



Fisheries Act (Northern Ireland) 1966

1966 CHAPTER 17

PART IV

PROTECTION OF FISHERIES

PROTECTION OF FISHING WATERS FROM POISONING, ETC., AND POLLUTION

46 Penalty for use or possession of deleterious matter.

- (1) If any person uses in any waters any deleterious matter for the capture, destruction or injury of fish he shall be guilty of an offence.
- (2) If any person being on the bank of or near any waters has in his possession or under his control any deleterious matter he shall be guilty of an offence.
- (3) It shall be a good defence to a charge under subsection (2) for the defendant to prove that the deleterious matter was in his possession or under his control for an innocent purpose.
- (4) Every person guilty of an offence under this section shall be liable—
 - ^{F1}(a) on summary conviction to a fine not exceeding £500 or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment;
 - (b) on conviction on indictment to^{F2} an unlimited fine] or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.]

Subs. (5) rep. by 1996 NI 24

F1 1981 NI 7

F2 1984 NI 3

Status: Point in time view as at 01/06/2009.

Changes to legislation: There are currently no known outstanding effects for the Fisheries Act (Northern Ireland) 1966, PART IV. (See end of Document for details)

47 **Penalty for pollution.**

- (1) Subject to subsection (2), if any person causes or knowingly permits any deleterious matter to enter any waters he shall be guilty of an offence and shall be liable
- [^{F3}(a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.]

[^{F3}(1A) If in the case of a continuing offence under subsection (1), the offender continues to contravene that subsection, he shall be guilty of a further offence and shall be liable on summary conviction to an additional fine not exceeding one-twentieth of level 5 on the standard scale for each day on which the offence is continued.]

- (2) Nothing in subsection (1) shall operate to penalise the discharge of any substance or article to which section 9 of the Radioactive Substances Act 1960 applies.

[^{F4}(3) Where a person (in this section referred to as "the person convicted") has been convicted of an offence under subsection (1), [^{F5}the Department]—

- (a) after consulting the owner of the fishing rights in the waters affected by the pollution; or
- (b) without such consultation if [^{F5}the Department] , upon making reasonable enquiries, is unable to ascertain the name and address of the owner,

may—

- (i) carry out such [^{F6} reinstatement] 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 [^{F6} reinstatement] to be undertaken under paragraph (i) of subsection (3); or
- (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 [^{F6} reinstatement] carried out by [^{F5}the Department] under subsection (3).]

F3 1994 NI 15

F4 1991 NI 13

F5 S. 47(3)(5): words in Act 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(1)(a)** (with Sch. 1 Pt. 1 para. 4(3)); S.R. 2009/172, **art. 2(a)(b)**

F6 2001 c. 4 (NI)

Modifications etc. (not altering text)

C1 S. 47 restricted (1.4.2007) by **Water (Northern Ireland) Order 1999 (S.I. 1999/662 (N.I. 6))**, art. 10(b) (as substituted by **Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21))**), arts. 1(2), **281(1)** (with arts. 8(8), 121(3), 307)); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

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PROTECTION OF YOUNG AND BREEDING FISH

48 Taking, etc., spawn or fry of salmon, trout or eels.

- (1) [^{F7}Subject to subsections (1A) and (2)] if any person—
- (a) wilfully takes, sells, purchases, or has in his possession the spawn, ...^{F8} or fry of salmon, trout or eels; or
 - (b) wilfully obstructs the passage of the ...^{F8} fry of salmon, trout or eels; or
 - (c) injures or disturbs the spawn or fry of salmon, trout or eels; or
 - (d) injures or disturbs any spawning bed, bank or shallow where the spawn or fry of salmon, trout or eels may be,

he shall be guilty of an offence.

[^{F7}(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.]

- (2) Where a person is charged with the offence of taking or having in his possession any ...^{F8} fry in contravention of subsection (1)(a), it shall be a good defence for him to prove that he removed the ...^{F8} fry from a system of waters solely for the purpose of preserving them from some immediate danger (whether actual or reasonably apprehended) and that he returned, or intended to return, them to an adjacent safer part of the same system of waters, without any avoidable injury, as soon as reasonably practicable.

[^{F7}(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.]

[^{F9}(4) It shall be a defence for a person charged with an offence under subsection (1)(a) in relation to the spawn of any salmon to prove—

- (a) that the spawn had been produced at a fish farm; or
- (b) that he believed on reasonable grounds that it had been so produced.

(5) If any person removes any material from the bed of any river—

- (a) without the consent of [^{F10}the Department] under subsection (6); or
- (b) otherwise than in accordance with the conditions of a consent granted by [^{F10}the Department] under subsection (6),

he shall be guilty of an offence.

(6) [^{F10} The Department] may, on the application of any person, grant its consent to the removal of material from the bed of a river on such conditions as it thinks fit.

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- (7) Where [^{F10}the Department]—
- (a) on an application for a consent under subsection (6), has refused a consent; or
 - (b) in giving a consent under subsection (6), has given that consent subject to conditions,
- the person who applied for the consent may appeal to the Appeals Commission against the decision within 28 days from the day on which notice of the decision was given to that person.
- (8) A consent under subsection (6) does not confer on any person a right to remove material from the bed of a river which (apart from this section) he would not otherwise have.
- (9) Nothing done under and in accordance with the conditions of a consent under subsection (6) constitutes an offence under subsection (1) or section 49.]

<p>F7 1991 NI 13</p> <p>F8 1968 c.31 (NI)</p> <p>F9 2001 c. 4 (NI)</p> <p>F10 S. 48: words in Act 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(1)(a) (with Sch. 1 Pt. 1 para. 4(3)); S.R. 2009/172, art. 2(a)(b)</p>

49 Chasing, etc., spawning fish.

If any person chases, injures or disturbs spawning fish or fish on the spawning beds or attempts (otherwise than by means of lawful angling with rod and line) to catch fish thereon, he shall be guilty of an offence.

50 Penalties for taking, etc., unseasonable salmon or trout.

- (1) Any person who at any time wilfully takes or kills or who knowingly buys, sells, offers or exposes for sale or has in his custody or possession any unseasonable salmon or trout shall be guilty of an offence.
- (2) A person who is guilty of an offence under subsection (1) shall be liable—
 - ^{F11}(a) on summary conviction to a fine not exceeding £500 with a further fine of £50 for each salmon and £10 for each trout in respect of which an offence is committed or to imprisonment for a term not exceeding six months or to both such fines and such imprisonment;
 - (b) on conviction on indictment to [^{F12} an unlimited fine] or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.]

<p>F11 1981 NI 7</p> <p>F12 1984 NI 3</p>

51 Prohibition against sale, etc., of immature salmon or trout.

- (1) Any person who buys, sells, offers or exposes for sale, or has in his possession for sale, any salmon or trout which is immature shall be guilty of an offence, and shall be

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liable on summary conviction [^{F13} to a fine not exceeding £500 or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.]

- (2) For the purposes of this section the expression “immature” means that the fish is of a length less than that prescribed by [^{F14}regulations], or, if no length is so prescribed, of a length less than [^{F15} 20 centimetres] measured from the tip of the snout to the fork or cleft of the tail.

F13 1981 NI 7

F14 S. 51(2): word in Act 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\(1\)\(c\)](#) (with [Sch. 1 Pt. 1 para. 4\(3\)](#)); S.R. 2009/172, [art. 2\(a\)\(b\)](#)

F15 SR 1983/100

52 Taking undersized pollen.

- (1) Any person who wilfully takes, kills or destroys, or who buys, sells, offers or exposes for sale, or has in his custody or possession any undersized pollen shall be guilty of an offence.
- (2) In this section the expression “undersized pollen” means pollen of a length less than that prescribed by [^{F16}regulations], or, if no length is so prescribed, of a length less than [^{F17} 19 centimetres] measured from the tip of the snout to the fork or cleft of the tail.

F16 S. 52(2): word in Act 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\(1\)\(c\)](#) (with [Sch. 1 Pt. 1 para. 4\(3\)](#)); S.R. 2009/172, [art. 2\(a\)\(b\)](#)

F17 SR 1983/100

OBSTRUCTIONS TO PASSAGE OF FISH

53 Removal of natural obstructions in rivers to allow free passage of fish.

- [^{F18}(1) Where in a river natural obstructions of any kind prevent or impede the free passage of fish, the Department may—
- (a) on the application of any person interested in a fishery in the river, authorise the construction of such works or the making of such alterations in the bed of the river as to secure the free passage of fish at all times, or
 - (b) construct such works or make such alterations,
- if (in either case) the Department is satisfied that the works or alterations will not impair the effective working power of any mill or the drainage of any lands.]
- (2) Any works constructed or alterations made under [^{F19}subsection (1)(a)] shall be executed in accordance with plans, sections and specifications approved by the Ministry.
- (3) Subject to subsection (6), the cost of any work or alterations authorised under [^{F19}subsection (1)(a)] shall be borne by the person on whose application the authorisation is given.

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- (4) Where, under subsection (1), the Ministry authorises the construction of works or the making of alterations in the bed of a river, the Ministry may, by agreement with the person on whose application the authorisation is given, cause the works or alterations so authorised to be executed.
- (5) For the purposes of the execution of any works or alterations [^{F20}under subsection (1) (a) or] in pursuance of an agreement made under subsection (4), the Ministry may, in so far as is reasonably necessary for or incidental to those purposes, do such of the things referred to in Schedule 2 to the Drainage Act (Northern Ireland) 1947 ^{F21} (clearing, widening, deepening, etc., of water courses) as are appropriate thereto, and in the doing thereof may to the like extent exercise any power which is exercisable by it under that Act as extended by any other enactment, other than a power of acquiring land compulsorily.
- (6) Section 13 of the Drainage Act (Northern Ireland) 1964 ^{F21} (power of Ministry to contribute to cost of works) shall have effect with respect to works or alterations executed under this section in like manner as it has effect with respect to works executed under section 12 of that Act, and as if after the reference therein to the said section 12 there were inserted a reference to this section.
- (7) Where the execution of any works or alterations in pursuance of an authorisation given under subsection (1) results in damage or injury to any person, that person may recover compensation from the person on whose application the authorisation was given.^{F22}; and where the execution of any works or alterations by the Department under subsection (1)(b) results in damage or injury to any person, that person may recover compensation from the Department.]

- F18** S. 53(1) 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(11)** (with Sch. 1 Pt. 1 para. 4(3)); S.R. 2009/172, **art. 2(a)(b)**
- F19** Words in s. 53(2)(3) 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(12)** (with Sch. 1 Pt. 1 para. 4(3)); S.R. 2009/172, **art. 2(a)(b)**
- F20** Words in s. 53(5) inserted (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(13)** (with Sch. 1 Pt. 1 para. 4(3)); S.R. 2009/172, **art. 2(a)(b)**
- F21** 1973 NI 1
- F22** Words in s. 53(7) added (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(14)** (with Sch. 1 Pt. 1 para. 4(3)); S.R. 2009/172, **art. 2(a)(b)**

S.53A rep. by 1973 NI 1

54 Construction of fish passes in dams in rivers.

- (1) Where a dam is constructed in a [^{F23}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—
- ^{F24}(a) the dam is rebuilt, reinstated or heightened after the commencement of the Fisheries (Amendment) Act (Northern Ireland) 1968, or
- ^{F25}(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

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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, [^{F26}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

[^{F24}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 that subsection and by notice in writing grants exemption from those requirements with respect to that dam].

[^{F25}(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) [^{F27}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^{F25}

[^{F25}(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

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- (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.]
- (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.

F23 1968 c.31 (NI)

F24 1968 c.31 (NI)

F25 1991 NI 13

F26 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)**

F27 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)**

55 Offence of taking fish in a fish pass, using fishing engines in a fish pass or placing obstacles in a fish pass.

- (1) If any person—
- (a) takes or kills any fish in a fish pass; or
 - (b) uses any fishing engine in a fish pass; or
 - (c) places any obstacle or contrivance of any kind or does any thing in or near a fish pass in order to deter or prevent fish from freely entering or passing through the fish pass at all times; or
 - (d) authorises or permits any other person to do any of the acts referred to in the foregoing paragraphs;
- he shall be guilty of an offence ...^{F28}.
- (2) Where a person is convicted under subsection (1)(c) of the offence of placing an obstacle or contrivance in a fish pass,^{F29} . . . the Ministry may cause the obstacle or

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contrivance to be removed and may recover from that person any expenses reasonably incurred in so doing.

(3) Where—

(a) an offence under this section has been committed in relation to a fish pass provided in connection with a mill dam in such circumstances as to appear to the court to afford reasonable grounds for believing that the offence was committed—

(i) by some person in the employment or under the control of the owner or occupier of the mill; or

(ii) with the knowledge or connivance of the owner or occupier or of the person in charge of the mill; or

(iii) through the default of reasonable precaution on the part of the owner or occupier to prevent the offence;

and

(b) the person who committed the offence is unknown or cannot be found; and

(c) the owner or occupier of the mill is charged with the offence;

the owner or occupier shall be deemed to be guilty of the offence and shall be punishable accordingly.

F28 1981 NI 7

F29 Words in s. 55(2) repealed (1.6.2009) by Public Authorities (Reform) Act (Northern Ireland) 2009 (c. 3), ss. 1(3)(b), 6, 7(1), Sch. 1 Pt. 2 para. 3(17), Sch. 3 (with Sch. 1 Pt. 1 para. 4(3)); S.R. 2009/172, art. 2(b)(e)

56 Restrictions on the use of fishing engines and rods and lines at or in the vicinity of dams.

(1) No person, other than a person to whom subsection (2) applies, shall—

^{F30}(a) use any fishing engine (other than a rod and line)^{F31} from any position on a dam or] at any place within^{F32} 200 metres] above or below any dam; [^{F30} or

(b) use a rod and line from any position on or within^{F32} 5 metres]^{F31} or such other distance as may be prescribed by [^{F33}regulations]] above or below any dam].

(2) Subsection (1) shall not apply to any person who is for the time being the owner of a several fishery in any place referred to in that subsection, and who is a successor in title of any other person who had exercised in that place the right of taking fish during the period of twenty years immediately preceding 14th August 1850 [^{F30}; and paragraph (b) of that subsection shall not apply in any case or class of case in which it is excluded (either absolutely or upon the observance of prescribed conditions) by [^{F33}regulations].]

(3) If any person contravenes subsection (1) he shall be guilty of an offence, ...^{F34}.

F30 1968 c.31 (NI)

F31 1991 NI 13

F32 SR 1983/100

F33 S. 56(1)(2): word in Act 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(1)(c) (with Sch. 1 Pt. 1 para. 4(3)); S.R. 2009/172, art. 2(a)(b)

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F34 1981 NI 7

57 Penalty for taking fish in works or watercourses appurtenant to mills.

- (1) Subject to subsection (2), if any person at any time in any pool, work or watercourse appurtenant to a mill either wilfully takes or kills any fish or uses a fishing engine for the purpose of taking or obstructing fish, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [^{F35} £500] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.
- (2) Subsection (1) shall not apply to the lawful use of a rod and line for the taking of fish of any kind otherwise than during the annual close season for angling for fish of that kind.
- (3) Where—
 - (a) an offence under this section has been committed by means of shutting down or closing any gate or sluice which is under the exclusive power of the occupier of the mill; and
 - (b) the person who committed the offence is unknown or cannot be found; and
 - (c) the occupier of the mill is charged with the offence;
 the occupier shall be deemed to be guilty of the offence and shall be punishable accordingly.
- (4) Where—
 - (a) an offence under this section has been committed in such circumstances as to appear to the court to afford reasonable grounds for believing that the offence was committed—
 - (i) by some person in the employment or under the control of the owner or occupier of the mill; or
 - (ii) with the knowledge or connivance of the owner or occupier or of the person in charge of the mill; or
 - (iii) through the default of reasonable precaution on the part of the owner or occupier to prevent the offence; and
 - (b) the person who committed the offence is unknown or cannot be found; and
 - (c) the owner or occupier of the mill is charged with the offence;
 the owner or occupier shall be deemed to be guilty of the offence and shall be punishable accordingly.

F35 1981 NI 7

58 Provisions in relation to sluices, etc., of mills deriving water from rivers.

- (1) The following provisions shall apply in relation to every mill [^{F36}, whether or not for the time being it is used or capable of being used as such,] which derives its supply of water from a [^{F37} river]:—
 - (a) if there is a fish pass in the dam belonging to the mill, or if the dam is a weir and is not provided with a channel such as is mentioned in paragraph (b), the [^{F36} mill sluice nearest to the point where water is abstracted from a river for the mill] and the waste gates or over-falls shall be kept shut—

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- (i) for twenty-four consecutive hours in each week between the hour of six o'clock on Saturday afternoon and six o'clock on the next-following Monday morning; and
 - (ii) during any other period when the mill is not being worked;
 - (b) if there is no fish pass in the dam belonging to the mill and if the waste gate on the upstream side of the mill sluices is erected in a channel suitable for the passage of fish, the mill sluices shall be kept shut and the waste gate kept open during the periods specified in sub-paragraphs (i) and (ii) of paragraph (a).
- (2) [^{F36}Subject to subsection (3),] if the provisions of paragraph (a) or paragraph (b) of subsection (1) are not complied with, the occupier of the mill shall be guilty of an offence ...^{F38}.
- [^{F36}(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,

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- (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 this section “mill sluices” means the sluices^{F36} or gate valves] which admit water to a mill.

F36	1991 NI 13
F37	1968 c.31 (NI)
F38	1981 NI 7

ABSTRACTION OF WATER FROM RIVERS AND LAKES

59 Gratings to be set in watercourses diverted from rivers or lakes to prevent entry therein of fish.

- (1) Where a watercourse to which this section applies carries water from a ^{F39} river] ^{F40} or lake]—
- (a) there shall be placed, at the points where the watercourse diverges from and returns to the river ^{F40} or lake], gratings extending across the whole width of the watercourse and from the bottom of the bed or sill thereof to the level of the highest flood waters;
- ^{F41}(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;]
- (c) during the months of March, April and May and at any other time when the fry of salmon or trout are descending the river ^{F40} or lake], there shall be placed over the entire surface of every such grating a wire lattice of such

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- dimensions as to effectually prevent the admission of fry or small fish into the watercourse;
- (d) every such grating and such wire lattice shall be securely fixed in a permanent manner so as to prevent its being removed or opened, and shall be kept in constant repair.
- (2) If, in respect of any watercourse to which this section applies (other than a watercourse in relation to which an exemption granted by the Ministry under subsection (4) is for the time being in force), the provisions of subsection (1) are not complied with, the owner or occupier of any premises to which the watercourse leads, or any other person who made, uses or has the care or maintenance of the watercourse, shall be guilty of an offence, ...^{F42}.
- (3) Without prejudice to subsection (2), if any person—
- (a) injures any grating or wire lattice placed in pursuance of subsection (1); or
 - (b) removes any such grating or lattice or part thereof, except, in the case of a lattice, during any period of the year during which such a lattice need not be maintained; or
 - (c) opens any such grating or lattice improperly; or
 - (d) permits any such grating or lattice to be injured or removed (except as is mentioned in paragraph (b)) or improperly opened;
- he shall be guilty of an offence.
- (4) If in respect of a watercourse to which this section applies,—
- (a) the Ministry is satisfied that sufficient arrangements will be made by means other than those specified in subsection (1) to prevent the admission of fish or fry into the watercourse, and that, having regard to those arrangements, exemption should be granted from the obligations imposed by subsection (1); or
 - (b) where the watercourse is a watercourse constructed for the purpose of conveying water as a motive power for machinery, it is proved to the satisfaction of the Ministry that exemption during any period from the obligations imposed by subsection (1) is necessary for the effective working of the machinery,^{F41} or]
- ^{F41}(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,]
- the Ministry may, by permit in writing, grant^{F41} subject to such conditions as it considers appropriate] such exemption.
- (5) Where an exemption has been granted under subsection (4) the Ministry may at any time—
- (a) revoke the exemption; or
 - (b) vary or revoke any condition for the time being attaching to the exemption; or
 - (c) attach any condition or any further condition to the exception;
- but no exemption shall be revoked nor shall any condition be varied or any condition or further condition imposed unless at least twenty-eight days' notice of the Ministry's

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intention to make a revocation or, as the case may be, to vary or impose the condition, has been given to the person who appears to the Ministry to be for the time being entitled to the benefit of exemption, and the Ministry has considered any representations made by him before the expiration of the notice.

[^{F41}(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.]

[^{F41}(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.]

(7) In this section “fry” in relation to salmon includes parr and smolts [^{F40} and “watercourse” includes any pipe, culvert or other device].

F39 1968 c.31 (NI)

F40 1968 c.31 (NI)

F41 1991 NI 13

F42 1981 NI 7

S.60 rep. by 1973 NI 2

INTERPRETATION

61 Interpretation of Part IV.

In this Part “mill” includes any factory, machine, building or other work by or for which water is taken or used for any purpose.

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