

**An Bord Achomharc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board**



Notice of Appeal Under Section 40(1) of Fisheries (Amendment) Act 1997 (No.23)

APPEAL FORM

Please note that this form will only be accepted by REGISTERED POST or if handed in to the ALAB offices		
Name of Appellant (Block Letters)	FRANK BURKE	
Address of Appellant	RAFORD KILLUA Athenry	
Eircode	[REDACTED]	
Phone	[REDACTED]	Email [REDACTED]
Mobile	[REDACTED]	
FEES		
Fees must be received by the closing date for receipt of appeals	Amount	Tick
An appeal by an applicant for a licence against a decision by the Minister in respect of that application	€380	
An appeal by the holder of a licence against the revocation or amendment of that licence by the Minister	€380	X
An appeal by any other individual or organisation	€150	
Request for an Oral Hearing* (fee payable in addition to appeal fee) *In the event that the Board decides not to hold an Oral Hearing the fee will not be refunded	€75	X
Fees can be paid by way of Cheque or Electronic Funds Transfer		
Cheques are payable to the Aquaculture Licences Appeals Board in accordance with the Aquaculture Licensing Appeals (Fees) Regulations, 2021 (S.I. No. 771 of 2021)		
Electronic Funds Transfer Details	IBAN: IE89AIBK93104704051067	BIC: AIBKIE2D
SUBJECT MATTER OF THE APPEAL		
See attached letter ⇒ Submission related to fish culture RAFORD TROUT FARM RAFORD, Athenry Co Galway Aquaculture licence Revocation +109/084. Dec 2023		
Site Reference Number: -	T09/084	

**AQUACULTURE LICENCES
APPEALS BOARD**
- 9 JAN 2024
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Please forward completed form to: Aquaculture Licences Appeals Board, Kilminchy Court, Dublin Road, Portlaoise, Co. Laois, R32 DTW5 Tel: (057) 86 31912 Email: info@alab.ie



RL 5355 6918 41E

(as allocated by the Department of Agriculture, Food, and the Marine)	
Appellant's particular interest in the outcome of the appeal:	
<p>RESTATE LICENCE Determine Clear statement outlining the conditions of my licence AND LICENCE FEES</p>	
Outline the grounds of appeal (and if necessary, on additional page(s) give full grounds of the appeal and the reasons, considerations, and arguments on which they are based):	
<p>outlined in a 4 page document attached to this application form.</p> <ul style="list-style-type: none"> → NO PROCEDURAL FAIRNESS. → UNFAIR TREATMENT / PF → POOR COMMUNICATION. → IMPACT ON LIVELIHOOD + FUTURE earnings on a business have heavily invested in and had no breaches with. 	
Signed by the Appellant	Frankie Burke
Date	8/01/2023
Please note that this form will only be accepted by REGISTERED POST or handed in to the ALAB offices	
Fees must be received by the closing date for receipt of appeals	

This notice should be completed under each heading and duly signed by the appellant and be accompanied by such documents, particulars or information relating to the appeal as the appellant considers necessary or appropriate and specifies in the Notice.

DATA PROTECTION – the data collected for this purpose will be held by ALAB only as long as there is a business need to do so and may include publication on the ALAB website

Extract from the Fisheries (Amendment) Act 1997 (No.23)

40. (1) A person aggrieved by a decision of the Minister on an application for an aquaculture licence or by the revocation or amendment of an aquaculture licence may, before the expiration of a period of one month beginning on the date of publication in accordance with this Act of that decision, or the notification to the person of the revocation or amendment, appeal to the Board against the decision, revocation or amendment, by serving on the Board a notice of appeal.

(2) A notice of appeal shall be served—

- (a) by sending it by **registered post** to the Board,
- (b) by **leaving it at the office of the Board**, during normal office hours, with a person who is apparently an employee of the Board, or
- (c) by such other means as may be prescribed.

(3) The Board shall not consider an appeal notice of which is received by it later than the expiration of the period referred to in subsection (1)

41. (1) For an appeal under section 40 to be valid, the notice of appeal shall—

- (a) be in writing,
- (b) state the name and address of the appellant,
- (c) state the subject matter of the appeal,
- (d) state the appellant's particular interest in the outcome of the appeal,
- (e) state in full the grounds of the appeal and the reasons, considerations and arguments on which they are based, and
- (f) where an environmental impact assessment is required under Regulation 3 of the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012 (SI No 468 of 2012), include evidence of compliance with paragraph (3A) of the said Regulation 3, and
- (g) **be accompanied by such fee**, if any, as may be payable in respect of such an appeal in accordance with regulations under *section 63*, and

shall be accompanied by such documents, particulars or other information relating to the appeal as the appellant considers necessary or appropriate.

Aqua Licence Appeals Board
Kilminchy Court
Dublin Road
Portlaois
Co Laois
R32 DTW5

Notice of Appeal Under Section 40(1) of Fisheries (Amendment) Act 1997 (No.23)

Date 27th December 2023

Factual Circumstances

I, Mr. Frank Burke, born on the [REDACTED] obtained a Fish Culture Licence in 1981. I operated the fish farm at Rafood, Kiltulla, Athenry, Co. Galway effectively since that time until late 2019 when it fell into partial disuse as some of the fish tanks and infrastructure required routine maintenance. I started to reduce stock slowly and [REDACTED] who is a mechanical engineer made arrangement for a registered civil contractor to carry out the works in 2020.

Unfortunately, the advent of Covid19 in early 2020 meant that plans to carryout maintenance on the farm had to be put on hold and that simultaneously the key market of restaurants and hospitality went into shut down for a large block of that time, which closed off the primary customer trade of the farm. [REDACTED]
[REDACTED]

In 2022 we decided to put the maintenance plans on hold and to restock the farm as our clients were actively requesting stock for restaurants around Galway city. It was at this time we were made aware that our steady supplier of the fish meal for the farm ceased trading and that it proved difficult to source an alternative supplier. We then made a business decision to carryout works on the farm. In 2023 this works were completed and we found a new supplier (Inland Fisheries Ireland) who applied for permission to supply fingerlings and meal to us. The order for fingerlings was placed.

The unexpected confluence of events as outlined above conspired against me meaning that the farm lay largely idle and unstocked from 2019. I feel I took reasonable and practical measures to restore the farm and continue its operation are to ensure it was viable.

Fish Farm Fee

We have fully complied with his subscriptions owing under the licence with the most recent payments made in December 2023.

Communication

- The Department of Marine communicated with me on the 23 February 2022, to indicate that as the farm had laid dormant for over two years, and advised the Minister would invoke his entitlement under legislation to revoke same, inactivity being one such criteria under the Act. We provided the department both orally and in writing of the factual statements outlined above and made it clear that we wish to preserve and continue the licence
- My [REDACTED] spoke to [REDACTED] on behalf and he encouraged me to get my son to apply for a licence in his own name. He said if my son sent in an application for a Aqua Culture licence it would be granted in two week. He explained that my licence will die with me and I was been given a great opportunity. He advised me that his job objective was to achieve compliance with the Common Fishery Policy rules and my current licence was too unrestrictive for compliance purposes. The updated Aquaculture licence contains terms and conditions which reflect the environmental protection required under EU and National law
- We received another identical letter form [REDACTED] in 2023 and we responded to the email address provided in the letter on 06th September 2023. We also requested that our Eircode be included in future responses as there are several people with the same name living in our community. In this email we requested to meet with the department at the site and show them all the repair work that was carried out to restore the farm. We received no response to this email or any further communication until we received to revoke the licence on the 19th December 2023. The letter I obtained is very poorly drafted. I am unsure whether my licence has been revoked or if the Minister is considering revoking the licence. Am I appealing the revoking of the licence or preparing a statement why my licence should not be revoked.

The Legal Framework

The principal Act dealing with Fish Farm Licences and related matters is the *Fisheries Consolidation Act 1959*. The Act has been amended by the *Fisheries (Amendment) Act 1997*.

The initial licence was granted under Section 15 of the Fisheries Consolidation Act 1959. It was always my understanding that under Section 15 (4) that the Minister could only revoke a fish culture licence under the following circumstances:

(a) if the licensee is convicted of an offence under the repealed enactments or an offence under any provision of this Act, or

(b) if he is satisfied that there has been a breach of any condition specified in the licence.

As highlighted above, Section 15(4) deals with the Revocation of Licences, and this can only occur where the licence holder has been convicted of an offence connected with the licence activity or where the licence holder has committed a breach of the conditions attaching to the licence. I don't have any convictions and from

reviewing the conditions attached to the licence and the correspondence from the Department, I do not see any breach of conditions alleged or considered to have occurred that fall under this Act. Thereby Section 15 does not appear satisfied.

The letter I received does not provide any reasons for the decision to revoke the licence or any reference to the legislation. The letter states the reasons for the Ministers decision are available to view online on a government site. The following notices appears:

Determination of Aquaculture Licensing Revocation - T09/084

The Minister has decided that it is in the public interest to revoke Fish Culture Licence FCL 71 for this site under Section 69(2) of the Fisheries (Amendment) Act, 1997. In making his determination the Minister considered those matters which by virtue of the Fisheries (Amendment) Act, 1997 and other relevant legislation he was required to have regard. Such matters include any submissions and observations received in accordance with statutory provisions

I have found reference to *Section 69(2) online and it states* : Where aquaculture in respect of which a licence has been granted has ceased for a continuous period of two years, the Minister shall, without compensation to the licensee, revoke the licence. "

GROUND FOR APPEAL:

In addition to the circumstances outlined at the beginning of this letter. I would like you to consider the following factual grounds on which I wish to raise an objection to the revocation of my licence farm and the argument that the licence should continue in being.

- I obtained a Fish Culture Licence and never agreed to move to an Aquaculture licence and only recently became aware that such licence exists.
- I have never been put on notice that any new conditions were attached to my original fish culture licence and have not received evidence of the same.
- I do not believe the cesser is applicable to my farm and/or licence, given that my licence was granted under the provisions of Section 15 of the 1959 Act and not the 1997 Act as mentioned in the public notice. I was not briefed on any "use it or lose it" clause that was applicable to my original licence.
- The Minister has never personally contacted me to inform me of any proposed revocation or an amendment to my licence before publishing this notice -see Section 68.3 which complements Section 69 of the 1997 Act referred to.
- I don't believe the two year rule applies to me and even if it did I believe I had exceptional circumstances for a temporary cessation of activity .
- The loss of this licence will have profound consequences on my livelihood and the fish farm that I have built up since the 1980's and want to continue to operate now [REDACTED] I have a constitutionally protected right to earn a livelihood and enjoys significant protection . I feel I have been

unfairly treated by the Department. Upon receipt of the cancellation letter I applied to the Department under the Freedom of Information for a full copy of my file and file notes as the communication to date as been informative and secretive and provided me with no clarity what was going on.

- I recently spoke to Patricia Buss from the Foreshore Management Division who advised there was an inspection of my farm in June . I have never received any notice of any planned inspection or any reports relating to this inspection.

I understand that entitlement to a licence is one which cannot be removed trivially or without very substantive attention to fair procedures, detail, and in accordance with clear process and procedure. To date I feel there has been errors in all these areas and I respectfully ask for a full-review of my file to avoid any judicial reviews in future which will be costly to both parties.

Regards

Frank Burke
Raford Kiltulla
Athenry
Co Galway
[REDACTED]

A handwritten signature in black ink that reads "Frank Burke". The signature is written in a cursive style with a large, looping initial "F".

Seoladh Fillte/Return Address

FRANK Burk

RaFORD



Éire
€7.85

24008
1760207486663
RegisteredPost



Postas íoctha ar Fud
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