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Explanatory Memorandum](#)



**AN BILLE FÁN ÚDARÁS UM CHAIGHDEÁIN DO
GHNÍOMHAÍOCHTAÍ EACHTRAÍOCHTA, 2000
ADVENTURE ACTIVITIES STANDARDS AUTHORITY
BILL, 2000**

*Mar a tionscnaíodh
As initiated*

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An tÚdarás um Chaighdeán do Ghníomhaíochtaí Eachtraíochta
The Adventure Activities Standards Authority

Acts Referred to

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Merchant Shipping (Investigation of Marine Casualties) Act, 2000	2000, No. 14
Safety, Health and Welfare at Work Act, 1989	1989, No. 7



AN BILLE FÁN ÚDARÁS UM CHAIGHDEÁIN DO
GHNÍOMHAÍOCHTAÍ EACHTRAÍOCHTA, 2000
ADVENTURE ACTIVITIES STANDARDS AUTHORITY
BILL, 2000

BILL

entitled

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A
BODY TO BE KNOWN AS AN tÚDARÁS UM CHAIGH-
DEÁIN DO GHNÍOMHAÍOCHTAÍ EACHTRAÍOCHTA
OR, IN THE ENGLISH LANGUAGE, THE ADVENTURE
ACTIVITIES STANDARDS AUTHORITY TO REGULATE
ADVENTURE ACTIVITIES AND TO DEFINE ITS FUNC-
TIONS AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

1.—(1) This Act may be cited as the Adventure Activities Standards Authority Act, 2000. Short title and commencement.

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

2.—(1) In this Act— Interpretation.

“adventure activities” has the meaning assigned to it by *section 8*;

“adventure activities operator” has the meaning assigned to it by *section 9*;

“the Authority” means the body established by *section 11*;

“the Director” means the chief officer of the Authority;

“the establishment day” means the day appointed by the Minister under *section 10*;

“functions” includes powers and duties and references to the performance of functions include, as respects powers and duties, references to the exercise of the powers and the carrying out of the duties;

“inspector” means an inspector appointed under *section 36*;

“the Minister” means the Minister for the Marine and Natural Resources;

“prescribed” means prescribed by regulations made by the Minister;

“superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death. 5

(2) (a) In this Act, a reference to a section or schedule is a reference to a section of, or a Schedule to, this Act unless it is indicated that reference to some other enactment is intended. 10

(b) In this Act, a reference to a subsection, paragraph or subparagraph is a reference 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. 15

Orders and regulations.

3—(1) An order under this Act may contain such consequential, ancillary or subsidiary provisions as the Minister considers necessary or expedient.

(2) The Minister may by order amend or revoke an order made under this Act (other than an order under *section 1* or *10*), including an order made under this subsection. 20

(3) Where it is proposed to make an order under this Act (other than an order under *section 1* or *10*), a draft of the order shall be laid before each House of the Oireachtas, and the order shall not be made until a resolution approving the draft has been passed by each such House. 25

(4) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which the House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 30

Offences.

4—(1) Any person who contravenes *section 17(6)* shall be guilty of an offence. 35

(2) Any person who contravenes *section 32(1)* or *33(7)* shall be guilty of an offence.

(3) A person who wilfully gives, for the purpose of entry in the register of a particular information which he or she knows to be false or misleading in a material respect or makes any such false or misleading statement reckless as to its truth or otherwise, shall be guilty of an offence. 40

(4) A person who obstructs or interferes with an inspector when the inspector is exercising a power under *section 36*, or who fails or refuses to comply with a request or requirement of an inspector under that section, shall be guilty of an offence. 45

(5) A person who wilfully gives to an inspector information which he or she knows to be false or misleading in a material respect or makes any such false or misleading statement reckless as to its truth or otherwise, shall be guilty of an offence.

5 (6) A person who continues to operate as an adventure activities operator in respect of a specified adventure activity after he or she has been directed to suspend or cease that adventure activity in accordance with the provisions of any scheme made under *section 35* shall be guilty of an offence.

10 (7) Where an offence under this Act is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to have been facilitated by any neglect on the part of any director, manager, secretary or other officer of such body, such
15 a person shall also be guilty of an offence.

5.—(1) A person guilty of an offence under *section 4(1)* shall be liable, on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding six months or, at the discretion of the court, to both such fine and such imprisonment. Penalties.

20 (2) A person guilty of an offence under *section 4(2), 4(3), 4(4) or 4(5)* shall be liable—

(a) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding six months or, at the discretion of the court, to both such fine and such
25 imprisonment, or

(b) on conviction on indictment, to a fine not exceeding £10,000 or to imprisonment for a term not exceeding two years or, at the discretion of the court, to both such fine and such imprisonment.

30 (3) A person guilty of an offence under *section 4(6)* shall be liable—

(a) on summary conviction, to a fine not exceeding £1,500, together with a fine not exceeding £50 per day for each day on which the failure to comply with the direction continues, provided however that the fines shall not
35 exceed £1,500 in total, or to imprisonment for a term not exceeding six months or, at the discretion of the court, to both such fine and such imprisonment, or

(b) on conviction on indictment, to a fine not exceeding £10,000, together with a fine not exceeding £500 per day for each day on which the failure to comply with the direction continues, or to imprisonment for a term not exceeding two years or, at the discretion of the court, to both such fine and such imprisonment.

45 6.—An offence under this Act may be prosecuted summarily by the Authority. Prosecution of offences.

7.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of monies provided by the Oireachtas and Expenses.

the expenses incurred by the Minister for Finance in the administration of this Act shall be paid out of monies provided by the Oireachtas.

PART II

Adventure Activities Standards Authority 5

Adventure activities.

8—(1) “Adventure activities” means any one or more of the following activities, that is to say:

- (a) hill-walking in areas more than 300 metres above sea level;
- (b) orienteering in areas more than 300 metres above sea level;
- (c) caving; 10
- (d) dinghy sailing;
- (e) kayaking;
- (f) canoeing;
- (g) surfing with a surf board;
- (h) wind-surfing; 15
- (i) scuba-diving;
- (j) snorkelling;
- (k) abseiling;
- (l) archery;
- (m) rock climbing. 20

(2) The Minister may, after consultation with the Authority, by order amend the definition of adventure activities contained in *subsection (1)*, whether by adding to or deleting from the list of adventure activities specified in *subsection (1)*, or otherwise.

(3) References in this Act to *subsection (1)* or to a provision of that subsection shall be construed in accordance with any amendment under this section. 25

Adventure activities operator.

9—(1) “Adventure activities operator” means a person who provides to members of the public for payment or reward—

- (a) training, instruction, supervision or leadership in an adventure activity, 30
- (b) facilities (including equipment for hire at a specified location) for the carrying on of an adventure activity, or
- (c) any two or more of the services specified in *paragraphs (a) and (b)*. 35

(2) The Minister may, after consultation with the Authority, by order amend the definition of adventure activities operator contained in *subsection (1)*.

(3) References in this Act to *subsection (1)* or to a provision of that subsection shall be construed in accordance with any amendment under this section.

5 **10.**—The Minister may by order appoint a day to be the establishment day for the purposes of this Act.

10 **11.**—(1) On the establishment day there shall stand established a body to be known as *Údarás um Chaighdeáin do Ghníomhaíochtaí Eachtraíochta* or, in the English language, the Adventure Activities Standards Authority, and in this Act referred to as “the Authority”, to perform the functions conferred on it by this Act.

(2) The provisions of the *Schedule* shall have effect with respect to the Authority.

15 **12.**—(1) The Minister may, after consultation with the Authority, by order vary the number of members of the Authority for the time being standing specified in *paragraph 2* of the *Schedule*.

(2) References in this Act to *paragraph 2* of the *Schedule* shall be construed in accordance with any order made under this section.

20 (3) An order under this section shall only be made after consultation with any other Minister of the Government who, having regard to his or her function, ought, in the opinion of the Minister, to be consulted.

25 **13.**—(1) The Minister may, after consultation with the Authority, by order vary the number of ordinary members of the Authority that may be nominated by any person and the persons that may nominate ordinary members of the Authority for the time being standing specified in *paragraph 8* of the *Schedule*.

(2) References in this Act to *paragraph 8* of the *Schedule* or to a provision of that paragraph shall be construed in accordance with any order made under this section.

30 (3) An order under this section shall only be made after consultation with any other Minister of the Government who, having regard to his or her function, ought, in the opinion of the Minister, to be consulted.

35 **14.**—(1) The functions of the Authority shall, subject to the provisions of this Act, be to promote, encourage, foster, facilitate and regulate the safe operation of adventure activities in the State.

(2) Without prejudice to the generality of *subsection (1)*, the principal powers of the Authority shall be—

40 (a) to promote, encourage, foster and facilitate activities and measures directed towards the safe operation of adventure activities in the State;

(b) to administer such schemes, grants and other financial facilities for the promotion, encouragement, fostering, facilitation and regulation of the safe operation of adventure

activities as may be authorised from time to time by the Minister, with the consent of the Minister for Finance;

(c) to advise the Minister on any matter relating to its functions.

(3) In carrying out its functions, the Authority shall keep itself informed of general developments and of any policies and objectives of the Government that may have a bearing on those functions. 5

(4) The Authority may provide or procure the provision of educational, training and advisory services for the purpose of enabling it to perform any of its functions.

(5) The Authority may carry out such research or investigations as it considers necessary or expedient for the performance of its functions. 10

(6) The Authority shall have all such powers as are necessary or expedient for the purposes of its functions.

(7) Such functions of, services to be provided by or activities to be carried out by, the Authority as it may determine may be performed, provided or carried out by or in conjunction with such other person as the Authority may, with the consent of the Minister, determine. 15

Conferral of
additional functions
on Authority.

15.—The Minister may, if he or she so thinks fit, by order—

(a) confer on the Authority such additional functions connected with the functions for the time being of the Authority or the services or activities that the Authority is authorised for the time being to provide or carry on as he or she considers appropriate, and 20

(b) make such provision as he or she considers necessary or expedient in relation to matters ancillary to or arising out of the conferral on the Authority of functions under this section or the performance by the Authority of functions so conferred (including provision for the transfer to the Authority of any property held by the Minister for the purposes of functions conferred on the Authority under this section). 25 30

Investigations and
special reports.

16.—(1) (a) The Authority may at any time direct any of its staff or any other competent person as it considers appropriate to investigate the circumstances surrounding any accident, incident, occurrence or situation or any other matter related to the general purposes of this Act and make a report to it, to be known and in this section referred to as “a special report”, on such matter. 35 40

(b) The purposes of an investigation under this subsection shall be to determine the cause of the accident, incident, occurrence, or situation and the adequacy of any codes of practice published or approved of under *section 34* with a view to recommending changes, where appropriate, and shall not be for the purposes of attributing blame or responsibility for the accident, incident, occurrence, situation or other matter. 45

(c) A person who is not an inspector undertaking an investigation under this section shall, for the purposes of such investigation, have all the powers of an inspector under this Act.

5 (2) In the case of an investigation and special report made under *subsection (1)* (otherwise than by a member of the staff of the Authority), the Authority may pay to the person making it such fees and expenses as the Minister may, with the approval of the Minister for Finance, determine.

10 (3) The Authority may, to such extent as the Minister may determine, defray the costs, other than those incurred under *subsection (2)*, if any, incurred in the preparation of a special report.

(4) A copy of a special report made under *subsection (1)* shall be presented to the Minister as soon as may be and the Authority shall
15 cause such report to be made public within a reasonable time and in such manner as it thinks fit.

(5) The Authority shall not have power to direct an investigation into an accident at a place of work (within the meaning of the Safety, Health and Welfare at Work Act, 1989) or in Irish waters (within
20 the meaning of the Merchant Shipping (Investigation of Marine Casualties) Act, 2000) save with the consent of the Minister given with the concurrence of any other Minister of the Government he or she considers appropriate.

25 **17.—**(1) Before publishing a report under *section 16*, the Authority shall send a draft of the report or sections of the draft report to any person who, in its opinion, is likely to be adversely affected by the publishing of the report or sections or, if that person is deceased, then such person as appears to the Authority best to represent the interest of that person.

Preparation of draft report and observations of affected persons.

30 (2) A person to whom the Authority sends a draft in accordance with *subsection (1)* may, within a period of 28 days commencing on the date on which the draft is sent to the person, or such further period, not exceeding 28 days, as the Authority in its absolute discretion thinks fit, submit to the Authority in writing his or her observations on the draft.
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(3) A person to whom a draft has been sent in accordance with *subsection (1)* may apply to the Authority for an extension, in accordance with *subsection (2)*, of the period in which to submit his or her observations on the draft.

40 (4) Observations submitted to the Authority in accordance with *subsection (2)* shall be included in an appendix to the published report, unless the person submitting the observations requests in writing that the observations not be published.

(5) Where observations are submitted to the Authority in accordance with *subsection (2)*, the Authority may, at its discretion—
45

(a) alter the draft before publication or decide not to do so, or

(b) include in the published report such comments on the observations as it thinks fit.

(6) A person to whom a draft has been sent in accordance with *subsection (1)* shall not publish or publicise, or cause to have published or publicised, the draft or its contents, except with the prior consent in writing of the Authority.

Power to direct an inquiry.

18.—(1) The Authority may, where it considers it necessary to do so and with the consent of the Minister, direct an inquiry to be held into any accident, incident, occurrence or situation or any other matter related to the general purposes of this Act. 5

(2) The following provisions shall have effect in relation to an inquiry under this section— 10

- (a) the Authority shall appoint a competent person to hold the inquiry, and may appoint any person possessing legal or special knowledge to act as assessor to assist in the inquiry;
- (b) the person or persons appointed (hereinafter referred to as “the tribunal”) shall hold the inquiry in such manner and under such conditions as the tribunal may think appropriate for enabling it to conduct the inquiry, and for enabling the tribunal to make its report; 15
- (c) the tribunal shall have for the purposes of the inquiry all the powers of a judge of the District Court when hearing a prosecution for an offence under this Act, and all the powers of an inspector under this Act, and in addition, power— 20
 - (i) to enter and inspect any premises or place the entry or inspection whereof appears to the tribunal requisite for the said purposes; 25
 - (ii) by summons signed by the tribunal to require the attendance of all such persons as it thinks fit to call before it and examine for the said purposes, and to require answers or returns to such inquiries as it thinks fit to make; 30
 - (iii) to require the production in legible form of all records, whether kept in manual form or otherwise, books, papers and documents which it considers necessary for the said purposes; 35
 - (iv) to administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by him or her in his or her examination. 40

(3) Persons attending as witnesses before the tribunal shall be allowed such expenses as would be allowed to witnesses attending before a court of record and, in case of dispute as to the amount to be allowed, the dispute shall be referred by the tribunal to a taxing master of the High Court who, on request signed by the tribunal, shall ascertain and certify the proper amount of the expenses. 45

(4) The tribunal shall make a report to the Authority stating the causes and circumstances of the subject of the inquiry and adding any observations which the tribunal thinks right to make.

(5) The Authority may cause the report of a tribunal made under this section to be made public at such time and in such manner as it thinks fit.

(6) In the case of an inquiry and report under this section, the Authority may pay to the person or persons undertaking it such fees and expenses as the Minister may, with the consent of the Minister for Finance, determine.

(7) The Authority may, to such extent as the Minister may determine, defray the other costs, if any, of such inquiry and report.

(8) The tribunal may require the fees and expenses incurred in and about an inquiry under this section (including the fees of any persons appointed to act as assessors) to be paid in whole or in part by any person summoned before it who appears to the tribunal to be, by reason of any act or default on his or her part or on the part of any servant or agent of his or hers, responsible in any degree for the subject of the inquiry but any such expenses not required to be paid shall be deemed to be part of the expenses of the Authority in the administration of this Act.

(9) The Authority shall give notice of intention to conduct an inquiry under this section by a notice published in the *Iris Oifigiúil* and at least one daily newspaper circulating in the State setting out the terms of reference of the inquiry.

(10) The Authority shall not have power to direct an inquiry into an accident at a place of work (within the meaning of the Safety, Health and Welfare at Work Act, 1989) or in Irish waters (within the meaning of the Merchant Shipping (Investigation of Marine Casualties) Act, 2000) save with the consent of the Minister given with the concurrence of any other Minister of the Government he or she considers appropriate.

19.—(1) The Minister, the Authority, a person undertaking an investigation under *section 16*, a person appointed to hold an inquiry under *section 18*, a person appointed to act as assessor to an inquiry under *section 18*, a person appointed to be an inspector under *section 36* and any other person involved in such an investigation or inquiry or in the preparation of a report under this Act shall be immune from all claims for damages arising from the conduct of the investigation or inquiry and the publication of the report of such an investigation or inquiry, where they act in good faith.

Immunities from claims.

(2) In *subsection (1)*, “report” includes a draft report referred to in *section 17(1)* and it also includes written observations on a draft report and comments on any such observations, as referred to in *section 17*.

20.—(1) Subject to the provisions of this section, the Authority or such other person as may be engaged by the Authority for the performance of that function, the provision of that service or the carrying on of that activity may make such charges as it considers appropriate in consideration of the performance by it of its functions, the provision by it of services (other than a service consisting of the provision of advice to the Minister) and the carrying on by it of activities.

Charges for services.

(2) The determination of the amounts of charges by the Authority or such other persons for educational, training and advisory services

shall be subject to the approval of the Minister and the Minister for Finance.

Director.

21.—(1) There shall be a chief officer of the Authority who shall be known, and is referred to in this Act, as the Director.

(2) The Director shall carry on and manage and control generally the administration and business of the Authority and perform such other functions as may be determined by the Authority. 5

(3) The Director shall hold office under a contract of service in writing containing such terms and conditions (including terms and conditions relating to remuneration and superannuation) as may be approved of by the Minister with the consent of the Minister for Finance. 10

(4) The Director shall be paid such allowances for expenses incurred by him or her in the performance of his or her functions as may be determined by the Minister with the consent of the Minister for Finance. 15

(5) The first Director shall be appointed, and may be removed from office at any time, by the Minister; each subsequent Director shall be appointed, and may be removed from office at any time, by the Authority with the consent of the Minister. 20

(6) The Director shall devote the whole of his or her time to his or her duties as Director and shall not hold any other office or position without the consent of the Authority.

(7) The Director may make proposals to the Authority on any matter relating to its activities. 25

(8) The Director shall not be a member of the Authority.

Staff of Authority.

22.—(1) The Authority may appoint such number of persons to be members of the staff of the Authority as it may determine with the consent of the Minister and the Minister for Finance.

(2) A member of the staff of the Authority (other than the Director) shall be paid, out of the monies at the disposal of the Authority, such remuneration and allowances for expenses incurred by him or her as the Authority may, with the consent of the Minister and the Minister for Finance, determine. 30

(3) The grades of the staff of the Authority and the number of staff in each grade shall be determined by the Authority, with the consent of the Minister and the Minister for Finance. 35

(4) The Authority may perform any of its functions through or by the Director or any other member of its staff duly authorised by the Authority in that behalf. 40

Superannuation of staff of Authority.

23.—(1) The Authority may, with the consent of the Minister and the Minister for Finance, make a scheme or schemes for the granting of superannuation benefits to or in respect of such members of staff of the Authority (other than the Director) as it may think fit.

(2) Every such scheme shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme and different times and conditions may be fixed in respect of different classes of persons.

5 (3) Every such scheme may be amended or revoked by a subsequent scheme made under this section.

10 (4) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

15 (5) No superannuation benefit shall be granted by the Authority nor shall any other arrangements be entered into by the Authority for the provision of such a benefit to or in respect of a member of the staff of the Authority, otherwise than in accordance with a scheme or schemes under this section.

20 (6) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next twenty-one days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything done thereunder.

24.—(1) Where a member of the Authority is—

(a) nominated as a member of Seanad Eireann, or

25 (b) nominated as a candidate for election to either House of the Oireachtas or to the European Parliament, or

(c) regarded, pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to such parliament to fill a vacancy,

30 he or she shall thereupon cease to be a member of the Authority.

(2) Where a person employed by the Authority is—

(a) nominated as a member of Seanad Eireann, or

(b) nominated as a candidate for election to either House of the Oireachtas or to the European Parliament, or

35 (c) regarded, pursuant to the said Part XIII as having been elected to the European Parliament to fill a vacancy,

40 he or she shall thereupon stand seconded from employment with the Authority and shall not be paid by, or be entitled to receive from, the Authority any remuneration or allowances in respect of the period commencing on such nomination or election or when he or she is so regarded as having been elected, as the case may be, and ending when he or she ceases to be a member of either such House or such Parliament.

45 (3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament shall, while he or she is so

Membership of either House of Oireachtas or of European Parliament by members or staff of Authority.

entitled or is such a member, be disqualified from becoming a member of the Authority or the staff of the Authority.

(4) Without prejudice to the generality of *subsection (2)*, that subsection shall be construed as prohibiting, *inter alia*, the reckoning of a period mentioned in that subsection as service with the Authority for the purposes of any superannuation benefits. 5

Grants to
Authority.

25.—The Minister may from time to time, with the consent of the Minister for Finance and out of monies provided by the Oireachtas, make grants to the Authority of such sums as the Minister may determine for the purposes of expenditure by the Authority in the performance of its functions. 10

Accounts and audits
of Authority.

26.—(1) The Authority shall keep in such form as may be approved of by the Minister, with the concurrence of the Minister for Finance, all proper and usual accounts of all monies received or expended by the Authority, including an income and expenditure account and balance sheet and, in particular, shall keep all such special accounts as the Minister may from time to time direct. 15

(2) The Authority shall, whenever so requested by the Minister, permit any person appointed by him or her to examine the books and accounts of the Authority in respect of any financial year or other period and shall facilitate any such examination, and the Authority shall pay such fee therefor as may be fixed by the Minister. 20

(3) Accounts kept in pursuance of this section shall be submitted as soon as may be, but not later than six months after the end of the financial year of the Authority to which they relate, to the Comptroller and Auditor General for audit, and a copy of the income and expenditure account and of the balance sheet and of such other (if any) of its accounts as the Minister may direct and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister as soon as may be and the Minister shall cause copies of each of the documents aforesaid to be laid before each House of the Oireachtas. 25 30

(4) The Minister may amend or extend the period within which the Authority shall submit or present accounts under *subsection (3)*.

(5) The financial year of the Authority shall be the period of twelve months ending on the 31st day of December in any year and, for the purposes of this provision, the period commencing on the date of the commencement of this section and ending on the 31st day of December, 2001, shall be deemed to be a financial year. 35

Estimates, reports
and information to
Minister.

27.—(1) The Authority shall submit estimates of its income and expenditure to the Minister in such form, in respect of such periods, and at such times as may be directed by him or her and shall furnish to the Minister any information which he or she may require in relation to such estimates. 40

(2) (a) Where the Minister receives an estimate prepared for the purposes of *subsection (1)*, the Minister may confirm the estimate, with or without modification, or refuse to confirm the estimate. 45

(b) Where the Minister refuses to confirm an estimate, the Minister may require the Authority to prepare and submit for the purposes of *subsection (1)* a fresh estimate of its expenditure and receipts for the year or other period to which the unconfirmed estimate relates.

(c) The Authority shall, as soon as may be, comply with a requirement under *subsection (1)*, and that subsection shall apply to estimates prepared in pursuance of a requirement under this subsection as it applies to estimates prepared in pursuance of that subsection.

(3) The Authority shall not, without the permission of the Minister, incur any expenditure other than expenditure included in an estimate as confirmed under this section by the Minister.

(4) As soon as may be after the end of each financial year of the Authority, but not later than six months thereafter, the Authority shall make a report to the Minister of its activities during that year and the Minister shall, within two months of the receipt of such report, cause copies of the report to be laid before each House of the Oireachtas.

(5) Each report under *subsection (4)* shall include information in such form and regarding such matters as the Minister may direct.

(6) The Minister may amend or extend the period within which the Authority shall report to the Minister under *subsection (4)*.

(7) The Authority shall, whenever so requested by the Minister, furnish to him or her information in relation to such matters as he or she may specify concerning or relating to the scope of its activities, or its strategy, generally or in respect of any estimate specified in *subsection (1)* or any report specified in *subsection (4)* or the policy and activities, other than day to day activities, of the Authority.

28.—(1) The Authority may accept gifts of money, land (subject to the consent of the Minister) or other property, upon such trusts or conditions, if any, as may be specified by the donor.

(2) The Authority shall not accept a gift if the trusts or conditions attached to it would be inconsistent with its functions.

(3) Any funds of the Authority which are a gift or the proceeds of a gift to it may, subject to any terms or conditions of the gift, be invested by the Authority in any manner in which a trustee is empowered by law to invest in a trust fund.

29.—The Authority may, for the purpose of providing for current or capital expenditure, from time to time borrow money (whether on the security of the assets of the Authority, or otherwise) including money in a currency other than the currency of the State, but shall not do so without the consent of the Minister and the Minister for Finance.

30.—(1) The Authority may establish committees to assist and advise it in relation to the performance of its functions.

(2) A committee may include persons who are not members of the Authority.

(3) The Authority may appoint a person to be chairman of a committee established under this section.

(4) A committee shall regulate the procedure and business of the committee.

(5) There may be paid out of the income of the Authority to members of a committee established under this section such allowances for expenses incurred by them as the Authority may, with the consent of the Minister and the Minister for Finance, determine. 5

Directions by
Minister to
Authority.

31.—(1) The Minister may give a direction in writing to the Authority in relation to policy generally, in relation to any matter specified in a report furnished to him or her under *section 27* or in relation to any information furnished to him or her under *section 27*. 10

(2) The Authority shall comply with a direction of the Minister under *subsection (1)*.

Disclosure of
information.

32.—(1) A person shall not, without the consent of the Authority, disclose any information obtained by him or her while performing (or as a result of having performed) duties as a member, or member of the staff of or an advisor or consultant to or an authorised inspector of the Authority. 15

(2) Nothing in *subsection (1)* shall prevent the disclosure of information in a report made to the Authority or by or on behalf of the Authority to the Minister. 20

PART III

Regulation of Operators

Register of
operators.

33.—(1) The Authority shall establish and maintain a register of all adventure activities operators in the State, referred to subsequently in this Act as “the register”. 25

(2) The Authority may enter in the register such particulars as it, after consultation with the Minister, considers appropriate.

(3) The Authority may amend an entry in or delete an entry from the register. 30

(4) The register may be established and maintained in a form that is not legible if it is capable of being converted into a legible form.

(5) The register shall be made available for inspection by members of the public at reasonable times during normal working hours. 35

(6) The Minister shall have access to and may inspect and examine the register and may take or be supplied with such information from the register as he or she considers appropriate for the purpose of his or her functions, and may take or be supplied with copies of the register or of such extracts from the register as he or she considers appropriate for the purpose of his or her functions. 40

(7) A person shall not carry on an adventure activity unless he or she is entered in the register as an adventure activities operator in respect of that adventure activity. 45

5 (8) (a) If in any proceedings under this Act a question arises as to whether a person was at the relevant time registered in the register as an adventure activities operator in respect of an adventure activity, a certificate signed by a person authorised by the Authority and stating any fact relating to the question shall be evidence of that fact.

10 (b) A document purporting to be a certificate described in *paragraph (a)* shall be deemed to be such a certificate, and to be signed in accordance with the authorisation, unless the contrary is shown.

34.—(1) The Authority may and, at the request of the Minister, Codes of practice.
shall—

(a) prepare and publish codes of practice, or

15 (b) approve of a code of practice or any part of a code of practice drawn up by any other body

for the purpose of providing practical guidance with respect to the safe operation of each of the adventure activities specified in *section 8(1)*.

20 (2) The Authority shall, before publishing or approving of a code of practice, consult with the Minister and any person or body that appears to the Authority to be appropriate, or that may be prescribed.

25 (3) Where the Authority publishes or approves of a code of practice or approves of any part of a code of practice, it shall publish a notice to that effect in the *Iris Oifigiúil*, specifying the adventure activity in relation to which the code is published or approved of and the date from which the code shall have effect.

30 (4) The Authority may, after consultation with the Minister and any person or body that appears to the Authority to be appropriate, or that may be prescribed—

(a) amend or revoke a code of practice prepared and published by it under this section, or

(b) withdraw its approval of any code of practice or part of a code of practice approved of by it under this section.

35 (5) Where the Authority amends or revokes, or withdraws its approval of a code of practice or any part of a code of practice published or approved of under this section, it shall publish a notice to that effect in the *Iris Oifigiúil*.

40 (6) An adventure activities operator shall comply with a code of practice or any part of a code of practice published or approved of under this section.

45 (7) A failure by an adventure activities operator to observe a code of practice or any part of a code of practice published or approved of under this section shall not of itself render that person liable to any civil or criminal proceedings.

(8) A document bearing the seal of the Authority and purporting to be a code of practice or part of a code of practice published or approved of by the Authority under this section shall be admissible in evidence in any proceedings under this Act.

Regulatory
schemes.

35.—(1) The Authority may, after consultation with the Minister, make a scheme or schemes for the regulation of adventure activities in the State.

(2) The Authority may, after consultation with the Minister, make a scheme amending or revoking a scheme under this section, including a scheme under this subsection. 5

(3) Without prejudice to the generality of *subsection (1)*, a scheme for the regulation of adventure activities may provide for any or all of the following:

(a) the carrying out of inspections by or on behalf of the Authority; 10

(b) the circumstances under which (including non-compliance with a code of practice published or approved of under *section 34*) and the manner in which the Authority may direct the suspension or cessation of an adventure activity; 15

(c) the circumstances under which (including non-compliance with a code of practice published or approved of under *section 34*) and the manner in which the Authority may direct the removal of an adventure activities operator from the register; 20

(d) the publication of any directions issued by the Authority to an adventure activities operator in accordance with any scheme under this section.

(4) An adventure activities operator shall comply with any scheme made under *subsection (1)*. 25

(5) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next twenty-one days on which the House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 30

PART IV

Inspections

Inspectors.

36.—(1) The Authority may appoint such and so many persons as it thinks fit to be inspectors for the purposes of this Act and may revoke any such appointment. 35

(2) The Authority shall issue to every inspector appointed by it under *subsection (1)* a warrant of appointment and, when exercising a power conferred on an inspector by or under this Act, the inspector shall, on being so requested by any person affected, produce the warrant or a copy of it, duly authenticated by the Authority, to that person. 40

(3) An inspector may, for the purposes of ascertaining whether this Act or any code of practice published or approved of under *section 34* or any scheme made under *section 35* is being complied with, do any or all of the following: 45

(a) at all reasonable times enter any premises or place where he or she reasonably believes that an adventure activities operation is being carried on or that it is being used for a purpose connected with an adventure activities operation or that equipment used for that purpose is at the premises or place,

(b) inspect the premises or place, the equipment and any documents or records kept or used on the premises or place or equipment,

(c) where he or she has reasonable grounds for suspecting that at any premises or place an offence under this Act has been or is being committed, use reasonable force where necessary in order to enter the premises or place, provided he or she is so authorised by a warrant of a judge of the District Court under *section 37* or, if it appears to the inspector to be a case of emergency and that the delay in obtaining a warrant would be likely to endanger life, then without being so authorised,

(d) when exercising a power under this section, be accompanied by a member of the Garda Síochána if the inspector has reasonable cause to apprehend a serious obstruction in the execution of the inspector's duty,

(e) require any person found at the premises or place or on or in the equipment to produce to the inspector any such document or record (including, in the case of information in a non-legible form, a copy of or extract from such information in permanent legible form) kept or used for a purpose connected with an adventure activities operation,

(f) inspect, examine and take copies of or extracts from or take away, if necessary, for the purposes of inspection or examination, any document or record (including in the case of information in a non-legible form a copy of an extract from such information in permanent legible form) kept or used in connection with the operation of an adventure activity and require the person by whom such document or record is kept or who produced the document or record to certify a copy thereof as a true copy,

(g) inspect, examine and take copies of or take away, if necessary, for the purposes of inspection or examination, any photograph, video or other recording, whether of sound or image, kept or used in connection with the operation of an adventure activity and require the person by whom such photograph, video or other recording is kept or who produced the document or record to certify a copy thereof as a true copy,

(h) investigate any accident involving an adventure activity, and

(i) undertake, or arrange for the undertaking of, the examination, testing, processing or dismantling of any equipment as may be necessary.

(4) For the purpose of exercising his or her powers under *subsection (3)* an inspector may detain equipment during such time as is required for the exercise of those powers.

(5) An inspector shall not, other than with the consent of the occupier, enter any part of a premises used as a private dwelling unless he or she has obtained a warrant from the District Court under *section 37* authorising such entry.

(6) Where an inspector in the exercise of his or her powers under this section is prevented from entering any premises, an application may be made under *section 37* for a warrant authorising such entry. 5

(7) Where the Authority is satisfied that an inspector appointed by it has, in a *bona fide* manner, exercised a power conferred on the inspector by or under this Act, the appointing authority shall indemnify the inspector against all actions or claims however arising in respect of the exercise by the inspector of that power. 10

Search warrants.

37.—If a judge of the District Court is satisfied on the sworn information of an inspector that there are reasonable grounds for suspecting that— 15

- (a) a premises or place is used for a purpose connected with adventure activities,
- (b) equipment used for that purpose is at the premises or place,
- (c) there is information or material relating to adventure activities required by an inspector for examination held in any premises or place or part of any premises or place, or 20
- (d) an offence under this Act has been or is being committed therein,

the judge may issue a warrant authorising an inspector, accompanied by other inspectors or by a member or members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production if so required of the warrant, to enter that premises or place, if need be by reasonable force, and exercise all or any of the powers conferred on an inspector under *section 36* published or approved of under this section. 25 30

Section 11.

SCHEDULE

An tÚdarás um Chaighdeáin do Ghníomhaíochtaí Eachtraíochta The Adventure Activities Standards Authority

1. The Authority shall be a body corporate with perpetual succession and an official seal and power to sue and be sued in its corporate name and, with the consent of the Minister, to acquire, hold and dispose of land or an interest in land and to acquire, hold and dispose of any other property. 35

2. The Authority shall consist of its chairperson and 14 ordinary members. 40

3. The chairperson of the Authority shall be appointed by the Minister.

4. The chairperson of the Authority may at any time resign his or her office by letter addressed and delivered to the Minister.

5. The Minister may at any time remove the chairperson of the Authority from office. 45

6. Subject to the provisions of this Schedule, the chairperson of the Authority shall hold office on such terms and conditions as the Minister may determine.
7. The chairperson of the Authority shall be paid, out of monies at the disposal of the Authority, such remuneration (if any) and allowances for expenses incurred by him or her (if any) as the Minister may, with the consent of the Minister for Finance, determine.
8. Of the 14 ordinary members of the Authority—
- (a) one ordinary member shall be appointed by the Minister on the nomination of the Minister for Tourism, Sport and Recreation,
 - (b) one ordinary member shall be appointed by the Minister on the nomination of the Minister for Education and Science,
 - (c) one ordinary member shall be appointed by the Minister from a member of the staff of his or her own department of State,
 - (d) one ordinary member shall be appointed by the Minister on the nomination of the National Authority for Occupational Safety and Health,
 - (e) four ordinary members shall be appointed by the Minister on the nomination of the national governing bodies for adventure activities, as recognised by the Irish Sports Council,
 - (f) four ordinary members shall be appointed by the Minister on the nomination of adventure activities operators not represented by the national governing bodies referred to at *subparagraph (e)*,
 - (g) one ordinary member shall be appointed by the Minister as representative of the staff of adventure activities operators,
 - (h) one ordinary member shall be appointed by the Minister on the basis of his or her having such knowledge, skills or experience as the Minister considers appropriate for membership of the Authority,
 - (i) not less than four shall be women and not less than four shall be men.
9. Subject to the provisions of this Schedule, each ordinary member of the Authority shall hold office on such terms and conditions as the Minister may determine.
10. (1) The term of office of the chairperson of the Authority shall be 5 years.
- (2) (a) Subject to the provisions of this subparagraph, the term of office of an ordinary member of the Authority shall be 5 years.
- (b) The term of office of 4 (determined by the Minister by lot) of the first fourteen persons appointed to be ordinary members of the Authority shall be 3 years.

- (c) The term of office of a further 5 (determined by the Minister by lot) of the first fourteen persons appointed to be ordinary members of the Authority shall be 4 years.
11. (1) If a member of the Authority dies, resigns, becomes disqualified or is removed from office, the Minister may appoint a person to be a member of the Authority to fill the casual vacancy so occasioned and the person so appointed shall be appointed in the same manner as the member of the Authority who occasioned the casual vacancy. 5
- (2) A person appointed to be a member of the Authority by virtue of this paragraph shall hold office for the remainder of the term of office of the member who occasioned the casual vacancy he or she is appointed to fill and shall be eligible for reappointment as a member of the Authority. 10
12. A member of the Authority whose term of office expires by effluxion of time shall be eligible for reappointment as a member of the Authority. 15
13. The Minister may at any time remove an ordinary member of the Authority from office.
14. An ordinary member of the Authority may resign his or her office as a member by letter addressed and delivered to the Minister. 20
15. A member of the Authority shall be disqualified from holding and shall cease to hold office if he or she is adjudged bankrupt or makes a composition or arrangement with creditors or is sentenced by a court of competent jurisdiction to a term of imprisonment or ceases to be ordinarily resident in the State. 25
16. Each ordinary member of the Authority shall be paid, out of monies at the disposal of the Authority, such remuneration (if any) and allowances for expenses (if any) incurred by him or her as the Minister may (with the consent of the Minister for Finance) sanction. 30
17. The Authority shall hold such and so many meetings as may be necessary for the performance of its functions.
18. The Minister may fix the date, time and place of the first meeting of the Authority.
19. The quorum for a meeting of the Authority shall be 9. 35
20. At a meeting of the Authority—
- (a) the chairperson of the Authority shall, if present, be the chairperson of the meeting, and
- (b) if and so long as the chairperson of the Authority is not present or if the office of chairperson is vacant, the members of the Authority who are present shall choose one of their number to be chairperson of the meeting. 40
21. The chairperson of the Authority and each ordinary member of the Authority present at a meeting thereof shall have a vote.
22. Every question at a meeting of the Authority shall be determined by a majority of the votes of the members present and voting on the question and, in the case of an equal division of the votes, the chairperson of the meeting shall have a second or casting vote. 45

23. The Authority may act notwithstanding one or more than one vacancy among its members.

24. Subject to the provisions of this Schedule, the Authority shall regulate, by standing orders or otherwise, the procedure and business of the Authority.

25. The Authority shall, as soon as may be after its establishment, provide itself with a seal.

26. The seal of the Authority shall be authenticated by—

10 (a) the signature of the chairperson of the Authority or some other member thereof authorised by the Authority to act in that behalf, and

(b) the signature of an officer of the Authority authorised by the Authority to act in that behalf.

15 27. Judicial notice shall be taken of the seal of the Authority and every document purporting to be an instrument made by the Authority and to be made with the seal (purporting to be authenticated in accordance with *paragraph 26*) of the Authority shall be received in evidence and be deemed to be such instrument without proof, unless the contrary is shown.



**AN BILLE FÁN ÚDARÁS UM CHAIGHDEÁIN DO
GHNÍOMHAÍOCHTAÍ EACHTRAÍOCHTA, 2000
ADVENTURE ACTIVITIES STANDARDS AUTHORITY
BILL, 2000**

EXPLANATORY AND FINANCIAL MEMORANDUM

General

The purpose of this Bill is to provide for the enactment of a new legislative regime to regulate the safe provision of adventure activities in Ireland by way of a new statutory authority. This legislative framework is a key recommendation in the Report of the Interdepartmental Working Group on a Review of the Safety Regulation of Adventure/Activity Centres in Ireland which was published in June 1999.

In this regard the Bill provides for:

- the definition of adventure activities and provision to cater for amendments at a later stage;
- the definition of adventure activity operators and provision to cater for amendments at a later stage;
- the establishment of an independent Adventure Activities Standards Authority with fifteen members;
- procedural aspects relating to the operation of the Authority;
- a mandatory requirement for adventure activity operators to register with the Authority in respect of specified adventure activities;
- the development of mandatory codes of practice by the Authority for specified adventure activities;
- the implementation by the Authority of a mandatory regulatory scheme including the circumstances under which the Authority may direct the suspension or cessation of a specified adventure activity in relation to non-compliance with codes of practice developed under *section 34*; and
- provisions relating to inspections.

Provisions of the Bill

Section 1 (Short title and commencement) and *section 2* (Interpretation), which contains definitions of terms used, are standard features of Bills.

Section 3 provides for the making of orders and regulations by the Minister and for the laying of such orders and regulations before each House of the Oireachtas in the normal course.

Section 4 outlines the offences against provisions of the Bill.

Section 5 outlines the penalties for which persons convicted of an offence against a provision of this Bill shall be liable.

Section 6 enables the Authority to prosecute summary offences under the Bill.

Section 7 provides for the expenses incurred by the Minister in the administration of the Bill to be determined by the Minister for the Marine and Natural Resources, with the consent of the Minister for Finance.

Adventure Activities Standards Authority

Section 8 outlines the definition of adventure activities (a total of thirteen activities at present) and a provision to cater for amendments at a later stage by way of Ministerial order in consultation with the Authority.

Section 9 outlines the definition of adventure activity operators and a provision to cater for amendments at a later stage by way of Ministerial order in consultation with the Authority.

Sections 10 and 11 provide for the establishment of the Adventure Activities Standards Authority in accordance with the provisions of the Schedule applying to the Bill. In this context the Authority shall have fifteen members comprising of an independent chairperson (appointed by the Minister), nominees from the Ministers for Education and Science, Tourism Sport and Recreation, the Marine and Natural Resources, a nominee from the Health and Safety Authority, four nominees from recognised National Governing Bodies for adventure activities, four nominees from adventure activity operators, one nominee as a representative of the staff of adventure activity operators, and one nominee by the Minister for the Marine and Natural Resources on the basis of his/her knowledge, skills or experience as the Minister considers appropriate for membership of the Authority;

Section 12 provides for the Minister to vary, by way of order after consultation with the Authority, the number of members of the Authority as set out in the Schedule.

Section 13 provides for the Minister to vary, by way of order after consultation with the Authority, the number of ordinary members of the Authority that may be nominated by any person, and the persons that may nominate ordinary members of the Authority, as set out in the Schedule.

Section 14 outlines the functions of the Authority.

Section 15 provides for the Minister to confer additional functions on the Authority, by way of order after consultation with the Authority.

Section 16 provides for the investigation of any accident, incident, occurrence or situation or any other matter related to the general purposes of the Bill and the production of a special report. This section provides that an investigation is conducted solely to establish the cause of such accidents, etc. and the adequacy of any codes of practice published or approved under this Bill with a view to recommending changes where appropriate. The section also provides that it is not the purpose of an investigation to attribute blame or fault. *Section 16* also provides that the Authority shall publish such special reports. It also provides that investigations at places of work or in

Irish waters can only be undertaken where the consent of the Minister is obtained as well as the consent of any other Minister as he or she considers appropriate.

Section 17 provides that any person whose reputation might be adversely affected by the publication of a special report, published under *section 16*, should be given confidential sight of the draft report and a right to reply, which reply must be published in an appendix to the special report, unless the person requests that it not be published. This section also provides for an offence where confidentiality has been breached by any person.

Section 18 provides for the establishment of a tribunal of inquiry (and for the conduct of such an inquiry) where the Authority, with the consent of the Minister, considers it necessary to establish such a tribunal.

Section 19 provides for immunity from claims for damages for those involved in investigations or inquiries under this Bill.

Section 20 provides that the Authority may make charges for the provision of its services.

Section 21 provides for the appointment of a Director and his or her terms of tenure of office.

Section 22 provides for the appointment of members of staff of the Authority, and for payment of remuneration and allowances for expenses to such staff with the consent of the Minister for the Marine and Natural Resources and Minister for Finance.

Section 23 provides for the drawing-up of a superannuation scheme for the staff of the Authority with the consent of the Minister for the Marine and Natural Resources and Minister for Finance.

Section 24 provides for termination of membership of the Authority if the member is nominated as a member of the Seanad, nominated as a candidate for the Dáil, Seanad or the European Parliament or becomes a member of that Parliament, or the secondment of a member of staff in similar circumstances.

Section 25 provides for the payment of grants to the Authority by the Minister for the Marine and Natural Resources out of monies provided by the Oireachtas and sanctioned by the Minister for Finance.

Section 26 provides for the keeping of accounts by the Authority, the auditing of these accounts and for their laying (together with the Report prepared on them by the Comptroller and Auditor General) before each House of the Oireachtas.

Section 27 provides for the submission by the Authority of estimates of income and expenditure to the Minister for the Marine and Natural Resources as well as the powers for the Minister to confirm, with or without modification, or refuse the estimate. This section also provides for the preparation by the Authority of an annual report no later than six months after the end of the financial year, which report shall be laid before each House of the Oireachtas.

Section 28 outlines the circumstances under which the Authority may accept gifts.

Section 29 provides for the Authority to borrow money with the

consent of the Minister for the Marine and Natural Resources and the Minister for Finance.

Section 30 provides for the Authority to establish committees to assist and advise it in relation to its functions.

Section 31 provides for the Minister for the Marine and Natural Resources to give a direction to the Authority in writing on policy generally or on a report or information supplied under *section 27*, with which the Authority will comply.

Section 32 prohibits the unauthorised disclosure of information obtained by a person while performing his or her duties as a member of the Authority, by a member of staff of the Authority, or while engaged by the Authority in an advisory, consulting or inspection capacity.

Section 33 provides for the establishment by the Authority of a register of all adventure activity operators in the State, and a mandatory requirement for any adventure activity operator to register as an adventure activity operator in respect of a given adventure activity in order to carry out that activity.

Section 34 provides for the development of codes of practice by the Authority for the safe operation of each adventure activity. These shall be published in *Iris Oifigiúil* after consultation with the Minister for the Marine and Natural Resources and other relevant persons or bodies. These codes shall be mandatory for adventure activity operators.

Section 35 provides for the implementation by the Authority of a mandatory regulatory scheme including the carrying out of inspections on behalf of the Authority, the circumstances under which the Authority may direct the suspension or cessation of a specified adventure activity, or the removal of an adventure activity operator from the register of operators (including as a result of non-compliance with codes of practice developed under *section 34*), and provides for the laying of any such scheme before both Houses of the Oireachtas.

Section 36 provides for the appointment by the Authority of inspectors for the purpose of this Bill and outlines the powers such inspectors will have in relation to the verification of whether the provisions of the Bill (particularly *section 34* and *section 36*) are being adhered to.

Section 37 provides for the issuing of a search warrant by a judge of the District Court on the sworn information of an inspector to enter a premises or a place and carry out the powers laid down in *section 36* of the Bill.

Staffing costs and implications

The operation of the Authority will involve a cost on the Exchequer, as any possible income from inspection fees will be limited and will not meet its costs. It is estimated that the Authority's costs could be in the region of £300,000 per year, for staff, agency

payments, board expenses, promotion and lease of premises. Income will depend on the nature and format of the regulatory scheme developed or adopted by the Authority

*Roinn na Mara agus Acmhainní Nádurtha,
Nollaig, 2000.*