
STATUTORY INSTRUMENTS

1991 No. 1466

The Fisheries (Amendment) (Northern Ireland) Order 1991

Title and commencement

1.—(1) This Order may be cited as the Fisheries (Amendment) (Northern Ireland) Order 1991.

(2) Except for the provisions mentioned in paragraph (3), this Order shall come into operation on the expiration of two months from the day on which it is made.

(3) Article 17(3), and Article 35(2) and Schedule 4 in so far as that Article and that Schedule relate to section 62(4) of the principal Act, shall come into operation on the expiration of one year from the day on which this Order is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954^{F1} shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order “the principal Act” means the Fisheries Act (Northern Ireland) 1966^{F2}.

F1 1954 c. 33 (N.I.)

F2 1966 c. 17 (N.I.)

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.”.

Functions of the Board

Extension of functions under sections 25 and 26 of principal Act

8.—(1) In section 25(2) of the principal Act (Board to be subject to direction by Head of the Department), after the word “Department,” there shall be inserted the words “exercise, in accordance with the terms and conditions of the direction, any function conferred on the Department by this Act and ”.

(2) In section 25(3) of the principal Act (specific powers of the Board), after paragraph (c) there shall be inserted the following paragraph—

“(cc) enter into an agreement to enforce the fishing rights of any owner or occupier of land or waters in accordance with such terms and conditions as may be specified in the agreement and on payment of such sums as may be so specified;” .

(3) In section 26(1) of the principal Act (power of the Board to make byelaws)—

(a) for the words “conservation or protection of” there shall be substituted the words “purposes of the Board’s functions in relation to ”; and

(b) after paragraph (k) there shall be inserted the following paragraph—

“(kk) the attachment of such identification marks as may be specified in the byelaws to any salmon captured;” .

Control of issue of fishing licences

9. In section 37 of the principal Act (power of the Board to make byelaws respecting fishing licences)—

(a) the existing provision shall be numbered as subsection (1);

(b) for paragraph (c) of that subsection there shall be substituted the following paragraph—

“(c) limit, subject to subsection (2), the number of licences which may be issued to authorise the use of fishing engines for the taking of fish;”

; and

(c) after that subsection there shall be added the following subsections—

“(2) Nothing in byelaws made under subsection (1)(c) shall affect the lawful use by any person of—

(a) a rod and line or a handline in the freshwater portion of any river or lake,

(b) a draft net in the circumstances specified in section 71(2)(d),

(c) a fishing weir or fixed engine in the circumstances specified in section 73(1).

(3) In subsection (1)(c)—

“licences” means licences of any class specified in the byelaws, and

“fish” does not include eels.” .

Protection of fisheries

Fishing at fish farms

10. In section 41 of the principal Act (prohibition of unlicensed fishing), after subsection (3) there shall be added the following subsections—

“(4) Nothing in this section shall apply to a person—

(a) who fishes lawfully by rod and line in a production pond at a fish farm operated by the holder of a fish culture licence granted under section 11; or

(b) who has for that purpose in his possession a rod and line at or near a fish farm.

(5) In subsection (4)(a) “production pond” means a pond—

(a) used for the artificial propagation and culture of fish, and

(b) designated for the purposes of this subsection as a production pond in a fish culture licence granted under section 11.” .

Restocking of polluted waters

11. In section 47 of the principal Act (penalty for pollution), after subsection (2) there shall be added the following subsections—

“(3) Where a person (in this section referred to as “the person convicted”) has been convicted of an offence under subsection (1), the Board—

- (a) after consulting the owner of the fishing rights in the waters affected by the pollution; or
- (b) without such consultation if the Board, upon making reasonable enquiries, is unable to ascertain the name and address of the owner,

may—

- (i) carry out such restocking to restore the fish population of the waters as is reasonable in the circumstances, and
- (ii) recover the cost thereof from the person convicted.

(4) Any question as to—

- (a) the reasonableness of any restocking to be undertaken under paragraph (i)
- (b) the costs to be recoverable under paragraph (ii) of that subsection,

shall be referred to arbitration under and in accordance with the provisions of the Arbitration Act (Northern Ireland) 1937.

(5) Nothing in this section shall affect any right of the owner of fishing rights in the waters affected by the pollution to bring civil proceedings against the person convicted; but in assessing damages in any such proceedings the court shall take into account the value of any restocking carried out by the Board under subsection (3).” .

Protection of spawn or fry of salmon, trout and eels

12. Section 48 of the principal Act shall be amended as follows—

(a) in subsection (1) at the beginning there shall be inserted the words “ Subject to subsections (1A) and (2) ”;

(b) after subsection (1) there shall be inserted the following subsections—

“(1A) It shall not be an offence under subsection (1)(a) for the owner of an eel several fishery to take or have in his possession the fry of eels where he has removed those fry from that several fishery solely for the purpose of returning them to an upstream part of the same several fishery.

(1B) Subsection (1A) applies to a person acting under the direction of the owner of an eel several fishery in the same manner as it applies to such an owner.” .

(c) for subsection (3) there shall be substituted the following subsection—

“(3) In this section—

- (a) “fry” (except in subsection (1)(d))—
 - (i) in relation to salmon, includes parr and smolts,
 - (ii) in relation to trout, includes trout of a length less than fifteen centimetres measured from the tip of the snout to the fork or cleft of the tail, and
 - (iii) in relation to eels, includes elvers; and
- (b) “trout” includes rainbow trout.” .

Construction of fish passes

13.—(1) In section 54 of the principal Act, in subsection (2), after paragraph (a) there shall be inserted the following paragraphs—

- “(aa) the dam is repaired after the date of the coming into operation of Article 13 of the Fisheries (Amendment) (Northern Ireland) Order 1991 in such a way as to change the nature of any surface of the dam or the structure of the crest of the dam, or
- (ab) the mill to which the dam belongs is, after that date, brought back into use or its use is changed, or the purpose for which the water retained by the dam is used is changed after that date, or” .

(2) After subsection (2) of that section there shall be inserted the following subsection—

“(2A) Where the Department refuses to grant an exemption for the purposes of subsection (2)—

- (a) the Department shall give to the applicant for such exemption a written notification of the reasons for its refusal, and
- (b) the applicant may, within 28 days from the day on which such notification is given, appeal to the Appeals Commission.” .

(3) In subsection (5) of that section the words from “and may recover” onwards shall be omitted.

(4) After subsection (5) of that section there shall be inserted the following subsections—

“(5A) Article 55 of the Roads (Northern Ireland) Order 1980 (power to enter land) shall apply in relation to subsection (5) subject to the following modifications—

- (a) for the purposes set out in sub-paragraphs (a) to (e) of paragraph (1) of that Article there shall be substituted a reference to the purpose of constructing a fish pass under subsection (5);
- (b) any reference to the Department shall be construed as a reference to the Department within the meaning of this Act; and
- (c) paragraph (7) shall be omitted.

(5B) Where—

- (a) in the exercise of the powers conferred under subsection (5) or (5A), any damage is caused to land or chattels, any person interested in the land or chattels may recover compensation in respect of the damage from the Department; or
- (b) in consequence of the exercise of any such powers, any person is disturbed in his enjoyment of land or chattels, he may recover compensation in respect of that disturbance from the Department.

(5C) Subject to subsection (5D), the Department may recover from the person liable under subsection (4)—

- (a) any expenses reasonably incurred by the Department in respect of works executed under that subsection; and
- (b) any amount awarded against, or reasonably paid by, the Department as compensation under subsection (5B).

(5D) The Department may not recover under paragraph (b) of subsection (5C) any amount (or any part of any amount) awarded or paid in respect of a breach of any duty of care on the part of the Department.

(5E) Any question—

- (a) as to whether a person is entitled to recover compensation from the Department under subsection (5B), and as to the amount of such compensation; and

- (b) as to whether the Department is entitled to recover any amount (or any part of any amount) under subsection (5C), shall be heard and determined by the Lands Tribunal.” .

Use of fishing engines at dams

14. In section 56(1) of the principal Act (restrictions on use of fishing engines and rods and lines at or in the vicinity of dams)—

- (a) in paragraph (a), after the words “rod and line)” there shall be inserted the words “ from any position on a dam or ”, and
- (b) in paragraph (b) after the words “5 metres” there shall be inserted the words “ or such other distance as may be prescribed by byelaws ”.

Mills, etc.

15.—(1) In subsection (1) of section 58 of the principal Act (provisions in relation to sluices, etc., of mills deriving water from rivers)—

- (a) after the words “every mill” there shall be inserted the words “ , whether or not for the time being it is used or capable of being used as such, ” and
- (b) in paragraph (a) of that subsection for the words “mill sluices” there shall be substituted the words “ mill sluice nearest to the point where water is abstracted from a river for the mill ”.

(2) In subsection (2) of that section, at the beginning there shall be inserted the words “ Subject to subsection (3), ”.

(3) For subsection (3) of that section there shall be substituted the following subsections—

“(3) The occupier of a mill shall not be guilty of an offence under this section if—

(a) he proves—

- (i) that compliance with paragraph (a) or (b) (whichever is applicable) of subsection (1) would have injuriously interfered with the machinery or water power of the mill, and
- (ii) that the mill was in regular use immediately before the date of the coming into operation of Article 15 of the Fisheries (Amendment) (Northern Ireland) Order 1991 and that there has been no alteration of use since that date; or

(b) he is the holder of a certificate issued by the Department under subsection (3A) and has not acted in contravention of that certificate.

(3A) Where the Department is satisfied that—

- (a) having regard to the nature of the dam or of the river or of the kinds of fish frequenting or likely to frequent the river, it is unnecessary or unreasonable to insist upon compliance with the requirements of subsection (1); or
- (b) alternative arrangements are provided to protect and facilitate the free passage of fish,

the Department may issue certificates exempting, in such circumstances, to such extent and subject to such conditions as it considers appropriate, the occupiers of mills from the requirements of subsection (1).

(3B) Where a certificate has been granted under subsection (3A) the Department may at any time—

- (a) revoke the certificate; or

- (b) vary or revoke any condition for the time being attaching to the certificate; or
- (c) attach any condition or any further condition to the certificate;

but no certificate shall be revoked nor shall any condition be varied or any condition or further condition imposed unless at least 28 days' notice of the Department's intention to make the revocation or, as the case may be, to vary or impose the condition, has been given to the person who appears to the Department to be for the time being entitled to the benefit of the certificate, and the Department shall consider representations made by him before the expiration of the notice.

(3C) Subsection (3D) shall apply where the Department—

- (a) under subsection (3A), refuses to grant a certificate or grants a certificate subject to conditions,
- (b) under subsection (3B), revokes a certificate, varies or revokes any condition for the time being attaching to a certificate, or attaches any condition or any further condition to a certificate.

(3D) Where this subsection applies—

- (a) the Department shall give to the applicant or the holder of the certificate, as the case may be, notification of the reasons for its actions; and
- (b) the applicant or the holder of the certificate may, within 28 days from the date on which such notification is given, appeal to the Appeals Commission.

(3E) Where—

- (a) it appears to the Department that a mill has fallen into disuse, and
- (b) the Department is unable, after making reasonable enquiries, to ascertain the identity of the owner or occupier of the mill,

the Department may take such steps as it considers necessary to ensure that the mill sluices and the waste gates or over-falls of the mill are kept shut.” .

(4) In subsection (4) of that section after the words “the sluices” there shall be inserted the words “ or gate valves ”.

Gratings set in watercourses

16.—(1) In subsection (1) of section 59 of the principal Act (gratings to be set in watercourses diverted from rivers or lakes to prevent entry therein of fish) for paragraph (b) there shall be substituted the following paragraph—

- “(b) the space between the bars of such gratings shall not exceed—
- (i) in the case of any grating placed at the point where the watercourse diverges from the river or lake, 5.1cm,
 - (ii) in the case of any grating installed before the date of the coming into operation of Article 16 of the Fisheries (Amendment) (Northern Ireland) Order 1991 and placed at the point where the watercourse returns to the river or lake, 5.1cm,
 - (iii) in the case of any grating installed on or after the date of the coming into operation of that Article of that Order, or installed before that date but renewed on or after it, and placed at the point where the watercourse returns to the river or lake, 2.5cm;” .

(2) In subsection (4) of that section,—

- (a) at the end of paragraph (b) there shall be added—
 - “or
 - (c) the Department is satisfied—

- (i) that the watercourse supplies a mill to which there belongs a dam,
- (ii) that there is no fish pass in that dam,
- (iii) that the waste gate on the upstream side of the mill sluices is erected in a channel suitable for the passage of fish, and
- (iv) that exemption from the obligations imposed by subsection (1) is necessary to permit the free pass age of fish,”

; and

- (b) after the word “grant” there shall be inserted the words “ subject to such conditions as it considers appropriate ”.
- (3) After subsection (5) of that section there shall be inserted the following subsection—
 - “(5A) Subsection (3D) of section 58 shall apply in relation to an exemption under subsection (4) of this section in the same manner as it applies for the purposes of subsection (3C) of that section.” .
- (4) For subsection (6) of that section there shall be substituted the following subsection—
 - “(6) This section applies to any watercourse conveying water which has been diverted from the main course of a river or lake, except where the water is conveyed to provide for navigation.” .

Illegal use of certain devices

17.—(1) In subsection (1) of section 62 of the principal Act (offences relating to use of certain devices for taking fish) after the word “taking” there shall be inserted the words “ , or facilitating the taking of, ”.

(2) In subsection (3) of that section for the words “salmon or trout” there shall be substituted the words “ salmon, trout or rainbow trout ”.

(3) In subsection (4) of that section, in paragraphs (a) and (b) the words “gaff or” shall be omitted.

(4) After subsection (4) of that section there shall be inserted the following subsection—

“(4A) In subsection (4)—

“gaff” means a hooked instrument (with or without a barb) used to penetrate the gills or body of a fish; and

“otter” means an otter lath or jack, and includes any instrument, whether used with a handline, or as an auxiliary to a rod and line, or otherwise for the purpose of running out lures, artificial or otherwise.” .

Fishing by cross lines

18.—(1) In section 63 of the principal Act the existing provision shall be numbered as subsection (1) and after the word “river” there shall be inserted the words “ or lake ”.

(2) After that subsection there shall be added the following subsection—

“(2) In subsection (1) “cross lines” means fishing lines—

- (a) reaching from one position to another across water and fixed or held at each of their ends, and
- (b) having attached to them one or more baited hooks or lures, artificial or otherwise.” .

Use of nets across rivers

19. In section 69 of the principal Act, for subsection (2) there shall be substituted the following subsection—

“(2) Any person (other than the owner of a several fishery in the whole of a river or its tributaries, within the limits of that several fishery)—

- (a) who shoots, draws or stretches a net across the mouth or across any other part of a river; and
- (b) who fails to leave open a channel which is—
 - (i) at least one-quarter of the width of the mouth of the river or, as the case may be, of that other part of the river, or 18 metres, whichever is the less, and
 - (ii) of sufficient depth and width to facilitate the passage of salmon in that river;

shall be guilty of an offence.” .

Restriction of right to use draft nets

20. In section 71(2) of the principal Act—

- (a) in paragraph (d), for “1965” there shall be substituted “ 1972 ”; and
- (b) in sub-paragraph (ii) of paragraph (e), for the words from “twenty years” to “1965” there shall be substituted the words “eighteen years immediately preceding 1st January 1986”.

Registers

Keeping of dealer's register

21. In section 120 of the principal Act—

- (a) for subsection (1) there shall be substituted the following subsection—

“(1) Every holder of a dealer's licence—

- (a) shall keep or cause to be kept at the place or premises to which the licence relates or at such other place as may be permitted by the Board a register in such form as may be prescribed by byelaws—
 - (i) of all salmon, trout or eels acquired, by whatever means and whether in the course of his business as a dealer or otherwise, by him or by any person acting on his behalf, and
 - (ii) of all salmon, trout or eels disposed of, by whatever means and whether in the course of his business as a dealer or otherwise, by him or any person acting on his behalf; and

- (b) shall enter or cause to be entered in the register such particulars relating to such salmon, trout or eels (other than any particulars as to price) as may be so prescribed.” ; and

- (b) in subsections (3) and (5) for the words “by the Board” there shall be substituted the words “ by byelaws ”.

Extension of Part VII of principal Act to other species of fish

Extension of Part VII of principal Act

22. After section 123 of the principal Act there shall be added the following section—

“Power to apply this Part to other species of fish.

123A.—(1) The Department may by order provide that this Part shall apply, subject to such modifications and exceptions as may be specified in the order, to any species of freshwater fish so specified.

- (2) In subsection (1) “modifications” includes additions, omissions and amendments.
- (3) An order made under subsection (1) shall be subject to negative resolution.”.

Marine Fish Culture

Marine fish fishery licences

23. After Part IX of the principal Act (shell-fish fishery licences) there shall be inserted the following Part—

“PART IXA

MARINE FISH FISHERY LICENCES

Marine fish fishery licences.

137A.—(1) Where the Department grants to any person a fish culture licence under section 11 authorising the operation of a fish farm for the culture of any species of marine fish at a place specified in the licence, the Department may, in accordance with this section, grant to that person a further licence (a “marine fish fishery licence”) conferring on him the exclusive right of cultivating marine fish of that species within any area specified in the marine fish fishery licence (“the licensed area”) which is at that place.

(2) Sections 131 to 137 shall apply to marine fish fishery licences subject to the following modifications—

- (a) subject to paragraphs (b) to (d)—
 - (i) any reference to a shell-fish fishery licence shall be construed as a reference to a marine fish fishery licence;
 - (ii) any reference to shell-fish shall be construed as a reference to marine fish of the species specified in the licence;
- (b) in section 131—
 - (i) subsection (1) shall be omitted, and
 - (ii) in subsection (3) for the words “fishing for shell-fish” there shall be substituted the words “ fishing for marine fish of any kind or for shell-fish ”;
- (c) in section 135—
 - (i) in subsection (2) for the words “depositing, propagating, dredging” there shall be substituted the words “ introducing, propagating, harvesting ”, and
 - (ii) in paragraph (b) of that subsection for the word “deposit” there shall be substituted the word “ introduce ”; and
- (d) in section 136(1), for paragraph (a) there shall be substituted the following paragraph—
 - “(a) uses any implement to catch fish of any kind; or” .

(3) In this section “marine fish” means fish of any kind found in the sea, but does not include shell-fish.”.

Enforcement of principal Act

Fishery Conservation Officers

24.—(1) Water bailiffs shall, instead of being so called, be called fishery conservation officers; and accordingly—

- (a) any enactment or instrument passed or made before the commencement of this Article, shall have effect so far as may be necessary in consequence of the change of title made by this Article, as if for any reference to a water bailiff there were substituted a reference to a fishery conservation officer; and
- (b) documents and forms printed or duplicated for use in connection with functions of water bailiffs may be used notwithstanding that they contain references to such bailiffs and those references shall be construed as references to fishery conservation officers.

(2) In paragraph (1) “water bailiffs” means water bailiffs appointed by the Fisheries Conservancy Board.

Private water bailiffs

25.—(1) In section 170 of the principal Act (appointment etc., of private water bailiffs)—

- (a) in subsection (3) for the words from “or, where” to “may be,” there shall be substituted the words “ and the Department, and the Board and ”;
- (b) after subsection (5) there shall be inserted the following subsection—

“(5A) Where a person who has appointed a private water bailiff revokes that appointment, that person shall, within 14 days of the revocation, serve written notice thereof on the clerk of petty sessions for the petty sessions district in which the court by which the appointment was confirmed, sits.”;

- (c) for subsection (6) there shall be substituted the following subsection—

“(6) Where—

- (a) the appointment of a person as a private water bailiff has been confirmed under subsection (4) or revoked under subsection (5), or
- (b) notice of the revocation of such an appointment has been received under subsection (5A),

the clerk of the court shall notify the Department and the Board of such confirmation or revocation or, as the case may be, such notice, as soon as practicable.”;

- (d) after subsection (7) there shall be inserted the following subsections—

“(7A) Any person or society mentioned in paragraphs (a) to (e) of subsection (1) who employs any person to act as a private water bailiff shall, before 31st January in each year, make to the Board a return in such form and containing such information as may be prescribed by byelaws.

(7B) The Board shall maintain a register of the names and addresses of those who are entitled to act as private water bailiffs.

(7C) The register to be maintained under subsection (7B) shall be open to inspection by the Department.”;

- (e) in subsection (8), after paragraph (b) there shall be inserted the following—

“or

- (c) fails to serve written notice under subsection (5A) within the time specified in that subsection; or
- (d) fails to make a return to the Board under subsection (7A) by the date specified in that subsection;” .

(2) After section 170 of the principal Act there shall be inserted the following section—

“Duration of appointments of private water bailiffs.

170A.—(1) Any person whose appointment as a private water bailiff is confirmed after the coming into operation of Article 25 of the Fisheries (Amendment) (Northern Ireland) Order 1991 shall, unless his appointment is renewed in accordance with Schedule 5A, cease to be a private water bailiff on the expiration of the period of 5 years from the date of that confirmation.

(2) Any person whose appointment as a private water bailiff was confirmed before the coming into operation of that Article of that Order shall, unless his appointment is renewed in accordance with Schedule 5A, cease to be a private water bailiff either—

- (a) on the expiration of the period of 5 years from the date of that confirmation, or
- (b) on the expiration of the period of 1 year from the date of the coming into operation of that Article of that Order,

whichever period is longer.

(3) In subsections (5), (5A), (6) and (8) of section 170 references (in whatever terms) to a person's appointment as a private water bailiff shall be construed as including references to the renewal of his appointment as such.

(4) Nothing in this section shall preclude the re-appointment under section 170 of a person who ceases, by virtue of subsection (1) or (2), to be a private water bailiff.”.

(3) The provisions set out in Schedule 1 shall be inserted after Schedule 5 to the principal Act as Schedule 5A.

Powers of certain authorised persons

26. In section 172 of the principal Act (general powers of authorised persons), after subsection (1) there shall be inserted the following subsections—

“(1A) Without prejudice to subsection (1)(a), an authorised person other than a private water bailiff may for the purpose of preventing or detecting the commission of an offence against any provision of this Act at any time enter on and traverse any land either on foot or, where there is a suitable roadway, lane or path, in a motor vehicle.

(1B) Where, by virtue of subsection (1A), an authorised person brings a motor vehicle onto any land, he shall not cause or permit that vehicle to stand or remain in such a position as to cause or be likely to cause any danger or obstruction.

(1C) An authorised person, on leaving any land which he has entered by virtue of this section, shall leave that land as effectually secured against trespassers as he found it.” .

Warrants to enter certain premises

27. In section 173 of the principal Act (power of justice of the peace to grant warrant to enter certain places)—

- (a) in subsection (1) for the words from “at such time” onwards there shall be substituted the words “ if need be using such force as is reasonable in the circumstances ”;

- (b) in subsection (2) at the end there shall be added the words “ and may, except where a specific time for execution is mentioned in the warrant, be executed at any reasonable time ”; and
- (c) after subsection (2) there shall be added the following subsections—
 - “(3) A person authorised to enter premises by virtue of a warrant issued under this section—
 - (a) may take with him such other authorised persons and such equipment he considers may be necessary; and
 - (b) shall, on leaving any unoccupied premises which he has entered by virtue of such a warrant, leave them as effectually secured against trespassers as he found them.
 - (4) In this section “authorised person” does not include a private water bailiff.” .

Detention of sea-fishing boats, etc. by officers of the Board

28. In section 175 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) Where it appears to an officer of the Board that a person has committed an offence under any provision of this Act relating to the taking of salmon in the sea, that officer may exercise the powers conferred on an authorised person by subsection (1).” .

Amendment of enforcement powers

29.—(1) In section 176 of the principal Act (apprehension of offenders), in paragraph (1)(b) (i) after the word “address” there shall be inserted the words “ to the satisfaction of the authorised person ”.

- (2) In subsection (1) of section 178 of the principal Act (powers of authorised officers)—
 - (a) in paragraph (b) after the words “interior of” there shall be inserted the words “ and, where he suspects that an offence under any provision of the Act is being, or has been, committed, to carry out a search of ”;
 - (b) in paragraph (g) after the word “examine” there shall be inserted the words “ , to demand the age of such a person who is apparently under the age of 18 ”;
 - (c) after paragraph (g) there shall be added the following paragraph—
 - “(h) to demand and take the name and address of any person who is fishing or whom he suspects to be about to fish or to have fished within the preceding half hour and to demand the age of such a person who is apparently under the age of 18.” .

(3) In subsection (3) of that section, after the word “address” (where it occurs for the first time) there shall be inserted the words “ to the satisfaction of the authorised officer ”.

Production of licences and permits issued by Department

30.—(1) In section 179 of the principal Act (persons using, etc. fishing engines to produce licence therefor on demand), in paragraph (b) of subsection (3), for the words “as soon as practicable” there shall be substituted the words “ within five days ”.

- (2) After section 179 of the principal Act there shall be inserted the following section—

“Production of permits issued under section 7A.

179A.—(1) If any person—

- (a) using at any waters the fishing rights in which are owned by the Department a fishing engine for which a permit is required under section 7A, or
- (b) having such a fishing engine erected or in fishing order in his possession in or near such a place,

fails on demand to produce to an authorised person a permit by or by virtue of which he is authorised to use that fishing engine in those waters, he shall be guilty of an offence.

(2) Subsections (2) to (4) of section 179 shall apply in relation to an offence under subsection (1) in the same manner as those provisions apply to an offence under subsection (1) of that section, but with the omission from subsection (3)(b)(i) of that section of the words “by byelaws made under section 37(1)(f)”.

(3) In this section “authorised person” means—

- (a) an officer appointed by the Department, and
- (b) an officer of the Board.”.

Jurisdiction of Water Appeals Commission for Northern Ireland

31. After section 185A of the principal Act (preservation of amenity) there shall be inserted the following heading and section—

“Jurisdiction of Water Appeals Commission for Northern Ireland under this Act

Jurisdiction of Appeals Commission.

185B.—(1) In relation to the exercise of the jurisdiction of the Appeals Commission under this Act, Article 8 of the Water and Sewerage Services (Northern Ireland) Order 1973 shall have effect subject to the following modifications—

- (a) in paragraphs (2) to (5) references to the Department within the meaning of that Article shall be construed as references to the Department within the meaning of this Act;
- (b) paragraph (8) shall have effect as if for the words from “Schedules” onwards there were substituted “ section 11A(3) or 132(2) of the Fisheries Act (Northern Ireland) 1966 ”.

(2) Where the Appeals Commission may determine an appeal under this Act—

- (a) the appeal shall be heard by such member of the Appeals Commission as the Chief Commissioner may appoint in that behalf;
- (b) except where an appeal is to be decided solely by reference to written representations, the Chief Commissioner may, after consultation with the Appeals Commission and the Department, appoint an assessor to sit with the member appointed under paragraph (a) at the appeal to advise him on any matters arising;
- (c) notwithstanding paragraphs (a) and (b), any decision on the appeal shall be made by the Appeals Commission.

(3) Where the Appeals Commission may hold an inquiry under this Act—

- (a) the inquiry shall be held by such member of the Appeals Commission as the Chief Commissioner may appoint in that behalf;

- (b) the Chief Commissioner may, after consultation with the Appeals Commission and the Department, appoint an assessor to sit with the member appointed under paragraph (a) at the inquiry or hearing to advise him on any matters arising;
 - (c) notwithstanding paragraphs (a) and (b), any report on the inquiry or hearing shall be made by the Appeals Commission.
- (4) The Appeals Commission may pay to any assessor appointed under subsection (2)(b) or (3)(b) such fees and allowances as the Commission, with the approval of the Department, may approve.”.

Time limit for certain summary offences

32. In section 186 of the principal Act (complaints)—

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

“(2) Notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981, summary proceedings for an offence under section 45 (including that section as applied by section 7A), or Part VII may be brought at any time within the period of six months from the date on which evidence, sufficient in the opinion of the Board to justify a prosecution for the offence, comes to the knowledge of the Board; but no such proceedings shall be brought by virtue of this section more than two years after the commission of the offence.

(3) For the purposes of subsection (2) a certificate purporting to be signed by the Chairman of the Board, as to the date on which such evidence as aforesaid came to the knowledge of the Board, shall be conclusive evidence thereof.”.

Applications for disposal of forfeitures

33. In section 198 of the principal Act—

- (a) in subsection (1) the words from “before” to “was forfeited” shall be omitted; and
- (b) immediately after that subsection there shall be inserted the following subsection—

“(1AA) An application under subsection (1) shall be made—

- (a) before the expiration of the period of 28 days from the date of the order by, or the conviction in consequence of, which the thing was forfeited, or
- (b) where notice of appeal against the order or conviction is given, before the expiration of 14 days from the date on which the order or conviction is affirmed or, as the case may be, the appeal is abandoned.”.

Miscellaneous and supplemental

Application to Londonderry Area

34.—(1) In section 212(1) of the principal Act—

- (a) after “170” there shall be inserted “, 170A and 171 ”;
- (b) after “174,” there shall be inserted “ 175(2), ”; and
- (c) after “176 to” there shall be inserted “ 179 and 180 to ”.

Para.(2)—Amendments

Article 35—Amendments and repeals

Changes to legislation:

There are currently no known outstanding effects for the The Fisheries (Amendment) (Northern Ireland) Order 1991.