



# Fisheries Act (Northern Ireland) 1966 <sup>F1</sup>

## 1966 CHAPTER 17

An Act to extend the functions of the Ministry of Agriculture in relation to fisheries and to make provision for the development and improvement of fisheries by, or with the assistance of, that Ministry; to establish the Fisheries Conservancy Board for Northern Ireland, and to define their functions; to provide for the transfer to that Board of the property, rights and liabilities of, and to dissolve, the existing boards of conservators; to consolidate with amendments the Fisheries Acts (Northern Ireland) 1842 to 1954 and certain other enactments relating to fisheries; otherwise to amend the law with respect to fisheries; and for purposes connected with those matters. [21st June 1966]

**F1** App. (hovercraft), SI 1972/971

### PART I

#### FUNCTIONS OF THE MINISTRY OF AGRICULTURE

##### PRELIMINARY

#### **1 Responsibility of the Ministry for fisheries in Northern Ireland.**

- (1) Subject to the provisions of this Act, the Ministry of Agriculture (in this Act referred to as “the Ministry” ) shall be responsible in Northern Ireland for the supervision and protection of fisheries and for fostering the establishment and development of fisheries, and for those purposes shall exercise the functions conferred on the Ministry by this Act.
- (2) Subsection (1) shall have effect without prejudice to any provision of the Foyle Fisheries Acts.

*Status: Point in time view as at 27/03/2009.*

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## DEVELOPMENT AND IMPROVEMENT OF FACILITIES FOR ANGLING

### [<sup>F2</sup>1A **Promotion of angling.**

The Department may promote angling and for that purpose may—

- (a) exercise any of the functions conferred on it by sections 2 to 7;
- (b) encourage and advise bodies interested in angling; and
- (c) take such other steps as appear to it appropriate to secure the furtherance and development of angling.]

F2 1991 NI 13
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## 2 **Acquisition and development of waters for angling.**

- (1) The Ministry shall have power to acquire by agreement fishing rights in any inland waters, for the purpose of developing or improving facilities for angling, and accordingly may, so far as is reasonably necessary for or is incidental to that purpose, so acquire—
  - (a) any estate in land by virtue of which such rights are exercisable; and
  - (b) any estate in any other land which the Ministry is satisfied it is expedient to acquire for the safeguarding or the full enjoyment or exploitation of those rights.
- (2) Where fishing rights in respect of any waters have been acquired by the Ministry under subsection (1), the Ministry may do all such things as are necessary or expedient for the proper development of those waters, and of any land acquired under that subsection, for angling or for the provision of facilities or amenities for persons authorised by the Ministry to enter thereon.
- (3) Without prejudice to the generality of the provisions of subsection (2), the things that may be done in exercise of the powers conferred by that subsection shall include—
  - (a) the provision of proper means of access to waters used or capable of being used for angling, including the provision of roads, stiles, jetties, quays or boats;
  - (b) the removal or exclusion from any such waters of any predatory animal or of either any other animal or any plant, organism or substance which is harmful to fish of a particular kind or the food of fish; and
  - (c) the stocking of any such waters with fish in pursuance of section 10.

### [<sup>F3</sup>3 **Development of derelict waters for angling.**

- (1) This section applies where—
  - (a) the Department is of the opinion that any inland waters should be developed for angling; and
  - (b) the person who is entitled to the fishing rights in those waters is unknown or cannot be found.
- (2) The Department may—
  - (a) undertake the development of those waters for angling; or

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- (b) authorise an approved developer to undertake such development in accordance with an approved scheme submitted to the Department by that developer.
- (3) Before undertaking or authorising the development of any waters in pursuance of subsection (2), the Department shall on at least two occasions and at intervals of not less than 14 days publish in one or more than one newspaper circulating in the locality in which the waters are situated and in the Belfast Gazette, a notice—
- (a) containing particulars sufficient to identify the waters;
  - (b) stating that the Department proposes to develop those waters or, as the case may be, that the Department proposes to authorise their development in accordance with a scheme;
  - (c) indicating in a general manner the Department's proposals for such development or, as the case may be, the nature of the scheme;
  - (d) specifying, where the Department proposes to authorise such development in accordance with a scheme, the name and address of the approved developer who has submitted the scheme and the name and address of a place at which copies of the scheme may be inspected at reasonable times; and
  - (e) calling upon any person who claims any right of fishing in those waters or who objects to their development, to notify the Department of his claim, or of his objection and of the grounds thereof, within such period as may be specified in the notice, being a period expiring no earlier than 28 days from the date of the second notice so published.
- (4) The Department shall serve a copy of any notice published under subsection (3) upon every person who appears to the Department to be an owner of land adjoining the waters in question.
- (5) Where—
- (a) a notice has been published under subsection (3) with respect to any waters; and
  - (b) any person notifies the Department of his claim to fishing rights in those waters or any part thereof and produces to the Department prima facie evidence of his title,
- the Department shall not, with respect to those waters or, as the case may be, any such part thereof, take any further action under this section.
- (6) Where—
- (a) a notice has been published under subsection (3) with respect to any waters; and
  - (b) any person notifies the Department of his objection and of the grounds thereof, the Department shall consider that objection unless, in its opinion, the objection is vexatious, frivolous or insubstantial.
- (7) Nothing in subsection (5) or (6) shall prejudice the power of the Department to provide assistance under section 5 for the development or improvement of such waters for angling in accordance with a programme agreed upon under section 6 by the Department and such a person as is mentioned in either of those subsections, or any other power conferred by this Part.
- (8) If, in relation to the waters referred to in a notice published by the Department under subsection (3) or in relation to any part of those waters—

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- (a) no claim to fishing rights is notified to the Department under subsection (5) or no objection is so notified under subsection (6); or
  - (b) all claims and objections so notified are withdrawn or disposed of;
- the Department—
- (i) may, in accordance with the proposals referred to in the notice, execute such works and do such things as the Department is by section 2(2) and (3) empowered to execute or do in the case of waters the fishing rights in respect of which are owned by the Department; or
  - (ii) may authorise the approved developer to implement the approved scheme.
- (9) In relation to waters to which subsection (8) applies—
- (a) the Department or, as the case may be, the approved developer may, to the exclusion of any other person, exercise in all respects the rights of the owner of a several fishery;
  - (b) the Department may, in particular, issue permits in respect of such waters in accordance with section 7A, or
  - (c) the approved developer may, in particular, issue to persons making application therefor permits for periods not exceeding one year authorising them to fish in any such waters, and charge such reasonable sums for the issue of such permits as the approved developer may determine.
- (10) Where, under subsection (2), the Department undertakes the development of any waters for angling, those waters shall for the purposes of section 24(b) and of any provision of this Act relating to the protection of waters the fishing rights in which are owned by the Department be deemed to be such waters.
- (11) Where, under subsection (2), the Department undertakes the development of any waters for angling, the Department may acquire by agreement any estate in land which the Department is satisfied it is expedient to acquire for the exploitation of those waters.
- (12) In this section and in sections 3A and 4—
- “approved developer” means—
- (a) any person intending to develop any waters for angling, or
  - (b) any body or association of persons established for or having among its objects such development;
- and approved by the Department for the purposes of this section;
- “scheme” means a scheme submitted to the Department under section 3A, and
- “approved scheme” means such a scheme which has been approved by the Department under that section; and
- “waters” include any part thereof.
- (13) The Department shall not approve a developer for the purposes of this section unless it is satisfied that the development will provide—
- (a) angling for members of the public or a section thereof, or
  - (b) angling associated with a catering establishment registered in a register maintained under paragraph (a), (b) or (c) of section 10(1) of the Development of Tourist Traffic Act (Northern Ireland) 1948.
- (14) In this section (except subsection (7)) and in sections 3A and 4 references to the development of waters shall be construed as including references to the improvement, maintenance and management of waters.

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- (15) Nothing in this section shall be taken to prejudice the title of any person (including the Department) in relation to fishing rights in waters to which it applies.]

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### [<sup>F4</sup>3A Schemes for development of derelict waters.

- (1) A scheme submitted to the Department for the purposes of section 3 shall be—
  - (a) in such form and contain such particulars as may be prescribed by regulations; and
  - (b) accompanied by such documents as may be so prescribed.
- (2) A fee of such amount as may be prescribed by regulations, made with the approval of the Department of Finance and Personnel, shall be payable by the approved developer on submitting a scheme.
- (3) The Department may approve a scheme with or without amendments.
- (4) In considering whether to give its approval to a scheme, the Department shall take into account such matters as are in its opinion appropriate and, in particular—
  - (a) the nature of the scheme and its potential effect on other fisheries;
  - (b) the financial and other resources available to the developer proposing the scheme;
  - (c) the arrangements made by the developer with owners of land to facilitate access to the waters to which the scheme relates; and
  - (d) the extent to which those waters, are already open to the public for angling.
- (5) Approval of a scheme shall be expressed to expire after the specified period.
- (6) Approval of a scheme may be—
  - (a) given subject to conditions; and
  - (b) withdrawn on failure to comply with those conditions.
- (7) The Department, on the application of the developer who proposed a scheme or otherwise, may vary an approval so as to—
  - (a) restrict the specified period; or
  - (b) add, remove or vary conditions to which the approval is subject.
- (8) On the expiration of the specified period the approved developer shall cease to occupy the waters forthwith.
- (9) Nothing in this section shall preclude an approved developer, who has in consequence of subsection (8) ceased to occupy waters, from submitting to the Department a further scheme in respect of those waters.
- (10) In this section and in section 4 “the specified period” means, subject to subsection (11) and section 4(3), such period as the Department may specify in relation to an approved scheme, being a period which expires no less than 5 years and no more than 15 years from the date on which the Department under section 3(2)(b) authorises the approved developer to undertake development of the waters in accordance with the scheme.
- (11) Where, under subsection (6), the Department withdraws its approval of a scheme, the specified period shall come to an end on the expiration of 30 days from the date

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on which the Department notifies the approved developer of that withdrawal, and subsection (8) and section 4 shall apply accordingly.]

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**[<sup>F5</sup>4 Provisions supplemental to sections 3 and 3A.**

- (1) The following provisions of this section shall have effect where—
  - (a) the Department has under section 3—
    - (i) undertaken the development of any waters for angling, or
    - (ii) authorised an approved developer to undertake such development in accordance with an approved scheme; and
  - (b) a person claiming to be entitled to fishing rights in respect of those waters (in this section referred to as "the owner") thereafter produces to the Department proof of his title to the rights.
- (2) Where the Department is the occupier of the waters, the Department shall be entitled to remain in occupation for the period of 5 years from the date on which the owner produces to the Department proof of his title to the fishing rights in respect of the waters.
- (3) Where an approved developer is the occupier of the waters, that developer shall be entitled to remain in occupation until the expiration of—
  - (a) the period of 5 years from the date on which the owner produces to the Department proof of his title to the fishing rights in respect of the waters, or
  - (b) the specified period,
 whichever is the earlier.
- (4) On the expiration of the period for which the occupier is by virtue of subsection (2) or (3) entitled to remain in occupation of the waters, the occupier shall cease to occupy the waters forthwith; but nothing in this subsection or in subsection (3) shall prejudice the Department's powers under section 3A(6) and (7).
- (5) The occupier shall pay compensation to the owner in respect of its occupation of the waters for the period beginning—
  - (a) if the occupier is the Department, on the date when the Department first began to undertake the development of the waters; or
  - (b) if the occupier is an approved developer, on the date when the Department authorised that developer to undertake the development of the waters in accordance with an approved scheme;
 and ending on the date when, in accordance with subsection (2) or (3), the occupier ceases to be entitled to occupy the waters.
- (6) Any question as to—
  - (a) the sufficiency of any evidence tendered by the owner in proof of his title to the fishing rights;
  - (b) whether compensation is payable under subsection (5); or
  - (c) the amount of such compensation;
 shall, in default of agreement, be referred to and determined by the Lands Tribunal.

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- (7) No proceedings shall be brought under subsection (6) after the expiration of the period of one year from the date on which the occupier is obliged by virtue of section 3A(8) or subsection (4) of this section to cease to occupy the waters.
- (8) When assessing compensation under subsection (6), the Lands Tribunal shall have regard to—
- (a) the extent to which fishing rights in the waters were exercised by the owner during the 10 years immediately preceding the date when the Department first began to undertake the development of the waters or, as the case may be, authorised the approved developer to undertake such development in accordance with an approved scheme; and
  - (b) the value of any development of the waters for angling, undertaken by the occupier.
- (9) Occupation of any waters such as are mentioned in subsection (1) shall not confer on the occupier any rights in respect of such waters other than those mentioned in section 3 or this section.
- (10) In this section—
- “the occupier” means—
    - (a) where the Department has undertaken the development of waters for angling, the Department, and
    - (b) where the Department has authorised an approved developer to undertake such development in accordance with an approved scheme, that developer;
  - “the owner” has the meaning given in subsection (1)(b).]

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## 5 Payment of grants and execution of works for the development, etc., of waters for angling.

- (1) The Ministry, upon the application of—
- (a) any person who is, by virtue of his ownership of any fishing rights, for the time being entitled to take fish in any inland waters; or
  - (b) any association of persons established for the purpose of developing or improving any waters for angling,
- may, in accordance with the terms of a programme approved by the Ministry under section 6,—
- (i) make grants to that person or association towards any expenditure reasonably incurred by him or them for the purposes of developing or improving any such waters for angling or of providing or improving facilities or amenities for anglers on or in connection with such waters;
  - (ii) cause such works to be executed and do such things as are expedient for any such purposes.
- (2) Without prejudice to the generality of paragraph (i) of subsection (1), the purposes for which grants may be made under that paragraph or for which works may be executed or any thing done under paragraph (ii) of that subsection shall include the doing of any thing which may, under section 2(2) and (3), be done by the Ministry in the case of waters the fishing rights in respect of which are owned by the Ministry.

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## 6 Programme for the development, etc., of waters for angling.

- (1) A person applying to the Ministry under subsection (1) of section 5 for any assistance such as is described in paragraph (i) or (ii) of that subsection, or a person so applying on behalf of any association, shall submit to the Ministry a programme for the development or improvement of the waters with respect to which the application is made, and the Ministry may approve the programme without modification or subject to any modification that may be agreed upon between the Ministry and the applicant, or may refuse to approve the programme.
- (2) In determining the amount of any grant for which application is made under section 5(1)(i) or the nature or extent of any works proposed to be executed or thing to be done under section 5(1)(ii), the Ministry shall have regard to—
  - (a) the security of tenure of the applicant or, as the case may be, the association or any of their members of any estate in land by virtue of which any right of taking fish in those waters is exercisable by him or them;
  - (b) any representations made to the Ministry by any other person who has such an estate in land, and the willingness of any such other person to enter into an agreement with the Ministry or the applicant for the furtherance of the purposes of the programme;
  - (c) the provisions of the programme with respect to the amount of any financial contribution to be made or work to be done for the purposes of the programme by the person making the application or, as the case may be, the association or any of their members;
  - (d) the amount of any contribution to be made for the purposes of the programme by a district council<sup>F6</sup> under section 37 of the Local Government (Ireland) Act 1898 ;
  - (e) any other sources of financial assistance available to the applicant; and
  - (f) the extent to and the terms on which facilities for angling in the waters to which the programme relates will be made available to members of the public or any section thereof.
- (3) A programme approved by the Ministry under subsection (1) may be modified with the Ministry's approval, and thereafter shall have effect for the purposes of this section as so modified.
- (4) Subject to subsection (5), where the Ministry has approved a programme under this section, the Ministry may revoke its approval if, at any time before the carrying out of the programme is completed, it appears to the Ministry—
  - (a) that any term of the programme or any condition imposed in connection with the payment of a grant or instalments thereof, or the execution of any works, or the doing of any thing, under section 5 in relation to the programme has not been, or is not likely to be, complied with; or
  - (b) that in connection with an application for approval of the programme or of any modification of the programme the applicant gave information which was false or misleading in a material respect;

and if before the revocation any payment is made by way of grant in respect of the programme, the Ministry may recover the payment, or so much thereof as it thinks fair, as a simple contract debt in any court of competent jurisdiction.
- (5) Before revoking an approval under subsection (4), the Ministry shall—
  - (a) give to the applicant or any other person to whom any grant would be payable by the Ministry under the programme, or from whom any payment of such



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- a grant would be recoverable, a written notification of the reasons for the proposed revocation; and
  - (b) afford to each such person an opportunity of appearing before and being heard by a person appointed for the purpose by the Ministry; and
  - (c) consider the report of the person so appointed and supply a copy of the report to each person who was entitled to appear before the person submitting it.
- (6) For the purpose of giving effect to the provisions of a programme to which the Ministry has given its approval under this section, or of securing the observance by any person of conditions attached to such approval, the Ministry may enter into an agreement with any person or association, by or on behalf of whom the programme was submitted, or with any person acting on behalf of such an association, or with any other person such as is referred to in subsection (2)( b), on such terms and conditions as the Ministry thinks fit; and without prejudice to the generality of the foregoing provisions of this subsection, the agreement may include provisions for ensuring that any disposition by any such person or association of fishing rights over the waters to which the programme relates or of any land held in connection therewith shall be made on such terms as may be appropriate for securing the continued observance of the conditions by his or their successors in title.

F6 1972 c.9 (NI) see s.133(2) of that Act

## 7 **Compilation and publication of angling guide.**

- (1) The Ministry may enter into arrangements with persons claiming to be entitled to fishing rights in any waters for such persons to supply to the Ministry—
- (a) particulars as to—
    - (i) the availability or otherwise of any such waters for angling by members of the public; and
    - (ii) the terms upon which waters are made so available; and
  - (b) such other information in relation to those waters as may appear to the Ministry to be of interest to persons wishing to engage in angling therein.
- (2) The Ministry may publish, or may enter into arrangements with any body established under any enactment for the promotion of the development of tourist traffic in Northern Ireland for the publication of, any particulars or information supplied to the Ministry under subsection (1), in the form of an angling guide.
- (3) Where the Ministry supplies to any persons copies of an angling guide published by the Ministry under this section, it may make such reasonable charges therefor as will defray any expenses incurred by the Ministry in relation to the preparation and publication of the guide.

[F7 PERMITS TO FISH IN DEPARTMENT'S WATERS]

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## 7A Permits.

- (1) Where the Department owns the fishing rights in any waters—
  - (a) the Department may issue permits, or make arrangements for their issue through agents, for periods not exceeding one year, authorising the holder of such a permit to use a fishing engine in the waters to which the permit relates; and
  - (b) may, subject to subsection (2), charge for the issue of such permits such reasonable sums as the<sup>F8</sup> Department may determine].
- (2) The Department may under subsection (1)(a) issue complimentary permits to persons not ordinarily resident in Northern Ireland and nothing in this Act shall require such persons to make any payment in respect of such permits.
- (3) Where permits are issued under subsection (1) in relation to any waters, any person who, without obtaining such a permit, uses a fishing engine in those waters, shall be guilty of an offence.
- (4) Section 45 (offence of falsifying, etc. licences) shall apply in relation to any permit issued under subsection (1) as if—
  - (a) for any reference in that section to a fishing licence there were substituted a reference to such a permit, and
  - (b) for the reference in paragraph (c) of that section to the Board there were substituted a reference to the Department.

**F8** 2001 c. 4 (NI)

## OTHER PROVISIONS FOR THE IMPROVEMENT AND PROTECTION OF FISHERIES

### 8 General power for stocking of waters.

Where the Ministry is satisfied—

- (a) that for the purpose of developing or improving the fishery of any waters it is expedient to introduce into those or any other waters fish of any kind; and
- (b) that the introducing of fish of that kind will not interfere with the reasonable and legitimate interests of any other person,

the Ministry may acquire, and may do such things as are necessary to establish in any such waters, any fish of that kind, or any eggs or young thereof.

### 9 Power of Ministry to improve fisheries at expense of other persons.

- (1) For the purpose of improving any fishery, the Ministry may by agreement with and at the expense of any other person either execute any works or do any thing which that person is entitled to execute or do.
- (2) Without prejudice to the generality of subsection (1), the things which may be done by the Ministry in pursuance of an agreement under that subsection shall include any of the things referred to in paragraphs ( a ), ( b ) and ( c ) of section 2(3).

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- (3) The execution of any works or the doing of any thing by the Ministry by agreement with any other person under subsection (1) shall not diminish in any respect any responsibility of that other person for any act or thing done in pursuance of the agreement.

## **10 Power of Ministry to establish a fish farm.**

- (1) The Ministry may establish and operate an undertaking for the culture of fish (in this Act referred to as a “fish farm” ) for the purposes—
- (a) of providing yearling or other fish, or fry or ova, for the stocking or restocking of any waters under section 8, or of any waters the fishing rights in which are owned by, or which are under the control of,—
    - (i) the Ministry, or
    - (ii) any other person, or
    - (iii) any association of persons interested in the fishery of any waters; and
  - (b) in so far as any fish reared in such a fish farm are not required for the purposes mentioned in paragraph ( a ), of providing fish for human consumption.
- (2) Where, under subsection (1)( a ), the Ministry provides fish for the purposes of any other person or any association, the Ministry may do so on such terms as it thinks fit, and may in particular do so in consideration of the payment to the Ministry of a sum of money less than the market value of the fish, or without payment, regard being had to—
- (a) any undertaking given to the Ministry by that person or association as to the provision by him or them of facilities for angling by members of the public or any section thereof; or
  - (b) any proposals of that person or association (whether or not contained in a programme of angling development under section 6) for the development or improvement of any waters for fishing and for the care and protection of such waters after such development or improvement has been carried out.

## **[<sup>F9</sup>11 <sup>F10</sup> Fish culture licences.**

- (1) Subject to the following provisions of this section and sections 11A and 11C, the Department may by licence (referred to as "a fish culture licence") authorise any person—
- (a) to operate a fish farm at a place specified in the licence, and
  - (b) to carry on in connection therewith such operations in relation to the culture of fish of any kind specified in the licence as may be so specified.
- (2) A fish culture licence—
- (a) may contain such conditions as the Department considers appropriate; and
  - (b) shall include, in particular, conditions as to the times and seasons at and the manner in which fish may be taken.
- (3) A fish culture licence may, in so far as is expedient for the purpose of giving effect to any such conditions, exempt—
- (a) the holder of the licence and any person acting under his directions, and
  - (b) a person who acquires fish of any kind taken in accordance with such conditions,

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from the restrictions imposed by section 111 in so far as those restrictions apply to fish of that kind.

- (4) Without prejudice to subsections (2) and (3), and notwithstanding anything contained in this Act or any regulation or byelaw made under this Act, a person to whom a fish culture licence is granted and any person acting under his directions may, subject to the conditions contained in the licence, do any of the things authorised by the licence.
- (5) If any person—
- (a) operates a fish farm with respect to which a fish culture licence is not for the time being in force; or
  - (b) operates a fish farm with respect to which such a licence is in force, otherwise than in accordance with any conditions attached to the licence,
- he shall be guilty of an offence.
- (6) In this section and in sections 11A and 11B references to the operation of a fish farm include references to such operation in inland or tidal waters or within the seaward limits of the territorial sea adjacent to Northern Ireland.]

**F9** 1991 NI 13

**F10** functions transf. by SR 2003/163

## <sup>F11F12</sup>11A Applications for fish culture licences.

- (1) An application for a fish culture licence—
- (a) shall be made to the Department in such form and manner, and
  - (b) shall include such particulars and shall be accompanied by such documents, as the Department may direct.
- (2) If, on considering an application for a fish culture licence, the Department is minded to grant the licence, the Department shall, except in relation to such classes of applications as it may direct, publish, at the applicant's expense, notice of the application in such two or more newspapers as it considers appropriate, stating the address where and the period (not being less than one month from the date of publication) within which objections in writing to the granting of the licence may be sent to it.
- (3) If—
- (a) within the period mentioned in subsection (2), the Department receives any objections (not being in the opinion of the Department vexatious, frivolous or insubstantial) which are not withdrawn; and
  - (b) those objections are not such as to cause the Department to become minded not to grant the fish culture licence,
- the Department shall cause a local public inquiry to be held by the Water Appeals Commission for Northern Ireland (in this Act referred to as “the Appeals Commission”) for the purpose of considering those objections.
- (4) If, otherwise than after the holding of such an inquiry, the Department is minded not to grant the licence or grants the licence subject to conditions—
- (a) 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

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- (b) the applicant may, within 28 days from the day on which such notification is given, appeal to the Appeals Commission.
- (5) Where, under<sup>F13</sup>[<sup>F14</sup>Article 7A(3)(a)] of the Water (Northern Ireland) Order 1999], the consent of the Department of the Environment is required to the discharge of effluent into a waterway in connection with the operation of a fish farm, a fish culture licence shall not be issued in respect of that operation unless such consent is granted.
- [ Where, under Part 2 of the Aquatic Animal Health Regulations (Northern Ireland)<sup>F15</sup>(5A) 2009, the authorisation of the Department is required in connection with the operation of a fish farm, a fish culture licence shall not be issued in respect of that operation unless such authorisation is granted.]
- (6) Nothing in this section applies to an application for a fish culture licence which is received by the Department before the date of the coming into operation of Article 6 of the Fisheries (Amendment) (Northern Ireland) Order 1991.]

**F11** 1991 NI 13

**F12** functions transf. by SR 2003/163

**F13** 1999 NI 6

**F14** Words in s. 11A(5) substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), art. 308(1), **Sch. 12 para. 7** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

**F15** S. 11A(5A) inserted (27.3.2009) by [Aquatic Animal Health Regulations \(Northern Ireland\) 2009 \(S.R. 2009/129\)](#), regs. 1(1), **16(1)**

<sup>F16</sup>**11B Discharge of effluent.**  
<sup>F17</sup>

- (1) Where—
- (a) an application is made to the Department of the Environment under<sup>F18</sup> paragraph 1 of Schedule 1 to the Water (Northern Ireland) Order 1999 (“the 1999 Order”), and
- (b) in the opinion of that Department, the purpose of the application is to obtain its consent to the discharge into a waterway of effluent or matter in connection with the operation of a fish farm,
- the Department of the Environment may, with the approval of the Department, make a direction—
- (i) that a local public inquiry to be held under section 11A(3) shall also consider any objection (other than one which is withdrawn or is, in the opinion of the Department of the Environment, vexatious, frivolous or insubstantial) received in response to<sup>F18</sup> the advertisement of the application under paragraph 1 of Schedule 1 to 1999 Order], and
- (ii) that the report on the inquiry shall be delivered to each Department.
- (2) The Department of the Environment shall give notice of any direction made under subsection (1) to—
- (a) the person making the application;
- [ the Foyle, Carlingford and Irish Lights Commission, where the discharge is
- <sup>F19</sup>(b) to be made in the Londonderry Area or the Newry area;]
- (c) the Board, where the discharge is to be made outside<sup>F19</sup> those Areas;]

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and (without prejudice to section 23 of the Interpretation Act (Northern Ireland) 1954) that person and the Foyle Fisheries Commission or, as the case may be, the Board shall be entitled to appear and be heard at the inquiry.

- (3) [<sup>F18</sup>Article 13(1) of the 1999 Order] shall not apply to such an application where the Department of the Environment makes a direction under subsection (1) of this section.
- (4) [<sup>F18</sup>Paragraph 2(2) of Schedule 1 to the 1999 Order shall not apply to any application under paragraph 1 of Schedule 1 to that Order] for the purpose mentioned in paragraph (b) of subsection (1) of this section.

*Subs. (5) rep. by 1999 NI 6]*

**F16** 1991 NI 13  
**F17** functions transf. by SR 2003/163  
**F18** 1999 NI 6  
**F19** SI 1999/859

<sup>F20</sup>**11C Amendment, suspension and revocation of fish culture licences.**  
<sub>F21</sub>

- (1) The Department may at any time amend any fish culture licence, either on its own motion or on the application of the holder of the licence.
- (2) Where the Department proposes to amend any fish culture licence on its own motion, the Department shall—
- (a) give to the holder of the licence a written notification of its intention to do so; and
  - (b) state in that notification—
    - (i) the specific amendment under consideration, and
    - (ii) the grounds upon which it is proposed to be made.
- (3) If the holder of the licence objects to the proposed amendment, he may, within 28 days from the day on which notification is given to him under subsection (2), appeal to the Appeals Commission.
- (4) A fish culture 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—
- (a) “licence” means a fish culture licence; and
  - (b) the references in paragraphs 1 and 3 to the fishery with respect to which the licence was issued shall be construed as references to the fish farm to which the licence relates.]

**F20** 1991 NI 13  
**F21** functions transf. by SR 2003/163

**12 Power of Ministry to conduct or assist research.**

The Ministry may, with the approval of the Ministry of Finance, conduct or promote, or assist (by grants or otherwise) any person in conducting, research or investigations into any matter relating to fish or any fishery.

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### **13 Prohibition of introduction of fish of certain kinds.**

- (1) Where the Ministry is satisfied that the introduction into any waters of fish of any particular kind would be detrimental to the fishery of those waters, the Ministry may make an order prohibiting the introduction into such waters of any live fish of that kind or any eggs or young thereof.
- (2) If any person introduces any thing into any waters in contravention of an order made under subsection (1) he shall be guilty of an offence.
- (3) Where an order has been made under subsection (1) with respect to any waters, the Ministry may, on the application of any person, issue to that person a permit to introduce into those waters any thing of a kind the introduction of which into those waters is prohibited by the order, and may attach to the permit such conditions as the Ministry thinks proper and specifies in the permit; and a person to whom such a permit has been granted, or any other person acting under his directions, may, subject to the conditions specified in the permit, do anything authorised by the permit without incurring any penalty under this section.
- (4) An order made under this section shall be subject to negative resolution.

### **14 Exemptions for artificial propagation and scientific purposes.**

- (1) The Ministry may, by permit in writing and subject to any conditions specified in the permit, authorise any named person to do, at any season of the year, such things as may be specified in the permit for the purpose of the artificial propagation of fish, for some scientific purpose or for the improvement of any fishery, and in particular, without prejudice to the generality of the foregoing,—
  - (a) to catch fish of any kind specified in the permit and to have in his possession fish of that kind or their ova for the purpose of artificial propagation, transplantation, the stocking, restocking or improvement of any fishery or for any scientific purpose, and for the purpose of so catching to have in his possession, erect and use any fishing engine of a kind specified in the permit or to have in his possession and use any substance of a kind so specified;
  - (b) to buy or sell ova or fry of fish of any kind specified in the permit for the purpose of stocking or restocking, or for any scientific purpose;
  - (c) to dispose of fish taken in accordance with the terms of the permit in such manner and on such terms as may be so authorised.
- (2) A permit under subsection (1) shall not authorise anything to be done in relation to a several fishery otherwise than with the consent of the owner of that fishery.
- (3) Notwithstanding anything contained in this Act or any instrument made thereunder, a person to whom a permit is issued under subsection (1) or any other person acting under the directions of such first-mentioned person may, subject to any conditions specified in the permit, do any of the things authorised by the permit without incurring any penalty under this Act.
- (4) A person to whom a permit has been given by the Ministry under this section shall, if when doing anything pursuant to the permit he is so requested by an authorised person, produce the permit to that person.
- (5) In subsection (4), “authorised person” has the same meaning as in section 166(1) and (2).

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## 15 Regulations with respect to eel fishing.

- (1) The Ministry may make such regulations as appear to the Ministry expedient for the management (other than financial), conservation, protection and improvement of the eel fisheries of Northern Ireland, other than the eel fisheries of the Londonderry Area [<sup>F22</sup>or the Newry Area], and, without prejudice to the generality of the foregoing provisions may by such regulations do the following things:—
- (a) regulate the establishment and use of eel weirs and the manner of erecting or hanging fishing engines therein;
  - (b) fix and alter the close seasons for eels;
  - (c) prescribe—
    - (i) the amounts of licence duties payable to the Fisheries Conservancy Board for Northern Ireland established under Part II in respect of licences for the use of fishing engines (other than rod and line) for the taking of eels;
    - (ii) the description and form of any fishing engine to be used for the taking of eels;
    - (iii) the minimum sizes of the meshes of nets, or the apertures in other fishing engines, used for taking eels;
    - (iv) the minimum sizes or weight of eels which may be taken;
    - (v) the times and places or the mode at or in which any fishing engine may be used for taking eels;
  - (d) subject to subsection (2), amend or revoke any byelaw relating in any manner to eels or eel fisheries.
- (2) Nothing in this section shall affect the power of the said Board to make byelaws under section 26 with respect to the taking of eels with rod and line.
- (3) If any person contravenes a regulation made under this section, he shall be guilty of an offence.

**F22** Words in s. 15(1) inserted (1.6.2008) by *Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9))*, arts. 1(3), 34(1), **Sch. 2 para. 2(3)** (with art. 32); S.R. 2008/232, **art. 2, Sch.**

## PROTECTION OF QUALITY OF FISH

### <sup>F23</sup>15A Regulations for protection of quality of fish.

- (1) With a view to reducing the risk of deterioration of or damage to fish after capture and before they are brought onto retail premises or, if not so brought, are sold by retail, the Ministry, with the concurrence of the Ministry of Health and Social Services, may make regulations imposing a duty on persons engaged in the business of fishing or of handling, processing, storing, transporting or selling fish, and persons acting on their behalf, to comply with such requirements (including requirements relating to processing, hygiene or temperature; or as to the stowage or exposure of fish; or as to the construction, lay out and equipping of holds in fishing boats or of the parts of such boats, or of premises, used for processing fish; or as to the size, form and material of containers and the manner of packing) as may be prescribed by the regulations.



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- (2) Regulations made under this section may prescribe standards of quality for fish and may limit the purposes for which fish of any of the standards may be used.
- (3) If any person contravenes a provision of regulations made under this section he shall be guilty of an offence, and if in the case of any fishing boat [<sup>F24</sup> there is a contravention of any such provision,—
  - (a) the master of the boat, and
  - (b) the charterer, if any, of the boat, or, if there is no charterer, the owner, and
  - (c) where there is a charterer and the offence relates to the construction or lay out of any part of the boat, also the owner of the boat,]shall each be guilty of an offence.
- (4) In this section “processing” in relation to fish includes preserving or preparing the fish, or producing any substance or article from it, by any method for human or animal consumption and “retail premises” means any separate and distinct premises, or part of any premises, used solely for the purposes of sale by retail or any vehicle so used.]

**F23** 1968 c.31 (NI)

**F24** 1981 NI 7

## DEFINITIONS OF MOUTHS OF RIVERS, ETC.

### 16 Definitions of mouths of rivers, etc.

- (1) For the purposes of this Act, the Ministry may by order define, by reference to a map or otherwise,—
  - (a) the mouth of any river at its entrance into any lake or the sea;
  - (b) the mouth of any tributary river at its entrance into any other river;
  - (c) the boundary between the tidal and freshwater portions of any river;
  - (d) the point or points to or from which distances are to be measured under this Act;
  - (e) the areas within which it is prohibited under this Act to use or practise certain methods of fishing;
  - <sup>F25</sup>(f) the boundary between so much of [<sup>F26</sup> the Northern Ireland zone] as is within, and so much thereof as is without, the Londonderry Area [<sup>F27</sup>or the Newry Area].]
- (2) Where several rivers flow into a common mouth or estuary, an order under this section may declare that the outlets of such rivers form separate mouths.

**F25** 1968 c.31 (NI)

**F26** SI 2002/790

**F27** Words in s. 16(1)(f) inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 34(1), **Sch. 2 para. 2(4)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

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## RECORDS AND RETURNS

### 17 **Records and returns by holders of fishing licences and dealers' licences and persons engaged in the sea-fish industry.**

- (1) The Ministry may make regulations with respect to—
- (a) the records to be kept and the returns to be made by—
    - (i) holders of fishing licences;
    - (ii) holders of dealers' licences;
    - (iii) persons engaged in business in connection with the wholesale distribution or the processing of sea-fish;
    - <sup>F28</sup>(iv) sea-fishermen;
    - (v) fish-salesmen;]
  - (b) the persons to whom, the times at which, and the forms in which the returns are to be made;
  - (c) the heads under which particulars are to be included in such records or returns; and
  - (d) such other matters with respect to the records or returns (including the inspection, verification and copying of records by an officer of the Ministry) as may seem expedient.
- (2) Every person required by regulations made under this section to keep any record or to make any return, who—
- <sup>F29</sup>(a) acts in contravention of any provision of the regulations; or]
  - (b) makes in a record or return any statement which to his knowledge is false or misleading in any material respect,
- shall be guilty of an offence.
- <sup>F30</sup>(3) In subsection (1)( a) in sub-paragraph (i) “fishing licence” does not include a licence to fish with rod and line and in sub-paragraph (iii) “processing” has the same meaning as in section 15A(4).]
- <sup>F28</sup>(4) In this section—
- (a) “sea-fishermen” includes the master, charterer or owner of a sea-fishing boat;
  - (b) “fish-salesmen” includes an auctioneer or dealer in fish at the point of landing (as defined by regulations) of the fish.]

<b>F28</b> 1981 NI 7
<b>F29</b> 1968 c.31 (NI)
<b>F30</b> 1968 c.31 (NI)

### 18 **Disclosure of returns and information.**

- (1) Subject to subsection (2), returns or any information contained in returns furnished pursuant to section 17 shall not, without the consent of the person by whom any return was made, or, as the case may be, the person to whose business the returns relate, be disclosed otherwise than to the Ministry or an officer of the Ministry.
- (2) Subsection (1) shall not apply to—

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- (a) the disclosure of returns or information in the form of a summary of similar returns or information furnished by or obtained from a number of persons, if the summary is so framed as not to enable particulars relating to any individual or any individual business to be ascertained from it; or
  - (b) any disclosure of information made for the purposes of any legal proceedings pursuant to this Act, or for the purposes of any report of any such proceedings; or
  - (c) the disclosure of any such returns or information in so far as the disclosure is required or authorised by or under this Act.
- (3) If any person discloses any information in contravention of this section, he shall be guilty of an offence.

## REGULATIONS

### 19 Regulations.

- (1) The Ministry may make regulations prescribing anything which, under this Act, may be prescribed by regulations, and providing for any matter in respect of which regulations may be made under this Act.
- (2) Regulations made under this Act shall be subject to negative resolution.

## INQUIRIES

### 20 Power of Ministry to hold inquiries and investigations.

- (1) The Ministry may cause local or other inquiries to be held or investigations to be made in relation to the fisheries of Northern Ireland or any of them and the best means to be adopted for the management, conservation, protection or improvement thereof, or in relation to the operation of this Act.
- (2) This section shall not be construed as empowering the Ministry to cause inquiries to be held or investigations to be made in any case in relation to which the Foyle<sup>F31</sup> Carlingford and Irish Lights] Commission is authorised to hold inquiries under section 80 of the Foyle Fisheries Act (Northern Ireland) 1952 .
- <sup>F32</sup>(3) Without prejudice to subsection (1), the Department may, with respect to any fish farm for which a fish culture licence under section 11 is in force (including any fishery for which a shell-fish fishery licence is also in force), make such inquiries and examination by an inspector or otherwise, and require from the holder of the licence such information, as the Department considers necessary or proper, and the holder of the licence shall afford all facilities for such inquiries and examination, and give such information, accordingly.
- (4) Without prejudice to any provision of Part XI, for the purpose of an examination under subsection (3) an officer authorised in writing in that behalf by the Department, on production if so required of his credentials, may at any reasonable time—

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- (a) enter any place specified in a fish culture licence under section 11 authorising the operation of a fish farm and any area specified in a shell-fish fishery licence; and
- (b) examine that place or land within that area and all fish, buildings, structures, rafts, trays, devices and things found there; and
- (c) obtain, take away and dispose of samples (which shall be marked, labelled or otherwise made capable of identification) of any fish, or of any water or other substance, found there;

and the holder of the licence shall afford to such an officer facilities for the exercise by him of any right conferred by this subsection.]

**F31** SI 1999/859

**F32** [1981 NI 7](#)

## 21 Notice of meetings and inquiries.

Where the Ministry is required under any provision of this Act to cause a public inquiry or public meeting to be held, sufficient notice of that inquiry or meeting shall be deemed to be given if, not less than fourteen days before the holding of the inquiry or meeting, notice of the time and place at which the inquiry or meeting is to be held, and of the matters to be inquired into or considered thereat, is given by advertisement inserted in one or more than one newspaper circulating in the district where the inquiry or meeting is to be held.

## REPORT

## 22 Annual report by the Ministry.

[<sup>F33</sup>(1)] The Ministry shall cause to be prepared and laid before Parliament an annual report containing for the year to which it relates—

- (a) particulars of the Ministry's proceedings under this Act; and
- (b) so far as is practicable, a statistical account of the fisheries of Northern Ireland, arranged and classified under such different heads as appear to the Ministry to be most suited for the purpose; and
- (c) particulars of the receipt and payment of any sums of money which the Ministry, under the provisions of this Act, receives or pays.

[<sup>F33</sup>(2)] The report under subsection (1) may be made and laid before the Assembly as part of the yearly report required by section 26 of the Agriculture and Technical Instruction (Ireland) Act 1899.]

**F33** [1991 NI 13](#)

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## FINANCIAL PROVISIONS

### 23 Expenses.

- (1) Subject to the succeeding provisions of this Part and without prejudice to section 29(1), there shall be defrayed out of moneys provided by Parliament—
- (a) any expenditure incurred by the Ministry under this Act, including, in particular,—
- (i) any sums expended in acquiring fishing rights under section 2 or in developing or improving any waters for angling or any land under that section or section 3;
  - (ii) any sums paid under section 4 to a person claiming fishing rights in waters developed or improved by the Ministry under section 3;
  - (iii) any grants paid, or the cost of any works executed or things done, under section 5 in pursuance of a programme of angling development approved by the Ministry under section 6;
  - (iv) any expenditure incurred in publishing an angling guide under section 7;
  - (v) any expenditure incurred in relation to the stocking of any waters under section 8;
  - (vi) subject to subsection (2), the cost of executing any works or doing any thing which the Ministry is by this Act authorised to execute or do at the expense of any other person;
  - (vii) any expenses incurred in relation to a fish farm established under section 10; and
  - (viii) any sums expended for the purposes of research or investigations carried out by the Ministry under section 12 or of any grants or other assistance provided for other persons under that section; and
- (b) any increase attributable to any provision of this Act in the sums which are authorised or required to be so defrayed under any other enactment.
- (2) The payment under subsection (1) of the amount of any expenses incurred by the Ministry in executing any works or doing any thing that may be so executed or done under this Act at the expense of any other person shall be subject to the reimbursement of the Ministry in the like amount by the person at whose expense the works are executed or the thing is done.
- (3) There shall be paid into the Exchequer any sums received by the Ministry under subsection (2) in reimbursement of any payment such as is described in that subsection.

### 24 Appropriations in aid.

There shall be appropriated in aid of moneys provided by Parliament for defraying the expenses incurred by the Ministry under this Act any sums received by the Ministry under this Act (other than sums to which sections 23(3) and 29(2) apply), including, in particular,—

- (a) any sum paid to the Ministry by a district council<sup>F34</sup> under section 37(1)(a) or (b)(i) of the Local Government (Ireland) Act 1898, by way of contribution towards the amount of any such expenses;

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- (b) any sum paid to the Ministry by any person in respect of a permit issued to him by the Ministry authorising him to fish in any waters the fishing rights in respect of which are owned by the Ministry;
- (c) any sum recovered by the Ministry under section 6(4) in consequence of the revocation by the Ministry of its approval of a programme of development under that section;
- (d) any sum received by the Ministry in respect of the sale of fish from a fish farm operated by the Ministry under section 10; and
- <sup>F35</sup>(e) any other sum paid to the Ministry by a person interested in the development of a fishery to defray any expenses incurred under this Act in relation to that fishery.

**F34** 1972 c.9 (NI) see **s.133(2)** of that Act

**F35** prosp. inserted by 1983 NI 21

## PART II

### THE FISHERIES CONSERVANCY BOARD FOR NORTHERN IRELAND

#### CONSTITUTION AND FUNCTIONS

#### <sup>F36</sup>25 **The Fisheries Conservancy Board for Northern Ireland.**

- (1) There shall be a body called the Fisheries Conservancy Board for Northern Ireland (in this Act referred to as “the Board”) whose functions shall, subject to the following provisions of this section, be the conservation and protection of the salmon and the inland fisheries of Northern Ireland, other than the fisheries of the Londonderry Area<sup>F37</sup> or the Newry Area].
- (2) The Board shall, if so directed in writing by the Head of the Department,<sup>F38</sup> exercise, in accordance with the terms and conditions of the direction, any function conferred on the Department by this Act and] execute such works and do such things in relation to any fisheries mentioned in subsection (1) as may be specified in the directions.
- (3) Without prejudice to the generality of subsections (1) and (2), the Board may, in the exercise of their functions—
  - (a) take legal proceedings for the enforcement of any statutory provision with respect to salmon or inland fisheries;
  - (b) make to the Department such suggestions and representations as the Board think proper in relation to any matter pertaining to such fisheries, and advise the Department upon any such matter which is referred to them by the Department;
  - (c) act in co-operation with any other body constituted under a statutory provision for the purpose of publicising any such fisheries as a tourist attraction;
  - <sup>F38</sup>(cc) [ enter into an agreement to enforce the fishing rights of any owner or occupier of land or waters in accordance with such terms and conditions as may be specified in the agreement and on payment of such sums as may be so specified;]

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- (d) apply and expend, subject to the provisions of this Act, any money paid to the Board in such manner as the Board think proper for the performance of their functions.
- (4) The functions of the Board under the preceding provisions of this section shall, if the Head of the Department so directs, cease to be exercisable by the Board in relation to salmon fisheries in the sea to such extent as may be specified in the directions.
- (5) The provisions of Schedule 2 shall have effect with respect to the Board.]

F36 1983 NI 21

F37 SI 1999/859

F38 1991 NI 13

## 26 Power of Board to make byelaws.

- (1) Subject to subsection (2), the Board may, with the approval of the Ministry, make such byelaws as appear to the Board to be expedient for the<sup>F39</sup> purposes of the Board's functions in relation to] any fisheries to which section 25 applies, and, without prejudice to the generality of the foregoing provisions, may make byelaws with respect to the following matters:—
  - (a) the regulation of fishing and preservation of good order amongst persons fishing;
  - (b) the times and seasons for the taking of fish or for any mode of taking fish and the conditions subject to which fish may be taken;
  - (c) prohibiting any mode of taking or destroying fish;
  - (d) the times and places at, or the mode in, which any fishing engine may be used;
  - (e) the description and form of nets or other fishing engines to be used, and the size of the meshes of those nets or the apertures in those other engines;
  - (f) the size (whether determined by measurement or by weight) of fish which may be taken;
  - (g) the making of applications for, and the issue, alteration, renewal and revocation of fishing licences, whether generally or in specified cases;
  - (h) the form of and the conditions attaching to fishing licences;
  - (i) the duties payable in respect of fishing licences;
  - (j) the protection of waters from any predatory animals;
  - (k) the prohibition of any practice whatsoever tending to impede the lawful capture of fish or to be in any manner detrimental to the fisheries;
  - <sup>F39</sup>(kk) the attachment of such identification marks as may be specified in the byelaws to any salmon captured;]
  - <sup>F40</sup>(kkk) anything relating in any matter to the management and protection of the fisheries;]
  - (l) anything which under this Act may be prescribed by byelaws or in respect of which byelaws are by this Act authorised to be made.

<sup>F41</sup>(2) [<sup>F39</sup>Except in relation to registers to be kept under section 120,] byelaws shall not be made under subsection (1) with respect to any matter in relation to which the Ministry is by this Act empowered to make regulations.

<sup>F40</sup>(3) The power to make byelaws under this section in relation to the regulation of fishing for salmon may be exercised for—

*Status: Point in time view as at 27/03/2009.*

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- (a) the conservation or enhancement of the natural beauty or amenity of marine or coastal areas (including the geological or physiological features) or of any features of archaeological or historic interest on those areas; or
  - (b) the conservation of flora or fauna which are dependant on, or associated with, a marine or coastal environment.]
- (4) All byelaws made by the Board shall be laid before Parliament by the Ministry, and shall be subject to negative resolution.
- (5) If any person contravenes a byelaw, he shall be guilty of an offence.

**F39** 1991 NI 13  
**F40** 2001 c. 4 (NI)  
**F41** prosp. inserted by 1983 NI 21

## FINANCIAL PROVISIONS AFFECTING THE BOARD

### 27 **Borrowing powers.**

The Board may, with the written consent of the Ministry and the Ministry of Finance or in accordance with the terms of any authorisation in writing given to them by the Ministry and the Ministry of Finance, borrow such sums as they may require for the purposes of their functions.

### 28 **Duty of Board to make to Ministry a yearly return of estimated receipts and payments.**

- (1) The Board shall, with respect to each of their financial years, forward to the Ministry for its approval estimates of their receipts and payments in that year.
- (2) Estimates under subsection (1) shall be prepared in accordance with any directions given to the Board by the Ministry in that behalf, and shall be furnished to the Ministry at such times as the Ministry may direct.
- (3) The Ministry may approve estimates furnished to it under subsection (2), subject to such modifications as it thinks fit, and may give directions to the Board as to the manner in which any excess of receipts so approved over payments so approved is to be applied, or any excess of payments so approved over receipts so approved is to be met.

### 29 **Power of Ministry to make advances to the Board.**

- (1) For the purpose of meeting any approved excess of the payments of the Board in any of their financial years over their receipts in that year, the Ministry may make to the Board, out of moneys provided by Parliament, advances of such amounts repayable over such periods and on such terms as may be approved by the Ministry of Finance, so however that the aggregate amount of such advances at any time outstanding shall not exceed twenty thousand pounds.
- (2) Any sums received by the Ministry by way of repayment of or interest on advances under subsection (1) shall be paid into the Exchequer.



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### [<sup>F42</sup>30 Accounts and Audit

- (1) The Board shall—
  - (a) keep proper accounts and proper records in relation to the accounts; and
  - (b) prepare a statement of accounts in respect of each financial year.
- (2) The statement of accounts shall—
  - (a) be in such form; and
  - (b) contain such information,as the Department may, with the approval of the Department of Finance and Personnel, direct.
- (3) The Board shall, within such period after the end of each financial year as the Department may direct, send copies of the statement of accounts relating to that year to—
  - (a) the Department; and
  - (b) the Comptroller and Auditor General for Northern Ireland.
- (4) The Comptroller and Auditor General shall—
  - (a) examine, certify and report on every statement of accounts sent to him by the Board under this section; and
  - (b) send a copy of his report to the Department.
- (5) The Department shall lay a copy of the statement of accounts and of the Comptroller and Auditor General's report before the Assembly.]

F42 2003 NI 5

## RETURNS AND INFORMATION

### 32 Annual reports of the Board.

- (1) The Board shall annually make to the Ministry a report of their work during their preceding financial year<sup>F43</sup> . . . .
- (2) The Ministry shall cause every such report to be laid before Parliament.

F43 2003 NI 5

### 33 Duty of Board to disclose information to Ministry.

Without prejudice to the requirement imposed by section 32, the Board shall provide the Ministry with such returns or information relating to their proceedings or undertaking as the Ministry may from time to time require, and for those purposes shall permit any person authorised by the Ministry in that behalf to inspect and make copies of their accounts, books, documents and papers, and shall afford such explanation thereof as that person or the Ministry may reasonably require.

*Ss. 34, 35 rep. by 1983 NI 21*

*Status: Point in time view as at 27/03/2009.*

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*S.36 rep. by 1968 c.31 (NI); SLR 1976*

## [<sup>F44</sup>PART III

### FISHING LICENCES

F44 1968 c.31 (NI)

#### 37 Power to make byelaws respecting fishing licences.

[<sup>F45</sup>(1)] Byelaws made by the Board under subsection (1) of section 26 may (without prejudice to the provisions of paragraphs (g), (h) and (i) of that subsection or to the provisions of section 70(2)(a), (c) or (d)),—

- (a) authorise the issue of different classes of fishing licence in respect of any one or more than one kind of fish, or any one or more than one description of fishing engine, specified in the byelaws;
- (b) prescribe different forms, periods of duration, territorial limitations, terms and conditions, or duties, in respect of different classes of licence and, in the case of different classes of licence, provide that reduced duties may be paid by [<sup>F46</sup> persons of such class or description as is specified in the byelaws];
- [<sup>F45</sup>(c) limit, subject to subsection (2), the number of licences which may be issued to authorise the use of fishing engines for the taking of fish;]
- (d) prescribe the records to be kept and the returns to be made by the holder of any licence to fish with rod and line or hand line;
- (e) provide for an appeal to the Ministry against the revocation by the Board of, or the refusal of the Board to issue or renew, any fishing licence;
- (f) provide for the exemption of persons who have not attained the age of sixteen, or such other age as may be prescribed by the byelaws, from the requirement to hold a fishing licence to fish for, take or kill fish of any kind so prescribed by rod and line or hand line.

[<sup>F45</sup>(2) Nothing in byelaws made under subsection (1)(c) shall affect the lawful use by any person of—

- (a) a rod and line or a handline in the freshwater portion of any river or lake,
- (b) a draft net in the circumstances specified in section 71(2)(d),
- (c) a fishing weir or fixed engine in the circumstances specified in section 73(1).

(3) In subsection (1)(c)—

“licences” means licences of any class specified in the byelaws, and  
“fish” does not include eels.]

F45 1991 NI 13

F46 2001 c. 4 (NI)

#### 38 Arrangements for the issue of certain licences.

The Board may make arrangements for the issue through agents of fishing licences of such classes as may be prescribed.

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### **39 Angling licences to be non-transferable.**

A fishing licence to fish with rod and line or hand line shall be used only by the person to whom it is issued and shall not be transferable.

### **40 Effect of fishing licences.**

A fishing licence shall operate in accordance with the terms of the byelaws under which it is issued and of the licence but shall not be construed—

- (a) as conferring on any person using any fishing engine any right of fishing in any place, being a right which he does not otherwise possess; or
- (b) as affecting the rights of any person other than the licence-holder or, in the case of a licence to which section 39 does not apply, the person using the fishing engine; or
- (c) as making legal any fishing engine that would otherwise be illegal, or as implying any recognition of the legality of any fishing engine; or
- (d) as rendering lawful anything which is unlawful by virtue of any enactment other than this Part.

### **41 Prohibition of unlicensed fishing.**

- (1) Unless expressly empowered to do so under any provision made by or under this Act or any other enactment for the time being in force, a person shall not fish for, take or kill salmon, eels or any freshwater fish except under the authority of a [<sup>F47</sup> fishing licence] issued pursuant to byelaws made under this Act and in accordance with the terms and conditions of that [<sup>F47</sup> fishing licence] and of the byelaws relating to it.
- (2) Unless expressly empowered as mentioned in subsection (1), a person shall not have in his possession in or near any fishing place any fishing engine for the taking or killing of salmon, eels or freshwater fish which is erected or in fishing order, unless there is in force a fishing licence by or by virtue of which he is authorised to use that fishing engine at that place.
- (3) Subject to section 43, any person who acts, or causes or permits any other person to act, in contravention of subsection (1) or (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding—
  - (a) where such contravention consists only of the unlicensed but otherwise lawful use or possession of a rod and line or hand line, [<sup>F48</sup> £200]; and
  - (b) in any other case, [<sup>F48</sup> £500].
- [<sup>F49</sup>(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.]
  - [<sup>F50</sup>(6) In this section "fishing licence" means a fishing licence issued under Part III or a fishing licence issued by the Foyle, Carlingford and Irish Lights Commission under

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regulations made by the Commission under the Foyle Fisheries Act (Northern Ireland) 1952.

- (7) In relation to a fishing licence issued by the Foyle, Carlingford and Irish Lights Commission, the reference in subsection (1) to byelaws shall be construed as a reference to regulations made by the Commission under the Foyle Fisheries Act (Northern Ireland) 1952.]

- F47** Words in s. 41(1) substituted (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), 34(1), **Sch. 2 para. 2(6)(a)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F48** 1981 NI 7
- F49** 1991 NI 13
- F50** S. 41(6)(7) added (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), 34(1), **Sch. 2 para. 2(6)(b)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

#### **42 Charging of certain offences under s.41.**

In charging an offence under section 41 by reason of a contravention of subsection (1) of that section it shall be sufficient—

- (a) where the offence is one to which section 41(3)( a) applies, to describe the offence as “unlicensed angling contrary to section 41 of the Fisheries Act (Northern Ireland) 1966 ” ; and
- (b) in any other case, to describe the offence as “fishing by unlicensed and unfair means contrary to section 41 of the Fisheries Act (Northern Ireland) 1966” .

#### **43 Defences to charges under section 41.**

- (1) Where a person is charged under section 41 with an offence which consists of taking fish which he is not licensed to take, it shall be a good defence for him to prove that, at the time when that fish was taken, he was engaged in lawfully fishing for another kind of fish and that the first-mentioned fish was taken unintentionally and, immediately upon being taken, was returned to the water without any avoidable injury.
- (2) Where a person is charged under section 41 with an offence which consists of having a fishing engine in his possession as mentioned in subsection (2) of that section, it shall be a good defence for him to prove that he had the fishing engine in his possession as manufacturer or seller thereof and not for the purpose of using it.

#### **44 Complimentary licences.**

The Board may by resolution authorise the issue to a person not ordinarily resident in Northern Ireland of a complimentary licence to use a rod and line and, where they do so, nothing in this Act or in any byelaws made by the Board thereunder shall require that person to pay any licence duty in respect of that licence.

#### **45 Falsification, etc., of licences.**

[<sup>F51</sup>(1)] A person who—

- (a) uses or, with intent to deceive, presents a fishing licence for any time, date, period, place or purpose other than that for which that licence is valid; or

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- (b) uses or presents, as being a fishing licence of which he is the holder, a fishing licence issued in the name of any other person; or
- (c) uses or presents a fishing licence that has been to his knowledge either in any manner altered (otherwise than by a person duly authorised by the Board) or fraudulently counterfeited;

shall be guilty of an offence.

[<sup>F52</sup>(2) In this section “fishing licence” means a fishing licence issued under Part III or a fishing licence issued by the Foyle, Carlingford and Irish Lights Commission under regulations made by the Commission under the Foyle Fisheries Act (Northern Ireland) 1952.]]

**F51** S. 45 renumbered (1.6.2008) as s. 45(1) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), 34(1), **Sch. 2 para. 2(7)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

**F52** S. 45(2) added (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), 34(1), **Sch. 2 para. 2(7)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

## 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—
  - <sup>F53</sup>(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 [<sup>F54</sup> 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*

**F53** [1981 NI 7](#)

**F54** [1984 NI 3](#)

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#### 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

- [<sup>F55</sup>(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.]

[<sup>F55</sup>(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.

[<sup>F56</sup>(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 [<sup>F57</sup> 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 [<sup>F57</sup> 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 [<sup>F57</sup> reinstatement] carried out by the Board under subsection (3).]

**F55** 1994 NI 15

**F56** 1991 NI 13

**F57** 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) [<sup>F58</sup>Subject to subsections (1A) and (2)] if any person—
- wilfully takes, sells, purchases, or has in his possession the spawn, ...<sup>F59</sup> or fry of salmon, trout or eels; or
  - wilfully obstructs the passage of the ...<sup>F59</sup> fry of salmon, trout or eels; or
  - injures or disturbs the spawn or fry of salmon, trout or eels; or
  - 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.

[<sup>F58</sup>(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 ...<sup>F59</sup> fry in contravention of subsection (1)(a), it shall be a good defence for him to prove that he removed the ...<sup>F59</sup> 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.

[<sup>F58</sup>(3) In this section—

- “fry” (except in subsection (1)(d))—
  - in relation to salmon, includes parr and smolts,
  - 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
  - in relation to eels, includes elvers; and
- “trout” includes rainbow trout.]

[<sup>F60</sup>(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—

- that the spawn had been produced at a fish farm; or
- 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—

- without the consent of the Board under subsection (6); or
- otherwise than in accordance with the conditions of a consent granted by the Board under subsection (6),

he shall be guilty of an offence.

(6) The Board 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 the Board—

- (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><b>F58</b> 1991 NI 13  <b>F59</b> 1968 c.31 (NI)  <b>F60</b> 2001 c. 4 (NI)</p>
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**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—
  - <sup>F61</sup>(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 [<sup>F62</sup> an unlimited fine] or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.]

<p><b>F61</b> 1981 NI 7  <b>F62</b> 1984 NI 3</p>
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**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 liable on summary conviction [<sup>F63</sup> to a fine not exceeding £500 or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.]



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- (2) For the purposes of this section the expression “immature” means that the fish is of a length less than that prescribed by byelaw, or, if no length is so prescribed, of a length less than<sup>F64</sup> 20 centimetres] measured from the tip of the snout to the fork or cleft of the tail.

F63 1981 NI 7  
F64 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 byelaw, or, if no length is so prescribed, of a length less than<sup>F65</sup> 19 centimetres] measured from the tip of the snout to the fork or cleft of the tail.

F65 SR 1983/100

## 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>F66</sup> (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.

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- (6) Section 13 of the Drainage Act (Northern Ireland) 1964 <sup>F66</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.

**F66** 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>F67</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>F68</sup>(a) the dam is rebuilt, reinstated or heightened after the commencement of the Fisheries (Amendment) Act (Northern Ireland) 1968 , or
- [<sup>F69</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>F68</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>F69</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.]

- (3) Every fish pass provided under this section shall be constructed in accordance with plans, sections and specifications approved by the Ministry.

*Status: Point in time view as at 27/03/2009.*

*Changes to legislation: Fisheries Act (Northern Ireland) 1966 is up to date with all changes known to be in force on or before 30 November 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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>F69</sup>. . . .
- [<sup>F69</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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**F68** 1968 c.31 (NI)

**F69** 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>F70</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.

**F70** 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>F71</sup>(a) use any fishing engine (other than a rod and line)<sup>[F72]</sup> from any position on a dam or] at any place within<sup>[F73]</sup> 200 metres] above or below any dam; <sup>[F71]</sup> or
- (b) use a rod and line from any position on or within<sup>[F73]</sup> 5 metres]<sup>[F72]</sup> or such other distance as may be prescribed by byelaws] above or below any dam].

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- (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>F71</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>F74</sup>.

**F71** 1968 c.31 (NI)  
**F72** 1991 NI 13  
**F73** SR 1983/100  
**F74** 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>F75</sup> £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.

**F75** 1981 NI 7

*Status: Point in time view as at 27/03/2009.*

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## 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>[F76]</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>[F77]</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>[F76]</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>[F76]</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>F78</sup>.
- <sup>[F76]</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
  - (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

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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>[F76]</sup> or gate valves] which admit water to a mill.

<b>F76</b>	1991 NI 13
<b>F77</b>	1968 c.31 (NI)
<b>F78</b>	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 <sup>[F79]</sup>river] <sup>[F80]</sup>or lake]—

- (a) there shall be placed, at the points where the watercourse diverges from and returns to the river <sup>[F80]</sup>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;

<sup>[F81]</sup>(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,

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- (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 [<sup>F80</sup> or lake], there shall be placed over the entire surface of every such grating a wire lattice of such 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, ...<sup>F82</sup>.
- (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,<sup>F81</sup> or]
- <sup>F81</sup>(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<sup>F81</sup> subject to such conditions as it considers appropriate] such exemption.



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(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 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.

[<sup>F81</sup>(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.]

[<sup>F81</sup>(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 [<sup>F80</sup> and “watercourse” includes any pipe, culvert or other device].

<b>F79</b>	1968 c.31 (NI)
<b>F80</b>	1968 c.31 (NI)
<b>F81</b>	1991 NI 13
<b>F82</b>	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.

## PART V

### REGULATION OF FISHING FOR SALMON, EELS AND FRESHWATER FISH

#### PROHIBITION OF CERTAIN METHODS OF FISHING

### 62 Penalty for using certain devices for taking fish.

(1) If, for the purpose of taking [<sup>F83</sup>, or facilitating the taking of,] any fish, any person uses or has in his possession or control, in or on the bank of or near the waters of any lake,

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river or estuary, any light or fire or any electrical or acoustical apparatus of any kind, he shall be guilty of an offence.

- (2) If, for the purpose of taking any fish, any person uses or has in his possession or control, in or on the bank of or near the waters of any lake, river or estuary, any instrument to which this subsection applies, he shall be guilty of an offence.
- (3) If any person throws, releases or discharges any missile or other object into any water for the purpose of taking or killing, or facilitating the taking or killing, of any<sup>[F83]</sup> salmon, trout or rainbow trout], he shall be guilty of an offence.
- (4) In subsection (2) the expression “instrument to which this subsection applies” means any otter, tailer or snare, spear, stroke-haul, gaff or other instrument of a similar kind<sup>[F84]</sup> or any instrument or device calculated in the course of normal use to foul-hook any fish], but does not include—
- (a) a<sup>F83</sup> . . . tailer used or to be used solely as an auxiliary to lawful angling between sunrise and one hour after sunset; or
  - (b) a<sup>F83</sup> . . . tailer used or to be used by the holder of a fishing licence in respect of any box in a fishing weir solely for the purpose of lawfully removing fish therefrom; or
  - (c) an eel spear used for taking eels.

<sup>[F83]</sup>(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.]

- (5) A person who is guilty of an offence under subsection (1) or (2) shall be liable on summary conviction to a fine not exceeding <sup>[F85]</sup> £500] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

**F83** 1991 NI 13  
**F84** 1968 c.31 (NI)  
**F85** 1981 NI 7

### 63 Fishing for salmon or trout by cross lines.

<sup>[F86]</sup>(1) If any person takes or fishes for salmon or trout by means of cross lines in any river<sup>[F86]</sup> or lake] he shall be guilty of an offence.

<sup>[F86]</sup>(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.]

**F86** 1991 NI 13

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#### **64 Penalty for taking salmon or trout in eel weir.**

- (1) If the owner or occupier of an eel weir takes or suffers to be taken therein any salmon or trout, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F87</sup> £500] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.
- (2) Where a person is charged with an offence under this section it shall be a good defence to prove that such salmon or trout was taken unintentionally and, immediately upon being taken, was returned to the water without any avoidable injury.

**F87** 1981 NI 7

#### **65 Penalty for damming or teeming river or millrace for purpose of taking salmon or trout.**

If any person dams, teems or empties any river or millrace for the purpose of taking or destroying any salmon or trout, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F88</sup> £500] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

**F88** 1981 NI 7

[REGULATIONS AS TO NETS, ETC.]

#### **66 Restrictions on use of nets.**

- (1) If any person—
  - (a) uses any one or more than one net of any kind in such a manner as to obtain the same advantage as he would have obtained by using a net the meshes of which are of a size smaller than that for the time being permitted under this Act for nets of that kind; or
  - (b) uses a net covered with canvas, hide, or other substance for the purpose of taking small fish; or
  - (c) affixes or keeps up continued nets stretched across a river;he shall be guilty of an offence.
- (2) Subsection (1)( b) shall not apply to a net used either in the sea or within an estuary solely for the purpose of dredging for shell-fish.

#### **67 Mesh of nets made of non-rigid material for the taking of salmon in the sea or tideways.**

- (1) If, in the sea or in the tidal portion of a river, any person uses any net to which this section applies with a mesh of less size than [<sup>F89</sup> 4.4 centimetres] from knot to knot, to be measured along the side of the square, or [<sup>F89</sup> 17.6 centimetres] to be measured all round each such mesh, such measurements being taken in the clear when the net is wet, then, subject to subsection (2), he shall be guilty of an offence.

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- (2) The Board may by byelaws permit the use of nets to which this section applies having meshes of a less size than that specified in subsection (1), and this section shall have application with respect to any net to which such byelaws apply as if for the dimensions specified in subsection (1) there were substituted the dimensions specified in those byelaws.
- (3) In this section the expression “net to which this section applies” means any net or other engine which is not formed of a rigid material and which is used for the taking of salmon.

**F89** SR 1983/100

**68 Meshes or openings of engines made of rigid material for the taking of salmon in the sea or tideways.**

- (1) If, in the sea or in the tidal portion of a river, any person uses any engine to which this section applies with meshes or openings of less width than<sup>[F90]</sup> 7.5 centimetres] on each side of the square, or, where no meshes or openings of the nature of reticulations are used, of less width between the bars than<sup>[F90]</sup> 5 centimetres], he shall be guilty of an offence.
- (2) In this section the expression “engine to which this section applies” means any engine which is formed of rigid material and is used for the taking of salmon.

**F90** SR 1983/100

**69 Use of salmon nets near mouths of rivers.**

- (1) If any person (other than the owner of a several fishery within the limits thereof) shoots, draws or uses any net for taking salmon—
  - (a) at the mouth of any river; or
  - (b) within<sup>[F91]</sup> 805 metres] in any direction from the mouth of any river,
 he shall be guilty of an offence.
- <sup>[F92]</sup>(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.]
- (3) Where an order under section 16 defines the mouth of a tributary river, references in this section to the mouth of a river shall be construed as including references to the mouth of that tributary river.

*Status: Point in time view as at 27/03/2009.*

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**F91** SR 1983/100  
**F92** 1991 NI 13

## **70 Powers of Board with respect to drift nets for the taking of salmon in the sea.**

- (1) Where the Board are satisfied that it is expedient to control the use of drift nets for the taking of salmon in the sea, they may make byelaws prohibiting, restricting or otherwise controlling—
  - (a) the use of such nets for fishing for salmon in the sea;
  - (b) the landing of salmon taken by means of such nets;
  - (c) the having in possession of salmon taken or landed in contravention of the byelaws.
- (2) Byelaws under this section restricting or otherwise controlling fishing for salmon may prescribe—
  - (a) the classes of persons to whom there may be issued fishing licences in respect of nets to which the byelaws apply;
  - (b) the classes of boats which may be used for the working of such nets;
  - (c) the maximum number of fishing licences which may be issued in any year in respect of such nets;
  - (d) the manner in which such licences shall be allocated in any case where the number of valid applications for such licences in any year exceeds the number prescribed under paragraph (c) in respect of that year.
- (3) If any person contravenes any byelaw made under this section, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F93</sup> £1,000] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

**F93** 1981 NI 7

## **71 Restriction on use of nets in fresh water.**

- (1) Save as is permitted by or under subsection (2), it shall not be lawful for any person to use any net in the freshwater portion of any river or in any lake.
- (2) Subsection (1) shall not apply to—
  - (a) the use of a landing net or keep net solely as auxiliary to lawful fishing with rod and line;
  - (b) the lawful use of a net solely for the purpose of removing fish from traps in a fishing weir;
  - (c) the lawful use of a fixed engine under section 73;
  - (d) the lawful use in a several fishery of draft nets for the taking of salmon or trout where such nets were lawfully used during the open fishing season of one or more of the five years immediately preceding 1st January, [<sup>F94</sup> 1972];
  - (e) the lawful use of draft nets for the capture of salmon or trout in any lake by members of the public who depend on such netting as a means of livelihood where—

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- (i) such nets are so used with the consent of every owner of a several fishery in that lake; and
  - (ii) such nets were so used with such consent or as of right by any such members of the public within the period of<sup>F94</sup> eighteen years immediately preceding 1st January 1986];
  - (f) the lawful use of nets for the taking of eels—
    - (i) in or in the vicinity of an eel weir; or
    - (ii) in accordance with regulations made under section 15;
  - (g) the lawful use, in accordance with byelaws, of nets for the taking of fish other than salmon, trout or eels.
- (3) If any person uses a net in contravention of this section he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F95</sup> £500] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.
- (4) In this section, “trout” does not include pollen.

**F94** 1991 NI 13

**F95** 1981 NI 7

## 72 Mesh of nets for taking fish in fresh water.

- (1) No person shall, under section 71(2)( *c*), ( *d*), ( *e*) or ( *g*), use any net with a mesh of less size than—
- (a) such size as may be prescribed by byelaw; or
  - (b) if no size is so prescribed, a size of<sup>F96</sup> 4.4 centimetres] from knot to knot, to be measured along the side of the square, or<sup>F96</sup> 17.6 centimetres] to be measured all round each mesh, such measurements being taken in the clear when the net is wet.
- (2) No person shall, under section 71(2)( *f*), use any net with a mesh of less size than—
- (a) such size as may be prescribed by regulations made under section 15; or
  - (b) if no size is so prescribed, the size specified in subsection (1)( *b*).
- (3) If any person contravenes subsection (1) or (2) he shall be guilty of an offence.

**F96** SR 1983/100

## PROHIBITION OF FISHING WEIRS AND FIXED ENGINES, WITH CERTAIN EXCEPTIONS

## 73 Restriction with respect to fishing weirs or fixed engines in fresh water portion of rivers or lakes.

- (1) It shall not be lawful for any person to erect or to use in the freshwater portion of any river or lake any fishing weir or a fixed engine of any description, unless that fishing weir or a fixed engine of that description was in existence and was lawfully used therein by that person or a predecessor in title of his during the open fishing season of one or more of the five years immediately preceding 1st January 1965.

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- (2) If any person erects or uses a fishing weir or fixed engine in contravention of this section he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F97</sup> £1,000] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.
- (3) The prohibition in subsection (1) shall not apply to—
  - (a) long lines used solely for the capture of eels; or
  - (b) any eel weir or any fixed engine for the capture of eels established and used in accordance with regulations made under section 15; or
  - (c) engines used in accordance with byelaws for the capture of fish other than salmon or eels.

F97 1981 NI 7

#### 74 **Restriction on use of fixed engines for the capture of salmon in the sea or tideways.**

- (1) It shall not be lawful for any person to erect or to use any fixed engine for the capture of salmon in the sea or in the tidal portion of a river unless a certificate in regard to such a fixed engine was granted under the Salmon Fishery (Ireland) Act 1863 to him or a predecessor in title of his before the commencement of this Act and is for the time being subsisting unrevoked.
- (2) If any person erects or uses any fixed engine for the capture of salmon in contravention of this section he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F98</sup> £1,000] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

F98 1981 NI 7

#### 75 **Effect of certificate under section 6 of the Salmon Fishery (Ireland) Act 1863.**

A certificate under section 6 of the Salmon Fishery (Ireland) Act 1863 shall be conclusive evidence that the person named therein or his successor in title is the person entitled to exercise the right therein given, but it shall not render any fixed engine lawful which would otherwise be unlawful by reason of its being injurious to navigation, a common nuisance to the public right of fishing or otherwise in violation of the common law or any enactment (including this Act).

#### 76 **Power of Ministry to authorise the alteration of sites of fixed engines.**

- (1) The owner of a fixed engine in respect of which a certificate has been granted under section 6 of the Salmon Fishery (Ireland) Act 1863 may apply to the Ministry for permission to remove the fixed engine from the place or position specified in the certificate and to erect it at some other place or in some other position.
- (2) If the Ministry, after causing a local public inquiry to be held, is satisfied that the removal and re-erection of the fixed engine will not unduly interfere with the reasonable and legitimate interests of any other person, the Ministry may grant a licence authorising the owner of the fixed engine to remove it from the place or position specified in the certificate and [<sup>F99</sup> for him and his successors in title] to erect

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and use it at such other place or in such other position, and subject to such conditions, and such limitations as to time or otherwise, as may be specified in the licence.

- (3) If the Ministry is satisfied that it is expedient in the interests of the salmon fisheries to revoke a licence granted under this section, or to vary the provisions of such a licence with respect to—
- (a) the place or position in which a fixed engine is by the licence authorised to be erected and used, or
  - (b) any conditions or limitations contained in the licence,
- the Ministry may revoke the licence or, as the case may be, may make such variation in the terms of the licence as the case may require; but the Ministry shall not revoke or vary a licence under this subsection unless at least twenty-eight days' notice of the revocation or the proposed variation has been given to the holder of the licence, and, if the holder, before the expiration of the notice, so requires, the Ministry has caused a local public inquiry to be held.
- (4) Without prejudice to subsection (3), a licence granted under this section may be suspended or revoked in accordance with the provisions of Schedule 1.
- (5) Nothing in this section shall be deemed to empower the Ministry to authorise the erection of any fixed engine at a place or in a position where its use would be injurious to navigation or would contravene the provisions of any enactment.
- (6) Where, by licence under this section, the Ministry authorises any person to erect and use a fixed engine at a place or in a position other than that specified in the certificate referred to in subsection (1), for the purposes of this Act the certificate shall have effect during the currency of the licence as if the reference in the certificate to the place or position so specified were a reference to the first-mentioned place or position.

**F99** 1968 c.31 (NI)

## **77 Power of Ministry to authorise variation in characteristics of fixed engines.**

- (1) The owner of a fixed engine in respect of which a certificate has been granted under section 6 of the Salmon Fishery (Ireland) Act 1863 may apply to the Ministry for permission to substitute for that fixed engine or for more than one such fixed engine a fixed engine of different characteristics from the characteristics specified in the certificate.
- (2) If the Ministry, after causing a local public inquiry to be held, is satisfied that such substitution will not unduly interfere with the reasonable and legitimate interests of any other person, the Ministry may accept the surrender of any certificate such as is referred to in subsection (1), and may grant a licence authorising the owner [<sup>F100</sup> and his successors in title] to erect and use—
- (i) in accordance with plans and specifications approved by the Ministry; and
  - (ii) at a place or in a position specified in the licence; and
  - (iii) subject to any conditions, or any limitations as to time or otherwise, contained in the licence,
- a fishing engine of such a kind as may be specified in the licence.
- (3) Upon the grant of a licence under subsection (2) any certificate surrendered to the Ministry in pursuance of that subsection shall cease to have effect, but without



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prejudice to the provisions of subsection (6) as to the revival of the certificate in the event of the licence being revoked under subsection (4) or (5).

(4) If the Ministry is satisfied that it is expedient in the interests of the salmon fisheries to revoke a licence granted under this section or to vary the provisions of such a licence with respect to—

- (a) the characteristics of a fixed engine the erection and use of which is authorised by the licence, or
- (b) the place or position in which such a fixed engine is so authorised to be erected, or
- (c) any conditions or limitations contained in the licence,

the Ministry may revoke the licence, or, as the case may be, may make such variation in the terms of the licence as the case may require; but the Ministry shall not revoke or vary a licence under this subsection unless at least twenty-eight days' notice of the revocation or the proposed variation has been given to the holder of the licence, and, if the holder, before the expiration of the notice, so requires, the Ministry has caused a local public inquiry to be held.

(5) Without prejudice to subsection (4), a licence granted under this section may be suspended or revoked in accordance with the provisions of Schedule 1.

(6) When a licence granted under this section is revoked—

- (a) the provisions of—
  - (i) this Act and any byelaws made under this Act, and
  - (ii) any certificate under section 6 of the said Act of 1863 with respect to a fixed engine such as is first mentioned in subsection (1),shall have effect with respect to any such fixed engine as if the licence had not been granted; and
- (b) the Ministry shall return to the person who immediately before the revocation of the licence was the holder thereof any certificate under the said section 6 which had been surrendered to the Ministry under subsection (2) by that person or by a predecessor in title of his.

(7) The provisions of sections 74 to 76, and of this section, shall have effect with respect to a licence granted under subsection (2) in like manner as they have effect with respect to a certificate under the said section 6, as if the licence were such a certificate; and for the purposes of section 74(1) the licence shall be deemed to have been granted before the commencement of this Act.

(8) Section 79 shall not apply to the placing or continuance in accordance with the terms of a licence granted under subsection (2) of a fishing engine specified in such a licence.

(9) Subsection (5) of section 76 shall apply for the purposes of this section as it applies for the purposes of that section.

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## REGULATIONS AS TO FIXED ENGINES

### 78 Prohibition of erecting or using fixed engines at mouths of rivers.

- (1) If at or within<sup>F101</sup> 1610 metres] in any direction from the mouth of any salmon river any person, other than the owner of a several fishery within the limits thereof, erects or uses any fixed engine, that person shall be guilty of an offence ...<sup>F102</sup>.
- (2) Where an order under section 16 defines the mouth of a tributary river, the reference in subsection (1) to the mouth of any river shall be construed as including a reference to the mouth of that tributary river.

**F101** SR 1983/100

**F102** 1981 NI 7

### 79 Prohibition of bag nets in certain places.

- (1) Subject to subsection (3), no bag net shall be placed or allowed to remain in any river or estuary or within a distance of<sup>F103</sup> 4830 metres] from the mouth of any river.
- (2) If any bag net is placed or allowed to remain in contravention of this section—
  - (a) it shall be deemed a common nuisance and may be taken possession of or destroyed; and
  - (b) the owner of the bag net shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F104</sup> £500] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.
- (3) This section shall not apply to—
  - (a) the placing or continuing, within<sup>F103</sup> 4830 metres] of the mouth of a river, of a bag net, where the owner of the bag net has the exclusive right of catching salmon in the whole of that river, including all tributary rivers and lakes upon the course of that river, and where that owner or a predecessor in title of his had on or immediately before 28th July 1863 exercised that right by means of a bag net at the place where the first-mentioned bag net is placed; or
  - (b) the placing or continuing, in accordance with the provisions of a licence granted under section 77(2), of a bag net the erection and use of which is authorised by the licence.

**F103** SR 1983/100

**F104** 1981 NI 7

### 80 Regulations as to construction and user of bag nets.

If any person maintains or uses any bag net—

- (a) the meshes of the nets of any leader whereof are not stretched to their full opening; or
  - (b) which is so constructed that the leaders thereof cannot be raised and kept out of the water;
- he shall be guilty of an offence ...<sup>F105</sup>.

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F105 1981 NI 7

## REGULATIONS AS TO FISHING WEIRS

### 81 Free gaps in fishing weirs.

- (1) In every fishing weir (other than an eel weir with respect to which a licence granted by the Ministry under section 84 is for the time being in force) there shall be a free gap or opening in accordance with the following provisions:—
- the free gap shall be situate in the deepest part of the stream;
  - the sides of the free gap shall be in line with and parallel to the direction of the stream at the weir;
  - the bottom of the free gap shall be level with the natural bed of the stream above and below the gap;
  - the width of the free gap at its narrowest part shall be not less than one-tenth part of the width of the stream:  
  
Provided that it need not be wider than<sup>F106</sup> 15.2 metres], and must not be narrower than<sup>F106</sup> 91 centimetres];
  - no existing free gap in any fishing weir shall be reduced in width or a gap of less width substituted therefor or any alteration made therein so as to reduce the flow of water through the gap.
- (2) The requirements of subsection (1), in so far as they relate to the provision of a free gap in every fishing weir, shall, in the case of a fishing weir in which there was no free gap on 1st January, 1965, be deemed to be complied with if immediately adjoining the weir there then was and continues to be a navigation gap which conforms in form and dimensions to the requirements of that subsection, and all the provisions of this Act which apply to free gaps in fishing weirs (other than those which require the free gap to be in the weir) shall apply to any such navigation gap.
- (3) Where there is no free gap in a fishing weir or where a free gap has been made in a fishing weir but is not maintained in accordance with subsection (1), then, unless that fishing weir is an eel weir which is for the time being excepted from the application of subsection (1), the owner and the occupier of the fishing weir shall each be guilty of an offence ...<sup>F107</sup>.
- (4) Where the provisions of subsection (1) have been contravened the Board or, failing the Board, the Ministry, may provide or restore a free gap and may recover from the owner or the occupier of the fishing weir any expenses reasonably incurred in executing the works undertaken for that purpose.

F106 SR 1983/100

F107 1981 NI 7

*Status: Point in time view as at 27/03/2009.*

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## 82 Offence of affecting flow of water through free gap by alteration of bed of river.

If any alteration is made in the bed of a river in such manner as to reduce the flow of water through the free gap in a fishing weir, the person making the alteration shall be guilty of an offence ...<sup>F108</sup>.

**F108** 1981 NI 7

## 83 Fishing in or near or obstructing free gaps.

- (1) Subject to subsection (4), if any person—
- (a) uses any fishing engine in a free gap in a fishing weir; or
  - (b) uses any fishing engine (not being a rod and line) within<sup>F109</sup> 45.5 metres] above or below any part of a fishing weir or the free gap in a fishing weir; or
  - (c) places any obstruction in a free gap; or
  - (d) uses any contrivance or does any act whereby fish may be scared, deterred or in any way prevented from freely entering and passing up and down a free gap at all times; or
  - (e) places any thing whatsoever in, over or across a free gap in a fishing weir, except a temporary bridge or board during the time only when the persons engaged in the fishing of that weir are passing over the free gap; or
  - (f) in any manner prevents the free and uninterrupted passage of fish through the free gap at any time; or
  - (g) authorises or instructs or permits any other person to do any of the acts referred to in the foregoing paragraphs;
- he shall be guilty of an offence.
- (2) Where the owner or occupier of a fishing weir is charged under subsection (1) with the offence of placing an obstruction in the free gap in that weir, and it is proved that the obstruction was placed in the free gap, it shall be presumed, until the contrary is shown, that the obstruction was placed in the free gap by him.
- (3) Where a person is convicted of an offence under this section in respect of an obstruction in the free gap of a fishing weir, the Board or, failing the Board, the Ministry, may cause the obstruction to be removed and may recover from that person any expenses reasonably incurred in so doing.
- (4) Where a licence granted by the Ministry under section 84 with respect to an eel weir is for the time being in force, this section shall not operate to penalise any act or thing authorised by the licence.

**F109** 1991 NI 13

## 84 Operation of eel weir without free gap.

- (1) The Ministry may by licence authorise the operation of a specified eel weir without a free gap, subject to such conditions as may be contained in the licence.
- (2) The Ministry may revoke, or may vary the conditions contained in, a licence granted under this section, where the Ministry is satisfied that such revocation or variation is expedient in the interests of the eel fisheries.

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- (3) When the Ministry proposes to revoke a licence, or to vary any conditions, under subsection (2), otherwise than on the application of the holder of the licence, the Ministry shall—
- (a) give to the holder of the licence at least twenty-eight days' prior notice of its intention to do so; and
  - (b) state in the notice given under paragraph (a) the specific variation, if any, under consideration and the grounds upon which the revocation or variation is proposed to be made,
- and shall consider any representations in relation to the revocation or variation made by the holder before the expiration of the notice.
- (4) Without prejudice to subsection (2), a licence granted under this section may be suspended or revoked in accordance with the provisions of Schedule 1.

## 85 Rules as to boxes in salmon weirs.

- (1) The following rules shall be observed in relation to the construction and use of boxes in salmon weirs:—
- (a) the surface of the floor of the box shall be level with the natural bed of the river;
  - (b) the inscales and the heck of the box shall be capable of being removed and opened up;
  - (c) the bars of the heck of the box shall be placed perpendicularly;
  - (d) the inscales and the heck of the box shall be so constructed that no bar or part of a bar is nearer to any other bar or part of a bar than such distance as may be prescribed by byelaws, or if no distance is prescribed, a distance of<sup>F110</sup> 5.1 centimetres];
  - (e) the box shall not be built over or in any other manner hidden from public inspection.
- (2) If any person constructs or uses any box in a salmon weir in contravention of subsection (1), he shall be guilty of an offence ...<sup>F111</sup>.
- (3) If any box in a salmon weir is constructed in contravention of this section, the Board or, failing the Board, the Ministry may cause the parts of that box which do not comply with the requirements of this section to be removed, and may recover from the occupier of the weir any expenses reasonably incurred in so doing.

**F110** SR 1983/100

**F111** 1981 NI 7

## 86 Construction of guiding walls appurtenant to salmon weirs.

- (1) There shall not be attached to a salmon weir in a river any guiding wall of greater length than—
- (a) [<sup>F112</sup>6 metres]; or
  - (b) such length, being less than<sup>F112</sup> 6 metres], as the Ministry may by order appoint with respect to a salmon weir specified in the order,
- that length being measured, in either case, from the upstream or downstream face of the weir along the centre line of the guiding wall.

*Status: Point in time view as at 27/03/2009.*

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- (2) There shall not be attached to any salmon weir any guiding wall which has the effect of narrowing up or preventing the ingress or discharge of water through or from the free gap in the weir.
- (3) If any salmon weir has a guiding wall in contravention of subsection (1) or (2), the following provisions shall have effect:—
  - (a) the occupier of the weir shall be guilty of an offence ...<sup>F113</sup>; and
  - (b) the Board or, failing the Board, the Ministry may cause the guiding wall to be altered or removed, and may recover from the occupier of the weir any expenses reasonably incurred in so doing.
- (4) If the occupier of a salmon weir in a river makes such use of any island or natural obstruction in the river as secures to him the advantage he would have obtained by attaching to the weir a guiding wall contravening subsection (1), he shall be guilty of an offence ...<sup>F113</sup>.
- (5) In this section, the expression “guiding wall” means any spur or tail wall, leader or outrigger, but does not include the main wall of the salmon weir that connects the boxes of the weir with the bank of the river.

**F112** SR 1983/100

**F113** 1981 NI 7

#### OTHER PROVISIONS

### **87 Restriction on possession of unlawful fishing engines, etc.**

- (1) It shall not be lawful for any person to have in his possession or control in any waters or on or near the banks of any waters any fishing engine or lure or bait, if the use of that engine, lure or bait in those waters for the purpose of taking fish is unlawful.
- (2) Any person who has in his possession or control any fishing engine or lure or bait in contravention of this section shall be guilty of an offence.
- (3) Where a person is charged with an offence under subsection (2) in relation to the possession or control of a net and it is proved that he was found in possession or control of the net in or in the vicinity of the freshwater portion of a river or any lake, it shall be presumed that he had the possession or control of the net with intent to use it in the freshwater portion of the river or in the lake in contravention of section 71(1) unless and until he satisfies the court that at the time the offence is alleged to have been committed—
  - (a) he intended and was entitled to use the net in one of the manners specified in section 71(2); or
  - (b) if he was found in possession or control of the net in the vicinity of the boundary between the tidal and freshwater portions of a river, that he intended and was entitled to use the net in the tidal portion of the river or in the sea; and also proves, in either case, that he was the holder of a fishing licence, if such is required by or under this Act, for the net.

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## **88 Taking salmon or trout unlawfully killed or found dead.**

- (1) A person who by any means removes or causes to be removed from any waters—
- (a) any salmon or trout which has been injured or killed otherwise than by lawful means; or
  - (b) any salmon or trout which has been found dead, from any cause whatever, by that person;
- shall be guilty of an offence.
- (2) Subsection (1) shall not apply to any of the following persons—
- (a) any person acting under the authority of the Ministry; or
  - (b) any officer of the Board; or
  - (c) any owner of a fishery in those waters; or
  - (d) any agent of the owner of a fishery in those waters; or
  - (e) any member of the Royal Ulster Constabulary; or
  - (f) [<sup>F114</sup> any person acting under the authority of a district council]. [<sup>F115</sup> or]
  - [<sup>F115</sup>(g) any private water bailiff appointed to protect those waters.]
- (3) Where a person is charged with an offence under this section in respect of any fish it shall be a good defence to prove that he removed the fish from any waters, or caused it to be so removed, solely for the purpose of delivering it to a person designated in any of paragraphs (a) to (f) of subsection (2), and that he did so deliver it before being required to do so by any such person.

**F114** SRO (NI) 1973/343

**F115** 1991 NI 13

## **PART VI**

### **TIMES OF FISHING FOR SALMON, TROUT, POLLEN AND EELS**

#### **ANNUAL CLOSE SEASON FOR SALMON AND TROUT CAUGHT OTHERWISE THAN BY ROD AND LINE**

## **89 Annual close season for salmon and trout.**

In this Act the expression “the annual close season for salmon and trout” means, in relation to any locality, the period during which it is declared by a byelaw for the time being in force and applicable to that locality to be unlawful to fish for, take or kill salmon or trout with a fishing engine other than rod and line.

## **90 Penalties for fishing otherwise than by rod and line for salmon or trout during the annual close season for salmon and trout.**

- (1) If any person fishes for, takes or wilfully kills salmon or trout during the annual close season for salmon and trout, he shall be guilty of an offence and shall be liable on summary conviction to [<sup>F116</sup> a fine not exceeding £500 or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, and shall in

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addition be liable to a further fine not exceeding £50 for every salmon and £10 for every trout taken or so killed by him].

- (2) This section shall not apply to—
- (a) the fishing for or taking of salmon or trout by rod and line, or the killing of salmon or trout so taken; or
  - (b) the fishing for, taking or killing of salmon or trout in any fish farm with respect to which a fish culture licence under section 11 is for the time being in force, in accordance with the terms of the licence.

F116 1981 NI 7

**91 Provisions to be observed in relation to fixed engines during the annual close season for salmon and trout**

- (1) During the annual close season for salmon and trout every net, leader or other moveable part of a fixed engine used for the taking of salmon or trout shall be removed from the poles or fixtures to which it is attached and shall be taken from thence.
- (2) If in respect of any fixed engine there is a contravention of the provisions of subsection (1), the occupier of the fixed engine shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F117</sup> £500] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.
- (3) Nothing in this section shall be construed as rendering liable to any penalty a person who satisfies the court that he was prevented by floods, storm or stress of weather from complying with subsection (1) during the continuance of that prevention.

F117 1981 NI 7

**92 Dismantlement of salmon weirs during the annual close season for salmon and trout.**

- (1) Within thirty-six hours of the commencement of the annual close season for salmon and trout, all the moveable parts of a salmon weir shall be removed from the weir and shall be taken from thence.
- (2) The moveable parts of a salmon weir shall not be placed in or on that weir earlier than thirty-six hours before the expiration of the annual close season.
- (3) During the annual close season (except the first and the last thirty-six hours thereof) the moveable parts of a salmon weir shall not be allowed to remain in or on that weir.
- (4) If in respect of any salmon weir there is a contravention of the provisions of subsection (1), (2) or (3) the occupier of the weir shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F118</sup> £500] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.
- (5) Nothing in subsection (4) shall be construed as rendering liable to any penalty an occupier of a salmon weir who satisfies the court that he was prevented by floods, storm or stress of weather from complying with subsection (1) during the continuance of that prevention.



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- (6) Where the occupier of a salmon weir is convicted of an offence under this section, the Board, or, failing the Board, the Ministry, may cause to be removed from the salmon weir the moveable parts in respect of which the offence was committed and may recover from the occupier any expenses reasonably incurred in so doing.
- (7) In this section the expression “moveable parts” means, in relation to a salmon weir, the inscales and heck of every box in the salmon weir and all other fittings and articles used in connection with those boxes which are capable of removal.

**F118** 1981 NI 7

**93 Removal of nets from banks, etc., of waters during the annual close season for salmon and trout.**

- (1) All nets used for taking salmon or trout shall be removed from the banks of any waters and from the vicinity thereof during the annual close season for salmon and trout.
- (2) If subsection (1) is not complied with in regard to any net, the owner of, or the person who used, that net shall be guilty of an offence.

**94 Use of nets in inland waters during the annual close season for salmon and trout.**

- (1) Subject to subsection (2), if any person, during the annual close season for salmon and trout, does, in the freshwater portion of any river or lake, any of the following things—
- (a) places, affixes or attaches any net to any stake, bridge, sluice or lock gates of a canal or other such fixed erection; or
  - (b) lays, draws or fishes with any net whatsoever;
- he shall be guilty of an offence.
- (2) This section shall not apply to—
- (a) the use of a landing net or keep net solely as auxiliary to lawful fishing with rod and line;
  - (b) the lawful use of a net for the taking of eels; or
  - (c) the lawful use, in accordance with byelaws, of nets for the taking of fish other than salmon, trout or eels.

ANNUAL CLOSE SEASON FOR ANGLING FOR SALMON  
AND ANNUAL CLOSE SEASON FOR ANGLING FOR TROUT

**95 Annual close season for angling for salmon and annual close season for angling for trout.**

- (1) In this Act the expression “the annual close season for angling for salmon” means, in relation to any locality, the period during which it is declared by a byelaw for the time being in force and applicable to that locality to be unlawful to fish for or take salmon with rod and line, or, if no period is prescribed, the period from 31st October in any year to 31st January in the then next-following year.

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- (2) In this Act the expression “the annual close season for angling for trout” means, in relation to any locality, the period during which it is declared by a byelaw for the time being in force and applicable to that locality to be unlawful to fish for or take trout with rod and line, or, if no period is prescribed, the period from 28th September in any year to the last day of February in the then next-following year.

**96 Angling for salmon or for trout during annual close season for angling for salmon or annual close season for angling for trout.**

If during the annual close season for angling for salmon or the annual close season for angling for trout any person fishes for, takes or wilfully kills salmon or trout, as the case may be, with rod and line, he shall be guilty of an offence.

WEEKLY CLOSE TIME FOR SALMON AND TROUT  
 CAUGHT OTHERWISE THAN BY ROD AND LINE

**97 Weekly close time.**

In this Act the expression “the weekly close time” means, in relation to any locality, the period prescribed by byelaw as such for that locality, or if no period is prescribed, the period commencing at 6 o'clock a.m. on each Saturday and ending at 6 o'clock a.m. on the then next-following Monday.

**98 Penalty for fishing otherwise than by rod and line for salmon or trout during the weekly close time.**

- (1) Subject to subsection (2), if, during the weekly close time, any person fishes for, takes or wilfully kills salmon or trout he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F119</sup> £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 salmon or trout otherwise than during the annual close season for angling for salmon or, as the case may be, the annual close season for angling for trout.

F119 1981 NI 7

**99 Provisions to be observed in relation to certain fixed engines during the weekly close time.**

- (1) During the weekly close time—
- (a) the netting of the leader of every bag net used for catching salmon shall be raised and kept out of the water; and
  - (b) all other nets used as fixed engines for the taking of salmon or trout shall be wholly removed from the water.
- (2) If in respect of any bag net the provisions of subsection (1)(a), or if in respect of any other net to which subsection (1)(b) applies the provisions of subsection (1)(b), are not complied with, the occupier of that bag net or net shall be guilty of an offence and shall

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be liable on summary conviction to a fine not exceeding [<sup>F120</sup> £500] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

- (3) Nothing in this section shall be construed as rendering liable to any penalty a person who satisfies the court that he was prevented by floods, storm, or stress of weather from complying with subsection (1) during the continuance of that prevention.

F120 1981 NI 7

#### 100 Provisions to be observed in relation to salmon weirs during the weekly close time.

- (1) During the weekly close time the inscales and heck of each box in a salmon weir shall be either removed or opened out in such a manner that a clear opening of not less than [<sup>F121</sup> 1.2 metres] in width is left open therein from the top to the bottom of the box and a free, direct and uninterrupted space of that width is effectually secured for the passage of all fish, both up and down, through the box.
- (2) If in respect of any salmon weir the provisions of subsection (1) are not complied with, the occupier thereof shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F122</sup> £500] in respect of each box in the weir the inscales and heck whereof are not removed or opened out as required by subsection (1).
- (3) Nothing in subsection (2) shall be construed as rendering liable to any penalty a person who satisfies the court that he was prevented by floods, storm or stress of weather from complying with subsection (1) during the continuance of that prevention.

F121 SR 1983/100

F122 1981 NI 7

#### 101 Penalty for preventing fish from passing through boxes, etc., during the weekly close time.

If any person, during the weekly close time—

- (a) uses any means or contrivance to prevent the free passage of fish through any box or gap in a salmon weir or through any fixed engine; or
- (b) in any way or by any means wilfully frightens or scares or attempts to frighten or scare any fish from passing through such a box or gap or through the traps or eyes of a fixed engine;

he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F123</sup> £500] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

F123 1981 NI 7

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**102 Scaring or obstructing free passage of salmon or trout during the weekly close time.**

- (1) Without prejudice to section 101, if any person scares, impedes or obstructs the free passage of salmon or trout during the weekly close time, he shall be guilty of an offence.
- (2) This section shall not apply to any person who takes fish lawfully by rod and line during the weekly close time.

**103 Use of nets in inland waters during the weekly close time.**

- (1) Subject to subsection (2), if any person, during the weekly close time, does, in the freshwater portion of any river or lake, any of the following things—
  - (a) places, affixes or attaches any net to any stake, bridge, sluice, lock gate of a canal or other such fixed erection; or
  - (b) lays, draws or fishes with any net whatsoever;
 he shall be guilty of an offence.
- (2) This section shall not apply to—
  - (a) the use of a landing net or keep net solely as auxiliary to lawful fishing with rod and line;
  - (b) the lawful use of a net for the taking of eels; or
  - (c) the lawful use, in accordance with byelaws, of nets for the taking of fish other than salmon, trout or eels.

OTHER RESTRICTIONS AS TO TIMES OF FISHING FOR SALMON AND TROUT

**104 Restriction on use of salmon or trout nets during certain hours in freshwater portions of rivers.**

- (1) Subject to subsection (3), it shall not be lawful for any person to use any net for the capture of salmon or trout in the freshwater portion of any river between the hours of eight o'clock in the evening and six o'clock in the morning.
- (2) If any person contravenes subsection (1) he shall be guilty of an offence.
- (3) This section shall not apply to the use of a landing net or keep net solely as auxiliary to lawful fishing with rod and line [<sup>F124</sup> or in connection with the lawful operation of a fishing weir.]

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## POLLEN

### 105 Annual close season for pollen.

In this Act, the expression “the annual close season for pollen” means, in relation to any locality, the period from 31st October in any year to 31st January in the then next-following year or such other period as may be declared by a byelaw for the time being in force and applicable to that locality to be a period during which it is unlawful to fish for, take or kill pollen.

### 106 Extension of sections 90 and 98 to pollen.

The provisions of section 90 and of section 98 shall apply to pollen in the same way as they apply to salmon and trout, with the substitution therein of references to pollen for references to salmon or trout, and of references to the annual close season for pollen for references to the annual close season for salmon and trout, and with the omission from section 98(2) of the words from “otherwise” to the end of the subsection.

## EELS

### 107 Annual close season for eels.

In this Act the expression “the annual close season for eels” means in relation to any locality and for the purposes of the taking of eels by means of a fishing engine of any description, other than rod and line, the period during which it is declared by a regulation under section 15 for the time being in force and applicable to that locality to be unlawful to fish for or take eels by means of a fishing engine of that description, or if no period is so prescribed,—

- (a) in relation to the taking of eels by means of [<sup>F125</sup> fishing engines which are erected or hung in fishing weirs or are] fixed engines (other than long lines), the period from 9th January in any year to 31st May in that year; and
- (b) in relation to the taking of eels by any means other than a fishing engine to which paragraph (a) applies (except by rod and line), the period from 9th January in any year to 30th April in that year.

**F125** 1968 c.31 (NI)

### 108 Prohibition of taking etc. eels, otherwise than by rod and line, during the annual close season.

- (1) Subject to subsection (2), and without prejudice to section 109, if any person—
  - (a) during the annual close season for eels taken otherwise than by means of a fishing engine to which section 107(a) applies, fishes for, takes or wilfully kills eels by any method whatsoever; or
  - (b) during the annual close season for eels taken by means of such a fishing engine, fishes for, takes or kills eels by means of such a fishing engine; or
  - (c) has in his possession during such period as may be prescribed by regulations, or, if no period is so prescribed, during the period from 31st March in any

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year to the then next-following 30th April, any eel other than an eel that he proves was captured elsewhere than in any part of Northern Ireland outside the Londonderry Area [<sup>F126</sup>or the Newry Area];

he shall be guilty of an offence and shall be liable on summary conviction [<sup>F127</sup> 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) [<sup>F128</sup> Paragraph (a)] of subsection (1) shall not apply to the fishing for or taking of eels by rod and line, or the killing of eels so taken, and paragraph (c) of that subsection shall not apply to a person who, having any eel in his possession during the period referred to therein, proves that the eel was caught by rod and line at a particular place by [<sup>F128</sup> a person who was the holder of a fishing licence authorising him to angle for eels or who was exempted by byelaws made under section 37(f) from the requirement to hold such a licence] otherwise than during any period for the time being fixed by byelaws as a close season for angling for eels.
- (3) The Ministry may by order made subject to affirmative resolution provide that this section shall have effect as if the words in subsection (1)(c) from “other” onwards were omitted.

**F126** Words in s. 108(1)(c) inserted (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), 34(1), **Sch. 2 para. 2(8)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

**F127** 1981 NI 7

**F128** 1968 c.31 (NI)

## **109 Placing fishing engines for taking eels in eyes, etc., of fishing weirs during the annual close season for eels or during the daytime.**

- (1) If any person places or hangs any fishing engine for taking eels in an eye or gap of any fishing weir during—
- (a) the annual close season for eels taken by means of a fishing engine to which section 107(a) applies; or
  - (b) the daytime, within any period that is not the annual close season for eels taken by a fishing engine to which section 107(a) applies,
- he shall be guilty of an offence and shall be liable on summary conviction [<sup>F129</sup> 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) Where a person is charged with an offence under this section and it is proved that at a particular time a fishing engine for taking eels was placed or was hanging in an eye or gap of a fishing weir, and that that person was at that time the occupier of the fishing weir, then it shall, until the contrary is proved, be presumed that the fishing engine was so placed or hung by him.

**F129** 1981 NI 7

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## PART VII

### RESTRICTIONS ON DEALINGS IN SALMON, TROUT AND EELS

#### 110 Prohibition of sale, etc., of salmon or trout unlawfully captured.

(1) Subject to the succeeding provisions of this section, if any person buys, sells, offers or exposes for sale or has in his possession any salmon or trout unlawfully captured, he shall be guilty of an offence under this Part and shall be liable—

<sup>F130</sup>(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 and shall in addition be liable to a further fine not exceeding £50 for every salmon and £10 for every trout so bought, sold, offered or exposed for sale or found in his possession;

(b) on conviction on indictment to [<sup>F131</sup> an unlimited fine] or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.]

(2) In any proceedings under this section, the onus of proving that the salmon or trout, the subject of the proceedings, was lawfully captured shall lie on the defendant.

(3) Where a person, being a common carrier, is charged with the offence of having in his possession any salmon or trout unlawfully captured, it shall be a good defence to the charge for him to prove—

(a) that he had the salmon or trout in his possession as a common carrier and not otherwise; and

(b) that at the time at which the salmon or trout was accepted by him for carriage, the consignor delivered to him a certificate in writing signed by the consignor to the effect that the salmon or trout was lawfully captured.

(4) <sup>F132</sup> .....

(5) Where a person is charged with an offence under subsection (1) in relation to a salmon or a trout and—

(a) he proves that he acquired the fish from a person who then was, or whom he believed on reasonable grounds then to have been, the holder of a dealer's licence issued under the succeeding provisions of this Part; or

(b) he satisfies the court that he had no reason to suppose the fish to have been unlawfully captured, and that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence;

the charge against that person shall be dismissed.

(6) If a person in a certificate signed by him and delivered to a common carrier under subsection (3)( b) makes any statement which to his knowledge is false, he shall be guilty of an offence [<sup>F133</sup> and shall be liable on summary conviction to a fine not exceeding £500.]

**F130** 1981 NI 7

**F131** 1984 NI 3

**F132** S. 110(4) repealed (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 34, Sch. 2 para. 2(9), **Sch. 3** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

**F133** 1981 NI 7

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**[<sup>F134</sup>111 Prohibition of purchase, sale, etc., of salmon, trout, pollen and brown eels at certain times.**

- (1) If any person buys, sells, offers or exposes for sale or has in his possession for sale—
- (a) any salmon or trout at any time during the period from 15th September in any year to 31st January in the next-following year; or
  - (b) any pollen at any time during the period from 7th November in any year to 31st January in the then next-following year; or
  - (c) any brown eels at any time during the period from 16th January in any year to the date in that year of the commencement of the period mentioned in section 108(1)( c);

he shall be guilty of an offence under this Part.

- (2) Subsection (1) shall not apply to any person buying, selling, offering or exposing for sale or having in his possession for sale any fish of a kind mentioned in paragraph ( a ) or, as the case may be, ( b ) or ( c ) of that subsection which he proves was

- [<sup>F135</sup>(a) reared in a fish farm; or  
 (b) supplied by the Department.]

- (3) For the purposes of this section a person shall be deemed to have a salmon or trout or, as the case may be, a pollen or a brown eel in his possession for sale if it is found at any place, or on or in any vehicle, specified in a dealer's licence issued to him under the succeeding provisions of this Part, unless he satisfies the court that it was not his intention to sell it.

- (4) The Board may by byelaws substitute for the period mentioned in paragraph ( a ) or ( b ) of subsection (1), and the Ministry may by regulations substitute for the period mentioned in paragraph ( c ) of that subsection such other period as may be specified in the byelaws or, as the case may be, the regulations.

- (5) Notwithstanding anything in section 19(2) or 26(4), any byelaws or regulations made under subsection (4), shall be subject to affirmative resolution.]

**F134** 1968 c.31 (NI)

**F135** 1984 NI 2

**112 Restriction on purchase of salmon, trout and eels.**

- (1) Subject to subsection (2), a person who is not the holder, or the agent duly authorised in writing in that behalf of the holder, of a dealer's licence issued under the succeeding provisions of this Part and for the time being in force, and who buys salmon, trout or eels, [<sup>F136</sup> or being the holder of such a licence, or the agent of such a holder, buys salmon, trout or eels elsewhere than at the place or vehicle in respect of which the licence is in force], shall be guilty of an offence under this Part.

- (2) Subsection (1) shall not apply in relation to—

- (a) the *bona fide* purchase by or on behalf of a person of salmon, trout or eels for use by the person in his own home; or
- (b) the *bona fide* purchase of salmon, trout or eels by or on behalf of any person for use for catering purposes in premises in which he carries on the business of a hotel, restaurant or guest house or of providing board and lodging or meals for reward, if the purchase is made from—



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- (i) the holder of a dealer's licence for the time being in force; or
  - (ii) a fisherman who is lawfully engaged in taking and killing salmon, trout or eels, and who is the holder of a fishing licence which is for the time being in force and is available for use for the taking and killing of salmon or, as the case may be, trout or eels;
- and, in the case of a purchase from a fisherman, the purchaser—
- (aa) obtains from the fisherman a statement in writing containing his name and address and the number of his fishing licence and stating that the salmon or, as the case may be, the trout or eels are of his own lawful capture, and
  - (bb) retains the statement<sup>F137</sup> and keeps it at the premises in which he carries on the business] and produces it to an authorised officer when requested by the authorised officer to do so.
- (3) A person who is buying salmon, trout or eels and purports to be acting as an agent of the holder of a dealer's licence shall produce on demand by an authorised officer his authorisation to act as such agent and if he refuses or fails to produce his authorisation or, on the production thereof, refuses or fails to permit the authorised officer to read the authorisation there and then, he shall be guilty of an offence.
- (4) A person who when the production of the authorisation referred to in subsection (3) is lawfully demanded of him under this section does not produce the authorisation because he is not the holder of an authorisation shall be deemed to refuse or fail to produce his authorisation within the meaning of this section.
- (5) Where, pursuant to subsection (2), a person (in this subsection referred to as the vendor) selling salmon, trout or eels to another person gives to that person a statement in writing which, or any part of which, is, to the knowledge of the vendor, false or misleading, the vendor shall be guilty of an offence under this Part.
- (6) In this section authorised officer means
- (a) an officer of the Ministry authorised by the Ministry to exercise the powers conferred by this section; or
  - (b) a member of the Royal Ulster Constabulary; or
  - <sup>F137</sup>(c) an inspector or fishery conservation officer appointed by the Board.]

**F136** 1968 c.31 (NI)

**F137** 1991 NI 13

## LICENCES FOR THE SALE OF SALMON, TROUT AND EELS

### 113 Prohibition of sale, etc., of salmon, trout and eels without licence.

- (1) Subject to subsection (3), no person shall sell, or offer or expose for sale, or have in his possession for sale at any place or from or in any vehicle, salmon, trout or eels unless he is the holder of a licence for the time being in force (in this Part referred to as a “dealer's licence” ) authorising him to sell salmon, trout or eels at that place, or, as the case may be, from that vehicle.

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- (2) Any person who, not being the holder of a dealer's licence, sells, offers or exposes for sale, or has in his possession for sale salmon, trout or eels, or being the holder of such a licence sells, offers or exposes for sale, or has in his possession for sale salmon, trout or eels at a place or, as the case may be, from or in a vehicle, other than that specified in the licence, shall be guilty of an offence under this Part.
- (3) This section shall not apply to—
- (a) the Board; or
  - (b) a fisherman selling only fish of his own lawful capture; or
  - (c) the holder of a fish culture licence under section 11, in relation to fish reared in the fish farm with respect to which the licence is in force; or
  - (d) a person who has possession of fish for use for catering purposes in premises in which he carries on the business of a hotel, restaurant or guest house or of providing board and lodging or meals for reward, or who sells fish or offers or exposes fish for sale as or as part of a meal in the ordinary course of such a business<sup>F138</sup>; or
  - (e) a person selling a fish in pursuance of section 181(2) or of a direction given by the Ministry under section 198(1)].

**F138** 1968 c.31 (NI)

#### 114 Grant of licence.

- (1) Where a person who is not for the time being disqualified under section 200 for holding a dealer's licence makes application in writing to the Board in the form prescribed by the Board and forwards therewith—
- (a) a certificate signed by a justice of the peace that that person is a fit and proper person to receive a licence; and
  - (b) a fee<sup>F139</sup> of such amount] as may be prescribed by byelaws;
- the Board may grant a dealer's licence to that person.
- (2) A dealer's licence shall (unless previously terminated) continue in force until 31st December of the year in which it is granted and shall then expire.

**F139** 1991 NI 13

#### 115 Renewal of licence.

- (1) Where the holder of a dealer's licence applies within the time before its expiration prescribed by the Board, or where a person who was the holder of a dealer's licence and is not for the time being disqualified under section 200 for holding such a licence applies within the time so prescribed after its expiration, and the application—
- (a) is made in writing in the prescribed form; and
  - (b) is accompanied by a fee<sup>F140</sup> of such amount] as may be prescribed by byelaws;
- the Board may renew that licence.
- (2) Every dealer's licence renewed under this section shall (unless previously terminated) continue in force until the expiration of the calendar year for which the licence is renewed, and shall then expire.

*Status: Point in time view as at 27/03/2009.*

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F140 1991 NI 13

### 116 Appeal from refusal of licence.

- (1) When the Board refuse to grant to a person who has complied with the provisions of section 114 or 115 either a dealer's licence or, as the case may be, the renewal of a dealer's licence, they shall send to that person a notice—
  - (a) stating the grounds upon which the licence or renewal is refused; and
  - (b) informing him of his right of appeal under subsection (2) and of the time within which the appeal may be brought.
- (2) A person who is aggrieved by a refusal of the Board to grant to him a dealer's licence or to renew such a licence of which he is or was the holder may, within twenty-eight days from the date on which a notice under subsection (1) is served on him, appeal to the county court against such refusal.

### 117 Separate licence required for each premises, etc.

A separate and distinct dealer's licence shall be taken out by every person proposing to sell salmon, trout or eels in respect of each separate and distinct place or set of premises where, or, as the case may be, every vehicle from which, it is proposed to sell the same.

### 118 Publication of licences.

- (1) Every holder of a dealer's licence shall cause that licence to be displayed prominently during business hours in the place or vehicle to which the licence relates, and, if he fails to do so, he shall be guilty of an offence under this Part.
- (2) Lists of persons holding dealers' licences shall be published by the Board at such times and places, and in such manner and form, as may be prescribed by the Board.

### 119 Temporary continuance of licence on death.

Where the holder of a dealer's licence dies, the licence shall, unless forfeited under section 200, enure for the benefit of his personal representative or his<sup>F141</sup> surviving spouse or civil partner] or any other member of his family until the expiration of two months from his death or such longer period as the Board may allow.

F141 SR 2005/479

### 120 Register to be kept by holder of licence.

- <sup>F142</sup>(1) Every holder of a dealer's licence—
- (a) shall keep or cause to be kept at the place or premises to which the licence relates or at such other place as may be permitted by the Board a register in such form as may be prescribed by byelaws—
    - (i) of all salmon, trout or eels acquired, by whatever means and whether in the course of his business as a dealer or otherwise, by him or by any person acting on his behalf, and

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- (ii) of all salmon, trout or eels disposed of, by whatever means and whether in the course of his business as a dealer or otherwise, by him or any person acting on his behalf; and
- (b) shall enter or cause to be entered in the register such particulars relating to such salmon, trout or eels (other than any particulars as to price) as may be so prescribed.]
- (2) A separate register shall be kept in respect of each place or set of premises, or, as the case may be, each vehicle, with respect to which a dealer's licence is for the time being in force.
- (3) Where a dealer's licence is issued with respect to a vehicle, the register referred to in subsection (1) shall be kept in that vehicle whenever the vehicle is being operated in the ordinary course of business, and at other times shall be kept at such place as may be prescribed<sup>[F142]</sup> by byelaws]; and, accordingly, references in this Part to any place or premises where the register is required to be kept shall, as the case requires, be construed as references to that vehicle or the place so prescribed.
- (4) The particulars referred to in subsection (1) shall be entered in the register on the same day as that on which the purchases, receipts or sales were made or received.
- (5) Subsection (1) shall not apply with respect to any one or more sales by retail made to any one person on any one day where the total weight of the fish sold to that person on that day does not exceed<sup>[F143]</sup> 2.25 kilograms], provided that a statement of the aggregate weight of all the fish which were the subject of such sales to all such persons on that day is entered in the register in such manner as may be prescribed<sup>[F142]</sup> by byelaws].
- (6) Any authorised officer may inspect any register kept in pursuance of this section during such time as the place where the register is required to be kept under this section is open for the carrying on of business or at such other reasonable hours as the Board may prescribe by byelaws; and it shall be the duty of the licence-holder and of every person keeping the register, upon the request of an authorised officer, to produce for inspection by him that register, and also all invoices, consignment notes, receipts and other documents (including copies thereof where the originals are not available) which may be required to verify any entry in or explain any omission from the register, and to allow the authorised officer to take copies of or extracts from the register or any such document.
- (7) A demand for the inspection of a register or other document under subsection (6) shall be deemed to have been duly made to the licence-holder if the demand is made verbally at the place, premises or vehicle where the register is required to be kept under subsection (1) or (3) to any person in the employment of the licence-holder.
- (8) A person who holds or has held a dealer's licence shall preserve and retain any register kept by him under this section <sup>[F144]</sup> together with any documents which may be required to verify any entry in or explain any omission from that register] for a period of six months after the expiration of the latest year in which an entry was made in the register.
- (9) Any holder of a dealer's licence who contravenes any provision of this section shall be guilty of an offence under this Part.

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(10) Any person who wilfully or negligently makes or causes to be made in a register kept under this section any entry which is false or misleading in any material particular shall be guilty of an offence under this Part.

(11) In this section “authorised officer” has the same meaning as in section 112(6).

**F142** 1991 NI 13  
**F143** SR 1983/100  
**F144** 1968 c.31 (NI)

*S.121 rep. by 1981 NI 7*

## OTHER PROVISIONS

### 122 Marking of packages containing salmon, trout or eels.

- (1) Every package containing salmon, trout or eels in course of transit in Northern Ireland shall be marked conspicuously on the outside with the words "salmon and trout" or the word "salmon", or the word "trout", or the word "eels", as the case may require, and shall have also marked thereon or on a label affixed thereto the name and address of the consignor thereof.
- (2) Where any package containing salmon, trout or eels is not marked in the manner required by this section, any person—
- (a) sending or consigning the package for transit in Northern Ireland; or
  - (b) carrying the package in Northern Ireland for reward (except in a case where that person proves that he did not know or could not reasonably have known that the package contained salmon, trout or eels);
- shall be guilty of an offence under this Part.

### 123 Penalties for offences under Part VII.

Any person guilty of an offence under any provision of this Part (other than [F145 section 110(6)]) shall be liable—

- <sup>F146</sup>(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) (except for an offence under section 120 or 122) on conviction on indictment to [F147 an unlimited fine] or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.]

**F145** 1981 NI 7  
**F146** 1981 NI 7  
**F147** 1984 NI 3

*Status: Point in time view as at 27/03/2009.*

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**[<sup>F148</sup>123A Power to apply this Part to other species of fish.**

- (1) The Department may by order provide that this Part shall apply, subject to such modifications and exceptions as may be specified in the order, to any species of freshwater fish so specified.
- (2) In subsection (1) “modifications” includes additions, omissions and amendments.
- (3) An order made under subsection (1) shall be subject to negative resolution.]

**F148** 1991 NI 13

## PART VIII

### SEA-FISHERIES

#### REGULATIONS

**[<sup>F149</sup>124 Sea-fishing regulations.**

- (1) The Department may make such regulations as appear to it to be expedient for the management, conservation, protection, improvement or increase of sea-fisheries<sup>[F150]</sup> in Northern Ireland inshore waters or] in<sup>[F151]</sup> the Northern Ireland zone].
- <sup>[F152]</sup>(1A) In the application of this section to the Londonderry Area and the Newry Area, the reference in subsection (1) to sea-fisheries does not include a reference to tope, sea bass, mussel or oyster fisheries.]
- (2) Without prejudice to subsection (1), regulations may be made for the following purposes—
  - (a) the registry of sea-fishing boats;
  - (b) the regulation of fishing and the preservation of good order among persons engaged therein;
  - (c) prohibiting, either absolutely or in the absence of compliance with conditions specified in the regulations, the taking of sea-fish of any description at any time or season or of sea-fish in any condition, and the having on board a sea-fishing boat of any such fish, and specifying conditions on which fish taken in contravention of the regulations may be retained (and the taking and having of them therefore excused);
  - (d) prohibiting in any area specified in the regulations, either without limitation of time or for any period so specified,—
    - (i) all fishing for sea-fish;
    - (ii) fishing for sea-fish of any description;
    - (iii) fishing for sea-fish, or sea-fish of any description, by any method so specified,
 by any sea-fishing boat or by a sea-fishing boat of any description;
  - <sup>[F150]</sup>(dd) prohibiting in any area specified in the regulations, either without limitation of time or for any period so specified,—

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- (i) fishing from or by means of any vehicle or any vehicle of a specified description;
  - (ii) fishing by means of a specified description of equipment;]
  - (e) fixing the times, seasons and places in which fishing engines or gear of any description may not be on board a sea-fishing boat or used;
  - (f) prohibiting the possession or use of fishing engines or gear of any description or the use of such engines or gear otherwise than in the manner prescribed by the regulations;
  - (g) prohibiting any practice whatsoever tending to impede the lawful capture of sea-fish or to be in any manner detrimental to the fisheries.
- [<sup>F150</sup>(2A) The power to make regulations under this section may be exercised for—
- (a) the conservation or enhancement of the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in those areas; or
  - (b) the conservation of flora or fauna which are dependent on, or associated with, a marine or coastal environment.]
- (3) If any person contravenes a regulation made under this section he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000; and if in the case of any sea-fishing boat there is a contravention of such a regulation, the master, and the charterer, if any, of the boat, or, if there is no charterer, the owner shall each be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.]
- [<sup>F150</sup>(4) Where—
- (a) a person commits an offence under subsection (3); and
  - (b) a vehicle or equipment is used in the commission of the offence, then, in addition to that person, any person who caused or permitted the commission of the offence is guilty of an offence.
- (5) For the purposes of this section—
- (a) “Northern Ireland inshore waters” means the area adjacent to the coast of Northern Ireland and to the landward of a limit of 6 miles from the baseline from which the breadth of the territorial sea is measured, up to the mean high-water mark of ordinary spring tides; and
  - (b) “sea-fisheries” includes any fishery within that area.]

**F149** 1981 NI 7

**F150** 2001 c. 4 (NI)

**F151** SI 2002/790

**F152** S. 124(1A) inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 34(1), **Sch. 2 para. 2(10)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

*S.125 rep. by 1981 NI 7*

[<sup>F153</sup>**126 Landing etc., fish caught in contravention of regulations.**

If any person brings to land, lands or sells or offers or exposes for sale or has in his possession for the purpose of sale any fish caught in contravention of any regulation made under section 124, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.]

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F153 1981 NI 7

## UNDERSIZED SEA-FISH

### 127 **Minimum sizes of sea-fish.**

F154

- (1) Subject to subsections (5) and (6), no person shall [<sup>F155</sup> bring to land], land, sell or offer or expose for sale, or have in his possession for the purpose of sale, any sea-fish of any description, being a fish of a smaller size than such size as may be prescribed in relation to sea-fish of that description by an order of the Ministry made subject to negative resolution, and orders under this subsection may prescribe a different size in relation to landing from that prescribed for other purposes.
- <sup>F155</sup>(1A) Where an order is made under subsection (1) in relation to lobsters that subsection shall have effect as if the words “for the purpose of sale” were omitted; but that subsection as so modified shall not apply to the possession of lobsters purchased by retail in a shop.]
- (2) Subject to any exemption granted under subsection (7), no person shall have in his possession for the purpose of processing or otherwise using in the course of any business any fish to which subsection (1) applies.
- (3) Where an order under subsection (1) prescribes a size for fish of any description (whether in relation to landing only or for all the purposes of the subsection), then, except in so far as provision is made to the contrary by such an order, a person who lands a part of a fish of that description shall be deemed to contravene that subsection if the part is of a smaller size than the size so prescribed.
- <sup>F155</sup>(3A) An order under subsection (1) may confer exemptions from any prohibition imposed by this section.]

*Subs.(4)(5) rep. by 1981 NI 7*

- (6) Where an order under [<sup>F156</sup> section 1(1) of the Sea Fish (Conservation) Act 1967 ] (which ...<sup>F157</sup> prohibits the landing in Great Britain and disposal there of sea-fish of less than the prescribed size ...<sup>F157</sup>) is for the time being in force with respect to fish of any description, then, in relation to fish of that description,—
- (a) no order shall be made under subsection (1) for purposes corresponding to those of the first-mentioned order prescribing any lesser size than the size prescribed by the first-mentioned order; ...<sup>F157</sup>

*Para.(b) rep. by 1981 NI 7*

...<sup>F157</sup>.

- (7) Where it appears to an officer authorised in that behalf by the Ministry that any fish which have been caught are fish to which subsection (1) applies, the officer may grant in writing to any person such exemption from subsection (2) as the officer considers requisite to enable the fish to be disposed of.
- (8) If any person contravenes this section, that person shall be guilty of an offence, ...<sup>F157</sup>.
- (9) Any person, ...<sup>F157</sup> who is guilty of an offence under subsection (8) shall be liable on summary conviction [<sup>F158</sup> to a fine not exceeding £1,000.]



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- (10) Any officer of a market authority acting within the limits of a market which that authority has power to regulate, may seize any sea-fish which are landed, sold or offered or exposed for sale by any person in contravention of this section or which any person has in his possession in contravention of this section and for the purposes of this subsection may exercise any power conferred on an authorised officer by section 178.
- (11) In this section “sea-fish” includes fish which has been cured, frozen or otherwise preserved, and “market authority” means any authority or person having power to regulate a market.

**F154** mod. by SR 2000/20

**F155** 1981 NI 7

**F156** 1981 NI 7

**F157** 1981 NI 7

**F158** 1981 NI 7

#### OTHER PROVISIONS

#### **128 Use of beaches, etc., by fishermen for purposes of sea-fishing.**

- (1) Any fisherman or any person employed by a fisherman may—
- (a) enter upon all such beaches, strands and waste lands on or adjoining the seashore or any estuary as may be necessary for the purpose of sea-fishing; and
  - (b) draw up and spread nets and land fish upon any such beach, strand or waste land.
- (2) If any person resists or forcibly obstructs any other person exercising any right conferred by subsection (1), the first-mentioned person shall be guilty of an offence.
- (3) Subsection (1) shall not be construed as authorising the erection of any fixtures or fixed nets on any beach, strand or waste land.

#### **129 Use by fishermen of land adjoining fishing places.**

- (1) Any fisherman engaged in sea-fishing, and any person watching on behalf of, directing, guiding, assisting or helping to attend to the nets of any such fisherman may, subject to subsection (2), enter any land in the vicinity of any fishing place for the purpose of watching for or of drawing or carrying ashore fish, or for the purposes of directing and guiding any fisherman engaged or about to engage in fishing.
- (2) Subsection (1) shall not authorise any person to enter an enclosed garden or any cultivated land bearing a growing crop.
- (3) If any person resists or forcibly obstructs any other person exercising any right conferred by subsection (1) the first-mentioned person shall be guilty of an offence.

*S.130 rep. by 1981 NI 7*

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## [<sup>F159</sup>PART IX

### SHELL-FISH FISHERY LICENCES

F159 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;
  - (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

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- (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<sup>F160</sup> by the Appeals Commission for the purpose of considering those objections];<sup>F160</sup> . . .

*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<sup>F160</sup> 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.]

**F160** 1991 NI 13

### **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
    - (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.

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- (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<sup>[F161]</sup> 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.
- <sup>[F161]</sup>(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.

**F161** [1991 NI 13](#)

#### **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.

#### **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—

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- (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
  - (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.

*Status: Point in time view as at 27/03/2009.*

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- (2) Without prejudice to<sup>[F162]</sup> 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.

F162 1994 NI 15

### 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—
- (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*

[<sup>F163</sup>[<sup>F164</sup>**PART IXA**

MARINE FISH FISHERY LICENCES

F163 1991 NI 13

F164 1991 NI 13

*Status: Point in time view as at 27/03/2009.*

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### **137A Marine fish fishery licences.**

- (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 any species of marine fish at a place specified in the licence, the Department may, in accordance with this section, grant to that person a further licence (a "marine fish fishery licence") conferring on him the exclusive right of cultivating marine fish of that species within any area specified in the marine fish fishery licence ("the licensed area") which is at that place.
- (2) Sections 131 to 137 shall apply to marine fish fishery licences subject to the following modifications—
  - (a) subject to paragraphs (b) to (d)—
    - (i) any reference to a shell-fish fishery licence shall be construed as a reference to a marine fish fishery licence;
    - (ii) any reference to shell-fish shall be construed as a reference to marine fish of the species specified in the licence;
  - (b) in section 131—
    - (i) subsection (1) shall be omitted, and
    - (ii) in subsection (3) for the words "fishing for shell-fish" there shall be substituted the words "fishing for marine fish of any kind or for shell-fish";
  - (c) in section 135—
    - (i) in subsection (2) for the words "depositing, propagating, dredging" there shall be substituted the words "introducing, propagating, harvesting", and
    - (ii) in paragraph (b) of that subsection for the word "deposit" there shall be substituted the word "introduce"; and
  - (d) in section 136(1), for paragraph (a) there shall be substituted the following paragraph—

“(a) uses any implement to catch fish of any kind; or”
- (3) In this section "marine fish" means fish of any kind found in the sea, but does not include shell-fish.]]

## **PART X**

### **MISCELLANEOUS OFFENCES**

#### **160 Obstructing persons lawfully fishing.**

If any person unlawfully obstructs any person lawfully engaged in fishing or in proceeding to or in returning from lawful fishing, such first-mentioned person shall be guilty of an offence.

#### **161 Placing fishing engine with intent to prevent fish entering any other fishing engine lawfully set.**

If any person wilfully and maliciously places any fishing engine with intent to prevent fish from entering the fishing engine of any other person set and placed in a lawful manner, such first-mentioned person shall be guilty of an offence.

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## **162 Taking or using boats without permission.**

If any person, without the permission of the owner thereof, removes, takes, uses or employs any boat he shall be guilty of an offence.

## **163 Names of owners to be painted on fishing boats.**

- (1) Every boat used for fishing, other than a fishing boat excepted from the application of this section by subsection (3), shall have upon some conspicuous place thereof the name of the owner, or of one of the owners where more than one, and of his place of residence, painted in clear legible characters or letters of not less than<sup>F165</sup> 5 centimetres] in length.
- (2) If, in respect of any boat to which this section applies the provisions of subsection (1) are not complied with, the owner of the boat or any person using it shall be guilty of an offence.
- (3) This section shall not apply to any fishing boat registered under<sup>F166</sup> the<sup>F167</sup> Part II of the Merchant Shipping Act 1995]] or to any boat which, so far as it is used for fishing, is used solely for catching fish otherwise than for profit.

**F165** SR 1983/100

**F166** 1993 c. 22

**F167** 1995 c. 21

## **164 Unauthorised entry on several fishery.**

If any person without authority from the owner or occupier enters into or upon a several fishery for the purpose of fishing, or kills or takes any fish therein, he shall be guilty of an offence.

## **165 Unauthorised fishing in private ponds.**

If any person kills, takes or destroys any fish in any pond, private canal or reservoir without the authority of the owner of such pond, private canal or reservoir, he shall be guilty of an offence.

# **PART XI**

## **AUTHORISED PERSONS**

### **DEFINITIONS**

## **166 Definitions for purposes of Part XI.**

- (1) In this Part—
  - “authorised person” means<sup>F168</sup> (except where otherwise provided)] a person being—
    - (a) a member of the Royal Ulster Constabulary, or



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(b) an officer appointed by the Ministry, or

(c) an officer of the Board, or

(d) a private water bailiff;

“officer of the Board” means<sup>F168</sup> the Chief Executive of the Board or,] an inspector or water bailiff appointed by the Board;

*Definition rep. by 1981 NI 7*

(2) In sections 174 to 177, 179, 184 and 185 the expression “authorised person” includes—

(a) any British sea-fishery officer,<sup>F169</sup>...

*Para.(b) rep. by 1981 NI 7*

(3) In subsection (2) “British sea-fishery officer” means [<sup>F170</sup> any person who is such an officer for the purposes of the Sea Fisheries Acts (as defined by section 19(1) of the Sea Fisheries Act 1968 ).]

**F168** 1991 NI 13

**F169** 1981 NI 7

**F170** 1981 NI 7

#### PROVISIONS WITH RESPECT TO PARTICULAR CLASSES OF AUTHORISED PERSONS

#### **167 Amendment of 1836 c.13 s.15, as to purposes for which members of the Royal Ulster Constabulary may be employed.**

(1) Subject to subsection (2), any member of the Royal Ulster Constabulary may enforce the provisions of this Act or of any instrument made under this Act,<sup>F171</sup> . . . .

(2) Save<sup>F171</sup> . . . where forcible resistance is actually made and is proved by information on oath), no member of the Royal Ulster Constabulary shall enter upon any lands or waters for the purpose of enforcing the fishing rights of any owner or occupier thereof, or of any person in whom fishing rights are vested.

**F171** 1998 c. 32

#### **168 Restriction on powers of officers of the Board.**

(1) Subject to subsection (2), an officer of the Board shall not enter upon any lands or waters for the purpose of enforcing the fishing rights of any owner or occupier thereof, or of any person in whom fishing rights are vested.

(2) Subsection (1) shall not apply in any case where the fishing rights in question are rights of the Ministry<sup>F172</sup> or rights of an owner or occupier of land or waters with whom the Board has entered into an agreement under section 25(3)(cc)].

**F172** 1991 NI 13

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**Modifications etc. (not altering text)**

- C2** S.168(1) excluded by 1952 c. 5 (N.I.), Third Sch. para. 2(2) (as added (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **29(b)** (with art. 32)); S.R. 2008/232, **art. 2**, Sch.

*S.169 rep. by 1981 NI 7*

**170 Appointment, etc., of private water bailiffs.**

- (1) Any of the following persons, namely,
- (a) any person who by virtue of any fishing rights in any lake or river has an interest in the preservation of the fish therein; or
  - (b) any persons who have united themselves into a society for the preservation of any fishery in any lake or river; or
  - (c) the owner of any salmon fishery on the sea coast <sup>[<sup>F173</sup>]</sup>; or
  - (d) the licensee under a shell-fish fishery licence; or
  - (e) any licensees under such licences who have united themselves into a society for the protection of their shell-fish fisheries;]

may by instrument in writing in the form set out in Schedule 5 appoint any person (other than a person disqualified under subsection (7)) to be a private water bailiff for the protection of the fisheries in any such lake or river or the tributaries thereof, or on such part of the sea coast <sup>[<sup>F173</sup>]</sup> or for the protection of that shell-fish fishery or those shell-fish fisheries.]

- (2) A person appointed to be a private water bailiff shall not act in that capacity until his appointment is confirmed by a court of summary jurisdiction sitting for the petty sessions district (or any one such district where there are more than one) within which the private water bailiff is appointed to act.
- (3) A person making application under subsection (2) for confirmation of the appointment of a person as a private water bailiff shall, not less than fourteen days before the date of the hearing of the application, give notice in writing of the application to the Board<sup>[<sup>F174</sup>]</sup> and the Department, and the Board and <sup>[<sup>F173</sup>]</sup> the Department shall be entitled to appear before the court, be heard and adduce evidence on the hearing of the application, and may do so by <sup>[<sup>F175</sup>]</sup> one of its officers] or by solicitor or counsel.
- (4) The confirmation of the appointment of a person as a private water bailiff shall be effected by the resident magistrate endorsing the instrument of appointment.
- (5) Where a court of summary jurisdiction has confirmed the appointment of a person to act as a private water bailiff within the petty sessions district for which the court sits or within any such districts of which that district is one, the court upon complaint made to it, may revoke the appointment, and thereupon the appointment shall be terminated.

<sup>[<sup>F174</sup>]</sup>(5A) Where a person who has appointed a private water bailiff revokes that appointment, that person shall, within 14 days of the revocation, serve written notice thereof on the clerk of petty sessions for the petty sessions district in which the court by which the appointment was confirmed, sits.]

<sup>[<sup>F174</sup>]</sup>(6) Where—

- (a) the appointment of a person as a private water bailiff has been confirmed under subsection (4) or revoked under subsection (5), or

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- (b) notice of the revocation of such an appointment has been received under subsection (5A),  
the clerk of the court shall notify the Department and the Board of such confirmation or revocation or, as the case may be, such notice, as soon as practicable.]
- (7) An officer of the Board shall be disqualified for appointment as a private water bailiff.
- [<sup>F174</sup>(7A) Any person or society mentioned in paragraphs (a) to (e) of subsection (1) who employs any person to act as a private water bailiff shall, before 31st January in each year, make to the Board a return in such form and containing such information as may be prescribed by byelaws.
- (7B) The Board shall maintain a register of the names and addresses of those who are entitled to act as private water bailiffs.
- (7C) The register to be maintained under subsection (7B) shall be open to inspection by the Department.]
- (8) If any person—
- (a) acts as a private water bailiff without having his appointment confirmed under subsection (4); or
  - (b) so acts after his appointment has been revoked either by a court under subsection (5) or by his employer; [<sup>F174</sup> or]
  - [<sup>F174</sup>(c) fails to serve written notice under subsection (5A) within the time specified in that subsection; or
  - (d) fails to make a return to the Board under subsection (7A) by the date specified in that subsection;]
- he shall be guilty of an offence [<sup>F176</sup> and shall be liable on summary conviction to a fine not exceeding £200].
- (9) The powers conferred by this Part on a private water bailiff shall be exercisable only for the protection of the fishery specified in his instrument of appointment.

F173 1981 NI 7  
F174 1991 NI 13  
F175 1981 NI 7  
F176 1981 NI 7

[<sup>F177</sup>**170**Duration of appointments of private water bailiffs.

- (1) Any person whose appointment as a private water bailiff is confirmed after the coming into operation of Article 25 of the Fisheries (Amendment) (Northern Ireland) Order 1991 shall, unless his appointment is renewed in accordance with Schedule 5A, cease to be a private water bailiff on the expiration of the period of 5 years from the date of that confirmation.
- (2) Any person whose appointment as a private water bailiff was confirmed before the coming into operation of that Article of that Order shall, unless his appointment is renewed in accordance with Schedule 5A, cease to be a private water bailiff either—
- (a) on the expiration of the period of 5 years from the date of that confirmation, or
  - (b) on the expiration of the period of 1 year from the date of the coming into operation of that Article of that Order,

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whichever period is longer.

- (3) In subsections (5), (5A), (6) and (8) of section 170 references (in whatever terms) to a person's appointment as a private water bailiff shall be construed as including references to the renewal of his appointment as such.
- (4) Nothing in this section shall preclude the re-appointment under section 170 of a person who ceases, by virtue of subsection (1) or (2), to be a private water bailiff.]

F177 1991 NI 13

## 171 Warrant for exercise of powers.

The production by an officer of the Board or a private water bailiff of the instrument of his appointment shall be a sufficient warrant for his exercising the authority conferred on him by this Part, but the production of that instrument shall not be necessary unless he has been first required to produce it.

## POWERS

### 172 General powers of authorised persons.

F178

- (1) An authorised person may, for the purposes of the protection of the fisheries, at any time—
  - (a) enter into and pass through or along [<sup>F179</sup> or remain on] the banks or borders of any lakes or rivers or of the tributaries thereof;
  - (b) with boats or otherwise, enter upon any such lakes or rivers;
  - (c) enter upon and examine all weirs, sluices, mill dams, fish passes, mill races and watercourses communicating with such lakes or rivers, and pass along the same;
  - (d) stop, enter and search any boat which has been or is engaged or is about to engage in fishing;
  - (e) examine all standing, floating or other nets whatsoever;
  - (f) examine all fish and all fishing engines found in any place which by this Act he is authorised to enter, and for that purpose open any package found in such place and containing or suspected of containing any fish or fishing engine;
  - (g) seize any unlawful fishing engine or any lawful fishing engine which is being unlawfully used;
  - (h) seize any fish in the possession of a person found or suspected of committing an offence under any statutory provision relating to fisheries or any fish which have been or are suspected of having been unlawfully captured;
  - (i) seize any other thing whatsoever by means of, or in relation to, which an offence under any provision of this Act has been or is suspected of having been committed;
  - (j) do all such other acts and things as he is authorised to do under this Act.

[<sup>F180</sup>(1A) Without prejudice to subsection (1)(a), an authorised person other than a private water bailiff may for the purpose of preventing or detecting the commission of an offence

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against any provision of this Act at any time enter on and traverse any land either on foot or, where there is a suitable roadway, lane or path, in a motor vehicle.

- (1B) Where, by virtue of subsection (1A), an authorised person brings a motor vehicle onto any land, he shall not cause or permit that vehicle to stand or remain in such a position as to cause or be likely to cause any danger or obstruction.
- (1C) An authorised person, on leaving any land which he has entered by virtue of this section, shall leave that land as effectually secured against trespassers as he found it.]
- (2) Nothing in this section shall be construed as authorising any person to enter any enclosed garden or any dwelling house or the curtilage thereof except where the ordinary road or passage to any weir, dam or dyke traverses such garden or curtilage.
- (3) In this section, “suspected” means suspected on reasonable grounds.

**F178** Mod., 1967 c.7 (NI)  
**F179** 1968 c.31 (NI)  
**F180** 1991 NI 13

### **173 Power of justice of the peace to grant warrant to enter certain places.**

- (1) Where upon a sworn complaint in writing it appears to any justice of the peace that there are reasonable grounds for believing that a breach of the provisions of this Act or any regulation or byelaw made thereunder has been committed within any enclosed garden or any dwelling house or the curtilage thereof, he may by warrant under his hand empower an authorised person to enter that garden or dwelling house or the curtilage thereof<sup>F181</sup> if need be using such force as is reasonable in the circumstances].
- (2) A warrant under this section shall not continue in force for more than seven days from the date thereof<sup>F181</sup> and may, except where a specific time for execution is mentioned in the warrant, be executed at any reasonable time].
- <sup>F181</sup>(3) A person authorised to enter premises by virtue of a warrant issued under this section—
- (a) may take with him such other authorised persons and such equipment he considers may be necessary; and
  - (b) shall, on leaving any unoccupied premises which he has entered by virtue of such a warrant, leave them as effectually secured against trespassers as he found them.
- (4) In this section “authorised person” does not include a private water bailiff.]

**F181** 1991 NI 13

### **174 Boarding and examination of fishing boats.**

- (1) Any authorised person to whom this section applies may do, with respect to any boat<sup>F182</sup> which is or has been] employed in fishing, all or any of the following things—
- (a) board the boat;
  - <sup>F182</sup>(aa) require the attendance of the master and of any other persons who are or have been on board the boat and require all such persons to do anything which appears to him to be necessary for facilitating the performance of his functions;]

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- (b) examine the certificate of registration or other official papers and the fishing engines of the boat [<sup>F182</sup> (including any fishing gear appurtenant to or used in association with any such engine)], and ascertain whether the provisions of this Act or any instrument made thereunder have been complied with and whether the master and other persons [<sup>F183</sup> are or have been carrying on fishing in contravention of any statutory provision];
  - (c) seize any unlawful fishing engine or any lawful fishing engine [<sup>F182</sup> which is being, or is reasonably suspected of having been,] unlawfully used and any fishing gear appurtenant to or used in association with any such engine.
- [<sup>F184</sup>(1A) Any authorised person to whom this section applies may, for the purpose of enforcing regulations made under section 124, do all or any of the following things with respect to any vehicle or equipment which is or has been employed in fishing—
- (a) enter in or on the vehicle or equipment;
  - (b) require the attendance of the person in charge of, and any other persons in or on or using, the vehicle or equipment and require all such persons to do anything which appears to him to be necessary for facilitating the performance of his functions;
  - (c) in relation to any vehicle, examine—
    - (i) any fish in or on the vehicle;
    - (ii) any apparatus on the vehicle, including any fishing engine and any fishing gear used in association with any such engine;
    - (iii) any document relating to the vehicle;
  - (d) in relation to any equipment, examine that equipment and any fish in or on the equipment;
  - (e) seize—
    - (i) any vehicle or equipment which is being, or is reasonably suspected of having been, used in the commission of an offence under any regulation made under section 124;
    - (ii) any fish in respect of which an offence is being, or is reasonably suspected of having been, committed under any regulation made under section 124.]
- (2) If the master of a fishing boat refuses to produce the certificate of registration or other papers of the boat when required to do so by any person acting under subsection (1), [<sup>F183</sup> or if he or any other person who is or has been on board the boat refuses without reasonable excuse to attend upon the authorised person or to do anything which the authorised person requires him to do for facilitating the performance of his functions, he or, as the case may be, that other person] shall be guilty of an offence [<sup>F185</sup> and shall be liable on summary conviction to a fine not exceeding £1,000].
- (3) This section applies to the following authorised persons, that is to say—
- (a) a member of the Royal Ulster Constabulary;
  - (b) an officer appointed by the Ministry;
  - (c) a person to whom section 166(2) applies.
- (4) In this section “certificate of registration” includes any certificate issued under section [<sup>F183</sup> 124(2)( a)], and any certificate issued with respect to a boat registered under [<sup>F186</sup> the [<sup>F187</sup> Part II of the Merchant Shipping Act 1995]].

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**F183** 1981 NI 7

**F184** 2001 c. 4 (NI)

**F185** 1981 NI 7

**F186** 1993 c. 22

**F187** 1995 c. 21

## 175 Detention of sea-fishing boats, etc.

[<sup>F188</sup>(1)] Any authorised person, being a person to whom section 166(2) applies or an officer appointed by the Ministry, may, in any case where it appears to him that a person has committed an offence under any provision of this Act relating to sea-fishing or the taking of salmon in the sea, without summons, warrant or other process, both take that person and the boat to which he belongs and the crew thereof to the [<sup>F189</sup> port which appears to him to be the nearest convenient port, or require that person to take it and them there,] and bring him or them as soon as practicable before a competent court, and in the meantime detain him, it and them in the port until the alleged offence has been inquired into or adjudicated upon by such court.

[<sup>F188</sup>(2)] Where it appears to an officer of the Board that a person has committed an offence under any provision of this Act relating to the taking of salmon in the sea, that officer may exercise the powers conferred on an authorised person by subsection (1).]

**F188** 1991 NI 13

**F189** 1981 NI 7

## 176 Apprehension of offenders.

<sup>F190</sup>

(1) If any person (in this section referred to as [<sup>F191</sup> “the alleged offender” ]) is found offending against any provision of this Act,—

(a) an authorised person may require [<sup>F191</sup> the alleged offender] to desist from the offence and to give his name and address; and

(b) if [<sup>F191</sup> the alleged offender]—

<sup>F192</sup>(i) after being so required, wilfully continues the offence or refuses or fails to give his name and address [<sup>F193</sup> to the satisfaction of the authorised person] [<sup>F192</sup>, or

(ii) resides outside the United Kingdom,]

the authorised person and any person acting under his directions may apprehend the [<sup>F191</sup> alleged offender.]

(2) Where [<sup>F191</sup> the alleged offender] is apprehended under this section by an authorised person who is not a member of the Royal Ulster Constabulary that person shall forthwith deliver [<sup>F191</sup> the alleged offender] into the custody of a member of the Royal Ulster Constabulary to be dealt with according to law.

<sup>F192</sup>(2A) Where the alleged offender resides outside the United Kingdom he may be detained by a member of the Royal Ulster Constabulary until a summons charging him with the relevant offence has been served upon him, and after the service of the summons he may be further detained until he enters into a recognizance, with such sureties or other security as, subject to subsection (2B), the justice of the peace or other person before whom the recognizance is entered into thinks fit, conditioned for his appearance at the time and place stated in the summons; and any such summons may, notwithstanding

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anything in section 7 of the Sunday Observance Act (Ireland), 1695 , be served on a Sunday.

(2B) The amount in which any party to a recognizance taken under subsection (2A) is bound, or the amount of any security required to be deposited under that subsection in lieu of sureties, shall not be greater than the amount of any fine which could be imposed on the alleged offender if he were convicted of the relevant offence.]

(3) In this section the expression “authorised person” includes any person who by virtue of any fishing rights exercisable by him has an interest in the fishery in which the relevant offence is committed.

**F190** Mod., 1967 c.7 (NI)

**F191** 1968 c.31 (NI)

**F192** 1968 c.31 (NI)

**F193** 1991 NI 13

## **177 Powers in relation to fishing engines, etc.**

Without prejudice to any other provision of this Act, where an authorised person finds—

- (a) during the annual close season for salmon and trout or the weekly close time—
  - (i) any passage in any fishing engine or contrivance closed or obstructed; or
  - (ii) any fishing engine or any contrivance whatsoever placed or used in contravention of this Act or any instrument made thereunder; or
- (b) at any time, any obstruction other than an obstruction authorised by a licence granted under section 84(1) in the free gap of a fishing weir or in a fish pass; or
- (c) at any time, any obstruction in the waste gate appurtenant to any mill or factory when such waste gate is required by law to be open,

he may open such passages and remove such obstructions, doing no unnecessary damage, and seize and remove all things so found or used contrary to the provisions of this Act or any instrument made thereunder.

## **178 Powers of inspection, examination and detention.**

**F194**

(1) Every person (in this section referred to as an “authorised officer” ) being an officer of the Ministry authorised by the Ministry to exercise the powers conferred by this section, or a member of the Royal Ulster Constabulary or an officer of the Board, is hereby authorised to do all or any of the following things—

- (a) to stop and search any person, conveying or suspected of conveying fish of any kind, or any instrument, poison, explosive or thing used or adapted for taking fish unlawfully and to <sup>F195</sup> examine] any fish, instrument or substance which that person is found to be conveying, and for that purpose to open and search any vehicle or package in which any fish, instrument or substance is or is suspected of being conveyed;
- (b) at all reasonable times to enter upon and have free access to the interior of<sup>F196</sup> and, where he suspects that an offence under any provision of the Act is being, or has been, committed, to carry out a search of]
  - (i) any premises in which fish is or is believed to be sold, or kept or exposed for sale or stored; or



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- (ii) any premises in which any instrument or substance intended for the destruction of fish is or is believed to be kept; or
  - (iii) the premises of any person engaged in the business of carrying goods for reward; or
  - (iv) any aerodrome, pier, quay, wharf, jetty or dock or premises thereon; or
  - (v) any aircraft, boat, railway wagon, motor lorry, cart, or other vessel or vehicle of whatever kind used for the conveyance of goods; or
  - (vi) any hotel, guest house, restaurant or other premises or place at which board and lodging or meals are provided for reward;
- (c) to examine all fish found in any place which he is authorised by this section to enter, and for that purpose to open any package found in such place and containing or suspected of containing fish;
- (d) to stop, enter, and search, on any waters, or the banks thereof, any boat used or suspected of being used for fishing or containing or suspected of containing fish unlawfully captured, and to examine all fish and all fishing engines or fishing gear found therein, and for that purpose to open any package which contains or is suspected of containing any fish or fishing engine or fishing gear;
- (e) to take, remove, and detain in his custody any fish (either together with or without any package in which the same may be contained) found in the course of the exercise of any of the powers conferred by this section in respect of which an offence under this Act is being or is suspected of being committed, or which have been or are suspected of having been unlawfully captured [<sup>F197</sup> or which are, or are believed to be, liable to forfeiture under this Act];
- (f) to take, remove, and detain in his custody any fishing engine, boat, vehicle or thing liable or believed to be liable to forfeiture under this Act;
- (g) to demand and take the name and address of the person having custody of any fish or other article which the authorised officer is authorised under this section to examine [<sup>F196</sup>, to demand the age of such a person who is apparently under the age of 18], and also to demand and take from such person the name and address of the owner of such fish or other article.
- [<sup>F196</sup>(h) to demand and take the name and address of any person who is fishing or whom he suspects to be about to fish or to have fished within the preceding half hour and to demand the age of such a person who is apparently under the age of 18.]
- (2) Where an authorised officer detains in his custody under the authority of this section any particular thing, he shall as soon as conveniently may be take such steps as may be proper to have the person guilty, or suspected to be guilty, of the offence committed or suspected to have been committed in relation to that thing dealt with according to law.
- (3) A person who refuses or fails to give his own name and address [<sup>F196</sup> to the satisfaction of the authorised officer] or the name and address (so far as known to him) of any other person, when lawfully demanded under this section, shall be guilty of an offence [<sup>F198</sup> and shall be liable on summary conviction—
- (a) except in a case such as is mentioned in paragraph ( b), to a fine not exceeding £1,000;
  - (b) where the person charged with the offence satisfies the court that any fish in connection with which the offence was committed were sea-fish taken only by rod and line or that any other article in connection with which the offence was committed was used, or (having regard to the circumstances of the offence)

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was capable of being used, only in connection with fishing for sea-fish by rod and line, to a fine not exceeding £200].

- (4) This section shall not authorise entry into any premises which are used exclusively as a private dwelling.
- (5) In this section “believed” and “suspected” mean respectively believed on reasonable grounds and suspected on reasonable grounds.

**F194** Mod., 1967 c.7 (NI)

**F195** 1968 c.31 (NI)

**F196** 1991 NI 13

**F197** 1968 c.31 (NI)

**F198** 1981 NI 7

### **179 Persons using, etc., fishing engines to produce fishing licence therefor on demand.**

- (1) If any person using [<sup>F199</sup> at any place] a fishing engine for which a licence is required under this Act, or having such a fishing engine erected or in fishing order ...<sup>F200</sup> in his possession in or near any fishing place ...<sup>F200</sup> fails on demand to produce to an authorised person a fishing licence [<sup>F201</sup> by or by virtue of which he is authorised to use that fishing engine at that place], he shall be guilty of an offence.
- (2) Where a person is charged with an offence under this section consisting of a failure to produce a fishing licence for a fishing engine to which subsection (1) applies, being a fishing engine in his possession, it shall be a good defence to prove that he had the fishing engine in his possession as a manufacturer or seller thereof and not for the purpose of using it.
- (3) A person shall not be charged with an offence under this section consisting of a failure to produce a fishing licence for a fishing engine in any of the circumstances referred to in subsection (1) if upon demand being made by an authorised person for the production of a fishing licence under that subsection, the first-mentioned person—
- (a) then and there gives to the authorised person his name and address and any evidence of his identity then available and also gives a reasonable explanation of his failure to produce the fishing licence at that time; and
  - (b) [<sup>F202</sup>within five days] thereafter, and in accordance with any reasonable requirement then communicated to him by the authorised person, produces to the authorised person or to any other person designated by him—
    - (i) a [<sup>F203</sup>fishing licence] authorising the first-mentioned person to use the fishing engine at that place and time [<sup>F199</sup> or, if the fishing engine is a rod and line which he was using to fish for fish of any kind, and by reason of his age he was at that time exempted by byelaws made under section 37(f) from the requirement to hold a fishing licence for a rod and line to fish for fish of that kind, evidence of his age]; and
    - (ii) evidence of the identity of the first-mentioned person.
- <sup>F199</sup>(4) A person who is guilty of an offence under subsection (1) by reason of a contravention of that subsection which consists only of the use or possession of a rod and line shall be liable on summary conviction to a fine not exceeding [<sup>F204</sup> £200.]

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[<sup>F205</sup>(5) In this section “fishing licence” means a fishing licence issued under Part III or a fishing licence issued by the Foyle, Carlingford and Irish Lights Commission under regulations made by the Commission under the Foyle Fisheries Act (Northern Ireland) 1952.]

**F199** 1968 c.31 (NI)

**F200** 1968 c.31 (NI)

**F201** 1968 c.31 (NI)

**F202** 1991 NI 13

**F203** Words in s. 179(3)(b)(i) substituted (1.6.2008) by *Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9))*, arts. 1(3), 34(1), **Sch. 2 para. 2(11)(a)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

**F204** 1981 NI 7

**F205** S. 179(5) added (1.6.2008) by *Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9))*, arts. 1(3), 34(1), **Sch. 2 para. 2(11)(b)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

[<sup>F206</sup>**179A** Production of permits issued under section 7A.

(1) If any person—

- (a) using at any waters the fishing rights in which are owned by the Department a fishing engine for which a permit is required under section 7A, or
- (b) having such a fishing engine erected or in fishing order in his possession in or near such a place,

fails on demand to produce to an authorised person a permit by or by virtue of which he is authorised to use that fishing engine in those waters, he shall be guilty of an offence.

(2) Subsections (2) to (4) of section 179 shall apply in relation to an offence under subsection (1) in the same manner as those provisions apply to an offence under subsection (1) of that section, but with the omission from subsection (3)(b)(i) of that section of the words “by byelaws made under section 37(1)(f)”.

(3) In this section “authorised person” means—

- (a) an officer appointed by the Department, and
- (b) an officer of the Board.]

**F206** 1991 NI 13

**180 Procedure for disposal of boat or fishing engine seized in certain cases.**

Where a persons in exercise of powers conferred on him by this Act, seizes any boat (other than a sea-fishing boat)[<sup>F207</sup>, fishing engine, vehicle or equipment] and no other person is charged with an offence under any provision of this Act in relation thereto, the first-mentioned person shall, as soon as may be, apply to a court of summary jurisdiction sitting for the petty sessions district in which the boat[<sup>F207</sup>, fishing engine, vehicle or equipment], as the case may be, was seized for an order for its disposal under this section, and thereupon the following provisions shall have effect:—

- (a) if, in the case of a boat[<sup>F207</sup> or a vehicle or equipment], the court finds that, at the time of its seizure,[<sup>F207</sup> the boat, vehicle or equipment] had been, was being, or was about to be, used for a purpose which under this Act[<sup>F207</sup> or any

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regulation made under section 124] is unlawful, the court shall order it to be forfeited;

- (b) if, in the case of a fishing engine, the court finds that it is a fishing engine the use of which is prohibited by law, the court shall order it to be forfeited and destroyed;
- (c) if, in the case of a fishing engine, the court finds that it is a lawful fishing engine which at the time of its seizure had been, was being or was about to be, unlawfully used, the court shall order it to be forfeited;
- (d) in any other case, the court shall order the boat<sup>F207</sup>, fishing engine, vehicle or equipment] to be returned to the person who appears to the court to be the owner thereof;

and where any fishing engine is forfeited in pursuance of this section any fishing gear appurtenant to or used for the purposes of that fishing engine which has been seized in the exercise of any power conferred by this Act shall also be forfeited.

F207 2001 c. 4 (NI)

## 181 Procedure for disposal of fish seized or detained.

- (1) Where in the exercise of the powers conferred by section 127(10), 172<sup>F208</sup>, 174] or 178 a person seizes or detains any fish and the fish is likely to become unfit for human food before the matter can conveniently be dealt with by a court, the succeeding provisions of this section shall have effect.
- (2) If the fish is a fish that may for the time being be lawfully taken, bought and sold, having regard to its kind, size and condition and the season of the year (in this section referred to as “lawful fish” ), the person seizing or detaining the fish shall, in accordance with any directions given to him by the Ministry or the Board, sell the fish, unless by virtue of an instruction given to him by the Ministry or the Board on any occasion, or in accordance with the terms of any general authorisation in writing given to him by the Ministry or the Board, he is permitted or required to dispose of it in some other manner.
- (3) If the fish is not lawful fish, the person shall destroy or otherwise dispose of it in accordance with any instruction or authorisation such as is referred to in subsection (2).
- (4) When a person proposes to sell, destroy or otherwise dispose of any fish in pursuance of subsection (2) or (3) he may produce the fish to a justice of the peace, and the justice of the peace may give to the person producing the fish a certificate in writing describing the fish and any marks, peculiarities or other particulars thereof pointed out to him by that person.
- (5) A certificate given by a justice of the peace under subsection (4) shall be *prima facie* evidence of all matters of fact such as are described in that subsection as are stated therein.
- (6) Any sum of money representing the proceeds of sale of fish sold by a person under subsection (2) shall forthwith be paid by that person to the Ministry, or, where the fish is a salmon, an eel or a freshwater fish, to the Board, and—
  - (a) where no other person is charged with an offence under any provision of this Act in relation to the fish, any such sum shall be disposed of as the Ministry or, as the case may be, the Board may direct;

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- (b) where some other person is charged with such an offence and is acquitted, a sum equal in amount to the net proceeds of the sale of the fish shall be paid to that other person by the Ministry or, as the case may be, the Board;
- (c) where some other person is convicted of such an offence, a sum equal in amount to the net proceeds of sale of the fish shall be applied by the Ministry or, as the case may be, the Board, in accordance with section 198, in the same manner as if the fish had been sold under that section.

F208 2001 c. 4 (NI)

## PROTECTION OF AUTHORISED PERSONS

### 182 **Penalty for assaulting authorised person.**

F209

If any person assaults—

- (a) any person exercising any power conferred by this Part; or
- (b) any officer of the Ministry or of the Board whilst doing any thing authorised by any of the provisions of this Act specified in Schedule 6; or
- (c) any authorised officer acting under section 112 or 120, or any officer acting under section 17 or 127;

he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F210</sup> £500] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

F209 Mod., 1967 c.7 (NI)

F210 1981 NI 7

### 183 <sup>F211</sup> **Obstructing or impeding authorised person.**

(1) If any person obstructs or impedes—

- (a) any person exercising any power conferred by this Part; or
- (b) any officer of the Ministry or of the Board whilst doing anything authorised by any of the provisions of this Act specified in Schedule 6; or
- (c) any authorised officer acting under section 112 or 120, or any officer acting under section 17 or 127;

he shall be guilty of an offence.

<sup>F212</sup>(2) For the purposes of this section a person who without reasonable excuse fails to afford to an officer the facilities required by section 20(4) or fails to comply with any requirement of an authorised person under section 174(1)( aa)<sup>F213</sup> or (1A)(b)] or section 175 shall be deemed to obstruct him.]

F211 Mod., 1967 c.7 (NI)

F212 1981 NI 7

F213 2001 c. 4 (NI)

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**184**  
 F214 **Giving warning to persons unlawfully fishing.**

If any person makes or causes to be made or aids or assists in making any signal or warning to any person engaged in fishing unlawfully, of the approach of an authorised person, he shall be guilty of an offence.

F214 Mod., 1967 c.7 (NI)

**185**  
 F215 **Indemnification of authorised persons.**

An authorised person shall not be liable for any loss or damage occasioned by or in the course of the exercise of any of the powers conferred on him by this Act unless such loss or damage was caused by him wantonly or maliciously.

F215 Mod., 1967 c.7 (NI)

## PART XII

### SUPPLEMENTAL PROVISIONS

#### [<sup>F216</sup>GENERAL CONSIDERATIONS]

F216 1968 c.31 (NI)

[<sup>F217</sup>**185A** **Preservation of amenity.**

In the exercise of their functions under this Act the Ministry and the Board shall have regard to the following matters, that is to say, the desirability of—

- (a) preserving natural beauty or amenity,
- (b) conserving flora, fauna and geological or physiographical features of special interest, and
- (c) protecting buildings and other objects of architectural or historic interest,

in so far as those matters are capable of being affected by that exercise.]

F217 1968 c.31 (NI)

#### [<sup>F218</sup>JURISDICTION OF WATER APPEALS COMMISSION FOR NORTHERN IRELAND UNDER THIS ACT

F218 1991 NI 13

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## 185B Jurisdiction of Appeals Commission.

F219 .....]

**F219** S. 185B repealed (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), art. 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch.1 Pt. II (subject to art. 3, Sch. 2)

## LEGAL PROCEEDINGS

### 186 Complaints.

[<sup>F220</sup>(1)] A complaint charging the commission of a summary offence under any provision of this Act may be heard and determined by a court of summary jurisdiction whether or not the complainant is an authorised person for the purposes of Part XI.

[<sup>F220</sup>(2) Notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981, summary proceedings for an offence under section 45 (including that section as applied by section 7A), or Part VII may be brought at any time within the period of six months from the date on which evidence, sufficient in the opinion of the Board to justify a prosecution for the offence, comes to the knowledge of the Board; but no such proceedings shall be brought by virtue of this section more than two years after the commission of the offence.

(3) For the purposes of subsection (2) a certificate purporting to be signed by the Chairman of the Board, as to the date on which such evidence as aforesaid came to the knowledge of the Board, shall be conclusive evidence thereof.]

**F220** [1991 NI 13](#)

*S.187 rep. by 1981 NI 7*

### 188 Jurisdiction in offences committed at sea.

(1) Where any part of a petty sessions district adjoins the sea coast or any estuary, the jurisdiction of any court of summary jurisdiction sitting for that district or of any resident magistrate or justice of the peace having authority in that district shall extend to all offences under any provision of this Act committed by any person at sea, in the same manner as it extends to offences committed on land within that district.

(2) Any court of summary jurisdiction or any resident magistrate or justice of the peace referred to in subsection (1) may do all or any of the following acts or things in relation to any such offence as is mentioned in that subsection in like manner as it or he has power to do so in relation to offences committed or goods or chattels situate on land within the petty sessions district for which that court sits or in which that magistrate or justice has authority—

- (a) issue warrants for the arrest of any person so offending, whether such person be on land at any place or at sea;
- (b) employ any person or any ways and means which may be lawfully employed for making such arrest;

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- (c) exercise all lawful powers and remedies for the apprehension, committal or punishment of persons so offending;
- (d) exercise all lawful powers and remedies for the seizure at sea of the boat, goods and chattels of any person so offending.

### 189 Service of documents.

In addition to the methods of service permitted by section 24 of the Interpretation Act (Northern Ireland) 1954, any document which is required or permitted under this Act to be served on any person, being the <sup>[F221]</sup> master, charterer or owner of or a person employed on a boat, may be served on that person by being left at or on board that boat.

**F221** 1981 NI 7

*Ss.190, 191 rep. by 1981 NI 7*

### 192 Additional defence for persons charged with buying, etc., undersized fish.

- (1) Where, under any provision of this Act, a person is charged with the offence of buying, selling, offering or exposing for sale or, as the case may be, having in his possession or having in his possession for sale <sup>[F222]</sup> any fish caught in contravention of any regulation made under section 124 or] any undersized fish, and he satisfies the court—
  - (a) that he had no reason to suppose that any fish dealt with by him as described in this subsection <sup>[F222]</sup> had been so caught or] were undersized fish; and
  - (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or by any person under his control;

the charge against that person shall be dismissed.

- (2) In subsection (1) “undersized” in relation to fish of any description means of a size less than the size prescribed with respect to fish of that description by, as the case may be, section 51(2), <sup>[F223]</sup> or 52(2) <sup>[F224]</sup> or regulations under section 15(1)(c)(iv), byelaws under section 26(1)(f)] or an order under section 127.

**F222** 1981 NI 7

**F223** 1981 NI 7

**F224** 1968 c.31 (NI)

### 193 Detention of offender pending return of warrant of distress.

- (1) Where, upon the conviction of any person for an offence under this Act, a warrant of distress is issued, the court may order the person so convicted to be detained and kept in custody, or, if he is not present, to be arrested and kept in custody, until the day appointed for the return of the warrant of distress (being a day not later than eight days from the day on which the warrant is issued) unless he enters into a recognisance to the satisfaction of the court for his appearance before the court on that day.
- (2) In this section the expression “court” means the court of summary jurisdiction before which the offender is convicted, and “warrant of distress” means a warrant of distress issued under the provisions of the Summary Jurisdiction Acts (Northern Ireland).



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*S.194 rep. by 1981 NI 7*

## FORFEITURES

### **195** **Forfeiture of boat, fishing engine, etc., as statutory consequence of conviction.**

F225

- (1) Subject to subsection (2), where a person is convicted of an offence under any provision of this Act, any fish illegally [<sup>F226</sup> either] taken by him or in his possession at the time of the offence and also any boat (other than a sea-fishing boat), and any fishing engine or other thing whatsoever by means or in respect of which the offence was committed shall, as a statutory consequence of conviction, stand forfeited.
- (2) Subsection (1) shall not apply to a vehicle.
- <sup>F226</sup>(3) Where more than twenty per cent. by weight of the fish contained in any package are undersized fish, all the fish contained in that package shall, for the purposes of determining under subsection (1) whether they were illegally taken or are illegally in any person's possession, be deemed to be undersized fish.
- (4) In subsection (3) “undersized” has the same meaning as in section 192(2).]

F225 Mod., 1967 c.7 (NI)

F226 1968 c.31 (NI)

### **196** **Non-obligation of court to pronounce or record forfeiture.**

F227

Where, as a statutory consequence of a conviction under this Act, a particular thing stands forfeited, then, notwithstanding any enactment or rule of law, it shall not be necessary for the court—

- (a) to pronounce the fact of such forfeiture at the time of adjudication; or
- (b) to record the fact of such forfeiture in the petty sessions Order Book or in the order of conviction.

F227 Mod., 1967 c.7 (NI)

### **[<sup>F228</sup>197** **Power of court to order forfeiture of vehicle.**

F229

- (1) Where a person is convicted of an offence under any provision of this Act, application may be made, by notice under [<sup>F230</sup> Part VII of the Magistrates' Courts (Northern Ireland) Order 1981], to a court of summary jurisdiction for the petty sessions district in which that person resides, or in which the offence was committed, for an order that any vehicle used by him as an aid to the commission of the offence shall be forfeited.
- (2) An application under this section shall not be made—
  - (a) in any event, until the expiration of the period within which notice of an appeal against the conviction may be given or an application to have a case stated in connection therewith may be made, or

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- (b) where such a notice is given or application made, until the conviction is affirmed or, as the case may be, the appeal is abandoned or dismissed or the application to have a case stated is finally disposed of,
- but, subject to the foregoing provisions of this subsection, shall be made as soon as may be after the conviction in question.
- (3) A court shall not make an order under this section for the forfeiture of a vehicle unless, not less than fourteen days before the date of the hearing, the notice under<sup>[F230]</sup> Part VII of the said Order of 1981] has been served by the applicant—
- (a) on the person convicted, and
  - (b) on any person, other than the person convicted, who appears to the applicant to have an interest in the vehicle.
- (4) Without prejudice to subsection (3) of this section or to<sup>[F230]</sup> paragraph (4) of Article 76 of the said Order of 1981], on an application by notice under this section the court may direct that the notice be published by the applicant in such manner as the court thinks fit.
- (5) Any person on whom a notice is served under subsection (3), and any other person claiming to have an interest in the vehicle, shall be entitled to appear and be heard and adduce evidence on the hearing of the application.
- (6) Notwithstanding any limitations imposed by<sup>[F230]</sup> Article 163 of the said Order of 1981], in any proceedings in consequence of an application under this section the court may make such order as to the costs of the application and the proceedings, and the extent to which they are to be paid by any party thereto, as it thinks fit.]

**F228** 1968 c.31 (NI)

**F229** Mod., 1967 c.7 (NI)

**F230** 1981 NI 26

## **198 Disposal of forfeitures.**

**F231**

- (1) Where any thing is forfeited under this Act, <sup>[F232]</sup> and an order for its destruction is not made under section 180( *b* ), the person by whom it was seized or any other person in whose custody it is shall<sup>F233</sup> . . . apply to the Ministry for a direction as to the disposal of that thing, and whether or not such an application is made the Ministry may direct], subject to section 199, that it be sold or otherwise disposed of in such manner as the Ministry thinks fit, or be returned to the person who appears to the Ministry to be the owner.

<sup>[F233]</sup>(1AA) An application under subsection (1) shall be made—

- (a) before the expiration of the period of 28 days from the date of the order by, or the conviction in consequence of, which the thing was forfeited, or
- (b) where notice of appeal against the order or conviction is given, before the expiration of 14 days from the date on which the order or conviction is affirmed or, as the case may be, the appeal is abandoned.]

<sup>F234</sup>(1A) Where the Ministry proposes to direct that any thing be sold under subsection (1) or otherwise disposed of (except by returning it to a person who appears to be its owner), the Ministry shall serve notice in writing of the proposal on the person, if any, in consequence of whose conviction the thing was, or was ordered to be, forfeited, and shall also—

*Status: Point in time view as at 27/03/2009.*

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- (a) serve a like notice on any other person who appears to the Ministry to have an interest in that thing; or
  - (b) if that thing appears not to be the property of the person convicted, if any, and the Ministry is not aware of the name and address of any other person such as is mentioned in paragraph ( a ), publish in one or more than one newspaper circulating in the locality where the offence was committed, or in such other locality as appears to the Ministry to be appropriate, a notice stating that the Ministry proposes to direct as aforesaid.]
- (2) Subject to any directions given by the court on an appeal under section 199, any sum of money representing the net proceeds of the sale under subsection (1) of any thing, shall be disposed of in like manner as is provided with respect to any fine that is or might have been imposed under this Act for the offence in relation to which the forfeiture was incurred.

**F231** Mod., 1967 c.7 (NI)  
**F232** 1968 c.31 (NI)  
**F233** 1991 NI 13  
**F234** 1968 c.31 (NI)

**199** **Appeal from refusal of Ministry to annul forfeiture in certain cases.**  
**F235**

- (1) Without prejudice to any right of appeal from a determination or order of a court of summary jurisdiction, where any thing is forfeited under this Act, a person who claims to be entitled to possession of that thing and who is aggrieved by a refusal of the Ministry to return it to him under section 198(1) may, upon giving to the Ministry and (in a case relating to salmon or inland fisheries) to the Board, within fourteen days from—
- <sup>F236</sup>(a) the date of the conviction or court order by virtue of which that thing was forfeited [<sup>F236</sup>, or
  - (b) the date of service on him of any notice which is served as mentioned in subsection (1A) of section 198 or, where no such notice is served on him, the date (or the last date, if more than one) of the publication of any notice such as is mentioned in paragraph ( b ) of that subsection, whichever is the later,]
- notice in writing of his appeal under this section specifying the proceedings in consequence of which the forfeiture was incurred and giving particulars of that thing sufficient to identify it, within twenty-eight days from that date appeal to the county court on the ground that—
- <sup>F237</sup>(i) the use of that thing in any manner referred to in section 180, [<sup>F238</sup> 195 or 197] was without his knowledge, connivance or consent; or
  - <sup>F237</sup>(ii) the contravention of this Act or of any statutory instrument made under this Act by reason of which the forfeiture was incurred was inadvertent or was of such a trivial or insignificant nature that that forfeiture should not be upheld.
- (2) On an appeal under this section, the Ministry and the Board shall be entitled to appear, be heard and adduce evidence before the court.
- (3) On an appeal under this section, the county court may, on being satisfied as to either of the grounds mentioned in subsection (1), annul the forfeiture and direct the return to the appellant of the thing forfeited.

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- <sup>F236</sup>(4) A person shall not be entitled to appeal under this section against the refusal of the Ministry to return to him any thing that has been forfeited under this Act if that thing was forfeited by virtue of an order made by a court under section 180 or 197 and he gave notice of appeal under<sup>F239</sup> Article 144 of the Magistrates' Courts (Northern Ireland) Order 1981] against that order or applied for a case stated under<sup>F239</sup> Article 146 of that Order] in connection with it.]

**F235** Mod., 1967 c.7 (NI)

**F236** 1968 c.31 (NI)

**F237** 1968 c.31 (NI)

**F238** 1968 c.31 (NI)

**F239** 1981 NI 26

## 200 Forfeiture of licences.

- (1) If the person who is the holder of a licence issued by the Board is convicted of an offence under any provision of this Act, the court may direct the licence to be forfeited and declare that person to be disqualified for holding a licence of the same kind during such period as the court may direct, being a period not exceeding one year in the case of a first conviction and not exceeding five years in the case of a second or subsequent conviction.
- (2) If a person who is not the holder of a licence is convicted of an offence under any provision of this Act, the court may declare that person to be disqualified for holding a licence during such period as the court may direct, being a period not exceeding one year in the case of a first conviction, and not exceeding five years in the case of a second or subsequent conviction.
- (3) Where under section 74(1) of the Foyle Fisheries Act (Northern Ireland) 1952 a licence issued by the Foyle<sup>F240</sup>, Carlingford and Irish Lights] Commission (in this section referred to as “the Commission”) is forfeited and the person who was the holder of that licence is declared to be disqualified for holding a licence of the Commission during a specified period, then, as a statutory consequence of such forfeiture and disqualification,—
  - (a) any corresponding licence issued by the Board which is held by that person shall stand forfeited; and
  - (b) that person shall be disqualified for holding such a licence of the Board during the same period as he is disqualified for holding a licence of the Commission.
- (4) Where a licence is directed to be forfeited under subsection (1) or where it stands forfeited under subsection (3) it shall thereupon cease to be in force.
- (5) Where a person is convicted by a court of an offence against this Act or against the Foyle Fisheries Acts, the clerk of the court shall, as soon as may be, in either case forward to each of the Board and the Commission a duly authenticated certificate of the conviction,<sup>F241</sup> . . . .
- (6) In this section “licence”, in relation to a licence of the Board, means a fishing licence or a dealer's licence, and for the purposes of this section [<sup>F242</sup> byelaws may specify the classes of fishing licence which are to be deemed to be licences of the same kind].

**F240** SI 1999/859

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**F241** 1991 NI 13  
**F242** 1968 c.31 (NI)

## PENALTIES

### 201 Penalties for offences.

- (1) <sup>F243</sup> A person who commits an offence under any provision of this Act for which a penalty is not provided by any provision of this Act other than this section shall be liable on summary conviction to a fine not exceeding [<sup>F244</sup> £500].
- (2) The Board may prescribe lower penalties for breach of a particular byelaw, and the Ministry may prescribe lower penalties for breach of a particular regulation, than the penalty provided under subsection (1), and that subsection shall, in any such case, be construed as if such lower penalties were substituted for that so provided.

**F243** Mod., 1967 c.7 (NI)  
**F244** 1981 NI 7

### 202 Continuing offences.

- (1) Where a person is convicted of an offence under any provision of this Act and the contravention in respect of which he was convicted is continued after the conviction, he shall be guilty of a further offence and, subject to subsections (3) and (4), shall be liable on summary conviction, in addition to any other penalty, to a fine not exceeding [<sup>F245</sup> £50] for each day on which the contravention is so continued.
- (2) An offence under this section shall be a continuing offence and accordingly fresh proceedings in respect thereof may be taken from time to time.
- (3) In the application of this section in relation to an offence under section 73 [<sup>F246</sup> 74 or 79], subsection (1) shall have effect as if for the [<sup>F246</sup> word “50”] there were substituted the [<sup>F246</sup> word “200”].

*Subs.(4) rep. by 1981 NI 7*

**F245** 1981 NI 7  
**F246** 1981 NI 7

### 203 Disposal of fines.

- (1) Every fine imposed for an offence under any provision of this Act, other than an offence under Part VIII or IX or under any other such provision in its application to sea-fisheries, shall, notwithstanding any other enactment, be paid—
  - (a) if the offence was committed in the Londonderry Area [<sup>F247</sup> or the Newry Area], in like manner as is provided by section 77 of the Foyle Fisheries Act (Northern Ireland) 1952 with respect to fines imposed for offences under that Act; and
  - (b) in any other case, subject to subsection (2), to the Board.

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- (2) When a fine has been imposed for an offence under any provision of this Act in a case to which subsection (1)( *b*) applies, and a member of the Royal Ulster Constabulary was the means of bringing to justice the person by whom the offence was committed, and the court imposing the fine so certifies, then—
- (a) one-third of the fine shall be paid to the Ministry of Home Affairs<sup>F248</sup> and shall be appropriated in aid of the moneys provided by [<sup>F249</sup> the Parliament of the United Kingdom] for defraying the costs, charges and expenses of the said Constabulary; and
  - (b) the remainder of the fine shall be paid to the Board.

**F247** Words in s. 203(1)(a) inserted (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), 34(1), **Sch. 2 para. 2(12)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

**F248** Now S of S, SI 1973/2163

**F249** SI 1973/2163

## EVIDENCE

### 204 Proof of documents.

<sup>F250</sup> Without prejudice to [<sup>F251</sup> Article 7 of the Departments (Northern Ireland) Order 1999], in any proceedings, a document purporting to be a copy of any document or instrument in writing, being a document or instrument made or issued (whether before or after the passing of this Act) under the Fisheries Acts or this Act, but not being a statutory rule to which [<sup>F252</sup> Article 9 of the Statutory Rules (Northern Ireland) Order 1979 ] applies, shall if it is certified to be a true copy—

- (a) in the case of a document or instrument made or issued or deemed to be made or issued by the Board, under the seal of the Board; or
- (b) in the case of a document or instrument made or issued or deemed to be made or issued by the Ministry, under the hand of a Secretary or Assistant Secretary of the Ministry,

be *prima facie* evidence of the document or instrument and of the facts—

- (i) that the document or instrument was duly made; and
- (ii) that all matters and things by the Fisheries Acts or this Act required to be done previously to the making or issue of the document or instrument were duly done and performed.

**F250** Mod., 1967 c.7 (NI)

**F251** 1999 NI 1

**F252** 1979 NI 12

### 205 Recovery and evidence of expenses.

- (1) Where under this Act the Ministry is or the Board are authorised to recover from any person the expenses of any work,—
- (a) the Ministry or, as the case may be, the Board may certify the amount of those expenses; and

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- (b) the amount so certified shall be recoverable by the Ministry or, as the case may be, the Board as a debt due to it or them, and, without prejudice to any right of the Ministry or the Board to sue in the High Court for the recovery thereof, shall be recoverable in the county court by civil bill or summarily as a civil debt.
- (2) Where, in pursuance of subsection (1), an action is taken by the Ministry or the Board in the county court for the recovery of the amount of any expenses, the court shall have jurisdiction to hear and determine the action notwithstanding that, by reason of the extent of the claim or otherwise, the case would not, but for this provision, be within the jurisdiction of a county court.
- (3) A certificate under subsection (1) shall be *prima facie* evidence of the amount of the expenses stated therein and of the liability of the person named therein to pay that amount and of the right of the Ministry or the Board, as the case may be, to recover that amount.

## INTERPRETATION

### 206 Interpretation. F253

(1) In this Act—

“angling for salmon or trout” means angling for salmon or trout with rod and line;

“annual close season for angling for salmon” has the meaning given to it by section 95(1);

“annual close season for angling for trout” has the meaning given to it by section 95(2);

“annual close season for eels” has the meaning given to it by section 107;

“annual close season for pollen” has the meaning given to it by section 105;

“annual close season for salmon and trout” has the meaning given to it by section 89;

[<sup>F254</sup>“the Appeals Commission” has the meaning given in section 11A(3);]

“authorised person”, for the purposes of Part XI, has the meaning given to it by section 166;

“bag net” includes any net of similar construction to a bag net;

“bank” includes the sea-shore and any land adjacent thereto;

“the Board” means the Fisheries Conservancy Board for Northern Ireland;

“boat” includes any ship, barge, cot, curragh or vessel;

“box”, in relation to a fishing weir, includes a crib or cruive;

[<sup>F255</sup>“bring to land” in relation to fish includes bringing the fish within the limits of a harbour;]

[<sup>F256</sup>“brown eels” means eels other than silver eels;]

“byelaws” means byelaws made by the Board under section 26;

*Definitions rep. by 1981 NI 7*

“dam” means a dam, weir, dyke, sluice, embankment or structure built or placed in or in connection with any river for or in connection with the sustaining of water for any purpose [<sup>F256</sup> but does not include an embankment erected solely to prevent erosion of the banks of the river or to protect adjacent lands from flooding];

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- “daytime” means the period between sunrise and sunset;
- “dealer's licence” has the meaning given to it by section 113(1);
- “deleterious matter” means any substance (including an explosive and an anaesthetic) the entry or discharge of which into any waters is liable to render those or any other waters poisonous or injurious to fish, spawning grounds or the food of any fish, or to injure fish in their value as human food or to impair the usefulness of the bed and soil of any waters as spawning grounds or their capacity to produce the food of fish;
- “district board” means any of the boards of conservators referred to in section 34(2);
- “draft net” includes a seine;
- “eels” means fresh water eels;
- “eel weir” means a fishing weir used solely for taking eels;
- “estuary” includes a harbour or roadstead;
- “financial year”, in relation to the Board, means a year ending on 31st December;
- “fish” includes shell-fish;
- [<sup>F255</sup> “fish farm” shall be construed in accordance with section 10;]
- “fish pass” means a channel for the free run or migration of fish in, over or in connection with an obstruction in a river, lake or watercourse and includes a fish ladder or any other contrivance which facilitates the passage of fish;
- “fisheries” includes all fisheries, whether several or public;
- “the Fisheries Acts” means the Fisheries Acts (Northern Ireland) 1842 to 1954;
- “fishing engine” means any engine, net, instrument or device whatsoever capable of being used for taking or killing fish;
- “fishing licence” means a fishing licence [<sup>F257</sup>, except in sections 41, 45 and 179,] issued by the Board under Part III;
- “fishing weir” means any erection, structure or obstruction fixed to the soil across or partly across a river and incorporating one or more openings wherein fish may be taken which is used for the purpose of taking, or facilitating the taking of, fish; but does not include a fixed engine;
- “fixed engine” means—
- (a) any stake, bag, stop and still or fixed draft net; or
  - (b) any net, implement, engine or device fixed to the soil or secured by anchors or held by hand or made stationary in any other way and used solely for the purpose of taking or facilitating the taking of fish, not being a fishing weir, or a rod and line (however used)[<sup>F254</sup> or a handline];
- “the Foyle Fisheries Acts” means the Foyle Fisheries Acts (Northern Ireland) 1952 and 1962;
- “free gap” means a free gap in a fishing weir;
- “freshwater fish” means any fish living in fresh water exclusive of fish of a kind that migrates to or from tidal waters;
- Definitions rep. by 1968 c.31 (NI); 1981 NI 7*
- “heck” means a grating mounted at the upstream end of a box in a fishing weir and so constructed as to prevent the passage of fish without obstructing the flow of water;
- “inquiry” means an inquiry conducted under section 20;
- “inland fishery” means any fishery of whatsoever kind, other than a salmon fishery, in inland waters;



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“inland waters” means the waters of any river above the boundary between the tidal and freshwater portions thereof, and the waters of any freshwater lake;

“inscales” means a pair of gratings mounted at the downstream end of a box in a fishing weir and converging towards the centre in the upstream direction to form between the upstream ends a vertical gap, the effect of the arrangement being to permit the passage of fish into the box and hinder their escape therefrom;

“instrument” and “statutory instrument”, when used in relation to an instrument in writing, have the same meaning as in section 1 of the Interpretation Act (Northern Ireland) 1954, and a reference to an instrument, or to an instrument of any kind, made under this Act includes a reference to an instrument deemed to be made under this Act;

“lawful fishing engine” means any fishing engine the use of which (except during particular times, in particular places, or in a particular manner) is not prohibited by or under this Act;

“licensee”, in relation to [<sup>F258</sup> a shell-fish fishery licence] means the person for the time being entitled to that licence;

“the Londonderry Area” has the meaning given to it by section 2(1) of the Foyle Fisheries Act (Northern Ireland) 1952;

“the Ministry” means the Ministry of Agriculture;

“the Minister” means the Minister of Agriculture;

“net” includes all descriptions of tackle, trawl, trammel, stake, bag, coghill, fyke, eel, haul, draft and seine nets, and all other engines or devices, of whatsoever construction or materials, or howsoever known or styled, which are used for the taking of fish;

[<sup>F259</sup>“Northern Ireland zone” has the same meaning as in the Northern Ireland Act 1998;]

[<sup>F260</sup>“the Newry Area” has the meaning given to it by section 2(1) of the Foyle Fisheries (Northern Ireland) Act 1952;]

“open fishing season” in relation to fish of any kind means any season that is not the annual close season for such fish;

“owner”, in relation to land, has the same meaning as in section 2 of the Public Health (Ireland) Act 1878;

*Definitions rep. by 1981 NI 7*

[<sup>F256</sup> “package” includes any tank or other container;]

“private water bailiff” means a water bailiff appointed under section ...<sup>F261</sup> 170;

“regulations” means regulations made by the Ministry;

“river” includes a tributary or a branch of a river and any stream or watercourse;

“rod and line” means a fishing engine consisting of a single rod and line;

“salmon” includes all fish of the salmon kind and sea trout;

“salmon fishery” includes any salmon fishery, whether in fresh water, any estuary or the sea;

“salmon river” means any river that is frequented by salmon;

*Definition rep. by 1968 c.31 (NI)*

“salmon weir” means a fishing weir used for taking salmon;

“sea-fish” means fish of any kind found in the sea, but does not include salmon;

“sea-fishery” includes any fishery, other than a salmon fishery, in the sea or an estuary;

“sea-fishing boat” does not include a boat used for fishing for salmon in the sea;

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“several fishery” means any fishery lawfully possessed and enjoyed as such under any title whatsoever, being a good and valid title at law, exclusively of the public by any person or persons whether in navigable waters or in waters not navigable, and whether the soil covered by such waters be vested in such person or persons or in any other person;

“shell-fish” includes all edible aquatic molluscs and crustaceans;

[<sup>F255</sup> “shell-fish fishery licence” means a licence granted under section 131 and includes a licence which is deemed to be such a licence by virtue of paragraph 2 of Schedule 3 to the Fisheries Amendment (Northern Ireland) Order 1981 ;]

[<sup>F256</sup> “silver eels” means physiologically maturing eels in spawning livery;]

*Definition rep. by 1981 NI 7*

“stake net” includes a stake weir and any fixed engine of similar construction to a stake net;

“statutory provision” has the same meaning as in section 1(*f*) of the Interpretation Act (Northern Ireland) 1954 ;

“substance” includes any liquid or gas;

“trout”, when used without any qualification, includes—

(a) all fish of the brown trout kind; and

(b) save in Part III, sections 51 and 71, Part VI (except as provided in section 106), Part VII and Schedule 4, pollen or fresh-water herring;

but does not include sea trout or rainbow trout;

“unseasonable” when used with respect to any fish means a fish which is about to spawn, or which has spawned and has not recovered from spawning;

“waste lands” includes any uncultivated or unoccupied lands;

“waters” includes any river, lake, watercourse or estuary or any part of the sea [<sup>F259</sup> within the Northern Ireland zone];

*Definition rep. by SI 2002/790*

“weekly close time” has the meaning assigned to it by section 97.

- (2) References in this Act to a fish or to any kind of fish shall be construed as including—
  - (a) references to part of a fish or to part of a fish of that kind; and
  - (b) references to the spawn, fry, brood or young of fish or of fish of that kind.
- (3) Where an order under section 16 defines the mouth of a river, the mouth of a tributary river, the boundary between the tidal and freshwater portions of a river, the point or points to or from which distances are to be measured ... <sup>F262</sup> any areas within which it is prohibited to use or practice certain methods of fishing, [<sup>F256</sup> or the boundary at sea between so much of [<sup>F259</sup> the Northern Ireland zone] as is within, and so much thereof as is without, the Londonderry Area,] such mouth, boundary, point or points, or areas shall for all purposes of and all proceedings under this Act be as so defined for the time being.
- (4) References in this Act to the landing of fish shall not include the landing of fish which have previously been landed outside Northern Ireland.
- (5) Subject to section 127(11), references in any provision of this Act which relates to the buying, selling, offering or exposing for sale or having possession of fish of any kind to fish of that kind shall not be construed as including references to fish of that kind which have been [<sup>F254</sup> preserved by drying, smoking, cooking or canning].

*Status: Point in time view as at 27/03/2009.*

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<sup>F256</sup>(5A) References in section 111 ...<sup>F261</sup> to the buying, selling, offering or exposing for sale or having possession for sale, or possession, of fish of any kind during any particular period shall not be construed as including references to the buying, selling, offering or exposing for sale or having possession for sale, or possession, of fish of that kind which have been lawfully taken or killed outside that period and preserved by freezing.]

(6) Any reference in this Act to an offence under a provision of this Act shall include a reference to an offence under any statutory instrument made by virtue of a provision of this Act.

**F253** Mod., 1967 c.7 (NI)  
**F254** 1991 NI 13  
**F255** 1981 NI 7  
**F256** 1968 c.31 (NI)  
**F257** Words in s. 206(1) in definition of "fishing licence" inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 34(1), **Sch. 2 para. 2(13)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.  
**F258** 1981 NI 7  
**F259** SI 2002/790  
**F260** SI 1999/859  
**F261** 1981 NI 7  
**F262** 1968 c.31 (NI)

## **207 Extension to hand lines of provisions relating to angling.**

(1) Subject to subsection (2), the provisions of this Act relating to angling shall extend to fishing by hand line, and accordingly any reference to a rod and line shall be construed as including a reference to a hand line.

(2) The provisions to which subsection (1) applies shall not include any provision of Part III ...<sup>F263</sup>.

**F263** 1968 c.31 (NI)

## SAVING

## <sup>F264</sup>**208 Saving for right of owner to take materials from streams**

Nothing in this Act other than section 48 shall prejudice the right of any owner to take materials from any stream.]

**F264** 2001 c. 4 (NI)

*Status: Point in time view as at 27/03/2009.*

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## TRANSITIONAL

### 209 Transitional provisions.

Without prejudice to the provisions of section 29 of the Interpretation Act (Northern Ireland) 1954<sup>F265</sup> . . .

- (a) any statutory instrument made under the Fisheries Acts or any other enactment repealed by this Act in relation to any matter with respect to which an instrument may be made by the Ministry under any provision of this Act and in force immediately before the commencement of that provision shall thereafter continue in force and be deemed to be an instrument made under that provision;
- (b) any statutory instrument made under the Fisheries Acts in relation to any matter with respect to which byelaws may be made under section 26 and in force immediately before the commencement of Part II shall thereafter continue in force and shall be deemed to be a byelaw;
- (c) any thing prescribed under any provision of the Fisheries Acts otherwise than by a statutory instrument and standing unrevoked immediately before the commencement of any provision of this Act corresponding to the first-mentioned provision shall be deemed to have been prescribed under that provision of this Act;
- (d) any enactment referring to a board of conservators or the district of such a board shall, so far as applicable, be construed as referring to the Board and to any area within which the Board are authorised by this Act to exercise their functions;
- (e) any proceedings taken in respect of a contravention of any provision of the Fisheries Acts or any other enactment, being an enactment repealed by this Act, or any statutory instrument made under those Acts or any such enactment, shall be prosecuted and continued under the corresponding provision of this Act, and in relation to those proceedings that corresponding provision shall have effect as if for the penalties provided for a contravention thereof there were substituted the penalties provided for a contravention of the first-mentioned provision.

F265 1983 NI 21

## GENERAL

*S.210, with Schedule 7, effects amendments.*

*S.211, with Schedule 8, effects repeals*

### 212 Application to the Londonderry Area.

- (1) Without prejudice to any other provision of this Act the following provisions shall not (except in so far as any of them have effect with respect to sea-fisheries) apply to the Londonderry Area<sup>F266</sup> or the Newry Area], that is to say,—

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sections [<sup>F267</sup>14] to 16, Parts II and III [<sup>F268</sup> (except section 45),] sections 46 to 50, 62 to 73 and 78 to 88, Part VI, and sections 110, 111, 120(5), 160, 161, 170<sup>F269</sup>, 170A and 171] to 174,<sup>F269</sup> 175(2),] [<sup>F270</sup> 176 to<sup>F269</sup> 179 and 180 to] 181 and 197].

[<sup>F271</sup>(1B) In subsection (1), the reference to sea-fisheries does not include a reference to tope, sea bass, mussel or oyster fisheries.]

- (2) In the application of this Act to the Londonderry Area<sup>F266</sup> or the Newry Area]
- (a) references to the Board shall be construed as references to the Foyle<sup>F266</sup>, Carlingford and Irish Lights] Commission; and
  - (b) references to byelaws shall be construed as references to regulations made under section 13 of the Foyle Fisheries Act (Northern Ireland) 1952 .
- (3) The Ministry shall consult with the Foyle<sup>F266</sup>, Carlingford and Irish Lights] Commission before—
- (a) commencing to develop or improve any waters in the Londonderry Area<sup>F266</sup> or the Newry Area] for angling, under section 2 or 3; or
  - (b) approving, under section 6, any programme relating to such waters.

**F266** SI 1999/859

**F267** Word in s. 212(1) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 34(1), **Sch. 2 para. 2(14)(a)** (with art. 32); S.R. 2008/232, **art. 2**, Sch. 2, Sch.

**F268** 1968 c.31 (NI)

**F269** 1991 NI 13

**F270** 1968 c.31 (NI)

**F271** S. 212(1B) inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 34(1), **Sch. 2 para. 2(14)(b)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

## 213 Commencement.

*Subs.(1)(2) rep. by SLR 1973*

(3) *Commencement*

## 214 Short title.

This Act may be cited as the Fisheries Act (Northern Ireland) 1966.

*Status: Point in time view as at 27/03/2009.*

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## SCHEDULES

SCHEDULE 1 <sup>F272</sup>                      Sections 11(6), 76(4), 77(5), 84(4), 137(1)  
 (2), 143(1)(2).

### SUSPENSION AND REVOCATION OF LICENCES

<b>F272</b> functions transf. by SR 2003/163
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- 1            Where the Ministry has reason to suspect that the holder of a licence has contravened any of the provisions of this Act relating to the fishery or, as the case may be, the fixed engine or fishing weir with respect to which the licence was issued, or any such provision of a byelaw or regulation, or any condition of the licence, the Ministry may, pending investigation of the suspected contravention and on giving notice in writing to the holder specifying the suspected contravention, suspend the licence.
- 2            When a licence is suspended under paragraph 1 the Ministry shall, within a period of twenty-eight days from the date of the suspension, either remove the suspension or revoke the licence under paragraph 3.
- 3            The Ministry may revoke a licence where the Ministry is satisfied that the holder of the licence has contravened—
  - (a) any of the provisions of this Act relating to the fishery or, as the case may be, the fixed engine or fishing weir with respect to which the licence was issued, or any such provision of a byelaw or regulation; or
  - (b) any condition of the licence;
 or has, in his application for the licence, made a statement which is false in any material particular.
- 4            Where the Ministry proposes to revoke a licence, other than a licence suspended under paragraph 1 the Ministry shall give to the holder of the licence at least twenty-eight days' prior notice of its intention to do so and of the grounds upon which the revocation is proposed to be made; and before revoking the licence the Ministry shall consider any representations in relation thereto made by the holder before the expiration of the notice.
- 5            Where the Ministry revokes a licence the Ministry shall send by post a notice of the revocation to the person whose licence has been revoked, and the notice shall inform that person of his right of appeal under paragraph 6, and of the time within which the appeal may be brought.
- 6            A person whose licence has been revoked under paragraph 3 may, within twenty-eight days from the date on which a notice under paragraph 5 is served on him, appeal to the county court on the ground that there has not been any contravention or false statement such as is described in paragraph 3 or that the contravention or

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false statement was inadvertent or was of such a trivial or insignificant nature that the licence should not be revoked.

7 The county court, in deciding an appeal brought under paragraph 6, shall state the reasons for its decision, and its decision shall be final.

8 When a licence is suspended or revoked, the person who was the holder of the licence shall, within fourteen days of receiving a request for its return to the Ministry, return the licence to the Ministry together with any copies thereof issued to him by the Ministry, and if he fails to do so, he shall be guilty of an offence.

[<sup>F273</sup>9 In this Schedule “contravention” , in relation to a condition of a licence, includes a failure to comply with that condition.]

**F273** 1981 NI 7

## [<sup>F274</sup>SCHEDULE 2

### THE FISHERIES CONSERVANCY BOARD FOR NORTHERN IRELAND]

**F274** 1983 NI 21

#### INCORPORATION AND CONSTITUTION

[<sup>F275</sup>1 The Board shall be a body corporate to which, subject to the provisions of this Schedule, section 19 of the Interpretation Act (Northern Ireland) 1954 shall apply.]

**F275** 1983 NI 21

[<sup>F276</sup>2 (1) The Board shall consist of not more than 24 persons appointed by the Head of the Department from amongst persons appearing to him to be qualified for the office.

(2) The Head of the Department shall appoint a chairman and a deputy chairman of the Board and of the other members of the Board—

- (a) four shall be persons chosen by the Head of the Department from any list of candidates not being less than six in number that may be submitted to the Head of the Department by a body or bodies for the time being recognised by the Head of the Department as representative of a substantial number of anglers;
- (b) three shall be persons appointed by the Head of the Department as representatives of any companies for the time being recognised by him as substantially interested in the commercial operation of any salmon or eel fishery;

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- (c) three shall be persons appointed by the Head of the Department as representatives of commercial fishermen (other than the companies recognised for the purposes of head (b));
  - (d) three shall be persons nominated by the Ulster Farmers' Union from amongst its members, one of whom shall be a person representative of persons operating fish farms;
  - (e) two shall be persons appointed by the Head of the Department as representatives of anglers not represented by the body or bodies recognised for the purposes of head (a);
  - (f) one shall be a person nominated by the Confederation of British Industry;
  - (g) one shall be a person nominated by the Department of Economic Development as representative of persons engaged in the tourism industry;
  - (h) one shall be a person nominated by the Department of Education as representative of persons participating in sport and physical recreation;
  - (i) one shall be a person nominated by such organisation as appears to the Head of the Department substantially to represent district councils;
  - (j) one shall be an officer of the Department;
  - (k) not more than two shall be persons appointed by the Head of the Department as representatives of such other persons or bodies as the Board may recommend to him.
- (3) Before appointing any person under head (b) of sub-paragraph (2) as representative of any companies the Head of the Department shall consult with those companies, and before appointing any person under head (c) as representative of any persons he shall consult with any body or bodies for the time being recognised by him as a representative of such persons.]

**F276** 1983 NI 21

- [<sup>F277</sup>3 (1) Subject to the following provisions of this paragraph—
- (a) the chairman, the deputy chairman and the persons appointed to the Board under heads (f) to (k) of paragraph 2(2) shall hold office for such period as the Head of the Department may determine; and
  - (b) all other members of the Board shall hold office for a period of six years.
- (2) When appointments are first made to the Board after the coming into operation of Article 4 of the Fisheries (Amendment) (Northern Ireland) Order 1983—
- (a) two of the persons appointed under head (a) of paragraph 2(2);
  - (b) one of the persons appointed under head (c) of paragraph 2(2);
  - (c) one of the persons appointed under head (d) of paragraph 2(2); and
  - (d) one of the persons appointed under head (e) of paragraph 2(2),
- shall be appointed for a period of three years; but on any subsequent appointment to the Board under any of those heads the persons appointed shall hold office in accordance with sub-paragraph (1)(b).
- (3) A person shall cease to be a member of the Board if—
- (a) by notice in writing to the Head of the Department he resigns;
  - (b) he is on more than three consecutive occasions absent without permission of the chairman from meetings of the Board; or



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(c) the Head of the Department, by notice in writing, removes him from office.

(4) A person shall, on ceasing to be a member, be eligible for reappointment.

(5) If a member of the Board dies or ceases to be a member before the expiration of the term for which he was appointed, the term of his successor shall be so fixed as to expire at the end of the first-mentioned term, but the Head of the Department may, if he thinks fit, defer the making of an appointment until the expiration of the first-mentioned term.]

F277 1983 NI 21

[<sup>F278</sup>4 The quorum of the Board and the procedure at meetings of the Board shall be such as the Board may determine.]

F278 1983 NI 21

[<sup>F279</sup>5 The Board may act notwithstanding any vacancy among their members.]

F279 1983 NI 21

[<sup>F280</sup>6 No defect in the appointment of any person acting as a chairman, deputy chairman or other member of the Board shall vitiate any proceedings of the Board in which he has taken part.]

F280 1983 NI 21

#### EXECUTIVE COMMITTEE OF THE BOARD

[<sup>F281</sup>7 (1) The Board shall establish an executive committee consisting of not less than three or more than six members of the Board, one of whom shall be the chairman or deputy chairman.

(2) The executive committee shall be responsible to the Board for—

- (a) monitoring, and reporting to the Board on, the implementation of the policies of the Board by their officers and servants;
- (b) financial matters; and
- (c) such other matters as may be delegated to the committee by the Board.

(3) Paragraphs 4, 5 and 6 shall apply to the executive committee as they apply to the Board.]

F281 1983 NI 21

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## REMUNERATION

- [<sup>F282</sup>8 (1) There shall be paid to the chairman and the deputy chairman of the Board such remuneration and such allowances as the Department, with the approval of the Department of Finance and Personnel, may determine.
- (2) No remuneration shall be paid to any other member of the Board, but there shall be paid to any other member such allowances as the Board, with the approval of the Department, may determine.]

**F282** 1983 NI 21

## POWER TO AMEND CERTAIN PROVISIONS OF THIS SCHEDULE

- [<sup>F283</sup>9 The Department may by order made subject to affirmative resolution—
- (a) amend paragraph 2 so as to alter the constitution of the Board;
  - (b) amend paragraph 3(1) so as to alter the period for which certain members of the Board are to hold office;
  - (c) amend paragraph 7(1) and (2) so as to alter the constitution and responsibilities of the executive committee.]

**F283** 1983 NI 21

## OFFICERS AND SERVANTS

- [<sup>F284</sup>10(1) The Board—
- (a) shall, with the approval of the Department, appoint a Chief Executive (who, unless the Board otherwise direct shall act as secretary of the Board);
  - (b) shall appoint such inspectors and other officers as the Department may direct, and shall appoint to any office under the Board (other than the office of water bailiff) such persons as the Board, with the approval of the Department, may determine; and
  - (c) may appoint such water bailiffs and such servants as the Board think fit.
- (2) Subject to any authorisation in writing given by the Department to the Board, any determination of the Board with respect to the remuneration or conditions of service of any person employed by the Board shall be subject to the approval of the Department.
- (3) A person, other than an employee of the Foyle Fisheries Commission, who is for the time being in the employment of the owner or occupier of a several fishery shall be disqualified for being appointed to or holding any office under the Board.

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(4) No member of the Board shall hold any employment or office of profit under the Board.]

**F284** 1983 NI 21

[<sup>F285</sup>11 The Board shall, in accordance with any reasonable requirements communicated to them by the Department make available to the Department the services of the Board's officers for the protection of the fishery of any waters the fishing rights in respect of which are owned by, or which are under the control of, the Department, on such terms as may be agreed upon between the Board and the Department.]

**F285** 1983 NI 21

#### SUPERANNUATION

[<sup>F286</sup>12(1) The Board, with the approval of the Department and the Department of Finance and Personnel, may make arrangements to secure the provision of superannuation or other benefits for or in respect of persons employed by the Board in a whole-time capacity and such arrangements shall provide for the payment of contributions by the Board and by the persons for or in respect of whom the benefits are provided.

(2) Arrangements made under sub-paragraph (1) may provide for the contributions to be paid to and the benefits to be paid by a body other than the Board.]

**F286** 1983 NI 21

#### THE SEAL

[<sup>F287</sup>13 The application of the seal of the Board shall be authenticated by the signature of the chairman or deputy chairman of the Board and of the officer of the Board for the time being acting as secretary of the Board or some other officer of the Board authorised by them to act for that purpose.]

**F287** 1983 NI 21

#### EXECUTION OF CONTRACTS AND INSTRUMENTS NOT UNDER SEAL

[<sup>F288</sup>14 Any contract or instrument which, if entered into or executed by an individual, would not require to be [<sup>F289</sup>executed as a deed] may be entered into or executed on

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behalf of the Board by any person generally or specially authorised by the Board to act for that purpose.]

**F288** 1983 NI 21

**F289** 2005 NI 7

*Schedule 3 rep. by 1983 NI 21*

*Schedule 4 rep. by 1968 c.31 (NI)*

## SCHEDULE 5

Section 170(1).

### FORM OF APPOINTMENT OF PRIVATE WATER BAILIFF

I, A.B. ( *or we, A.B. and C.D., as the case may be*) of

( *name the place or places of residence*).

do hereby appoint E.F., of

( *name the place of his residence*),

a private water bailiff to protect the fishery of

( *name the fishery, lake, river, [<sup>F290</sup>sea coast or shell-fish fishery or fisheries], as the case may be*), pursuant to the Fisheries Act (Northern Ireland) 1966; and the said E.F., of

**F290** 1981 NI 7

**F290** 1981 NI 7

( *name the place of his residence*),

is hereby authorised to do all lawful acts as such private water bailiff according to the provisions of the said Act.

Dated this day of 19 .

(Signed) A.B.

To all whom it may concern.

I, the undersigned Resident Magistrate do hereby confirm the above appointment.

Dated this day of 19 .

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(Signed)

[<sup>F291</sup>This appointment expires on the [ ] day of [ ]]

**F291** 1991 NI 13

[<sup>F292</sup>SCHEDULE 5A

Section 170A(1) and (2).

RENEWAL OF APPOINTMENTS OF PRIVATE WATER BAILIFFS

**F292** 1991 NI 13

[<sup>F293</sup> Where any person (in this Schedule referred to as "the applicant") intends to renew the appointment of a private water bailiff, he shall, not less than 6 weeks before the date on which the appointment is to cease to have effect, serve a notice, in such form and containing such particulars as may be prescribed by regulations, on—

- (a) the clerk of petty sessions,
- (b) the Department, and
- (c) the Board.]

**F293** 1991 NI 13

[<sup>F294</sup> Where the Department or the Board objects to the renewal of the appointment of a private water bailiff, it shall, within 21 days of receiving a notice under paragraph 1, notify the applicant and the clerk of petty sessions of its objection and of the grounds thereof.]

**F294** 1991 NI 13

[<sup>F295</sup> Where, within the time specified in paragraph 2, the clerk of petty sessions has received no notice of an objection under that paragraph, he shall confirm the appointment and endorse the instrument of appointment to that effect.]

**F295** 1991 NI 13

[<sup>F296</sup> (1) Where the Department or the Board notifies (or both notify) the applicant that there is an objection to the renewal of the appointment, the applicant may apply to the court for confirmation of the renewal of the appointment.

(2) Subsections (3) and (4) of section 170 shall apply to an application to the court under sub-paragraph (1) in the same manner as they apply to an application under subsection (2) of that section.]

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**F296** 1991 NI 13

[  
 F297 5 In this Schedule—  
 “the applicant” has the meaning given in paragraph 1;  
 “the court” means a court of summary jurisdiction sitting for the petty sessions district (or any such district where there is more than one) within which the private water bailiff is appointed to act and "clerk of petty sessions" shall be construed accordingly.]]

**F297** 1991 NI 13

## SCHEDULE 6

Sections 182, 183.

### PROVISIONS TO WHICH SECTIONS 182(B) AND 183(B) APPLY

<i>Section</i>	#
[ F298 20(3), (4)	Inspection of fish farm or shell-fish fishery.]
54(5)	Provision of fish passes in dams.
55(2)	Removal of obstacle or contrivance from fish pass.
81(4)	Provision or restoration of free gap in a fishing weir.
83(3)	Removal of obstruction from free gap in a fishing weir.
85(3)	Removal from salmon weir of parts of boxes which are constructed in contravention of section 85(1).
86(3)( b)	Alteration or removal of guiding wall.
92(6)	Removal of moveable parts of salmon weir during annual close season.

**F298** 1981 NI 7

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## Schedule 8 # Repeals

**Status:**

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