



# Fisheries Act (Northern Ireland) 1966

## 1966 CHAPTER 17

### PART IV

#### PROTECTION OF FISHERIES

##### OBSTRUCTIONS TO PASSAGE OF FISH

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

- (1) Where in a river natural obstructions of any kind prevent or impede the free passage of fish, the Ministry may, on the application of any person interested in a fishery in the river or of the Board, authorise the construction of works or the making of alterations in the bed of the river so as to secure the free passage of fish at all times, if the Ministry is satisfied that such construction 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 subsection (1) 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 subsection (1) shall be borne by the person on whose application the authorisation is given.
- (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 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 <sup>F1</sup> (clearing, widening, deepening, etc., of water courses) as are appropriate thereto, and in the doing thereof

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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 <sup>F1</sup> (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.

**F1** 1973 NI 1

*S.53A rep. by 1973 NI 1*

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

- (1) Where a dam is constructed in a [<sup>F2</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>F3</sup>(a) the dam is rebuilt, reinstated or heightened after the commencement of the Fisheries (Amendment) Act (Northern Ireland) 1968, or
  - [<sup>F4</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, on the application of any person interested in a fishery in the river or of the Board, and on being satisfied 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>F3</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 that subsection and by notice in writing grants exemption from those requirements with respect to that dam].

- [<sup>F4</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.]

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- (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), by the person on whose application the order is made; 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>F4</sup> . . . .
- [<sup>F4</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—
- (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.

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

**F3** 1968 c.31 (NI)

**F4** 1991 NI 13

**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 ...<sup>F5</sup>.

(2) Where a person is convicted under subsection (1)(c) of the offence of placing an obstacle or contrivance in a fish pass, the Board or, failing the Board, the Ministry may cause the obstacle or 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.

**F5** 1981 NI 7

**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—

- <sup>F6</sup>(a) use any fishing engine (other than a rod and line)<sup>F7</sup> from any position on a dam or] at any place within<sup>F8</sup> 200 metres] above or below any dam; [<sup>F6</sup> or

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- (b) use a rod and line from any position on or within<sup>[F8 5 metres]</sup><sup>[F7]</sup> or such other distance as may be prescribed by byelaws] 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 <sup>[F6]</sup>; 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 byelaws.]
- (3) If any person contravenes subsection (1) he shall be guilty of an offence, ...<sup>F9</sup>.

<b>F6</b>	1968 c.31 (NI)
<b>F7</b>	1991 NI 13
<b>F8</b>	SR 1983/100
<b>F9</b>	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 <sup>[F10 £500]</sup> 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.

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**F10** 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<sup>F11</sup>, 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 [<sup>F12</sup> 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<sup>F11</sup> 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—
    - (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) [<sup>F11</sup>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 ...<sup>F13</sup>.
- <sup>F11</sup>(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

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(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 this section “mill sluices” means the sluices<sup>F11</sup> or gate valves] which admit water to a mill.

**F11** 1991 NI 13

**F12** 1968 c.31 (NI)

**F13** 1981 NI 7

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