



# Fisheries Act (Northern Ireland) 1966

## 1966 CHAPTER 17

### PART IV

#### PROTECTION OF FISHERIES

##### OBSTRUCTIONS TO PASSAGE OF FISH

#### **54 Construction of fish passes in dams in rivers.**

- (1) Where a dam is constructed in a [<sup>F1</sup> river], a fish pass sufficient to permit the free passage through the dam of salmon, trout and eels at all times shall be provided and maintained by the owner of the dam.
- (2) Subsection (1) shall not apply so as to require the provision of a fish pass in conjunction with a dam erected before 10th August 1842 unless—
  - <sup>F2</sup>(a) the dam is rebuilt, reinstated or heightened after the commencement of the Fisheries (Amendment) Act (Northern Ireland) 1968 , or
  - [<sup>F3</sup>(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]
  - (b) the Ministry, [<sup>F4</sup>on being satisfied (whether on the application of any person interested in a fishery in the river or otherwise)] that there will be no impairment in any navigation or in the effective working power of any mill to which the dam belongs, by order directs that a fish pass be provided as required by this section

[<sup>F2</sup> nor shall it apply so as to require the provision of a fish pass in conjunction with a particular dam in a river if the Ministry is satisfied that, 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

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that subsection and by notice in writing grants exemption from those requirements with respect to that dam].

[<sup>F3</sup>(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) Every fish pass provided under this section shall be constructed in accordance with plans, sections and specifications approved by the Ministry.

(4) The cost of providing a fish pass shall be borne—

- (a) in the case of a dam with respect to which an order is made under subsection (2) [<sup>F5</sup>on the application of any person, by that person; and]
- (b) in any other case, by the owner of the dam.

(5) Where in contravention of subsection (1) the owner of a dam does not provide a fish pass in conjunction with that dam, the Ministry may by notice in writing require him to do so, and if he fails to comply with the notice within any reasonable period specified therein the Ministry may cause a fish pass to be constructed<sup>F3</sup>. . . .

[<sup>F3</sup>(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—

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- (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.]
- (6) If any owner of a dam fails to provide such a fish pass as he is required by this section to provide, or, where such a fish pass has been provided (whether by him or not), fails to maintain it in an efficient state, he shall be guilty of an offence.

**F1** 1968 c.31 (NI)

**F2** 1968 c.31 (NI)

**F3** 1991 NI 13

**F4** Words in s. 54(2)(b) substituted (1.6.2009) by [Public Authorities \(Reform\) Act \(Northern Ireland\) 2009 \(c. 3\)](#), ss. 1(3)(b), 7(1), **Sch. 1 Pt. 2 para. 3(15)** (with Sch. 1 Pt. 1 para. 4(3)); S.R. 2009/172, **art. 2(a)(b)**

**F5** Words in s. 54(4)(a) substituted (1.6.2009) by [Public Authorities \(Reform\) Act \(Northern Ireland\) 2009 \(c. 3\)](#), ss. 1(3)(b), 7(1), **Sch. 1 Pt. 2 para. 3(16)** (with Sch. 1 Pt. 1 para. 4(3)); S.R. 2009/172, **art. 2(a)(b)**

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