

FISHERIES (AMENDMENT) ACT (NORTHERN IRELAND) 2001

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Fisheries (Amendment) Act (Northern Ireland) 2001. They have been prepared by the Department of Agriculture and Rural Development (and agreed by the Department of Culture, Arts and Leisure) in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. These notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Collection of wild shellfish for commercial purposes from the shores of Strangford Lough has been increasing in recent years and conservation interests have raised concerns about the likely impact of this on wildlife on the foreshore. Powers to regulate fishing activity on the foreshore are not currently available in

Northern Ireland and changes to existing fisheries legislation are therefore considered to be necessary to allow the use of fisheries regulatory powers to regulate the collection of wild shellfish from the foreshore.

4. It is also considered necessary to amend existing fisheries legislation to provide fisheries regulators with powers to conserve and enhance the environment and to permit trade in farmed salmon roe. In addition a number of measures within the existing legislation relating to the issue of permits and licences have proved to be restrictive.
5. This Act amends the Fisheries Act (NI) 1966 to allow the Department of Agriculture and Rural Development to manage, protect and regulate fisheries in or on the foreshore around the coast of Northern Ireland, to provide for the regulation of fisheries for environmental reasons and to permit trade in farmed salmon roe. It also amends the Act to enable the Fisheries Conservancy Board to control the removal of materials from rivers, to empower the Board to reinstate waters affected by pollution and to recover the costs from the convicted polluter, and to extend the Board's byelaw making powers for the management and protection of fisheries. Certain provisions of the Act relating to the issue of fishing permits and licences are also amended.

COMMENTARY ON SECTIONS

Section 1: Regulation of sea-fisheries in Northern Ireland inshore waters

This section amends section 124 of the Fisheries Act (NI) 1966.

Subsection (2) extends the area in which the Department of Agriculture and Rural Development (DARD) has powers to make regulations in relation to sea-fisheries to include the area within Northern Ireland inshore waters and will enable the Department to regulate the collection of wild shellfish from the foreshore.

Subsection (3) provides DARD with powers to make regulations prohibiting, in any specified area within Northern Ireland inshore waters, fishing from, or by means of, any vehicle or any vehicle or equipment of a specified description.

Subsection (4) inserts a new subsection 2A into section 124 of the Fisheries Act (NI) 1966 and provides DARD with powers to regulate sea fisheries for environmental purposes. This amendment brings Northern Ireland into line with Great Britain where wider powers to regulate fishing for environmental reasons are already available.

Subsection (5) provides that where a person commits an offence under section 124(3) of the Fisheries Act (NI) 1966 and a vehicle or equipment is used in the commission of the offence, any person who causes or permits the commission of the offence is also guilty of an offence. The maximum penalty for such an offence is a fine not exceeding the maximum on the level 5 scale. This subsection also provides a definition of the term “Northern Ireland inshore waters” for the purposes of section 124 of the Act and amends the definition of the term “sea-fisheries” for those purposes to include any fishery within the area defined as Northern Ireland inshore waters.

Section 2: Enforcement of regulatory powers in relation to sea-fisheries in Northern Ireland inshore waters

Subsection (1) inserts a new subsection (1A) into section 174 of the Fisheries Act (NI) 1966 and extends the powers currently available to authorised persons under the Act in relation to the boarding and examination of boats to cover the boarding and examination of vehicles and equipment which are being or have been employed in fishing.

Subsection (2) amends section 180 of the Fisheries Act (NI) 1966 to provide for procedures for the disposal of vehicles and equipment seized under section 174 of the Act.

Subsection (3) amends section 181(1) of the Fisheries Act (NI) 1966 to provide for procedures for the disposal of fish seized any fish seized under section 174 of the Act.

Subsection (4) amends section 183(2) of the Fisheries Act (NI) 1966 to provide for any person in charge of, or any other person in or on or using, a vehicle or equipment, who fails to comply with any necessary requirement of an authorised person, to be deemed to be obstructing him.

Section 3: Disturbing spawning beds etc.

This section amends section 48 (taking, etc., spawn or fry of salmon, trout or eels) and section 208 (saving for right of owner to take materials from streams) of the Fisheries Act (NI) 1966.

Subsection (1) adds a new subsection (4) to section 48 to provide a defence for any person charged with an offence under this section in relation to the spawn of salmon if the spawn had been produced at a fish farm or if the person believed on reasonable grounds that it had been so produced. The new subsection (4) removes the prohibition on trading in farmed salmon roe while retaining the protection for wild stocks.

Subsection (1) also adds new subsections (5) to (9) to section 48 to provide the Fisheries Conservancy Board (FCB) with powers to control the removal of material from rivers by making it an offence to remove material from the bed of a river without the prior consent of the FCB. The penalty for such an offence is a level 4 fine under section 201 of the 1966 Act (penalties for offences). It also provides for a person who

has been refused consent, or has been granted consent subject to conditions, to appeal to the Water Appeals Commission.

Subsection (2) amends section 208 of the 1966 Act to provide that, other than the provisions of section 48, nothing in the 1966 Act prejudices the right of any owner to take materials from any stream. The amendment closes any possible loophole that might allow riparian landowners to abstract materials from a stream without FCB approval.

Section 4: Charges for fishing permits

This section amends section 7A (permits) of the Fisheries Act (NI) 1966 to streamline and shorten the administrative process of setting charges for permit fees.

The section removes the requirement for the Department of Finance and Personnel to approve permit fees set by the Department of Culture, Arts and Leisure (DCAL) for the use of fishing engines in those waters in which DCAL owns the fishing rights.

Section 5: Power of Board to make byelaws

This section amends section 26 (power of Fisheries Conservancy Board to make byelaws) of the Fisheries Act (NI) 1966 to extend the byelaw making powers of the Fisheries Conservancy Board (FCB).

Paragraph (a) of this section inserts a new paragraph (kkk) in section 26(1) to provide the FCB with powers to make byelaws in respect of anything relating to the management and protection of fisheries. These powers will enable the FCB to make

the appropriate byelaws in its area of control to facilitate the implementation of salmon carcass tagging schemes throughout the island of Ireland. The Foyle, Carlingford and Irish Lights Commission and the Fisheries Boards in Ireland have appropriate powers to facilitate the introduction of a salmon carcass tagging scheme as a conservation and protection measure in their areas of control.

Paragraph (b) of this section inserts a new subsection (3) in section 26 to provide the FCB with powers to regulate salmon and marine fishing for environmental reasons. The amendment to section 26 parallels the position in Great Britain where the Environment Act 1995 amended fisheries legislation to empower fisheries regulators to protect the marine and aquatic environment.

Section 6: Reduced duties for Fisheries Conservancy Board licences

This section amends section 37 (power to make byelaws respecting fishing licences) of the Fisheries Act (NI) 1966 to enable the Fisheries Conservancy Board (FCB) to introduce licences at reduced rates for anglers with disabilities or any other class of persons if the FCB so wish.

The section amends subsection (1)(b) of section 37 to provide that the FCB may make byelaws for the issue of licences at concessionary rates for persons of such class or description as is specified in the byelaws.

Section 7: Reinstatement of polluted waters

This section amends section 47 (penalty for pollution) of the Fisheries Act (NI) 1966 to enable the Fisheries Conservancy Board to recover from the person convicted of an

offence of knowingly damaging any waters, for example in a pollution incident, the costs of reinstating the waters, and not just the costs of restocking the waters as is currently the case.

Paragraph (a) of this section amends section 47(3)(i) to empower the FCB to carry out such reinstatement of the waters as is reasonable in the circumstances. It is intended that “reinstatement” should include such restocking, restoration and enhancement of the habitat as is necessary to return the habitat to the level it was prior to the pollution offence occurring. Research has demonstrated that a more long-term and sustained improvement in productivity can be achieved by reinstating the in-stream habitat of rivers. Where reinstatement is carried out, the survival and productivity of any surviving stock migrating into the affected areas will be sufficiently improved to at least mitigate the losses as a consequence of pollution.

Paragraph (b) of this section amends section 47(4)(a) to provide that any question as to the reasonableness of any reinstatement to be undertaken shall be referred to arbitration. It also amends section 47(5) to provide that where the owner of the fishing rights of the waters affected by the pollution brings civil proceedings against the person convicted, the court, in assessing damages in any such proceedings, shall take into account the value of any reinstatement carried out by the FCB under subsection (3).

Section 8: Interpretation

This section defines the term “principal Act” to mean the Fisheries Act (NI) 1966 when used in this Act.

Section 9: Short title

This section provides for the Act to be cited as the Fisheries (Amendment) Act (NI) 2001.