thinks proper, either wholly prohibit the entry or specify conditions to be observed by the person making the entry.

(7) Where a Judge of the District Court prohibits under this section a proposed entry on land, it shall not be lawful for any person to enter on the land and where a Judge of the District Court specifies under this section conditions to be observed by persons entering on land, every person who enters land shall observe the conditions so specified.

(8) An authorised person may request the owner or occupier of such land so entered to give assistance, to carry out such instructions and to give such information as may be reasonably necessary for the purposes of the performance by the authorised officer of his or her functions.

(9) Any person who by act or omission impedes or obstructs an authorised person or a person mentioned in *subsection (4)* in the lawful exercise of any power conferred on them by this section shall be guilty of an offence.

67.—Section 73 of the Principal Act is hereby amended by the substitution of the following for subsection (1): Amendment of section 73 (search warrants) of Principal Act.

“(1) If a Judge of the District Court is satisfied by information on oath of an authorised person or a member of the Garda Síochána that there are reasonable grounds for suspecting that a person is in possession on any premises or other land of any specimen of fauna, flora, fossils or minerals or any part, product or derivative of any such specimen or anything mentioned in section 72(7) of this Act or anything liable or believed to be liable to forfeiture under this Act and that as regards the specimen, part, product, derivative or thing an offence under this Act has been or is being committed, the Judge may issue a search warrant under this section.”.

68.—Section 74 of the Principal Act is hereby amended— Amendment of section 74 (penalties) of Principal Act.

(a) in subsection (1)—

- (i) by the substitution of “under the *Wildlife Acts, 1976 and 2000*” for “under this Act” and of “subsection (2), (3) or (3A)” for “subsection (2) or (3)”,

[No. 38.] *Wildlife (Amendment) Act, 2000.* [2000.]

PT.VI S.68

- (ii) by the substitution, in paragraph (a), of “£500 or to imprisonment for a term not exceeding 3 months or to both” for “fifty pounds”,
- (iii) by the substitution, in paragraph (b), of “£1,000 or to imprisonment for a term not exceeding 6 months or to both” for “one hundred pounds”, and
- (iv) by the substitution, in paragraph (c), of “£1,500 or to imprisonment for a term not exceeding 12 months or to both” for “two hundred pounds”,

(b) in subsection (2)—

- (i) by the insertion of “under section 59(11) or” after “guilty of an offence” and of “or land to which a natural heritage area order” after “section 18 of this Act”,
- (ii) by the substitution, in paragraph (a), of “£1,500 or to imprisonment for a term not exceeding 12 months or to both” for “two hundred and fifty pounds”, and
- (iii) by the substitution, in paragraph (b), of “£50,000 or to imprisonment for a term not exceeding 2 years or to both” for “five hundred pounds”,

(c) by the substitution of the following for subsection (3)—

“(3) Where a person is guilty of an offence under Part II or under section 45, 47, 51, 52, 53, 53A or 58(3)(b) of this Act in relation to—

- (a) any specimen of a species of fauna specified in the Fourth Schedule to this Act,
- (b) any specimen of a species listed in annexes to the CITES Regulations, or
- (c) any specimen of a species of flora or fauna which is of a species for the time being declared by regulations under this section to be a species to which this subsection relates,

such person shall be liable—

- (i) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or
- (ii) on conviction on indictment to a fine not exceeding £50,000 or to imprisonment for a term not exceeding 2 years or to both.”,

(d) by the addition of the following after subsection (3):

“(3A) Where a person is guilty of an offence under Chapter II of Part III of the *Wildlife (Amendment) Act, 2000*, or under the European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94 of 1997), such person shall be liable—

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

- (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 £50,000 or to imprisonment for a term not exceeding 2 years or to both.”,

(e) by the substitution of the following for subsection (4):

“(4) Where the Minister is satisfied that a particular species of fauna or flora is in danger of extinction or requires special protection because of a threat to its existence throughout the State or in any specified area of the State, the Minister may by regulations declare—

- (a) the species, or
- (b) the species in any specified area,

to be one to which subsection (3) of this section relates.”,

and the said subsections (1) and (2), as so amended, are set out in the Table to this section.

TABLE

(1) Where a person is guilty of an offence under the *Wildlife Acts, 1976 and 2000*, not being an offence mentioned in subsection (2), (3) or (3A) of this section, subject to the said subsection (3), such person shall be liable on summary conviction—

- (a) in the case of a first offence under the particular section or subsection, to a fine not exceeding £500 or to imprisonment for a term not exceeding 3 months or to both,
- (b) in the case of a second such offence, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 6 months or to both, and
- (c) in the case of a third or subsequent such offence, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both.

(2) Where a person is guilty of an offence under section 59(11) or under section 69(2) of this Act because of a contravention of, or of a failure to comply with, regulations under section 59 of this Act or is guilty of any offence under this Act, being an offence committed on land to which an establishment order, a recognition order, a designation order or an agreement under section 18 of this Act or land to which a natural heritage area order relates, the person 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 £50,000 or to imprisonment for a term not exceeding 2 years or to both.

69.—Section 76 of the Principal Act is hereby amended—

(a) by the substitution of the following for subsection (1):

“(1) (a) Where any specimen of fauna, flora, fossils or minerals or any part, product or derivative of such a specimen or any firearm, trap, snare, net or any mechanically-propelled vehicle or any vessel or aircraft or other thing has come into the possession of a member of the Garda Síochána or an authorised person in respect of which, or with which, or by means of which,

Amendment of
section 76
(forfeiture) of
Principal Act.

an offence is with reasonable cause suspected by the member or authorised person of having been committed under the *Wildlife Acts, 1976 and 2000*, or where an offence has been committed or is alleged to have been committed under those Acts, and on the application before a court of—

- (i) the Minister, or
- (ii) where criminal proceedings have been instituted, the person who instituted those proceedings,

then, subject to subsections (2), (3) and (4) of this section, the appropriate court may, at its discretion and where it is satisfied that an offence has been committed (whether or not any person has been convicted of the offence) order the forfeiture of the thing concerned.

(b) In this subsection—

‘appropriate court’ means—

- (i) in case the estimated value of the thing to be forfeited does not exceed £5,000, the District Court,
- (ii) in case the estimated value of the thing to be forfeited does not exceed £30,000, the Circuit Court,
- (iii) in any case, the High Court;

‘estimated value’, in relation to the thing sought to be forfeited, means the estimated amount of money which, in the opinion of the court, a willing purchaser would pay to a willing seller when such a thing could be sold legally and after deduction for—

- (i) the estimated costs incidental to such a sale, and
- (ii) the estimated amount of any tax or duty owing to the State in respect of that thing,

and when it cannot be sold legally then such estimated value, if any, as the court considers appropriate.

(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—

- (I) the estimated value of the thing to be forfeited exceeds £5,000, or
- (II) that for any reason it should decline jurisdiction,

it may, if it so thinks fit, transfer the application to the Circuit Court or the High Court, whichever it considers

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

appropriate having regard to the estimated value aforesaid or to such other matters that it considers appropriate. Pr.VI S.69

(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—

(I) the estimated value of the thing to be forfeited exceeds £30,000, or

(II) that for any reason it should decline jurisdiction,

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) (i) An order shall not be made by a court under this section unless the court is satisfied that in the circumstances all practicable steps have been taken to notify any person of the proceedings relating to the application for the order and who, in the opinion of the court, should be given the opportunity of being heard by it on that application.

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

(b) by the substitution of the following for subsection (4):

“(4) Where an order is made under this section in relation to a thing other than a firearm to which subsection (3) of this section applies, such thing shall, as the court shall direct, either be returned to the person appearing to the court to be the owner or sold or disposed of in such other manner as the court thinks fit.”,

and

(c) in subsection (5), by the insertion of “or mechanically-propelled vehicle or vessel or aircraft” after “firearm”,

and the said subsection (5), as so amended, is set out in the Table to this section.

TABLE

(5) Where a firearm or mechanically-propelled vehicle or vessel or aircraft or other thing is sold pursuant to this section, the net proceeds of the sale shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance shall direct.

70.—Section 77 of the Principal Act is hereby amended by the insertion of “, including any seizure or detention to which the CITES Regulations relate” after “under this Act” and of “Judge” for “Justice” in both places where it occurs, and the said section, other than paragraphs (a) and (b), as so amended, is set out in the Table to this section. Amendment of section 77 (appeal against seizures) of Principal Act.

TABLE

77.—Any person who is aggrieved by a seizure and detention under this Act, including any seizure or detention to which the CITES Regulations relate, may appeal to a Judge of the District Court and in determining the appeal the Judge may—

Amendment of section 78 (disposal of things seized) of Principal Act.

71.—Section 78 of the Principal Act is hereby amended—

(a) in subsection (1), by the substitution, in paragraph (b), of “a Judge of the District Court” for “a Peace Commissioner”,

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

“(2) A person who under this Act has seized any thing may, subject to such person giving notice in writing to—

(a) the owner, or

(b) the person who, when the seizure was made, was in apparent charge or control of it,

where such owner or person is known to the person who so seized that thing or whose identity and the address at which such owner or person resides can be ascertained by reasonable inquiries of the intention to do so, apply to a Judge of the District Court for a direction that the thing be disposed of (by destruction or otherwise) in a manner specified in the direction.”,

(c) in subsection (3), by the substitution of “a Judge of the District Court” for “a Peace Commissioner”,

(d) by the insertion of the following after subsection (3):

“(3A) Where any thing has been seized under this Act is, in the opinion of any person entitled to seize it, of a perishable nature, then the thing seized may be sold or otherwise destroyed as appropriate and where it is sold the person causing it to be sold shall out of the proceeds of such sale defray all expenses incurred in the seizure, removal, storage and sale of it and, except where a court has otherwise decided in relation to the thing so sold or court proceedings relating to the thing so sold have been instituted but not concluded, shall pay the surplus of such proceeds to the person who at the time of the seizure was the owner of it.”,

and

(e) by the deletion of subsections (5), (6) and (7),

and the said subsections (1) (other than paragraph (a)) and (3), as so amended, are set out in the Table to this section.

TABLE

(1) A person who, in accordance with this Act, has seized any document or other thing shall not dispose of it—

(b) in the case of any thing other than a document, unless a direction is given pursuant to this section by a Judge of the District Court for its disposal.

(3) A Judge of the District Court to whom an application in that behalf is duly made under this section shall, if he is satisfied that any thing in respect of which the application is made is likely, before it can be used as evidence in proceedings for an offence under this Act, to become unfit for human consumption, or if he is satisfied

[2000.] *Wildlife (Amendment) Act, 2000.* [No. 38.]

for any other reason that the thing ought not to be further detained, give a direction under this section authorising its disposal (by destruction or otherwise). Pt.VI S.71

PART VII

MISCELLANEOUS AMENDMENT OF ENACTMENTS

72.—The Forestry Act, 1946, is hereby amended—

Amendment of
Forestry Act, 1946.

(a) by the insertion, in subsection (4) of section 37, of the following after paragraph (b):

“(bb) the tree is standing on land held or managed by the Minister for Arts, Heritage, Gaeltacht and the Islands, or”,

and

(b) by the insertion, in section 62, of the following after subsection (1):

“(1A) Where either or both the wood and land to which subsection (1) of this section relates is or forms part of either or both wood and land to which Chapter III of Part II, or Regulation 17 or 18, of the European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94 of 1997), applies, then the Minister may only serve a notice under subsection (1) of this section—

(a) where all relevant provisions of the European Communities (Natural Habitats) Regulations, 1997, have been complied with, and

(b) where appropriate, the service of the notice under subsection (1) of this section is necessary for the imperative reasons of overriding public interest as provided for in those Regulations and Article 6 of Council Directive No. 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora⁽¹⁾.”.

73.—The Registration of Title Act, 1964 (as amended by section 66 of the Principal Act), is hereby amended by the insertion, in subsection (1) of section 69, of the following after paragraph (rr):

Amendment of
Registration of Title
Act, 1964.

“(rrr) an order under *section 18(1) of the Wildlife (Amendment) Act, 2000;*”.

74.—The State Property Act, 1954, is hereby amended by the insertion of the following paragraph after paragraph 1 of the First Schedule to that Act:

Amendment of
State Property Act,
1954.

“1A. Any land acquired under the *Wildlife Acts, 1976 and 2000.*”.

75.—The European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94 of 1997), are hereby amended—

Amendment of
European
Communities
(Natural Habitats)
Regulations, 1997.

(a) in Regulation 2, by the substitution of the following for the definition given to “European site”:

⁽¹⁾O.J. No. L 206, 22 July 1992, page 7

“ ‘European site’ means—

(a) a site—

- (i) notified for the purposes of Regulation 4, subject to any amendments made to it by virtue of Regulation 5, or
- (ii) transmitted to the Commission in accordance with Regulation 5(4), or
- (iii) added by virtue of Regulation 6 to the list transmitted to the Commission in accordance with Regulation 5(4),

but only until the adoption in respect of the site of a decision by the Commission under Article 21 of the Habitats Directive for the purposes of the third paragraph of Article 4(2) of that Directive,

(b) a site adopted by the Commission as a site of community importance for the purposes of Article 4(2) of the Habitats Directive in accordance with the procedure laid down in Article 21 of that Directive,

(c) a special area of conservation,

(d) an area classified pursuant to paragraph (1) or (2) of Article 4 of the Birds Directive;”,

and

(b) by the revocation of Regulations 21, 22 and 39.