



Salmon and Freshwater Fisheries Act 1975

1975 CHAPTER 51

PART II

OBSTRUCTIONS TO PASSAGE OF FISH

6 Fixed engines

- (1) Any person who—
 - (a) places a fixed engine in any inland or tidal waters; or
 - (b) uses an unauthorised fixed engine for taking or facilitating the taking of salmon or migratory trout or for detaining or obstructing the free passage of salmon or migratory trout in any such waters,shall be guilty of an offence.
- (2) A person acting under directions to that effect given by the water authority for the area may take possession of or destroy an engine placed or used in contravention of this section.
- (3) In subsection (1) above "unauthorised fixed engine" means any fixed engine other than—
 - (a) a fixed engine certified in pursuance of the Salmon Fishery Act 1865 to be a privileged fixed engine ; or
 - (b) a fixed engine which was in use for taking salmon or migratory trout during the open season of 1861, in pursuance of an ancient right or mode of fishing as lawfully exercised during that open season, by virtue of any grant or charter or immemorial usage.

7 Fishing weirs

- (1) No unauthorised fishing weir shall be used for taking or facilitating the taking of salmon or migratory trout.
- (2) Where a fishing weir extends more than halfway across any river at its lowest state of water, it shall not be used for the purpose of taking salmon or migratory trout unless

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it has in it a free gap or opening situated in the deepest part of the river between the points where it is intercepted by the weir, and—

- (a) the sides of the gap are in a line with and parallel to the direction of the stream at the weir ; and
 - (b) the bottom of the gap is level with the natural bed of the river above and below the gap ; and
 - (c) the width of the gap in its narrowest part is not less than one-tenth part of the width of the river.
- (3) A free gap need not be more than 40 feet wide and must not be less than 3 feet wide.
- (4) If any person uses a weir in contravention of this section or makes any alteration in the bed of a river in such manner as to reduce the flow of water through a free gap, he shall be guilty of an offence.
- (5) In subsection (1) above " unauthorised fishing weir" means any fishing weir which was not lawfully in use on 6th August 1861, by virtue of a grant or charter or immemorial usage.

8 Fishing mill dams

- (1) No unauthorised fishing mill dam shall be used for taking or facilitating the taking of salmon or migratory trout.
- (2) A fishing mill dam shall not be used for the purpose of taking salmon or migratory trout unless it has attached to it a fish pass of such form and dimensions as may be approved by the Minister, and unless the fish pass is maintained in such a condition and has constantly running through it such a flow of water as will enable salmon and migratory trout to pass up and down the pass.
- (3) If any person—
- (a) uses an unauthorised fishing mill dam as mentioned in subsection (1) above ;
or
 - (b) uses or attempts to use a dam in contravention of subsection (2) above,
- he shall be guilty of an offence.
- (4) If a fishing mill dam has not a fish pass attached to it as required by law, the right of using the fishing mill dam for the purpose of taking fish shall be deemed to have ceased and be for ever forfeited, and the water authority for the area may remove from it any cage, crib, trap, box, cruive or other obstruction to the free passage of the fish.
- (5) In subsection (1) above " unauthorised fishing mill dam " means any fishing mill dam which was not lawfully in use on 6th August 1861, by virtue of a grant or charter or immemorial usage.

9 Duty to make and maintain fish passes

- (1) Where in any waters frequented by salmon or migratory trout—
- (a) a new dam is constructed or an existing dam is raised or otherwise altered so as to create increased obstruction to the passage of salmon or migratory trout, or any other obstruction to the passage of salmon or migratory trout is created, increased or caused; or

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- (b) a dam which from any cause has been destroyed or taken down to the extent of one-half of its length is rebuilt or reinstated,
the owner or occupier for the time being of the dam or obstruction shall, if so required by notice given by the water authority for the area and within such reasonable time as may be specified in the notice, make a fish pass for salmon or migratory trout of such form and dimensions as the Minister may approve as part of the structure of, or in connection with, the dam or obstruction, and shall thereafter maintain it in an efficient state.
- (2) If any such owner or occupier fails to make such a fish pass, or to maintain such a fish pass in an efficient state, he shall be guilty of an offence.
- (3) The water authority may cause to be done any work required by this section to be done, and for that purpose may enter on the dam or obstruction or any land adjoining it, and may recover the expenses of doing the work in a summary manner from any person in default.
- (4) Nothing in this section—
- (a) shall authorise the doing of anything that may injuriously affect any public waterworks or navigable river, canal, or inland navigation, or any dock, the supply of water to which is obtained from any navigable river, canal or inland navigation, under any Act of Parliament; or
 - (b) shall prevent any person from removing a fish pass for the purpose of repairing or altering a dam or other obstruction, provided that the fish pass is restored to its former state of efficiency within a reasonable time; or
 - (c) shall apply to any alteration of a dam or other obstruction, unless—
 - (i) the alteration consists of a rebuilding or reinstatement of a dam or other obstruction destroyed or taken down to the extent of one-half of its length, or
 - (ii) the dam or obstruction as altered causes more obstruction to the passage of salmon or migratory trout than was caused by it as lawfully constructed or maintained at any previous date.

10 Power of water authority to construct and alter fish passes

- (1) Any water authority may, with the written consent of the Minister, construct and maintain in any dam or in connection with any dam a fish pass of such form and dimensions as the Minister may approve, so long as no injury is done by such a fish pass to the milling power, or to the supply of water of or to any navigable river, canal or other inland navigation.
- (2) Any water authority may, with the written consent of the Minister, abolish or alter, or restore to its former state of efficiency, any existing fish pass or free gap, or substitute another fish pass or free gap, provided that no injury is done to the milling power, or to the supply of water of or to any navigable river, canal or other inland navigation.
- (3) If any person injures any such new or existing fish pass, he shall pay the expenses incurred by the water authority in repairing the injury, and any such expenses may be recovered by the water authority in a summary manner.

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11 Minister's consents and approvals for fish passes

- (1) Any approval or consent given by the Minister to or in relation to a fish pass may, if in giving it he indicates that fact, be provisional until he notifies the applicant for approval or consent that the pass is functioning to his satisfaction.
- (2) While any such approval or consent is provisional, the Minister may, after giving the applicant not less than 90 days' notice of his intention to do so, revoke the approval or consent.
- (3) Where the Minister revokes a provisional approval given to a fish pass forming part of or in connection with a dam or other obstruction, he may extend the period within which a fish pass is to be made as part of or in connection with the obstruction.
- (4) The Minister may approve and certify any fish pass if he is of opinion that it is efficient in all respects and for all purposes, whether it was constructed under this Act or not.
- (5) Where a fish pass has received the approval of the Minister, and the approval has not been revoked, it shall be deemed to be a fish pass in conformity with this Act, notwithstanding that it was not constructed in the manner and by the person specified in this Act.

12 Penalty for injuring or obstructing fish pass or free gap

- (1) If any person—
 - (a) wilfully alters or injures a fish pass; or
 - (b) does any act whereby salmon or trout are obstructed or liable to be obstructed in using a fish pass or whereby a fish pass is rendered less efficient; or
 - (c) alters a dam or the bed or banks of the river so as to render a fish pass less efficient; or
 - (d) uses any contrivance or does any act whereby salmon or trout are in any way liable to be scared, hindered or prevented from passing through a fish pass,he shall be guilty of an offence, and shall also in every case pay any expenses which may be incurred in restoring the fish pass to its former state of efficiency; and any such expenses may be recovered in a summary manner.
- (2) The owner or occupier of a dam shall be deemed to have altered it if it is damaged, destroyed or allowed to fall into a state of disrepair, and if after notice is served on him by the water authority in whose area the dam is or was situated he fails to repair or reconstruct it within a reasonable time so as to render the fish pass as efficient as before the damage or destruction.
- (3) If any person—
 - (a) does any act for the purpose of preventing salmon or trout from passing through a fish pass, or takes, or attempts to take, any salmon or trout in its passage through a fish pass ; or
 - (b) places any obstruction, uses any contrivance or does any act whereby salmon or trout may be scared, deterred or in any way prevented from freely entering and passing up and down a free gap at all periods of the year,he shall be guilty of an offence.
- (4) This section shall not apply to a temporary bridge or board used for crossing a free gap, and taken away immediately after the person using it has crossed.

13 Sluices

- (1) Subject to subsection (3) below, unless permission in writing is granted by the water authority for the area, any sluices for drawing off the water which would otherwise flow over any dam in waters frequented by salmon or migratory trout shall be kept shut on Sundays and at all times when the water is not required for milling purposes, in such manner as to cause the water to flow through any fish pass in or connected with the dam or, if there is no such fish pass, over the dam.
- (2) If any person fails to comply with this section, he shall be guilty of an offence.
- (3) This section shall not prevent any person opening a sluice for the purpose of letting off water in cases of flood or for milling purposes or when necessary for the purpose of navigation or, subject to previous notice in writing being given to the water authority, for cleaning or repairing the dam or mill or its appurtenances.

14 Gratings

- (1) Where water is diverted from waters frequented by salmon or migratory trout by means of any conduit or artificial channel and the water so diverted is used for the purposes of a water or canal undertaking or for the purposes of any mill, the owner of the undertaking or the occupier of the mill shall, unless an exemption from the obligation is granted by the water authority for the area, place and maintain, at his own cost, a grating or gratings across the conduit or channel for the purpose of preventing the descent of the salmon or migratory trout.
- (2) In the case of any such conduit or artificial channel the owner of the undertaking or the occupier of the mill shall also, unless an exemption is granted as aforesaid, place and maintain at his own cost a grating or gratings across any outfall of the conduit or channel for the purpose of preventing salmon or migratory trout entering the outfall.
- (3) A grating shall be constructed and placed in such a manner and position as may be approved by the Minister.
- (4) If any person without lawful excuse fails to place or to maintain a grating in accordance with this section, he shall be guilty of an offence.
- (5) No such grating shall be so placed as to interfere with the passage of boats on any navigable canal.
- (6) The obligations imposed by this section shall not be in force during such period (if any) in each year as may be prescribed by byelaw.
- (7) The obligations imposed by this section on the occupier of a mill shall apply only where the conduit or channel was constructed on or after 18th July 1923.

15 Power of water authority to use gratings etc. to limit movements of salmon and trout

- (1) A water authority, with the written consent of the Minister—
 - (a) may cause a grating or gratings of such form and dimensions as they may determine to be placed and maintained, at the expense of the authority, at a suitable place in any watercourse, mill race, cut, leat, conduit or other channel for conveying water for any purpose from any waters frequented by salmon or migratory trout; and

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- (b) may cause any watercourse, mill race, cut, leat, conduit or other channel in which a grating is placed under this section to be widened or deepened at the expense of the authority so far as may be necessary to compensate for the diminution of any flow of water caused by the placing of the grating, or shall take some other means to prevent the flow of water being prejudicially diminished or otherwise injured.
- (2) If any person—
- (a) injures any such grating ; or
 - (b) removes any such grating or part of any such grating, except during any period of the year during which under a byelaw gratings need not be maintained; or
 - (c) opens any such grating improperly ; or
 - (d) permits any such grating to be injured, or removed, except as aforesaid, or improperly opened ;
- he shall be guilty of an offence.
- (3) A water authority, with the written consent of the Minister, may adopt such means as the Minister may approve for preventing the ingress of salmon or trout into waters in which they or their spawning beds or ova are, from the nature of the channel or other causes, liable to be destroyed.
- (4) Nothing in this section shall—
- (a) affect the liability under this Act of any person to place and maintain a grating ; or
 - (b) authorise a grating to be so placed or maintained during any period of the year during which under a byelaw gratings need not be maintained ; or
 - (c) authorise any grating to be placed or maintained so as to obstruct any conduit or channel used for navigation or in any way interfere with the effective working of any mill;
- and nothing in subsection (3) above shall authorise the water authority prejudicially to interfere with water rights used or enjoyed for the purposes of manufacturing or for milling purposes or for drainage or navigation.

16 Boxes and cribs in weirs and dams

- (1) Any person who uses a fishing weir or fishing mill dam for the taking of salmon or migratory trout by means of boxes or cribs shall be guilty of an offence unless the boxes or cribs satisfy the requirements specified in subsection (2) below.
- (2) The requirements mentioned in subsection (1) above are—
- (a) the upper surface of the sill of the box or crib must be level with the bed of the river ;
 - (b) the bars or inscales of the heck or upstream side of the box or crib—
 - (i) must not be nearer to each other than 2 inches;
 - (ii) must be capable of being removed ; and
 - (iii) must be placed perpendicularly;
 - (c) there must not be attached to any such box or crib any spur or tail wall, leader or outrigger of a greater length than 20 feet from the upper or lower side of the box or crib.

17 Restrictions on taking salmon or trout above or below an obstruction or in mill races

- (1) Any person who takes or kills, or attempts to take or kill, except with rod and line, or scares or disturbs any salmon or trout—
 - (a) at any place above or below any dam or any obstruction, whether artificial or natural, which hinders or retards the passage of salmon or trout, being within 50 yards above or 100 yards below the dam or obstruction, or within such other distance from the dam or obstruction as may be prescribed by byelaw; or
 - (b) in any waters under or adjacent to any mill, or in the head race or tail race of any mill, or in any waste race or pool communicating with a mill; or
 - (c) in any artificial channel connected with any such dam or obstruction,shall be guilty of an offence.
- (2) Nothing in this section shall apply to any legal fishing mill dam not having a crib, box or cruive, or to any fishing box, coop, apparatus, net or mode of fishing in connection with and forming part of such a dam or obstruction for purposes of fishing.
- (3) Where a fish pass approved by the Minister is for the time being attached to a dam or obstruction, this section shall not be enforced in respect of the dam or obstruction until compensation has been made by the water authority to the persons entitled to fish in the waters for that right of fishery.

18 Provisions supplementary to Part II

- (1) If any person obstructs a person legally authorised whilst he is doing any act authorised by section 9, 10 or 15 above, he shall be guilty of an offence.
- (2) The Minister shall not give a water authority his consent—
 - (a) to the construction, abolition or alteration of a fish pass or the abolition or alteration of a free gap in pursuance of section 10 above ; or
 - (b) to the doing of any work under section 15 above,unless reasonable notice of the authority's application under the relevant section has been served on the owner and occupier of the dam, fish pass or free gap, watercourse, mill race, cut, leat, conduit or other channel, with a plan and specification of the proposed work; and the Minister shall take into consideration any objections by the owner or occupier, before giving his consent.
- (3) If any injury is caused—
 - (a) to any dam by reason of the construction, abolition or alteration of a fish pass or the abolition or alteration of a free gap in pursuance of section 10 above ; or
 - (b) by anything done by the water authority under section 15 above,any person sustaining any loss as a result may recover from the water authority compensation for the injury sustained.
- (4) The amount of any compensation under section 10, 15 or 17 above shall be settled in case of dispute by a single arbitrator appointed by the Minister.
- (5) In any case in which a water authority are liable to pay compensation under this Part of this Act in respect of injury or damage caused by the making or maintaining of any work, compensation shall not be recoverable unless proceedings for its recovery are instituted within two years from the completion of the work.