



Fisheries Act (Northern Ireland) 1966

1966 CHAPTER 17

[^{F1}PART IX

SHELL-FISH FISHERY LICENCES

F1 1981 NI 7

131 Power of Department to grant shell-fish fishery licence.

- (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 shell-fish of any kind at a place specified in the licence, the Department may, in accordance with the provisions of this Part, grant to that person a further licence (a “shell-fish fishery licence”) conferring on him the exclusive right of cultivating shell-fish of that kind within any area specified in the shell-fish fishery licence (“the licensed area”) which is at that place.
- (2) Subject to subsections (3) and (4), the licensed area may include any part of the foreshore or any part of the bed of the sea or an estuary.
- (3) A shell-fish fishery licence shall not specify any area in which the Department is satisfied the public exercise a substantially profitable fishing for shell-fish.
- (4) A shell-fish fishery licence shall not specify any area—
 - (a) which forms part of the foreshore or the bed of the sea or an estuary, unless the licence is granted with the consent of the Secretary of State;
 - (b) which forms part of the Crown Estate or is subject to rights exercisable by the Crown in right of the Crown Estate, unless the licence is granted with the consent of the Crown Estate Commissioners;
 - (c) which forms either part of the foreshore or part of the bed of the sea or an estuary owned or lawfully occupied by a person other than the Crown, unless the licence is granted to, or with the consent of, the owner or occupier of that part of the foreshore or that part of the bed of the sea or the estuary;

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- (d) which is within the limits of a several fishery, unless the licence is granted to, or with the consent of, the owner or occupier of that fishery.

(5) In subsection (4) “consent” means consent in writing.

132 Application for shell-fish fishery licence.

- (1) An application for a shell-fish fishery licence shall be made to the Department in such form and manner as the Department may direct and shall be accompanied by any consents required by section 131(4) (a), (c) or (d).
- (2) On considering an application for a shell-fish fishery licence—
 - (a) if the Department is minded to grant the licence it shall—
 - (i) publish, at the applicant's expense, notice of the application in the Belfast Gazette and in such two or more newspapers as the Department considers appropriate, stating the address to which and the period (not being less than one month from the date of publication) within which objections in writing to the grant of the licence may be sent to the Department; and
 - (ii) if any objections (not being, in the opinion of the Department, vexatious, frivolous or insubstantial) are received within that period and not withdrawn, and are not such as, without further inquiry, to cause the Department to become minded not to grant the licence, cause a local public inquiry to be held^{F2} by the Appeals Commission for the purpose of considering those objections];^{F2} . . .

Head (iii) rep. by 1991 NI 13

Para. (b) rep. by 1991 NI 13

- (c) if, otherwise than after the holding of a local public inquiry, the Department is minded not to grant the licence^{F2} or grants the licence subject to conditions—
 - (i) 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
 - (ii) the applicant may, within 28 days from the day on which such notification is given, appeal to the Appeals Commission.]

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133 Form, conditions, duration and variation of shell-fish fishery licence.

- (1) A shell-fish fishery licence—
 - (a) shall define the position and limits of the licensed area by reference to a map, either with or without descriptive matter (which, in the case of any discrepancy with the map, shall prevail except in so far as may otherwise be provided by the licence);
 - (b) without prejudice to subsection (2), may be subject to any conditions or limitations specified in the licence; and
 - (c) subject to subsections (3) and (4),—
 - (i) shall in the first instance be limited to a period of five years, and

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- (ii) on the expiration of that period shall, on the Department's being satisfied that reasonable progress has been, and is likely to continue to be, made in forming, developing and cultivating the shell-fish fishery, be renewed for a further period specified by the Department in writing, not exceeding 30 years, and
 - (iii) on the expiration of that period, on the Department's being satisfied as aforesaid, may be further renewed from time to time but not, on any occasion, for a period exceeding 30 years.
- (2) Where any consent mentioned in section 131(4) was given subject to any conditions or limitations, those conditions or limitations shall be specified in the licence.
- (3) Where a shell-fish fishery licence has been granted—
 - (a) to the occupier (not being the owner) of a several fishery or of any land included in the licensed area;
 - (b) to any person with the consent of such an occupier ,and the owner of the several fishery or land did not consent in writing to the grant of the licence, the licence shall remain in force only during the continuance in occupation of that occupier.
- (4) Where a shell-fish fishery licence is granted with the consent in writing of any owner or occupier and a period is named in the consent, the licence shall remain in force only for that period.
- (5) Subject to^{F3} subsections (5A) and (6)], a shell-fish fishery licence may be varied by the Department—
 - (a) on the Department's own motion, after consultation with the licensee, within 10 years from the date on which the licence was granted (but not so as to extend the licensed area); or
 - (b) on the application of the licensee at any time;and where an application is made under paragraph (b) for the variation of a licence (otherwise than solely by reducing the licensed area) sections 131(2) to (5) and 132 shall apply as they apply to the grant, or an application for the grant, of a licence.
- [^{F3}(5A) Where the Department varies a licence under subsection (5)(a)—
 - (a) the Department shall give to the applicant a written notification of the reasons for the variation; and
 - (b) the applicant may, within 28 days from the day on which such notification is given, appeal to the Appeals Commission.]
- (6) A shell-fish fishery licence shall not be varied so as to affect any conditions or limitations subject to which a consent under section 131(4) was given, or any period named in such a consent, otherwise than with the consent in writing of the person or authority who gave the consent or his or its successor in title.

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134 Publication of shell-fish fishery licence.

The Department, when it grants a shell-fish fishery licence, shall cause notice of the grant to be published, at the licensee's expense, in the Belfast Gazette and in such two or more newspapers as the Department considers appropriate.

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135 Effect of shell-fish fishery licence.

- (1) A shell-fish fishery licence shall confer on the licensee a right of several fishery in the licensed area in relation to shell-fish of any kind specified in the licence.
- (2) Without prejudice to subsection (1), a shell-fish fishery licence shall confer on the licensee within the licensed area the exclusive right of depositing, propagating, dredging, fishing for, and taking shell-fish of any kind specified in the licence and, in exercise of that right, the right—
 - (a) to establish and maintain suitable living conditions for shell-fish of that kind;
 - (b) notwithstanding any regulations under section 124(2)(c) and notwithstanding section 127(1) and (1A), at any season to collect shell-fish of that kind and remove them from place to place within the licensed area or to another licensed area and to deposit them as and where he thinks fit;
 - (c) to do all other things which he thinks proper for obtaining, storing and disposing of the produce of the fishery or for the regulation of the fishery.
- (3) To the extent to which—
 - (a) arrangements made between the licensee and the Secretary of State; and
 - (b) where the licence was granted with the consent of the Crown Estate Commissioners, arrangements made between the licensee and the Commissioners,
 allow, and subject to compliance by the licensee with the terms and conditions of the arrangements, a shell-fish fishery licence shall confer on the licensee within so much of the licensed area as consists of bed of the sea or an estuary, foreshore and (in the case of the Secretary of State) land contiguous to the foreshore and immediately below the level of mean high water springs the right, in exercise of the right mentioned in subsection (2), to moor, deposit, transport or erect such rafts, trays or other structures or devices as are necessary for or reasonably incidental to the culture of shell-fish of a kind specified in the licence.
- (4) A shell-fish fishery licence shall not,—
 - (a) except for the purpose of the culture of shell-fish of a kind specified in the licence, affect any right in or over the foreshore or the bed of the sea or any estuary, or any right of several fishery;
 - (b) for any purpose, affect any such right of any person which he enjoys under a local or personal Act or under Royal Charter, letters patent, prescription or immemorial usage, without the consent of that person.
- (5) Subject to subsection (4), every shell-fish fishery licence shall be binding on the Crown and on all persons whomsoever, and shall operate to vest in the licensee, his executors, administrators and assigns such rights as are given by the licence, free from all prior or other estates.

136 Offences with respect to licensed shell-fish fishery.

- (1) If any person other than the licensee or a person employed by him knowingly does within the licensed area any of the following things—
 - (a) uses any implement, except a fishing engine constructed or adapted solely for catching free swimming fish and so used as not to disturb or injure in any manner the fishery or any shell-fish in it; or
 - (b) dredges for any ballast or substance except under lawful authority for improving the navigation; or

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- (c) deposits any stone, ballast, rubbish or substance; or
 - (d) without prejudice to paragraph (e), places any implement, apparatus, material, substance or thing that is prejudicial or likely to be prejudicial to the fishery or any shell-fish, except for a lawful purpose of navigation or anchorage; or
 - (e) where the limits of the area or any part of it are buoyed or otherwise marked with the consent in writing of the Secretary of State, beaches any vessel within those limits otherwise than because of actual or apprehended damage to the vessel, under stress of weather or with the consent in writing of the licensee; or
 - (f) disturbs or injures in any manner, except as permitted by virtue of paragraph (d) or (e), the fishery or any shell-fish in it; or
 - (g) damages or interferes with any raft, tray or other structure or device moored, erected or deposited by the licensee or any predecessor of his; or
 - (h) interferes with or takes away any shell-fish from the fishery without the consent in writing of the licensee,
- he shall be guilty of an offence.

- (2) Without prejudice to [F⁴ Article 14 of the Criminal Justice (Northern Ireland) Order 1994] (compensation orders against convicted persons), where a person does any act in contravention of subsection (1), then, whether he has or has not been prosecuted for or convicted of an offence under that subsection, he shall be liable to compensate the licensee for all damage sustained by the licensee by reason of that act, and such compensation shall be recoverable by the licensee by action in any court of competent jurisdiction.
- (3) For the purpose of subsection (1)(e) a document purporting to certify that any limits were buoyed or otherwise marked with the consent of the Secretary of State, to give particulars of the buoys or markers authorised in the document conveying the consent, and to be signed on behalf of the Secretary of State shall be received as evidence of the matters stated in it.

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137 Suspension or revocation of shell-fish fishery licence.

- (1) Without prejudice to subsection (2), a shell-fish fishery 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 “licence” shall mean a shell-fish fishery licence.
- (2) Notwithstanding that there has not been, in relation to a shell-fish fishery licence, any contravention such as is mentioned in paragraph 1 of Schedule 1, the Department may suspend or revoke such a licence when it suspends or, as the case may be, revokes a fish culture licence held by the licensee in respect of any place at which the area specified in the shell-fish fishery licence is situated; but, where the revocation of the fish culture licence is annulled by the county court on an appeal under paragraph 6 of Schedule 1, the shell-fish fishery licence shall be revived.
- (3) Upon the revocation of a shell-fish fishery licence, all rights conferred by the licence shall absolutely determine, but they shall revive if the licence is revived under subsection (2).
- (4) When a shell-fish fishery licence is revoked the Department shall—

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- (a) cause notice of the revocation to be published in the Belfast Gazette; and
- (b) notify the revocation to the Secretary of State, and also to the Crown Estate Commissioners where the licence was granted with their consent.]

Ss. 138#159.*The substituted Part IX comprises sections 131#137 only*

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