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STATUTORY INSTRUMENTS

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**1991 No. 1466**

**The Fisheries (Amendment) (Northern Ireland) Order 1991**

*Promotion and development of angling, etc.*

**Promotion of angling**

3. Immediately before section 2 of the principal Act (acquisition and development of waters for angling) there shall be inserted the following section—

**“Promotion of angling.**

1A. The Department may promote angling and for that purpose may—

- (a) exercise any of the functions conferred on it by sections 2 to 7;
- (b) encourage and advise bodies interested in angling; and
- (c) take such other steps as appear to it appropriate to secure the furtherance and development of angling.”.

**Derelict waters**

4. For sections 3 and 4 of the principal Act (development of derelict waters for angling, etc.) there shall be substituted the following sections—

**“Development of derelict waters for angling.**

3.—(1) This section applies where—

- (a) the Department is of the opinion that any inland waters should be developed for angling; and
- (b) the person who is entitled to the fishing rights in those waters is unknown or cannot be found.

(2) The Department may—

- (a) undertake the development of those waters for angling; or
- (b) authorise an approved developer to undertake such development in accordance with an approved scheme submitted to the Department by that developer.

(3) Before undertaking or authorising the development of any waters in pursuance of subsection (2), the Department shall on at least two occasions and at intervals of not less than 14 days publish in one or more than one newspaper circulating in the locality in which the waters are situated and in the Belfast Gazette, a notice—

- (a) containing particulars sufficient to identify the waters;
- (b) stating that the Department proposes to develop those waters or, as the case may be, that the Department proposes to authorise their development in accordance with a scheme;

- (c) indicating in a general manner the Department's proposals for such development or, as the case may be, the nature of the scheme;
  - (d) specifying, where the Department proposes to authorise such development in accordance with a scheme, the name and address of the approved developer who has submitted the scheme and the name and address of a place at which copies of the scheme may be inspected at reasonable times; and
  - (e) calling upon any person who claims any right of fishing in those waters or who objects to their development, to notify the Department of his claim, or of his objection and of the grounds thereof, within such period as may be specified in the notice, being a period expiring no earlier than 28 days from the date of the second notice so published.
- (4) The Department shall serve a copy of any notice published under subsection (3) upon every person who appears to the Department to be an owner of land adjoining the waters in question.
- (5) Where—
- (a) a notice has been published under subsection (3) with respect to any waters; and
  - (b) any person notifies the Department of his claim to fishing rights in those waters or any part thereof and produces to the Department prima facie evidence of his title,
- the Department shall not, with respect to those waters or, as the case may be, any such part thereof, take any further action under this section.
- (6) Where—
- (a) a notice has been published under subsection (3) with respect to any waters; and
  - (b) any person notifies the Department of his objection and of the grounds thereof,
- the Department shall consider that objection unless, in its opinion, the objection is vexatious, frivolous or insubstantial.
- (7) Nothing in subsection (5) or (6) shall prejudice the power of the Department to provide assistance under section 5 for the development or improvement of such waters for angling in accordance with a programme agreed upon under section 6 by the Department and such a person as is mentioned in either of those subsections, or any other power conferred by this Part.
- (8) If, in relation to the waters referred to in a notice published by the Department under subsection (3) or in relation to any part of those waters—
- (a) no claim to fishing rights is notified to the Department under subsection (5) or no objection is so notified under subsection (6); or
  - (b) all claims and objections so notified are withdrawn or disposed of;
- the Department—
- (i) may, in accordance with the proposals referred to in the notice, execute such works and do such things as the Department is by section 2(2) and (3) empowered to execute or do in the case of waters the fishing rights in respect of which are owned by the Department; or
  - (ii) may authorise the approved developer to implement the approved scheme.
- (9) In relation to waters to which subsection (8) applies—
- (a) the Department or, as the case may be, the approved developer may, to the exclusion of any other person, exercise in all respects the rights of the owner of a several fishery;

- (b) the Department may, in particular, issue permits in respect of such waters in accordance with section 7A, or
- (c) the approved developer may, in particular, issue to persons making application therefor permits for periods not exceeding one year authorising them to fish in any such waters, and charge such reasonable sums for the issue of such permits as the approved developer may determine.

(10) Where, under subsection (2), the Department undertakes the development of any waters for angling, those waters shall for the purposes of section 24(b) and of any provision of this Act relating to the protection of waters the fishing rights in which are owned by the Department be deemed to be such waters.

(11) Where, under subsection (2), the Department undertakes the development of any waters for angling, the Department may acquire by agreement any estate in land which the Department is satisfied it is expedient to acquire for the exploitation of those waters.

(12) In this section and in sections 3A and 4—

“approved developer” means—

- (a) any person intending to develop any waters for angling, or
- (b) any body or association of persons established for or having among its objects such development;

and approved by the Department for the purposes of this section;

“scheme” means a scheme submitted to the Department under section 3A, and “approved scheme” means such a scheme which has been approved by the Department under that section; and

“waters” include any part thereof.

(13) The Department shall not approve a developer for the purposes of this section unless it is satisfied that the development will provide—

- (a) angling for members of the public or a section thereof, or
- (b) angling associated with a catering establishment registered in a register maintained under paragraph (a), (b) or (c) of section 10(1) of the Development of Tourist Traffic Act (Northern Ireland) 1948.

(14) In this section (except subsection (7)) and in sections 3A and 4 references to the development of waters shall be construed as including references to the improvement, maintenance and management of waters.

(15) Nothing in this section shall be taken to prejudice the title of any person (including the Department) in relation to fishing rights in waters to which it applies.

### **Schemes for development of derelict waters.**

**3A.—**(1) A scheme submitted to the Department for the purposes of section 3 shall be—

- (a) in such form and contain such particulars as may be prescribed by regulations; and
- (b) accompanied by such documents as may be so prescribed.

(2) A fee of such amount as may be prescribed by regulations, made with the approval of the Department of Finance and Personnel, shall be payable by the approved developer on submitting a scheme.

(3) The Department may approve a scheme with or without amendments.

(4) In considering whether to give its approval to a scheme, the Department shall take into account such matters as are in its opinion appropriate and, in particular—

- (a) the nature of the scheme and its potential effect on other fisheries;
  - (b) the financial and other resources available to the developer proposing the scheme;
  - (c) the arrangements made by the developer with owners of land to facilitate access to the waters to which the scheme relates; and
  - (d) the extent to which those waters, are already open to the public for angling.
- (5) Approval of a scheme shall be expressed to expire after the specified period.
- (6) Approval of a scheme may be—
- (a) given subject to conditions; and
  - (b) withdrawn on failure to comply with those conditions.
- (7) The Department, on the application of the developer who proposed a scheme or otherwise, may vary an approval so as to—
- (a) restrict the specified period; or
  - (b) add, remove or vary conditions to which the approval is subject.
- (8) On the expiration of the specified period the approved developer shall cease to occupy the waters forthwith.
- (9) Nothing in this section shall preclude an approved developer, who has in consequence of subsection (8) ceased to occupy waters, from submitting to the Department a further scheme in respect of those waters.
- (10) In this section and in section 4 “the specified period” means, subject to subsection (11) and section 4(3), such period as the Department may specify in relation to an approved scheme, being a period which expires no less than 5 years and no more than 15 years from the date on which the Department under section 3(2)(b) authorises the approved developer to undertake development of the waters in accordance with the scheme.
- (11) Where, under subsection (6), the Department withdraws its approval of a scheme, the specified period shall come to an end on the expiration of 30 days from the date on which the Department notifies the approved developer of that withdrawal, and subsection (8) and section 4 shall apply accordingly.

**Provisions supplemental to sections 3 and 3A.**

- 4.—(1) The following provisions of this section shall have effect where—
- (a) the Department has under section 3—
    - (i) undertaken the development of any waters for angling, or
    - (ii) authorised an approved developer to undertake such development in accordance with an approved scheme; and
  - (b) a person claiming to be entitled to fishing rights in respect of those waters (in this section referred to as “the owner”) thereafter produces to the Department proof of his title to the rights.
- (2) Where the Department is the occupier of the waters, the Department shall be entitled to remain in occupation for the period of 5 years from the date on which the owner produces to the Department proof of his title to the fishing rights in respect of the waters.
- (3) Where an approved developer is the occupier of the waters, that developer shall be entitled to remain in occupation until the expiration of—
- (a) the period of 5 years from the date on which the owner produces to the Department proof of his title to the fishing rights in respect of the waters, or
  - (b) the specified period,

whichever is the earlier.

(4) On the expiration of the period for which the occupier is by virtue of subsection (2) or (3) entitled to remain in occupation of the waters, the occupier shall cease to occupy the waters forthwith; but nothing in this subsection or in subsection (3) shall prejudice the Department's powers under section 3A(6) and (7).

(5) The occupier shall pay compensation to the owner in respect of its occupation of the waters for the period beginning—

- (a) if the occupier is the Department, on the date when the Department first began to undertake the development of the waters; or
- (b) if the occupier is an approved developer, on the date when the Department authorised that developer to undertake the development of the waters in accordance with an approved scheme;

and ending on the date when, in accordance with subsection (2) or (3), the occupier ceases to be entitled to occupy the waters.

(6) Any question as to—

- (a) the sufficiency of any evidence tendered by the owner in proof of his title to the fishing rights;
- (b) whether compensation is payable under subsection (5); or
- (c) the amount of such compensation;

shall, in default of agreement, be referred to and determined by the Lands Tribunal.

(7) No proceedings shall be brought under subsection (6) after the expiration of the period of one year from the date on which the occupier is obliged by virtue of section 3A(8) or subsection (4) of this section to cease to occupy the waters.

(8) When assessing compensation under subsection (6), the Lands Tribunal shall have regard to—

- (a) the extent to which fishing rights in the waters were exercised by the owner during the 10 years immediately preceding the date when the Department first began to undertake the development of the waters or, as the case may be, authorised the approved developer to undertake such development in accordance with an approved scheme; and
- (b) the value of any development of the waters for angling, undertaken by the occupier.

(9) Occupation of any waters such as are mentioned in subsection (1) shall not confer on the occupier any rights in respect of such waters other than those mentioned in section 3 or this section.

(10) In this section—

“the occupier” means—

- (a) where the Department has undertaken the development of waters for angling, the Department, and
- (b) where the Department has authorised an approved developer to undertake such development in accordance with an approved scheme, that developer;

“the owner” has the meaning given in subsection (1)(b).”

## Issue of permits by Department

5. After section 7 of the principal Act (compilation and publication of angling guide) there shall be inserted the following—

*“Permits to fish in Department's waters*

### Permits.

7A.—(1) Where the Department owns the fishing rights in any waters—

- (a) the Department may issue permits, or make arrangements for their issue through agents, for periods not exceeding one year, authorising the holder of such a permit to use a fishing engine in the waters to which the permit relates; and
- (b) may, subject to subsection (2), charge for the issue of such permits such reasonable sums as the Department of Finance and Personnel may approve.

(2) The Department may under subsection (1)(a) issue complimentary permits to persons not ordinarily resident in Northern Ireland and nothing in this Act shall require such persons to make any payment in respect of such permits.

(3) Where permits are issued under subsection (1) in relation to any waters, any person who, without obtaining such a permit, uses a fishing engine in those waters, shall be guilty of an offence.

(4) Section 45 (offence of falsifying, etc. licences) shall apply in relation to any permit issued under subsection (1) as if—

- (a) for any reference in that section to a fishing licence there were substituted a reference to such a permit, and
- (b) for the reference in paragraph (c) of that section to the Board there were substituted a reference to the Department.”.

## Fish culture licences

6. For section 11 of the principal Act there shall be substituted the following sections—

### “Fish culture licences.

11.—(1) Subject to the following provisions of this section and sections 11A and 11C, the Department may by licence (referred to as “a fish culture licence”) authorise any person—

- (a) to operate a fish farm at a place specified in the licence, and
- (b) to carry on in connection therewith such operations in relation to the culture of fish of any kind specified in the licence as may be so specified.

(2) A fish culture licence—

- (a) may contain such conditions as the Department considers appropriate; and
- (b) shall include, in particular, conditions as to the times and seasons at and the manner in which fish may be taken.

(3) A fish culture licence may, in so far as is expedient for the purpose of giving effect to any such conditions, exempt—

- (a) the holder of the licence and any person acting under his directions, and
- (b) a person who acquires fish of any kind taken in accordance with such conditions,

from the restrictions imposed by section 111 in so far as those restrictions apply to fish of that kind.

(4) Without prejudice to subsections (2) and (3), and notwithstanding anything contained in this Act or any regulation or byelaw made under this Act, a person to whom a fish culture licence is granted and any person acting under his directions may, subject to the conditions contained in the licence, do any of the things authorised by the licence.

(5) If any person—

- (a) operates a fish farm with respect to which a fish culture licence is not for the time being in force; or
- (b) operates a fish farm with respect to which such a licence is in force, otherwise than in accordance with any conditions attached to the licence,

he shall be guilty of an offence.

(6) In this section and in sections 11A and 11B references to the operation of a fish farm include references to such operation in inland or tidal waters or within the seaward limits of the territorial sea adjacent to Northern Ireland.

#### **Applications for fish culture licences.**

**11A.**—(1) An application for a fish culture licence—

- (a) shall be made to the Department in such form and manner, and
- (b) shall include such particulars and shall be accompanied by such documents,

as the Department may direct.

(2) If, on considering an application for a fish culture licence, the Department is minded to grant the licence, the Department shall, except in relation to such classes of applications as it may direct, publish, at the applicant's expense, notice of the application in such two or more newspapers as it considers appropriate, stating the address where and the period (not being less than one month from the date of publication) within which objections in writing to the granting of the licence may be sent to it.

(3) If—

- (a) within the period mentioned in subsection (2), the Department receives any objections (not being in the opinion of the Department vexatious, frivolous or insubstantial) which are not withdrawn; and
- (b) those objections are not such as to cause the Department to become minded not to grant the fish culture licence,

the Department shall cause a local public inquiry to be held by the Water Appeals Commission for Northern Ireland (in this Act referred to as “the Appeals Commission”) for the purpose of considering those objections.

(4) If, otherwise than after the holding of such an inquiry, the Department is minded not to grant the licence or grants the licence subject to conditions—

- (a) the Department shall give to the applicant a written notification of the reasons why it is minded not to grant the licence or has granted it subject to conditions; and
- (b) the applicant may, within 28 days from the day on which such notification is given, appeal to the Appeals Commission.

(5) Where, under section 7 of the Water Act (Northern Ireland) 1972, the consent of the Department of the Environment is required to the discharge of effluent into a waterway in connection with the operation of a fish farm, a fish culture licence shall not be issued in respect of that operation unless such consent is granted.

(6) Nothing in this section applies to an application for a fish culture licence which is received by the Department before the date of the coming into operation of Article 6 of the Fisheries (Amendment) (Northern Ireland) Order 1991.

**Discharge of effluent.**

**11B.—(1)** Where—

- (a) an application is made to the Department of the Environment under section 7 of the Water Act (Northern Ireland) 1972 (“the 1972 Act”), and
- (b) in the opinion of that Department, the purpose of the application is to obtain its consent to the discharge into a waterway of effluent or matter in connection with the operation of a fish farm,

the Department of the Environment may, with the approval of the Department, make a direction—

- (i) that a local public inquiry to be held under section 11A(3) shall also consider any objection (other than one which is withdrawn or is, in the opinion of the Department of the Environment, vexatious, frivolous or insubstantial) received in response to notices published under section 9(3) of the 1972 Act, and
- (ii) that the report on the inquiry shall be delivered to each Department.

(2) The Department of the Environment shall give notice of any direction made under subsection (1) to—

- (a) the person making the application;
- (b) the Foyle Fisheries Commission where the discharge is to be made in the Londonderry Area;
- (c) the Board, where the discharge is to be made outside that Area;

and (without prejudice to section 23 of the Interpretation Act (Northern Ireland) 1954) that person and the Foyle Fisheries Commission or, as the case may be, the Board shall be entitled to appear and be heard at the inquiry.

(3) Section 9(4) of the 1972 Act shall not apply to such an application where the Department of the Environment makes a direction under subsection (1) of this section.

(4) Section 9(5) of the 1972 Act shall not apply to any application under section 7 of that Act for the purpose mentioned in paragraph (b) of subsection (1) of this section.

(5) Nothing in this section applies to an application under section 7 of the 1972 Act which is received by the Department of the Environment before the date of the coming into operation of Article 6 of the Fisheries (Amendment) (Northern Ireland) Order 1991.

**Amendment, suspension and revocation of fish culture licences.**

**11C.—(1)** The Department may at any time amend any fish culture licence, either on its own motion or on the application of the holder of the licence.

(2) Where the Department proposes to amend any fish culture licence on its own motion, the Department shall—

- (a) give to the holder of the licence a written notification of its intention to do so; and
- (b) state in that notification—
  - (i) the specific amendment under consideration, and
  - (ii) the grounds upon which it is proposed to be made.

(3) If the holder of the licence objects to the proposed amendment, he may, within 28 days from the day on which notification is given to him under subsection (2), appeal to the Appeals Commission.

(4) A fish culture licence may be suspended or revoked in accordance with the provisions of Schedule 1; and in the application of those provisions for the purposes of this section—

- (a) “licence” means a fish culture licence; and
- (b) the references in paragraphs 1 and 3 to the fishery with respect to which the licence was issued shall be construed as references to the fish farm to which the licence relates.”.

### **Department's annual report**

7. In section 22 of the principal Act—

- (a) the existing provision shall be numbered as subsection (1); and
- (b) after that subsection there shall be added the following subsection—

“(2) The report under subsection (1) may be made and laid before the Assembly as part of the yearly report required by section 26 of the Agriculture and Technical Instruction (Ireland) Act 1899.” .

**Changes to legislation:**

There are currently no known outstanding effects for the The Fisheries (Amendment) (Northern Ireland) Order 1991, Cross Heading: Promotion and development of angling, etc..