

FISHERIES (AMENDMENT) ACT 1997 (AS AMENDED AND SUBSTITUTED)

Appeal Reference Number: **AP1/2024**

DETERMINATION

WHEREAS an appeal having been made to the Aquaculture Licences Appeals Board (“**the Board**”) pursuant to Section 40 of the Fisheries (Amendment) Act, 1997 (as amended) (“**the Act**”) by Frank Burke (“**the Appellant**”) against the decision of the Minister for Agriculture, Food and the Marine (“**the Minister**”) to **Revoke** an Aquaculture Licence, formerly a Fish Culture Licence (“**the Licence**”) to Frank Burke for the cultivation of Rainbow Trout on Site T09/084 (“**the Site**”) in Kiltulla, Co. Galway.

AND WHEREAS the Board in considering the appeal took account of the appeal, the file provided to it by the Minister, the information provided by the Appellant, the Conclusion Statement of the Board dated 25 July 2024, the matters set out under Section 69(2) of the Act (as amended and substituted), including the reasons why aquaculture, in respect of which a licence has been granted to the licensee, has ceased.

The Board considered the appeal at its meetings on the **26 January 2024, 1 March 2024, 28 March 2024, 11 April 2024, 1 May 2024, 30 May 2024, 1 July, 25 July 2024 and 6 September 2024.**

GROUNDINGS OF APPEALS

The grounds of the appeal are summarised as follows:

- The Appellant had received a Fish Culture Licence and had never agreed to move to an Aquaculture Licence and had only recently become aware that such Licences exist.
- The Appellant has not been put on notice that any new conditions were attached to his original Fish Culture licence and has not received evidence of same.
- The Appellant did not believe the cesser is applicable to his farm or licence, given that his licence was granted under the provision of Section 15 of the Fisheries (Consolidation)

Act, 1959 (“the 1959 Act” and not the Act as mentioned in the notice. The Appellant was not briefed on any “use it or lose it” clause that was applicable to his original licence.

- The Minister has never personally contacted him to inform him of any proposed revocation or any amendment to any licence before publishing the notice - see Section 68.3 which complements Section 69 of the Act.
- The Appellant does not consider that the two-year rule is applicable to him and even if it was, he believed he had exceptional circumstances for a temporary cessation of activity in Covid.
- The loss of the Licence will have a profound consequence on his livelihood and the fish farm that he has built since the 1980’s and wants to continue to operate now that he is back to full health. The Appellant states that he has a constitutionally protected right to earn a livelihood and enjoys signification protection to that right. He believes that he has been unfairly treated by the Minister. Following receipt of the cancellation letter, he applied to the Minister, by way of Freedom of Information request, for a full copy of the Minister’s file and file notes as to the communication to date has been uninformative and secretive and provided him with no clarity of what was going on.
- The Appellant also had communication with the Foreshore Management Division who advised that there was an inspection on his farm in June, but he did not receive any notice of any planned inspection or any reports relating to the inspection.

DETERMINATION

The Board has determined the appeal on the grounds that:

1. The Minister’s decision to revoke the Licence was deemed unreasonable due to miscommunications, poor administrative process and a failure to fully consider the context of the Covid pandemic on the operation of the Licence; and
2. The Appellant has demonstrated exceptional reasons why the aquaculture activities had ceased.

Having considered all the foregoing and the information contained in the Conclusion Statement of 5 September 2024, the Board determined at its meeting on 6 September 2024 pursuant to Section 40(4)(c) and Section 69(2)(b) of the Act, to **ANNUL** the decision of the Minister to **REFUSE TO REVOKE** the Aquaculture Licence granted to the Applicant at Site T09/084.



ALAB

An Bord Achomhairc Um
Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board

Dated this 26 day of *Spéirde* 2024

The affixing of the Seal of the
AQUACULTURE LICENCES APPEALS BOARD
was authenticated by: -

Deputy Chairperson

Authorised Signatory



