
STATUTORY INSTRUMENTS

1981 No. 227 (N.I. 7)

NORTHERN IRELAND

The Fisheries Amendment (Northern Ireland) Order 1981

Laid before Parliament in draft

Made 18th February 1981

Coming into operation in accordance with Article 1 (2)

ARRANGEMENT OF ORDER

Article

1. Title and commencement.
2. Interpretation.
3. Variation of punishments or mode of trial for certain offences.
4. Records and returns.
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6. Sea-fishing regulations.
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8. Shell-fish.
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10. Transitional provisions, amendments and repeals.

SCHEDULES:

- Schedule 1—Variation of punishments or mode of trial.
Schedule 2—Shell-fish fishery licences.
Schedule 3—Transitional provisions.
Schedule 4—Amendments.
Schedule 5—Repeals.

At the Court at Buckingham Palace, the 18th day of February 1981

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (a), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Title and commencement

1.—(1) This Order may be cited as the Fisheries Amendment (Northern Ireland) Order 1981.

(2) Except for Article 3 (1) (a) and Part I of Schedule 1, which shall come into operation on such day as the Head of the Department of Agriculture may by order appoint, this Order shall come into operation on the expiration of a period of one month from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (b) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order “the principal Act” means the Fisheries Act (Northern Ireland) 1966 (c).

Variation of punishments or mode of trial for certain offences

3.—(1) For the purpose of varying the maximum punishment on conviction of offences (generally described in column 2 of Schedule 1) against certain provisions of—

(a) the Foyle Fisheries Act (Northern Ireland) 1952(d);

(b) the principal Act; and

(c) the Fish Industry Act (Northern Ireland) 1972(e),

the provisions of those Acts specified in column 1 of Parts I, II and III respectively of Schedule 1 shall have effect with the substitution for the maximum punishments specified in column 3 of the respective punishments specified in column 4, and where in the case of any offence no punishment on conviction on indictment is specified in column 3 but such a punishment is specified in column 4, proceedings in respect of the offence instead of being taken summarily may alternatively be taken by way of indictment and the defendant on conviction on indictment shall be liable to a punishment not exceeding that specified in column 4.

(2) At the end of section 63 (5) of the Foyle Fisheries Act (Northern Ireland) 1952 there shall be inserted the words “and shall be liable on summary conviction to a fine not exceeding £200”.

(3) In the principal Act—

(a) the maximum fine which may be imposed on summary conviction for an offence under section 55 (1), 56 (3), 58 (2), 59 (2), 78 (1), 80, 81 (3), 82, 85 (2) or 86 (3) (a) and (4) shall be increased from £100 to £500 (which is the maximum fine which may be imposed on summary conviction under section 201) and accordingly—

(i) in each of those sections (except section 56 (3)) the words from “and shall be liable” onwards shall cease to have effect; and

(a) 1974 c. 28. (b) 1954 c. 33 (N.I.). (c) 1966 c. 17 (N.I.).

(d) 1952 c. 5 (N.I.). (e) 1972 c. 4 (N.I.).

- (ii) in section 56 (3) the words from “and in the case” onwards shall cease to have effect;
 - (b) in section 110 (6) for the words “under this Part” there shall be substituted the words “and shall be liable on summary conviction to a fine not exceeding £500”;
 - (c) in section 170(8) after the word “offence” there shall be inserted the words “and shall be liable on summary conviction to a fine not exceeding £200”;
 - (d) in section 174 (2) after the word “offence” there shall be inserted the words “and shall be liable on summary conviction to a fine not exceeding £1000”;
 - (e) in section 178 at the end of subsection (3) there shall be inserted the words “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) was capable of being used, only in connection with fishing for sea-fish by rod and line, to a fine not exceeding £200”;
 - (f) in section 202(3) for the words “or 74”, “five pounds” and “fifty pounds” there shall be substituted respectively the words “, 74 or 79”, “£50” and “£200”, and for “words” (twice) there shall be substituted “word”.
- (4) In section 5 of the Diseases of Fish Act (Northern Ireland) 1967(a), in paragraph (b) after the word “provisions” there shall be inserted the words “except section 201(1)”, and after that paragraph there shall be inserted the following additional paragraph—
- “(c) section 201(1), as well as applying to offences under other provisions of that Act mentioned in this section which do not themselves provide for penalties, shall apply also to offences against this Act (and for that purpose the first reference in that subsection to that Act includes this Act and the words from “for which” to “section” are inoperative).”;
- and section 6 of that Act shall cease to have effect.
- (5) In section 7 (6)(a) of the Fish Industry Act (Northern Ireland) 1972 for the word “£100” there shall be substituted the word “£500”.

Records and returns

4. In section 17 of the principal Act—
- (a) after subsection (1) (a) (iii) there shall be inserted the following sub-paragraphs—
 - “(iv) sea-fishermen;
 - (v) fish-salesmen;”;

(a) 1967 c. 7 (N.I.).

(b) after subsection (3) there shall be inserted the following subsection—

“(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.”.

Inquiries

5. At the end of section 20 of the principal Act (power of Department to hold inquiries and investigations) there shall be inserted the following subsections—

“(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—

- (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.”.

Sea-fishing regulations

6. For section 124 of the principal Act there shall be substituted the following section—

“Sea-fishing regulations. **124.**—(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 in waters within British fishery limits which are adjacent to Northern Ireland.

(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;
- (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.

(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.”.

Landing or selling fish caught in contravention of regulations

7. For section 126 of the principal Act there shall be substituted the following section—

“Landing etc, fish caught in contravention of regulations. **126.** 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.”.

Shell-fish

8. For Part IX of the principal Act there shall be substituted the new Part IX set out in Schedule 2.

Boarding and examination of fishing boats

9. In section 174 of the principal Act—

(a) in subsection (1)—

- (i) after the words “to any boat” there shall be inserted the words “which is or has been”;

(ii) after paragraph (a) there shall be inserted the following paragraph—

“(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;”;

(iii) in paragraph (b) after the word “boat” there shall be inserted the words “(including any fishing gear appurtenant to or used in association with any such engine)” and for the words from “on board” onwards there shall be substituted the words “are or have been carrying on fishing in contravention of any statutory provision”;

(iv) in paragraph (c) after the words “lawful fishing engine” there shall be inserted the words “which is being, or is reasonably suspected of having been,”;

(b) in subsection (2) for the word “he” there shall be substituted the words “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”;

(c) in subsection (4) for the word “(1)” there shall be substituted the word “(2)”.

Transitional provisions, amendments and repeals

10.—(1) The transitional provisions set out in Schedule 3 shall have effect.

(2) The provisions of the principal Act specified in Part I of Schedule 4 shall have effect subject to the amendments respectively there specified.

(3) The amendments of other statutory provisions set out in Part II of Schedule 4 shall have effect.

(4) The statutory provisions specified in columns 1 and 2 of Schedule 5 are hereby repealed to the extent specified in column 3.

N. E. Leigh,

Clerk of the Privy Council.

SCHEDULES
SCHEDULE 1

Article 3 (1).

VARIATION OF PUNISHMENTS OR MODE OF TRIAL

PART I

VARIATION OF PUNISHMENTS OR MODE OF TRIAL FOR CERTAIN OFFENCES
UNDER THE FOYLE FISHERIES ACT (NORTHERN IRELAND) 1952.

Section of Foyle Fisheries Act	General Nature of Offence	Present maximum	Substituted maximum
34	Sale, etc., of salmon and trout unlawfully captured.	On summary conviction a fine of £25 with a further fine of £2 for each salmon or trout sold, etc.	(a) on summary conviction, a fine of £500 with a further fine of £50 for each salmon and £10 for each trout or imprisonment for 6 months or both such fines and such imprisonment. (b) on conviction on indictment, a fine of £2000 or imprisonment for 2 years or both.
40	Use or possession of deleterious matter.	(a) on summary conviction a fine of £100 or imprisonment for 6 months or both. (b) on conviction on indictment a fine of £500 or imprisonment for 2 years or both.	(a) on summary conviction a fine of £500 or imprisonment for 6 months or both. (b) on conviction on indictment a fine of £2000 or imprisonment for 2 years or both.
41	Pollution of a river.	A fine of £50 or, for the substantial repetition or continuance of an earlier offence after conviction of the earlier offence, imprisonment for 6 months, or both such fine and imprisonment.	A fine of £500 or imprisonment for 6 months or both.

Section of Foyle Fisheries Act	General Nature of Offence	Present maximum	Substituted maximum
42	Using, etc., certain devices for taking fish.	A fine of £100 or imprisonment for 6 months or both.	A fine of £500 or imprisonment for 6 months or both.
48	Taking, buying, etc., unseasonable salmon or trout.	On summary conviction a fine of £100 or imprisonment for 6 months or both.	(a) on summary conviction a fine of £500 with a further fine of £50 for each salmon and £10 for each trout or imprisonment for 6 months or both such fines and such imprisonment.
51A	Use of boat or vehicle as aid to commission of offence.	(a) on summary conviction a fine of £100 or imprisonment for 6 months or both. (b) on conviction on indictment a fine of £500 or imprisonment for 2 years or both.	(a) on summary conviction a fine of £500 or imprisonment for 6 months or both. (b) on conviction on indictment a fine of £2000 or imprisonment for 2 years or both.
55 (4)	Acting as private river watcher without holding confirmed appointment.	A fine of £10.	A fine of £200.
66	Assaulting or obstructing authorised persons.	A fine of £20 or imprisonment for 2 months or both.	A fine of £500 or imprisonment for 6 months or both.
68	Offences for which a penalty is not provided by any other provision of the Act.	A fine of £50, and for a continuing offence a further fine of £5 for every day during which the offence is continued after conviction.	A fine of £500, and for a continuing offence a further fine of £50 for every day during which the offence is continued after conviction.
81 (3)	Failure to attend an inquiry held by the Foyle Fisheries Commission or a refusal to take an oath or to produce a document or to answer any question lawfully required.	A fine of £25.	A fine of £200 or imprisonment for 3 months or both.

PART II
 VARIATION OF PUNISHMENTS OR MODE OF TRIAL FOR CERTAIN OFFENCES
 UNDER THE PRINCIPAL ACT

Section of Principal Act	General Nature of Offence	Present maximum	Substituted maximum
41 (3) (a)	Unlicensed angling.	A fine of £25.	A fine of £200.
41 (3) (b)	Other unlicensed fishing.	A fine of £250.	A fine of £500.
46	Use or possession of deleterious matter.	(a) on summary conviction a fine of £100 or imprisonment for 6 months or both; (b) on conviction on indictment a fine of £500 or imprisonment for 2 years or both;	(a) on summary conviction a fine of £500 or imprisonment for 6 months or both; (b) on conviction on indictment a fine of £2000 or imprisonment for 2 years or both.
47 (1)	Pollution.	with in either case an additional fine of £5 in respect of each fish taken. A fine of £100 for a first offence and for a second or subsequent offence a fine of £200 or imprisonment for 6 months or both.	A fine of £500 or imprisonment for 6 months or both.
50 (2)	Taking, etc., unseasonable salmon or trout.	On summary conviction a fine of £100 or imprisonment for 6 months or both with a further fine of £5 for each salmon or trout.	(a) on summary conviction a fine of £500 with a further fine of £50 for each salmon and £10 for each trout or imprisonment for 6 months or both such fines and such imprisonment. (b) on conviction on indictment a fine of £2000 or imprisonment for 2 years or both.
51	Sale, etc., of immature salmon or trout.	A fine of £50 for a first offence and for a second or subsequent offence a fine of £100 or imprisonment for 3 months or both.	A fine of £500 or imprisonment for 6 months or both.

Section of Principal Act	General Nature of Offence	Present maximum	Substituted maximum
57 (1)	Taking fish in works or watercourses appurtenant to mills.	A fine of £100 or imprisonment for 6 months or both.	A fine of £500 or imprisonment for 6 months or both.
62	Use of certain devices for taking fish.	A fine of £100 or imprisonment for 6 months or both.	A fine of £500 or imprisonment for 6 months or both.
64	Taking salmon or trout in an eel weir.	A fine of £100 or imprisonment for 6 months or both.	A fine of £500 or imprisonment for 6 months or both.
65	Damming or teeming river or mill race for purpose of taking salmon or trout.	A fine of £100 or imprisonment for 6 months or both.	A fine of £500 or imprisonment for 6 months or both.
70 (3)	Contravention of drift net byelaws.	A fine of £100 or imprisonment for 6 months or both.	A fine of £1000 or imprisonment for 6 months or both.
71 (3)	Unlawful use of nets in fresh water.	A fine of £100 or imprisonment for 6 months or both.	A fine of £500 or imprisonment for 6 months or both.
73 (2)	Disregarding restrictions with respect to fishing weirs or fixed engines in freshwater portions of rivers or lakes.	A fine of £100 or imprisonment for 6 months or both.	A fine of £1000 or imprisonment for 6 months or both.
74 (2)	Disregarding restrictions on use of fixed engines for capture of salmon in sea or tideways.	A fine of £100 or imprisonment for 6 months or both.	A fine of £1000 or imprisonment for 6 months or both.
79 (2) (b)	Placing bag net in prohibited area.	A fine of £100 or imprisonment for 6 months or both.	A fine of £500 or imprisonment for 6 months or both.
90 (1)	Fishing (except angling) during close season.	A fine of £100 or imprisonment for 6 months or both with a further fine of £5 for each salmon or trout.	A fine of £500 with a further fine of £50 for each salmon and £10 for each trout or imprisonment for 6 months or both such fines and such imprisonment.

Section of Principal Act	General Nature of Offence	Present maximum	Substituted maximum
91 (2)	Failing to remove parts of fixed engines in close season for salmon and trout.	A fine of £100 or imprisonment for 6 months or both.	A fine of £500 or imprisonment for 6 months or both.
92 (4)	Failing to dismantle salmon weirs in close season.	A fine of £100 or imprisonment for 6 months or both.	A fine of £500 or imprisonment for 6 months or both.
98 (1)	Fishing (except angling) during weekly close time.	A fine of £100 or imprisonment for 6 months or both.	A fine of £500 or imprisonment for 6 months or both.
99 (2)	Failing to observe provisions about fixed engines during weekly close time.	A fine of £100 or imprisonment for 6 months or both.	A fine of £500 or imprisonment for 6 months or both.
100 (2)	Failing to observe provisions about salmon weirs during weekly close time.	A fine of £100 in respect of each offending box in the weir.	A fine of £500 in respect of each offending box in the weir.
101	Preventing free passage through boxes, etc., during weekly close time.	A fine of £100 or imprisonment for 6 months or both.	A fine of £500 or imprisonment for 6 months or both.
108 (1)	Taking eels (except by angling) during close season.	A fine of £50 for a first offence and for a second or subsequent offence a fine of £100 or imprisonment for 6 months or both.	A fine of £500 or imprisonment for 6 months or both.
109	Disregarding rules for eel weirs.	A fine of £50 for a first offence and for a second or subsequent offence a fine of £100 or imprisonment for 6 months or both.	A fine of £500 or imprisonment for 6 months or both.
110 (1)	Sale, etc., of unlawfully captured salmon or trout.	The punishment specified in section 123 with a further fine of £5 for each salmon or trout.	The punishment specified below in relation to section 123 for summary conviction or conviction on indictment, as the case may be, with on summary conviction a further fine of £50 for each salmon and £10 for each trout.

Section of Principal Act	General Nature of Offence	Present maximum	Substituted maximum
123	Certain offences under Part VII (regulation of dealings in salmon, trout or eels).	On summary conviction a fine of £50 for a first offence and for a second or subsequent offence a fine of £100 or imprisonment for 6 months or both.	(a) on summary conviction a fine of £500 or imprisonment for 6 months or both. (b) (except for an offence under section 120 or 122) on conviction on indictment a fine of £2000 or imprisonment for 2 years or both.
127 (9)	Contravention of provisions relating to the minimum sizes of sea-fish.	A fine of £100 for a first offence and for a second or subsequent offence a fine of £200.	A fine of £1000.
179 (4)	Failure to produce angling licence.	A fine of £25.	A fine of £200.
182	Assaulting authorised persons.	A fine of £100 or imprisonment for 6 months or both.	A fine of £500 or imprisonment for 6 months or both.
201 (1)	Offences for which a penalty is not provided by any other provision of the Act.	A fine of £50.	A fine of £500.
202 (1)	Continuance of contravention after conviction.	A fine of £5 for each day on which the contravention is continued.	A fine of £50 for each day on which the contravention is continued.

PART III
 VARIATION OF PUNISHMENTS UNDER THE FISH INDUSTRY ACT (NORTHERN IRELAND) 1972

Section of the Fish Industry Act	General Nature of Offence	Present maximum	Substituted maximum
7 (7)	Failure to furnish information etc.	A fine of £100.	A fine of £500.
7 (8)	Obstruction of person with right of entry.	A fine of £50.	A fine of £500.
7 (9)	Failure to comply with conditions subject to which a grant or loan was made.	(a) on summary conviction a fine of £300; (b) on conviction on indictment a fine of £1000 or 3 times the amount repayable, whichever is the greater.	(a) on summary conviction a fine of £500; (b) on conviction on indictment a fine of £2,000 or 3 times the amount repayable, whichever is the greater.

SHELL-FISH FISHERY LICENCES

PART IX

SHELL-FISH FISHERY LICENCES

Power of Department to grant shell-fish fishery licence.

131.—(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.

Application for shell-fish fishery licence.

132.—(1) An application for a shell-fish fishery licence shall be made to the Department in such form and manner as the Department may direct and shall be accompanied by any consents required by section 131 (4) (a), (c) or (d).

(2) On considering an application for a shell-fish fishery licence—

(a) if the Department is minded to grant the licence it shall—

(i) publish, at the applicant’s expense, notice of the application in the Belfast Gazette and in such two or more newspapers as the Department considers appropriate, stating the address to which and the period (not being less than one month from the date of publication) within which objections in writing to the grant of the licence may be sent to the Department; and

(ii) if any objections (not being, in the opinion of the Department, vexatious, frivolous or insubstantial) are received within that period and not withdrawn, and are not such as, without further inquiry, to cause the Department to become minded not to grant the licence, cause a local public inquiry to be held as to the expediency of granting the licence; and

(iii) before deciding whether or not to grant the licence, consider the report of the person who held the inquiry;

(b) if, after the holding of a local public inquiry under paragraph (a) (ii), the Department decides not to grant the licence, the Department shall give to the applicant a written notification of the reasons for its decision;

(c) if, otherwise than after the holding of a local public inquiry, the Department is minded not to grant the licence it shall—

(i) give to the applicant a written notification of the reasons why it is so minded;

(ii) accord to the applicant an opportunity of appearing before and being heard by a person appointed for the purpose by the Department; and

(iii) before deciding whether or not to grant the licence, consider the report of the person so appointed;

and if it decides not to grant the licence the Department shall give to the applicant a written notification of the reasons for its decision.

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

133.—(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.

(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 subsection (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.

(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.

Publication
of shell-fish
fishery
licence.

134. 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.

Effect of
shell-fish
fishery
licence.

135.—(1) A shell-fish fishery licence shall confer on the licensee a right of several fishery in the licensed area in relation to shell-fish of any kind specified in the licence.

(2) Without prejudice to subsection (1), a shell-fish fishery licence shall confer on the licensee within the licensed area the exclusive right of depositing, propagating, dredging, fishing for, and taking shell-fish of any kind specified in the licence and, in exercise of that right, the right—

(a) to establish and maintain suitable living conditions for shell-fish of that kind;

(b) notwithstanding any regulations under section 124(2)(c) and notwithstanding section 127(1) and (1A), at any season to collect shell-fish of that kind and remove them from place to place within the licensed area or to another licensed area and to deposit them as and where he thinks fit;

(c) to do all other things which he thinks proper for obtaining, storing and disposing of the produce of the fishery or for the regulation of the fishery.

(3) To the extent to which—

(a) arrangements made between the licensee and the Secretary of State; and

(b) where the licence was granted with the consent of the Crown Estate Commissioners, arrangements made between the licensee and the Commissioners,

allow, and subject to compliance by the licensee with the terms and conditions of the arrangements, a shell-fish fishery licence shall confer on the licensee within so much of the licensed area as consists of bed of the sea or an estuary, foreshore and (in the case of the Secretary of State) land contiguous to the foreshore and immediately below the level of mean high water springs the right, in exercise of the right mentioned in subsection (2), to moor, deposit, transport or erect such rafts, trays or other structures or devices as are necessary for or reasonably incidental to the culture of shell-fish of a kind specified in the licence.

(4) A shell-fish fishery licence shall not,—

(a) except for the purpose of the culture of shell-fish of a kind specified in the licence, affect any right in or over the foreshore or the bed of the sea or any estuary, or any right of several fishery;

(b) for any purpose, affect any such right of any person which he enjoys under a local or personal Act or under Royal Charter, letters patent, prescription or immemorial usage, without the consent of that person.

(5) Subject to subsection (4), every shell-fish fishery licence shall be binding on the Crown and on all persons whomsoever, and shall operate to vest in the licensee, his executors, administrators and assigns such rights as are given by the licence, free from all prior or other estates.

Offences
with respect
to licensed
shell-fish
fishery.

136.—(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.

(2) Without prejudice to Article 3 of the Criminal Justice (Northern Ireland) Order 1980 (compensation orders against convicted persons)(a), 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.

Suspension or
revocation of
shell-fish fish-
ery licence.

137.—(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.

(a) S.I. 1980/704 (N.I.6).

(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.

Article 10 (1).

SCHEDULE 3

TRANSITIONAL PROVISIONS

Punishments

1. A provision of this Order which relates to the punishment by way of fine or imprisonment for any offence or which permits proceedings in respect of any offence to be taken by way of indictment where heretofore they could be taken only summarily shall not affect the punishment for or proceedings in respect of an offence committed before the commencement of that provision.

Shell-fish

2. An oyster bed licence purporting to have been granted under section 131 of the principal Act (as originally enacted) before the date of the commencement of Article 8 shall, if (so far as relevant)—

(a) consents corresponding to those mentioned in subsection (4) of that section (as substituted by that Article) were given before that date, or

(b) the consents mentioned in that subsection are given within the period of one year from that date,

and the consents (except a consent given by the Secretary of State or the Crown Estate Commissioners) either have been transmitted by the licensee to the Department of Agriculture or are so transmitted before the expiration of that period, be deemed to be a shell-fish fishery licence for the culture of oysters, and shall have effect as if section 131 (as substituted by Article 8) had been in force when the licence was granted, and the licence was duly granted under it (and accordingly sections 133, 135 and 137 shall apply to the licence and section 136 shall apply to the fishery to which it relates).

3. Where any consent referred to in paragraph 2 (a) or (b) has been or is given subject to any conditions or limitations which are not specified in the licence, the licence may be varied to specify those conditions and limitations and section 133 (5) of the principal Act shall not apply to that variation.

4. Where a licence such as is first mentioned in paragraph 2 is, by virtue of that paragraph, deemed to be a shell-fish fishery licence, the Department of Agriculture after consultation with the licensee may, notwithstanding any limitation in section 133 (5)(a) of the principal Act, vary the licence so as to incorporate, subject to the limits mentioned in section 133 (1) (c) (ii) and (iii), a term fixing the duration of the licence and conditions about the proper formation, development and cultivation of the fishery.

5. On the expiration of the period mentioned in sub-paragraph (b) of paragraph 2 any oyster bed licence in the case of which the conditions mentioned in that paragraph have not been met shall cease to have effect.

6. Where following an application made by any person before the date of the commencement of Article 8 for an oyster bed licence the Department of Agriculture had before that date caused a local public inquiry to be held under section 132 of the principal Act (as originally enacted), the Department may treat the application as an application for a shell-fish fishery licence and (if minded following consideration of the report of the person who conducted the inquiry to grant the licence) grant such a licence to the applicant without complying with section 132 (as substituted by Article 8).

SCHEDULE 4

Article 10 (2) (3).

AMENDMENTS

PART I

OTHER AMENDMENTS OF THE FISHERIES ACT (NORTHERN IRELAND) 1966

Section 15A

In subsection (3) for “any such provision is not complied with, the master, the owner and the charterer, if any, of that boat” substitute “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.”

Section 16

In subsection (1) (f) (power to define boundary of waters within Londonderry Area) for the words from “waters” to “Northern Irish baselines” substitute “waters within British fishery limits which are adjacent to Northern Ireland”.

Section 121

This section (exportation of unseasonable salmon) shall cease to have effect.

Section 123

For “a provision of section 121” substitute “section 110 (6)”.

Section 127

- (a) In subsection (1) after “shall” insert “bring to land”.
- (b) After that subsection insert—

“(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.”.
- (c) After subsection (3) insert—

“(3A) An order under subsection (1) may confer exemptions from any prohibition imposed by this section.”.
- (d) The following provisions shall cease to have effect, namely, subsections (4) and (5); in subsection (6), in the words in brackets, the word “section” and the words from “and requires” to “returned to the sea”, and the words from the end of paragraph (a) onwards; in subsection (8) the words from “, and if” onwards; and in subsection (9) the words “master, owner or charterer”.
- (e) In subsection (6) for “subsection (1) of section 4 of the Sea-Fishing Industry Act 1933” substitute “section 1 (1) of the Sea Fish (Conservation) Act 1967”.

Section 166

Subsection (2) (b) (coastguards to be authorised officers) shall cease to have effect.

In subsection (3) for the words from “any officer” onwards substitute “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).”.

Section 169

This section (additional powers of coastguard) shall cease to have effect.

Section 170

(a) In subsection (1) after paragraph (c) insert—

“; 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;”,

and at the end of that subsection insert “or for the protection of that shell-fish fishery or those shell-fish fisheries”.

(b) In subsection (3) after “Board” where first occurring insert “or, where the appointment was made by a person such as mentioned in subsection (1) (d) or (e), to the Department”, after that word where secondly occurring insert “or, as the case may be, the Department” and for “an officer of the Board” substitute “one of its officers”.

(c) In subsection (6) after “the Board” insert “or, as the case requires, the Department”.

Section 175

For “nearest or most convenient port” substitute “port which appears to him to be the nearest convenient port, or require that person to take it and them there,”.

Section 183

At the end insert—

(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) or section 175 shall be deemed to obstruct him.”.

Section 189

For “owner or master” substitute “master, charterer or owner”.

Section 192

(a) In subsection (1) after “possession for sale” insert “any fish caught in contravention of any regulation made under section 124 or” and in paragraph (a) after “subsection” insert “had been so caught or”.

(b) In subsection (2) for “52 (2), 156 (1) (a) or 157 (1)” substitute “or 52 (2)”.

Section 206

(a) In subsection (1)—

(i) after the definition of “box” insert—

“ ‘bring to land’ in relation to fish includes bringing the fish within the limits of a harbour;”;

(ii) after the definition of “fish” insert—

“ ‘fish farm’ shall be construed in accordance with section 10;”;

(iii) in the definition of “licensee” for “an oyster bed licence” substitute “a shell-fish fishery licence”;

(iv) the definitions of “oyster bed licence” and “oyster fishery order” shall cease to have effect;

(v) after the definition of “shell-fish” insert—

“ ‘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;”;

(vi) in the definition of “waters” for the words from “within”, where first occurring onwards substitute “consisting of waters within British fishery limits which are adjacent to Northern Ireland;”;

(vii) after the definition of “waters” insert—

“ ‘waters within British fishery limits which are adjacent to Northern Ireland’ means waters within British fishery limits which are adjacent to Northern Ireland and are not nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Great Britain or the Isle of Man is measured than to any point on the corresponding Northern Irish baselines.”.

(b) In subsection (3) (effect of order defining boundary of waters within Londonderry Area) for the words from “waters” to “Northern Irish baselines” substitute “waters within British fishery limits which are adjacent to Northern Ireland”.

Schedule 1

At the end insert—

“9. In this Schedule “contravention”, in relation to a condition of a licence, includes a failure to comply with that condition.”.

Schedule 5

For “*or sea coast*” substitute “, *sea coast or shell-fish fishery or fisheries*”.

Schedule 6

Before the entry relating to section 54 (5) insert—

“20 (3), (4) Inspection of fish farm or shell-fish fishery.”.

PART II

AMENDMENTS OF OTHER STATUTORY PROVISIONS

Fisheries (Amendment) Act (Northern Ireland) 1968 (c. 31)

In section 2 the amendment of section 15A (3), and in Schedule 2 the amendments of sections 16 (1) (f) and 206 (3), of the principal Act specified in Part I.

Fish Industry Act (Northern Ireland) 1972 (c. 4)

In section 1 (1) (b) for sub-paragraph (ii) substitute—

“(ii) forming or developing a shell-fish fishery, or”.

REPEALS

Chapter or Number	Title or Short Title	Extent of Repeal
5 & 6 Vict. c. 106.	The Fisheries (Ireland) Act 1842.	Sections 86, 87, 89 to 92, 96 and 103 so far as applicable for the purposes of the Steam Trawling (Ireland) Act 1889.
52 & 53 Vict. c. 74.	The Steam Trawling (Ireland) Act 1889.	The whole Act.
1 Edw. 7 c. 38.	The Fisheries (Ireland) Act 1901.	The whole Act.
9 Edw. 7 c. 8.	The Trawling in Prohibited Areas Prevention Act 1909.	In section 5, paragraph (2). Section 6.
1952 c. 5.	The Foyle Fisheries Act (Northern Ireland) 1952.	In section 2 (1) the definition of "the Valuation Acts".
1964 c. 72.	The Fishery Limits Act 1964.	In Schedule 1 the amendment of the Steam Trawling (Ireland) Act 1889.
1966 c. 17.	The Fisheries Act (Northern Ireland) 1966.	In sections 55 (1), 58 (2), 59 (2), 78 (1), 80, 81 (3), 82, 85 (2) and 86 (3) (a) and (4) the words from "and shall be liable" onwards. In section 56 (3) the words from "and in the case" onwards. Section 121. Section 125. In section 127, subsections (4) and (5), in subsection (6) in the words in brackets, the word "section" and the words from "and requires" to "returned to the sea", and the words from the end of paragraph (a) onwards; in subsection (8) the words from ", and if" onwards; and in subsection (9) the words "master, owner or charterer". Section 130. In section 166 in subsection (1) the definition of "private water bailiff" and in subsection (2) paragraph (b) and the word "and" immediately preceding it.

Chapter or Number	Title or Short Title	Extent of Repeal
1966 c. 17.	The Fisheries Act (Northern Ireland) 1966 (<i>contd.</i>).	<p>Section 169.</p> <p>Section 187.</p> <p>Section 190.</p> <p>Section 191.</p> <p>Section 194.</p> <p>Section 202 (4).</p> <p>In section 206 the definitions of— “close season for cockles”; “close season for mussels”; “close season for oysters”; “close season for periwinkles”; “grantee”; “oyster bed licence”; “oyster fishery order”; and “spring tides”.</p> <p>In the definition of “private water bailiff” the words “150 or”.</p> <p>In section 206 (5A) the words “or Part IX”.</p>
1967 c. 7.	The Diseases of Fish Act (Northern Ireland) 1967.	Section 6.
1968 c. 31.	The Fisheries (Amendment) Act (Northern Ireland) 1968.	<p>In section 1 (1) the first four words and the words from “and accordingly” onwards.</p> <p>In section 5 (4) the words from “and in subsection (3)” onwards .</p>
1976.c. 86.	The Fishery Limits Act 1976.	In Schedule 2, paragraph 14.
S.I. 1977/2157 (N.I. 28).	The Rates (Northern Ireland) Order 1977.	In Schedule 2, paragraph 2 (a) (iii) and in Schedule 7 paragraph 5 (c), and in each case the word “and” immediately preceding that paragraph.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends the Foyle Fisheries Act (Northern Ireland) 1952, the Fisheries Act (Northern Ireland) 1966, the Diseases of Fish Act (Northern Ireland) 1967 and the Fish Industry Act (Northern Ireland) 1972 by, in particular,—

- (a) increasing maximum punishments for certain offences and permitting proceedings in respect of some offences which formerly could be taken only summarily to be taken alternatively by way of indictment;
- (b) extending the classes of persons who may be required by regulations made by the Department of Agriculture to keep records and make returns to include sea-fishermen and certain fish-salesmen;
- (c) replacing existing provisions for the regulation of sea-fishing and dealings in sea-fish by new provisions;
- (d) replacing existing provisions about the licensing of oyster and other shell-fish beds by new provisions for shell-fish fishery licences; and
- (e) empowering certain authorised persons to require the co-operation of persons belonging to fishing boats they board in the course of their duties.