STATUTORY INSTRUMENTS

1991 No. 1466 (N.I. 13)

The Fisheries (Amendment) (Northern Ireland) Order 1991

- - - - - - *26th June 1991*

Title and commencement

1.—(1) This Order may be cited as the Fisheries (Amendment) (Northern Ireland) Order 1991.

(2) Except for the provisions mentioned in paragraph (3), this Order shall come into operation on the expiration of two months from the day on which it is made.

(3) Article 17(3), and Article 35(2) and Schedule 4 in so far as that Article and that Schedule relate to section 62(4) of the principal Act, shall come into operation on the expiration of one year from the day on which this Order is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954[F1] 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[F2].

F1 1954 c. 33 (N.I.)
F2 1966 c. 17 (N.I.)

Promotion and development of angling, etc.

Promotion of angling

3. Immediately before section 2 of the principal Act (acquisition and development of waters for angling) there shall be inserted the following section—

"**Promotion of angling.**

1A. 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.".

Derelict waters

4. For sections 3 and 4 of the principal Act (development of derelict waters for angling, etc.) there shall be substituted the following sections—

"**Development of derelict waters for angling.**

3.—(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

(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 mo re 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—

(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 is sue 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 t his 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.

(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.

Schemes for development of derelict waters.

3A.—(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 on which the Department notifies the approved developer of that withdrawal, and subsection (8) and section 4 shall apply accordingly.

Provisions supplemental to sections 3 and 3A.

4.—(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.

(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.