
STATUTORY INSTRUMENTS

1991 No. 1466

The Fisheries (Amendment) (Northern Ireland) Order 1991

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—

- “(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 passage of fish;”;

(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”.