STATUTORY INSTRUMENTS

2007 No. 915

The Foyle and Carlingford Fisheries (Northern Ireland) Order 2007

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Foyle and Carlingford Fisheries (Northern Ireland) Order 2007.

(2) This Article and Article 2 come into operation on the expiration of 7 days from the day on which this Order is made.

(3) Except as provided by paragraph (2), this Order comes into operation on such day or days as the Department may by order appoint.

(4) Without prejudice to section 17(5) of the Interpretation Act (Northern Ireland) 1954 (c. 33) an order made under paragraph (3) may specify or delimit any geographical area in relation to which any provision of this Order is to come into operation.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

"the Department" means the Department of Agriculture and Rural Development;

"the 1952 Act" means the Foyle Fisheries Act (Northern Ireland) 1952 (c. 5);

"statutory provision" has the same meaning as in the Interpretation Act (Northern Ireland) 1954.

PART II

AQUACULTURE

Aquaculture

3.—(1) In the 1952 Act, after Part VI, there shall be inserted—

"PART VIA

AQUACULTURE

Aquaculture licences

Aquaculture licences

52A.—(1) The Commission may, in accordance with the provisions of this Part, grant a licence ("an aquaculture licence") to any person authorising that person to engage in aquaculture within any area specified in the licence (the "licensed area").

(2) An aquaculture licence may be granted notwithstanding any public right to fish in the area which, on the granting of the licence, becomes the licensed area.

(3) Subject to subsection (4) the licensed area may include any part of the foreshore or any part of the bed of the sea or an estuary.

(4) An aquaculture licence shall not specify any area—

(a) which forms either part of the foreshore or part of the bed of the sea or an estuary owned or lawfully occupied by any person, unless the licence is granted to, or with the consent in writing of, the owner or lawful occupier of that part of the foreshore or that part of the bed of the sea or the estuary; or

(b) which is within the limits of a several fishery, unless the licence is granted to, or with the consent in writing of, the owner or lawful occupier of that fishery.

(5) A person shall not engage in aquaculture in the Foyle Area or the Carlingford Area except under, and in accordance with the conditions of, an aquaculture licence.

(6) A person who contravenes subsection (5) shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 6 months, or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years, or to both.

Applications for aquaculture licences

52B.—(1) An application for an aquaculture licence shall be made to the Commission and shall—

(a) contain such information and be made in such form and in such manner as may be prescribed;

(b) be advertised, at the expense of the applicant, in such form and in such manner as may be prescribed; and

(c) be accompanied by—

(i) any consent required by section 52A(4); and

(ii) the prescribed fee.

(2) Without prejudice to any other provision of this Part, regulations under subsection (1)(a) may contain provisions similar to the provisions of Directive 85/337/EEC and may, in particular, require the Commission, when considering whether to grant an aquaculture licence, to take account of any information received by, or representations made to, the Commission which relate to the impact of aquaculture on the environment.

(3) The Commission may, by giving notice to the applicant, require him to furnish such further information as may be specified in the notice, within the period so specified, as the Commission may require for the purpose of determining the application.

(4) If a person fails to furnish any information—

(a) required under subsection (1)(a); or

(b) specified in a notice under subsection (3) within the period specified in the notice,

the Commission may refuse to proceed with the application.

Determination of applications for aquaculture licences

52C.—(1) The Commission shall consider an application for an aquaculture licence and either—

(a) grant the licence; or

(b) refuse to grant the licence.

(2) In determining an application for an aquaculture licence, the Commission shall consider any written representations relating to the application (including any representations made to the Commission which relate to the impact of aquaculture on the environment) which are received by the Commission within the period of 28 days beginning with the date on which the application was last advertised in accordance with section 52B(1)(b).

(3) As soon as practicable after determining an application for an aquaculture licence the Commission shall give—

(a) the applicant; and

(b) each person who made representations considered under subsection (2),

notice of the determination.

(4) Where the Commission grants an aquaculture licence, the Commission shall, in such form and in such manner as may be prescribed, publish a notice stating that the licence has been granted.

(5) Where the Commission grants an aquaculture licence, the licence—

(a) shall, if no appeal is brought under section 52P, take effect on the expiration of 28 days from the date on which the Commission, in accordance with subsection (4), last published a notice stating that the licence had been granted;

(b) shall, if an appeal is brought under section 52P, take effect—

(i) if and so far as the licence is confirmed on appeal, from the date on which the appeal is determined;

(ii) if the appeal is withdrawn, on the date of the withdrawal of the appeal.

Form and conditions of aquaculture licences

52D.—(1) An aquaculture licence shall define the position and limits of the licensed area by reference to a map or chart, either with or without descriptive matter (which, in the case of any discrepancy with the map or chart, shall prevail except in so far as may otherwise be provided by the licence).

(2) Where any consent mentioned in section 52A(4) was given subject to any conditions or limitations, the licence shall be subject to such conditions or limitations and such fact shall be stated in the licence.

(3) An aquaculture licence may contain such other conditions as the Commission shall determine.

(4) Without prejudice to the generality of subsection (3), conditions contained in an aquaculture licence may relate to any of the following—

(a) operational practices;

(b) monitoring and protection of the health of fish, aquatic invertebrate animals or aquatic plants and the reporting of incidences of disease and the presence of parasites;

(c) monitoring and inspection of the activities carried on pursuant to the licence;

(d) the type of ropes, trestles, fish cages or other equipment or structures which may be located within the licensed area;

(e) the marking, by buoys or otherwise, of the limits of the licensed area or any part of it, or of the location of ropes, trestles, fish cages or other structures within the licensed area;

(f) the keeping of records by the holder of the licence;

(g) the making of returns and the giving of other information to the Commission in relation to activities in the licensed area;

(h) the protection of the environment (including the man-made environment of heritage value) and the control of discharges from the licensed area;

(i) appropriate environmental, water quality and biological monitoring and, in particular, the provision of samples, or of facilities for taking samples in the licensed area;

(j) in relation to the farming or culture of fish—

(i) the amount of feed inputs;

(ii) annual or seasonal limits on stock inputs and outputs and the amount of stock in the licensed area or in any part of it;

(iii) the disposal of dead fish;

(iv) measures for preventing the escape of fish and arrangements for reporting any such escape;

(v) the movement of fish within, and in to or out of, the licensed area;

(k) the payment of any prescribed fee in relation to the licence.

(5) An aquaculture licence may, in so far as is expedient for the purpose of giving effect to any conditions attached to it, exempt—

(a) the holder of the aquaculture licence and any person acting under his directions; and

(b) a person who acquires fish of any kind taken in accordance with such conditions,

from the restrictions imposed by section 34 or regulations made under section 13(gg) in so far as those restrictions apply to fish of that kind.

Duration of aquaculture licences

52E.—(1) Subject to subsections (2) and (3), an aquaculture licence—

(a) shall in the first instance be limited to a period specified by the Commission in writing, being a period of not less than 10 years and not exceeding 20 years, and

(b) on the expiration of that period shall, on the Commission being satisfied that reasonable progress has been, and is likely to continue to be, made in developing the licensed site, be renewed for a further period specified by the Commission in writing, not exceeding 20 years, and

(c) on the expiration of that period, on the Commission being satisfied as aforesaid, may be further renewed from time to time for such period specified by the Commission in writing but not, on any occasion, for a period exceeding 20 years.

(2) Where an aquaculture 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; or

(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.

(3) Where an aquaculture licence is granted with the consent in writing of any owner or occupier and a period is specified in the consent, the licence shall remain in force only for that period.

Effect of aquaculture licence

52F.—(1) An aquaculture licence shall confer on the holder of the licence the exclusive right, in the licensed area, to deposit, introduce, propagate, dredge, harvest and take any fish, aquatic invertebrate animal or aquatic plant which is farmed or cultivated in accordance with the licence.

(2) An aquaculture licence shall not—

(a) except for the purpose of the farming or cultivation of fish, animals or plants 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.

(3) Notwithstanding anything contained in this Act or any regulations made under this Act, the holder of an aquaculture licence and any person acting under his directions may, subject to the conditions contained in the licence, do anything authorised by the licence or anything that is necessary or expedient for doing anything authorised by the licence.

(4) The ownership of any fish, aquatic invertebrate animal or aquatic plant the farming or cultivation of which is authorised by an aquaculture licence and which is farmed or cultivated in accordance with that licence vests in the holder of the licence and his executors, administrators or assigns.

(5) Subject to section 52K, an aquaculture licence is not transferable by the holder, but the Commission may transfer it to another person in accordance with section 52L.

(6) Except as permitted by or under this Act, if a person, by trespass, fishing or otherwise, interferes with anything done or being done pursuant to an aquaculture licence and the interference is carried on without the permission of the holder of the licence, then, notwithstanding the existence of any public right to fish, the person so interfering shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 6 months, or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years, or to both.

Variation of aquaculture licences by Commission

52G.—(1) Subject to subsection (2), the Commission may, on its own initiative, vary an aquaculture licence (but not so as to extend the licensed area) if it considers that it is in the public interest to do so.

(2) An aquaculture licence shall not be varied so as to affect any conditions or limitations subject to which a consent under section 52A(4) was given, or any period mentioned 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.

(3) Where the Commission proposes to vary an aquaculture licence under this section, the Commission shall—

(a) give to the holder of the licence at least 28 days' notice of its proposal to do so and of the grounds upon which the variation is proposed to be made; and

(b) advertise, in such form and in such manner as may be prescribed, notice of its proposal to vary the licence.

(4) Before varying the licence the Commission shall consider any written representations which are received by the Commission within the period of 28 days from—

(a) the date on which the Commission gave notice to the holder of the licence of the proposed variation; or

(b) the date on which notice of the proposal to vary the licence was last advertised in accordance with subsection (3)(b),

whichever is the later.

(5) Where the Commission varies a licence under this section the Commission shall give notice of the variation to the holder of the licence and the notice shall specify—

(a) the variation of the licence which the Commission has decided to make; and

(b) the date or dates on which the variation is to take effect.

(6) Where the Commission varies a licence under this section, the Commission shall, in such form and in such manner as may be prescribed, publish a notice stating that the licence has been varied.

(7) The Commission shall be liable to pay compensation to the holder of an aquaculture licence in respect of any loss or damage sustained by him as a result of any action taken by the Commission in relation to an aquaculture licence by virtue of subsection (1) and any dispute as to a person's entitlement to such compensation or as to the amount of it shall be referred to and determined by the Appeals Board.

Variation of aquaculture licences: applications by holder of licence

52H.—(1) Subject to subsection (2), the holder of an aquaculture licence may, at any time after the expiration of 2 years from the granting of the licence, apply to the Commission, in such manner as may be prescribed, for the variation of the licence specified in the application.

(2) An aquaculture licence shall not be varied so as to affect any conditions or limitations subject to which a consent under section 52A(4) was given, or any period mentioned 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.

(3) Where an application is made under subsection (1) for the variation of a licence (otherwise than solely by reducing the licensed area) sections 52A(3) and (4), 52B and 52C shall apply as they apply to the grant, or an application for the grant, of an aquaculture licence.

Revocation of aquaculture licences

52I.—(1) The Commission may revoke an aquaculture licence if it is satisfied that the holder of the licence has not engaged in aquaculture in the licensed area for a continuous period of 2 years.

(2) The Commission may revoke an aquaculture licence if—

(a) it is satisfied that there has been a breach of a condition specified in the licence; or

(b) it considers that it is in the public interest to do so.

(3) Where the Commission proposes to revoke an aquaculture licence, the Commission shall give the holder of the licence at least 28 days' notice of—

(a) its intention to do so; and

(b) the grounds upon which the revocation is proposed to be made;

and before revoking the licence the Commission shall consider any representations made by the holder of the licence before the expiration of the notice.

(4) Where the Commission revokes an aquaculture licence the Commission shall give 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 section 52P, and of the time within which the appeal may be brought.

(5) The revocation of an aquaculture licence in accordance with this section shall not take effect until—

(a) the expiry of the time allowed for making an appeal under section 52P; or

(b) if an appeal is made under section 52P—

(i) if and so far as the revocation of the licence is confirmed on appeal, the date on which the appeal is determined; or

(ii) if the appeal is withdrawn, on the date of the withdrawal of the appeal,

whichever is the later.

(6) The Commission shall be liable to pay compensation to a person who was the holder of an aquaculture licence in respect of any loss or damage sustained by that person as a result of any action taken by the Commission by virtue of subsection (2)(b) and any dispute as to a person's entitlement to such compensation or as to the amount of it shall be referred to and determined by the Appeals Board.

Surrender of aquaculture licences

52J.—(1) An aquaculture licence may, in accordance with subsections (2) to (5), be surrendered by its holder to the Commission if the Commission accepts the surrender.

(2) The holder of an aquaculture licence who wishes to surrender it shall make an application for that purpose to the Commission on a form provided by the Commission for the purpose, giving such information and accompanied by such documentation as the Commission reasonably requires and accompanied by the fee payable in accordance with section 52N.

(3) On receiving an application for the surrender of an aquaculture licence the Commission—

(a) shall inspect the licensed area, and

(b) may require the holder of the aquaculture licence to—

(i) provide the Commission with further information;

(ii) carry out such works in relation to the licensed area as the Commission may specify in writing.

(4) Where the surrender of a licence is accepted by the Commission under this section the Commission shall issue a certificate (a "certificate of completion") to the applicant and, on the issue of that certificate, the aquaculture licence shall cease to have effect.

(5) If within the period of 3 months from the date on which the Commission receives an application to surrender a licence, or within such longer period as the Commission and the applicant may at any time agree in writing, the Commission has neither issued a certificate of completion nor given notice to the applicant that the Commission has refused the application, the Commission shall be deemed to have refused the application.

Vesting of aquaculture licences on death or bankruptcy of holder

52K.—(1) On the death of the holder of an aquaculture licence, the licence shall be regarded as property forming part of the deceased's personal estate, whether or not it would be so regarded apart from this subsection, and shall accordingly vest in his personal representatives.

(2) If a bankruptcy order is made against the holder of an aquaculture licence, the licence shall be regarded for the purposes of Parts VIII to X of the Insolvency (Northern Ireland) Order 1989 (insolvency of individuals; bankruptcy) as property forming part of the bankrupt's estate, whether or not it would be so regarded apart from this subsection, and shall accordingly vest as such in the trustee in bankruptcy.

(3) A person in whom an aquaculture licence vests under this section shall become the holder of the aquaculture licence, in place of the prior holder, from the date of the vesting.

(4) Where an aquaculture licence vests in any person under this section, that person shall give notice of that fact to the Commission not later than the end of the period of 90 days, or such longer period as may be agreed with the Commission, beginning with the date of the vesting.

Transfer, etc. of aquaculture licences

52L.—(1) An aquaculture licence may be transferred to another person in accordance with the following provisions of this section.

(2) Where the holder of an aquaculture licence desires that the licence be transferred to another person ("the proposed transferee") the aquaculture licence holder and the proposed transferee shall jointly make an application to the Commission for a transfer of the licence.

(3) An application under subsection (2) for the transfer of an aquaculture licence shall be made on a form provided by the Commission for the purpose, accompanied by—

(a) such information as the Commission may reasonably require;

(b) where the aquaculture licence has been granted subject to the consent of the owner or lawful occupier of the foreshore, bed of the sea, estuary or any fishery, the consent in writing of that owner or lawful occupier, as the case may be, to the proposed transfer of the licence;

(c) the fee payable in accordance with section 52N; and

(d) the licence.

(4) If the Commission is not satisfied that the licence should be transferred to the proposed transferee, it shall give notice of its refusal to transfer the licence to the holder of the aquaculture licence and the proposed transferee.

(5) If, on an application under subsection (2), the Commission is satisfied that the licence should be transferred to the proposed transferee, the Commission shall effect a transfer of the aquaculture licence to the proposed transferee.

(6) The Commission shall effect a transfer of an aquaculture licence under subsection (5) by causing the licence to be endorsed with the name and other particulars of the proposed transferee as the holder of the licence from such date specified in the endorsement as may be agreed with the applicants.

(7) Nothing in this section shall affect the liability of the holder of an aquaculture licence for any failure by him, before any transfer under subsection (5) took effect, to comply within any condition of that licence.

Register of aquaculture licences

52M.—(1) The Commission shall, in such manner as may be prescribed, maintain a register containing prescribed particulars of, or relating to, aquaculture licences.

(2) Without prejudice to the generality of subsection (1), a register under this section may be maintained in electronic form.

(3) The Commission shall—

(a) ensure that the contents of a register maintained under this section are available, at all reasonable times, for inspection (including, where practicable, inspection by electronic means) by the public free of charge; and

(b) afford members of the public reasonable facilities for obtaining from the Commission, on payment of reasonable charges, copies of entries in the register.

(4) A register maintained under this section shall be conclusive evidence as to the terms of any aquaculture licence, or any condition to which such a licence is subject, as that licence, or that condition, as the case may be, has effect for the time being.

Fees in respect of applications for aquaculture licences, etc.

52N.—(1) The Commission may in such manner as may be prescribed, provide for the payment to the Commission of fees in relation to—

(a) applications for aquaculture licences under section 52B;

(b) the subsistence of an aquaculture licence;

(c) applications for the variation of an aquaculture licence under section 52H;

(d) applications for the surrender of an aquaculture licence under section 52J;

(e) applications for the transfer of an aquaculture licence under section 52L.

(2) Regulations under subsection (1) may provide for the refund (in whole or in part) of fees in prescribed circumstances.

Foyle and Carlingford Aquaculture Licensing Appeals Board

Foyle and Carlingford Aquaculture Licensing Appeals Board

52O.—(1) There is hereby established a body to be known as the Foyle and Carlingford Aquaculture Licensing Appeals Board ("the Appeals Board").

(2) The Appeals Board shall consist of 8 members to be appointed by NSMC.

(3) At least one of the members of the Appeals Board shall be a solicitor or barrister qualified to practice in any part of the Foyle Area or the Carlingford Area.

(4) In appointing the other members of the Appeals Board, NSMC shall—

(a) have regard to the desirability of having as members of the Appeals Board persons with knowledge and experience of fisheries, aquaculture, financial matters or environmental protection; and

(b) to the extent practicable, endeavour to ensure that there is an equitable balance between men and women in the composition of the Appeals Board.

(5) NSMC shall appoint a Chairperson from among the members of the Appeals Board.

(6) The Department may make regulations providing for the payment to the Appeals Board of fees in relation to appeals under section 52P.

(7) The Department may make grants to the Appeals Board out of money appropriated by Act of the Assembly.

(8) Such grants shall be of such amounts and be made on such terms and conditions as the Department may determine.

(9) Schedule 3A shall have effect in relation to the Board.

Appeals from decisions with respect to aquaculture licences

52P.—(1) A person aggrieved by a decision of the Commission—

(a) to grant or to refuse to grant an aquaculture licence;

(b) to specify any condition in an aquaculture licence;

(c) to vary an aquaculture licence under section 52G;

(d) to vary or to refuse to vary an aquaculture licence under section 52H;

(e) to revoke an aquaculture licence under section 52I;

(f) to refuse to transfer an aquaculture licence under section 52L;

(g) to refuse to accept the surrender of an aquaculture licence under section 52J;

may appeal to the Appeals Board.

(2) An appeal to the Appeals Board shall be made by sending a notice of appeal to the Appeals Board so that it is received by the Appeals Board—

(a) in the case of a decision of the Commission to grant an aquaculture licence or specify any condition in an aquaculture licence, not later than 28 days after the date on which notice to grant the licence was last published in accordance with section 52C(4);

(b) in the case of a decision by the Commission to vary an aquaculture licence under section 52G or 52H, not later than 28 days after the date on which notice of the decision to vary the licence was last published in accordance with section 52G(6);

(c) in the case of a decision of the Commission—

(i) to refuse to grant an aquaculture licence;

(ii) to refuse to vary an aquaculture licence under section 52H;

(iii) to revoke an aquaculture licence; or

(iv) to refuse to transfer an aquaculture licence,

not later than 28 days after the date on which notice of the disputed decision was received by the person aggrieved;

(d) in the case of a decision (or deemed decision) of the Commission to refuse to accept the surrender of an aquaculture licence under section 52J, not later than 28 days after the date on which in accordance with subsection (5) of that section, notice of

the refusal was given to the applicant or, as the case may be, the Commission was deemed to have refused the application.

(3) The Appeals Board may—

(a) confirm or set aside the decision which is the subject of the appeal, or any part of it; or

(b) substitute its decision on the matter for that of the Commission.

(4) Where, on an appeal under subsection (1), the Appeals Board determines that the decision of the Commission should be altered, the Commission shall give effect to the determination and shall publish, in such manner and such form as may be prescribed, notice of the determination.

(5) Schedule 3B shall have effect with respect to appeals under subsection (1).

(6) The Department may make regulations providing for such additional, incidental, consequential or supplemental procedural matters in respect of appeals to the Appeals Board as appear to the Department to be necessary or expedient.

(7) Without prejudice to the generality of subsection (6), regulations under that subsection may make provision—

(a) in relation to the class or classes of persons who may be heard at an oral hearing;

(b) for the manner of the notification of the determination of an appeal; and

(c) the availability for inspection by the public of documents or extracts from documents relating to appeals, the period of such availability, and the purchase by the public of copies of such documents or extracts from such documents.

Reasons to be given for decisions

52Q. Where—

(a) the Commission gives any decision—

(i) to grant or refuse to grant an aquaculture licence;

(ii) to specify any condition in an aquaculture licence;

(iii) to vary an aquaculture licence under section 52G;

(iv) to vary or to refuse to vary an aquaculture licence under section 52H;

(v) to revoke an aquaculture licence under section 52I;

(vi) to refuse to transfer an aquaculture licence under section 52L; or

(b) the Commission gives any decision, or is deemed to give any decision, to refuse to accept the surrender of an aquaculture licence under section 52J; or

(c) the Appeals Board gives a decision in relation to a dispute referred to it under section 52G(7) or 52I(6) or determines an appeal under section 52P,

it shall be the duty of the Commission or, as the case may be, the Appeals Board, to state the reasons for the decision or determination.

Miscellaneous

Recapture of escaped stock

52R.—(1) The Commission may take such action as it considers necessary to recapture stock which has escaped from a licensed area.

(2) The Commission may, notwithstanding any other provision of this Act, authorise—

(a) the holder of an aquaculture licence; or

(b) a person other than the holder of an aquaculture licence,

to take such action as is specified in the authorisation to recapture stock which has escaped from a licensed area.

(3) An authorisation referred to in subsection (2) may be granted subject to such conditions, if any, as the Commission considers necessary or expedient.

(4) The reasonable costs of—

(a) any action taken by the Commission under subsection (1);

(b) a person taking action in pursuance of an authorisation under subsection (2),

may be recovered from the holder of the aquaculture licence whose stock has escaped as a civil debt recoverable summarily by the person who incurred the costs.

Offences of making false or misleading statements or false entries

52S.—(1) A person who, for the purpose of obtaining for himself or for another any grant of an aquaculture licence, any variation of an aquaculture licence or any transfer of an aquaculture licence, makes a statement which he knows to be false or misleading in a material particular, or recklessly makes any statement which is false or misleading in a material particular, shall be guilty of an offence.

(2) A person who intentionally makes a false entry in any record required to be kept by virtue of an aquaculture licence shall be guilty of an offence.

(3) A person guilty of an offence under subsection (1) or (2) shall be liable—

(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.

Inquiries and inspections

52T.—(1) Without prejudice to section 80, the Commission may, with respect to any licensed area, make such inquiries and examination by an officer of the Commission (within the meaning of section 53) or otherwise, and require from the holder of the aquaculture licence to which the licensed area relates such information as the Commission considers necessary or proper, and the holder of the aquaculture licence shall afford all facilities for such inquiries and examination, and give such information, accordingly.

(2) Without prejudice to any provision of Part VII, for the purpose of an examination under subsection (1) an officer authorised in writing in that behalf by the Commission, on producing his authority if so required, may at any reasonable time—

(a) enter any licensed area; and

(b) examine that area and all fish, buildings, structures, rafts, trays, devices and other 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, animal or plant or of any water or other substance, found there,

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

(3) Nothing in this section shall be construed as authorising any person to enter—

(a) any enclosed garden;

(b) any dwelling-house or the curtilage thereof.

Regulations

52U.—(1) Regulations made under this Part by the Commission shall be subject to the approval of NSMC.

(2) As soon as practicable after it makes any regulations under this Part, the Commission or, as the case may be, the Department, shall publish in at least two newspapers circulating in the Foyle Area and the Carlingford Area notice—

(a) stating that the regulations have been made and giving a general description of their content;

(b) specifying a place at which, and the hours between which, a copy of the regulations may be inspected.

(3) Regulations made under this Part by the Commission or by the Department may contain such supplementary, incidental and transitional provision as the Commission or, as the case may be, the Department, thinks necessary or appropriate.

(4) The Commission or, as the case may be, the Department, shall cause regulations made under this Part to be laid before the Assembly as soon as may be after they are made, and regulations under this Part shall be subject to negative resolution.

Transitional provision – existing licences in the Foyle and Carlingford Areas

52V.—(1) This section applies to a licence which—

(a) is granted under section 11, Part IX or Part IXA, as the case may be, of the Fisheries Act (Northern Ireland) 1966;

(b) is in force immediately before the coming into operation of Article 3 of the Foyle and Carlingford Fisheries (Northern Ireland) Order 2007; and

(c) authorises the doing of any act in any area of the Foyle Area or the Carlingford Area in respect of which the provisions contained in that Article are in operation.

(2) On and after the coming into operation of Article 3 of the Foyle and Carlingford Fisheries (Northern Ireland) Order 2007, a licence to which this section applies shall, for so long as it would have continued in force apart from this section, have effect as an aquaculture licence granted under section 52A, subject to the same conditions as were attached to the licence immediately before that Article came into operation.

Transitional provision – applications, etc. for certain licences in the Foyle Area and the Carlingford Area

52W.—(1) This section applies to an application for a licence under section 11, Part IX or Part IXA of the Fisheries Act (Northern Ireland) 1966 which—

(a) relates to any area in the Foyle Area or the Carlingford Area in respect of which the provisions contained in Article 3 of the Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 are in operation; and

(b) has not been determined by the Department before the date on which the provisions of Article 3 of that Order came into operation as respects that area.

(2) Subject to paragraph (3), the provisions of this Part and any regulations made under any provision of this Part shall apply to applications to which this section applies as if they were applications under this Part.

(3) Anything done in relation to an application to which this section applies under a relevant provision of the Fisheries Act (Northern Ireland) 1966 shall be deemed to have been done under the corresponding provision of this Act.

(4) In subsection (3), "relevant provision" means any of the following provisions of the Fisheries Act (Northern Ireland) 1966—

(a) sections 11 to 11C;

(b) Part IX;

(c) Part IXA.

Interpretation

52X.—(1) In this Part—

"the Appeals Board" means the Foyle and Carlingford Aquaculture Licensing Appeals Board established by section 52O(1);

"aquaculture" means the farming or cultivation of any fish, aquatic invertebrate animal or aquatic plant, including any aquatic form of food suitable for the nutrition of fish;

"aquaculture licence" means an aquaculture licence applied for or granted under this Part;

"licensed area" means the area specified in an aquaculture licence;

"notice" means notice in writing;

"notice of appeal" means a notice of appeal under section 52P(2);

"prescribed" means prescribed by regulations under this Part;

"regulations" (except in sections 52O(6) and 52P(6)) means regulations made by the Commission under this Part;

"vary", in relation to the conditions of an aquaculture licence, means adding to the conditions or varying or rescinding any of the conditions, and "variation" shall be construed accordingly.

(2) In this Part, "fish" means—

(a) freshwater fish of any kind;

(b) salmon and other fish of a kind that migrates to and from the sea;

(c) eels and elvers;

(d) sea-fish;

(e) shell-fish;

(f) the spawn, fry, brood and spat of any fish;

(g) any part of any fish.

(3) In subsection (2)(a), "freshwater fish" means any fish living in fresh water, other than a kind of fish that migrates to and from the sea.".

(2) The provisions set out in Schedule 1 shall be inserted after the Third Schedule to the principal Act as Schedule 3A and Schedule 3B of that Act.

PART III

MISCELLANEOUS AMENDMENTS OF THE FOYLE FISHERIES ACT (NORTHERN IRELAND) 1952

Definitions

4. In section 2 of the 1952 Act (interpretation)—

(a) in subsection (1)—

(i) for the definition of "river" there shall be substituted—

""river" includes a branch of a river and any stream, lake, estuary or watercourse;";

(ii) for the definition of "waters" there shall be substituted—

""waters" includes any river or part of the sea;";

(iii) at the appropriate place in alphabetical order there shall be inserted the following definition—

""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 is vested in such person or persons or in any other person;";

(b) for subsection (2) there shall be substituted—

"(2) In this Act, except in Part VIA, "fish" (when used without any qualification) includes—

(a) freshwater fish of any kind;

(b) salmon and other fish or a kind that migrates to and from the sea;

(c) sea bass and tope;

(d) eels and elvers;

(e) mussels;

(f) oysters;

(g) the spawn, fry, brood and spat of any kind of fish mentioned in paragraphs (a) to (f);

(h) any part of any kind of fish mentioned in paragraphs (a) to (g).

(3) In subsection (2)(a), "freshwater fish" means any fish living in fresh water, other than a kind of fish that migrates to and from the sea.

(4) In this Act any reference to a river includes a reference to the channel or bed of a river which is for the time being dry.".

Functions of the Commission

5.—(1) In section 11 of the 1952 Act (constitution and functions of the Commission)—

(a) in subsection (2), after paragraph (b) there shall be added—

"and

(c) such other functions as are conferred on the Commission by or under this Act or any other statutory provision.";

(b) after subsection (2) there shall be inserted—

(2A) Without prejudice to the generality of subsection (2), the Commission may, for the purposes of its functions under that subsection—

(a) provide education or training courses or facilities for training or instruction;

(b) co-operate with other bodies having functions similar to those of the Commission;

(c) carry out such research as it considers necessary;

(d) make charges for facilities, amenities and services provided by the Commission.”.

(2) In the Third Schedule to the 1952 Act, in paragraph 2(1) (as renumbered by Article 29 of this Order) in head (c) the words “for the government, management, maintenance or improvement of the fisheries of the Foyle Area or the Carlingford Area” shall cease to have effect.

Regulation of fishing

6.—(1) In section 13 of the 1952 Act (regulations)—

(a) in subsection (1), after paragraph (g) there shall be inserted—

“(gg) the regulation or prohibition of the sale of any species of fish caught by rod and line;”;

(b) in subsection (2), after “licence” there shall be inserted “, tag”;

(c) for subsections (3) to (5) there shall be substituted—

“(2A) Regulations made by virtue of subsection (2) may—

(a) provide for charging concessionary fees in such cases as may be prescribed;

(b) provide for exemption from payment of the prescribed fees in such cases as may be prescribed.

(2B) Regulations made by the Commission under this section may—

(a) require tags issued by the Commission to be attached to the carcasses of fish;

(b) require applications for fishing licences to be accompanied by a photograph of the applicant and particulars of the applicant’s date of birth;

(c) prescribe the form of, and conditions attaching to, fishing licences issued by the Commission;

(d) provide that a fishing licence to fish with rod and line or hand line shall not be transferable; and

(e) regulate the transfer of other fishing licences.

(3) As soon as practicable after it makes any regulations under this section the Commission shall publish in at least two newspapers circulating in the Foyle Area and the Carlingford Area a notice—

(a) stating that the regulations have been made and giving a general description of their content; and

(b) specifying a place at which, and the hours between which, a copy of the regulations may be inspected.

(4) Regulations made by the Commission under this section may contain such supplementary, incidental and transitional provisions as the Commission thinks necessary or appropriate.

(5) The Department shall cause regulations made under this section to be laid before the Assembly as soon as may be after they are made, and regulations under this section shall be subject to negative resolution.”;

(d) subsections (5A) and (5B) shall cease to have effect.

(2) In section 34 of the 1952 Act, subsection (4) shall cease to have effect.

Restrictions on number of licences

7. For section 14 of the 1952 Act (restriction on number of licences) there shall be substituted—

"**14 Restrictions on number of licences**

(1) The number of fishing licences which may be issued by the Commission in any year for fishing with fishing engines of any kind (other than rod and line) in—

(a) the tidal waters of the Foyle Area; or

(b) the tidal waters of Carlingford Area;

(c) any prescribed part of those waters,

shall not exceed such number as may be prescribed in relation to those waters or that part.

(2) If the number of applications duly made for fishing licences in any year exceeds the maximum number prescribed by virtue of this section, the fishing licences shall be allocated in such manner as may be prescribed.".

Acquisition and development of waters for angling

8. After section 14 of the 1952 Act there shall be inserted—

"**Acquisition and development of waters for angling**

14A.—(1) The Commission may, for the purpose of developing or improving facilities for angling, acquire by agreement—

(a) fishing rights in any waters in the Foyle Area or the Carlingford Area;

(b) any estate in land by virtue of which such rights are exercisable;

(c) any estate in any other land which the Commission 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 Commission under subsection (1)(a), the Commission may do all such things as are necessary or expedient—

(a) for the proper development of those waters, and of any land acquired under subsection (1)(b) or (c), for angling; or

(b) for the provision of facilities or amenities for persons authorised by the Commission to enter such land.".

Permits to fish in Commission's waters

9. After section 14A of the 1952 Act, as inserted by Article 8 of this Order, there shall be inserted—

"**Permits to fish in Commission's waters**

14B.—(1) Where the Commission owns or manages the fishing rights in any waters—

(a) the Commission may issue permits, or make arrangements for their issue through agents, authorising the holder of such a permit to use a rod and line in the waters to which the permit relates; and

(b) may, subject to subsection (2), charge for the issue of such permits such sums as may be prescribed.

(2) The Commission may under subsection (1)(a) issue complimentary permits to such persons as may be prescribed in such circumstances as may be prescribed and nothing in this Act shall require such persons to make any payment in respect of such a permit.

(3) A permit issued under subsection (1)(a) shall be granted for such period, and subject to such conditions, as may be specified in the permit.

(4) Where a permit is issued under subsection (1)(a) in relation to any waters, any person who—

(a) without obtaining such a permit, uses a rod and line in those waters;

(b) contravenes any condition to which a permit is subject;

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

(d) uses or presents, as being a permit of which he is the holder, a permit issued in the name of any other person; or

(e) uses or presents a permit that has been to his knowledge either in any manner altered (otherwise than by a person duly authorised by the Commission) or fraudulently counterfeited,

shall be guilty of an offence against this Act.".

Close seasons and times

10.—(1) In section 27 of the 1952 Act (times of fishing) at the end there shall be added—

"(5) Different periods may be prescribed under this section in respect of different kinds of fish and, where a period is so prescribed for a particular kind of fish, references in this Act to the annual close season, the annual close season for angling or the weekly close time shall, as the case may require, be construed in relation to that kind of fish as references to the period so prescribed.

(6) Regulations may provide that this section and sections 28 and 29 shall not apply to fish of a prescribed kind.".

(2) In sections 28 (close seasons) and 29 (close times) after the words "salmon or trout" wherever those words occur there shall be inserted the words "or any other fish of a kind prescribed for the purposes of this section".

(3) In section 33 (use of nets during close season or close time) for the words "annual close season or weekly close time" there shall be substituted the words "annual close season for salmon or trout or weekly close time for salmon or trout".

Unlicensed fishing, etc.

11. At the beginning of Part VI of the 1952 Act there shall be inserted—

"Unlicensed fishing, etc.

Prohibition of unlicensed fishing

35A.—(1) A person shall not fish for, take or kill salmon or such other kind of fish as may be prescribed for the purposes of this section except—

(a) under the authority of a fishing licence; and

(b) in accordance with the terms and conditions of that licence and of any regulations relating to it.

(2) A person shall not have in his possession in or near any fishing place any fishing engine for the taking or killing of salmon or such other kind of fish as may be prescribed for the purposes of this section, which is erected or in fishing order, unless there is in force a fishing licence by virtue of which he is authorised to use that fishing engine at that place.

(3) A person who acts, or causes or permits another person to act, in contravention of subsection (1) or (2) shall be guilty of an offence against this Act.

(4) If any person using at any place a fishing engine for which a fishing licence is required under this Act, or having such a fishing engine erected or in fishing order in his possession in or near any fishing place, fails on demand to produce to an authorised person a fishing licence by virtue of which he is authorised to use that fishing engine at that place, he shall be guilty of an offence against this Act.

(5) A person guilty of an offence under subsection (3) or (4) by reason of a contravention of subsection (1), (2) or (4) which consists only of the use or possession of a rod and line or hand line shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) 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

(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 Commission) or fraudulently counterfeited;

shall be guilty of an offence against this Act.

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

(a) where the contravention consists only of the use or possession of a rod and line or hand line, to describe the offence as "unlicensed angling contrary to section 35A of the Foyle Fisheries Act (Northern Ireland) 1952"; and

(b) in any other case, to describe the offence as "fishing by unlicensed means contrary to section 35A of the Foyle Fisheries Act (Northern Ireland) 1952".

(8) In this section and in section 35B "fishing licence" means—

(a) a licence issued by the Commission under regulations made by the Commission under this Act; or

(b) a licence corresponding to a licence mentioned in paragraph (a) and issued by a body approved for the purposes of this paragraph by NSMC.

(9) In relation to a fishing licence issued by a body other than the Commission, the reference to regulations in subsection (1)(b) shall be construed as a reference to regulations or byelaws relating to that licence.

(10) This section is subject to section 35B.

Exceptions, defences, etc. in relation to offences under section 35A

35B.—(1) Subsections (1) and (2) of section 35A do not apply in relation to anything which a person is expressly empowered to do under any provision made by or under this Act or any other statutory provision.

(2) Nothing in section 35A applies to a person—

(a) who fishes lawfully by rod and line in a production pond at a licensed area (within the meaning of section 52X(1)); or

(b) who has for that purpose in his possession a rod or line at or near a licensed area.

(3) In subsection (2) "production pond" means a pond—

(a) used for the artificial propagation and culture of fish; and

(b) designated by the Commission for the purposes of this subsection as a production pond in an aquaculture licence.

(4) Where a person is charged under section 35A 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—

(a) at the time when that fish was taken, he was engaged in lawfully fishing for another kind of fish; and

(b) that the first-mentioned fish was taken unintentionally and, immediately upon being taken, was returned to the water without any avoidable injury.

(5) Where a person is charged under section 35A with an offence which consists of—

(a) having a fishing engine in his possession as mentioned in subsection (2) of that section; or

(b) a failure to produce a fishing licence for a fishing engine in any of the circumstances referred to in subsection (4) 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 of the fishing engine and not for the purpose of using it.

(6) A person shall not be charged with an offence under section 35A consisting of failure to produce a fishing licence for a fishing engine in any of the circumstances referred to in subsection (4) of that section 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) within 5 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 fishing licence authorising him to use the fishing engine at that place and time; and

(ii) evidence of his identity.".

Metrication

12.—(1) In section 37(1) of the 1952 Act (mesh of nets for the taking of salmon)—

(a) for the words "one and three-quarter inches" there shall be substituted the words "4.5 centimetres";

(b) for the words "seven inches" there shall be substituted the words "18 centimetres".

(2) In section 38(1) for the words "half a mile" (where they twice occur) there shall be substituted the words "805 metres".

Use of nets across rivers

13. In section 38 of the 1952 Act (use of salmon nets near mouths of rivers) for subsection (2) there shall be substituted—

"(2) If a person—

(a) shoots, draws or stretches a net across the mouth or across any other part of a river; and

(b) 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, and

(ii) of sufficient depth and width to facilitate the passage of salmon in that river,

he shall be guilty of an offence against this Act.".

Reinstatement of polluted waters

14. In section 41 of the 1952 Act (penalty for pollution)—

(a) in subsection (3)(i) for "restocking to restore the fish population" there shall be substituted "reinstatement";

(b) in subsection (4) for "the Arbitration Act (Northern Ireland) 1937" there shall be substituted "Part I of the Arbitration Act 1996";

(c) in subsections (4)(a) and (5) for "restocking" there shall be substituted "reinstatement".

Use of certain devices to take fish

15.—(1) In section 42 of the 1952 Act (penalty for using, etc., certain devices for taking fish) for subsection (1) there shall be substituted—

"(1) If, for the purpose of taking or facilitating the taking of any fish, any person uses or has in his possession or control, in any river or on or near the banks thereof—

(a) any light or fire; or

(b) any electrical or acoustical apparatus of any kind,

he shall be guilty of an offence against this Act.".

(2) In subsection (3)(a) and (b) of that section the words "gaff or" shall cease to have effect.

(3) After subsection (3) of that section there shall be inserted—

"(3A) 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 fish, he shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 6 months, or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years, or to both.".

(4) At the end of that section there shall be added—

"(5) In this section—

"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.".

Fishing by cross lines

16. Section 43 of the 1952 Act (fishing for salmon or trout by cross lines) shall be renumbered as subsection (1) of that section and after that subsection there shall be added—

"(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.".

Taking fish unlawfully killed or found dead

17. In section 45 of the 1952 Act (taking fish unlawfully killed or found dead)—

(a) in subsection (2)—

(i) in paragraph (d) for "sanitary officer" there shall be substituted "person acting under the authority of a district council";

(ii) at the end there shall be added—

"or

(e) a private river watcher appointed to protect the waters in question.";

(b) after subsection (2) there shall be added—

"(3) Where a person mentioned in subsection (2)(a), (c), (d) or (e) removes fish from a river as mentioned in subsection (1) or causes fish to be so removed, he shall inform the Commission of that fact as soon as is practicable.".

Taking, etc., spawn, smolts or fry of salmon or trout

18. Section 46 of the 1952 Act (taking, etc., spawn, smolts or fry of salmon or trout) shall be renumbered as subsection (1) of that section and after that subsection there shall be added—

"(2) It shall be a defence for a person charged with an offence under subsection (1)(a) in relation to the spawn of any salmon or trout to prove—

(a) that the spawn had been produced at a—

(i) fish farm (as defined in the Fisheries Act (Northern Ireland) 1966); or

(ii) a licensed area (within the meaning of section 52X(1)); or

(b) that he believed on reasonable grounds that it had been so produced.

(3) If any person removes any material from the bed of the freshwater portion of any river in the Londonderry Area or the Newry Area—

(a) without the consent of the Commission under subsection (4); or

(b) otherwise than in accordance with the conditions of a consent granted by the Commission under subsection (4),

he shall be guilty of an offence against this Act.

(4) The Commission may, on the application of any person, grant its consent to the removal of material from the bed of the freshwater portion of a river on such conditions as it thinks fit.

(5) Where the Commission—

(a) on an application for a consent under subsection (4), has refused a consent; or

(b) in giving a consent under subsection (4), has given that consent subject to conditions,

the person who applied for the consent may appeal to the Water Appeals Commission for Northern Ireland against the decision within 28 days from the day on which notice of the decision was given to that person.

(6) In relation to the jurisdiction of the Water Appeals Commission for Northern Ireland under this section, Article 293 of the Water and Sewerage Services (Northern Ireland) Order 2006 shall have effect as if, in paragraphs (6) to (8) of that Article, references to the relevant Department were references to the Foyle, Carlingford and Irish Lights Commission.

(7) A consent under subsection (4) 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.

(8) Nothing done under and in accordance with the conditions of a consent under subsection (4) constitutes an offence under subsection (1) or section 47.”.

Officers of the Commission

19.—(1) In section 53 of the 1952 Act (definitions), in the definition of “officer of the Commission”, for “river watcher” there shall be substituted “fishery officer”.

(2) In section 54(1)(b) of the 1952 Act (appointment of inspectors and river watchers) for “river watcher” there shall be substituted “fishery officer”.

River watchers

20.—(1) In section 55 of the 1952 Act (appointment of river watchers) for subsections (2) to (4) there shall be substituted—

“(2) A person appointed to be a river watcher shall not act in that capacity until his appointment is confirmed by the appropriate court.

(3) A person may apply to the appropriate court for confirmation of the appointment of a person as a river watcher and Part VII of the Magistrates' Courts (Northern Ireland) Order 1981 shall apply to any such application as if it were an application referred to in Article 76(1)(b) of that Order.

(4) The confirmation of the appointment of a person as a river watcher shall be effected by the resident magistrate endorsing the instrument of appointment.

(5) The appropriate court may, upon complaint made to it, revoke the appointment of a river watcher and thereupon the appointment shall be terminated.

(6) Where a person who has appointed a river watcher revokes that appointment, he shall, within 14 days of the revocation, serve written notice thereof on the clerk of petty sessions.

(7) Where—

(a) the appointment of a person as a river watcher has been confirmed under subsection (4) or revoked under subsection (5); or

(b) notice of the revocation of such an appointment has been received under subsection (6),

the clerk of petty sessions shall notify the Commission of such confirmation or revocation or, as the case may be, such notice, as soon as practicable.

(8) Any person who appoints another person to act as a river watcher shall, not later than 31st January in each year, make a return to the Commission in such form and containing such information as may be prescribed.

(9) The Commission shall maintain a register containing the names and addresses of those who are entitled to act as river watchers and descriptions of the geographical areas in which they are entitled to act.

(10) If any person—

(a) acts as a river watcher 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; or

(c) so acts after he has ceased to be a river watcher by virtue of section 55A,

he shall be guilty of an offence against this Act.

(11) In this section and sections 55A and 55B "the appropriate court", in relation to a river watcher, means a court of summary jurisdiction sitting for the petty sessions district (or any one such district where there is more than one) within which the river watcher is appointed to act and "clerk of petty sessions" shall be construed accordingly.".

(2) After section 55 of the 1952 Act there shall be inserted—

"**Duration of appointment of river watchers**

55A.—(1) Any person whose appointment as a river watcher is confirmed after the coming into operation of Article 20 of the Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 shall, unless his appointment is renewed under section 55B, cease to be a river watcher on the expiration of 5 years from the date of that confirmation.

(2) Any person whose appointment as a river watcher was confirmed before the coming into operation of that Article shall, unless his appointment is renewed under section 55B, cease to be a river watcher—

(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 coming into operation of that Article,

whichever is the later.

(3) A person who ceases by virtue of this section to be a river watcher may be re-appointed as such under section 55.

Renewal of appointment as river watcher

55B.—(1) Where a person ("the applicant") intends to renew the appointment of a river watcher, 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, on—

(a) the clerk of petty sessions; and

(b) the Commission.

(2) Where the Commission objects to the renewal of the appointment of a river watcher, it shall, within 21 days of receiving a notice under subsection (1), notify the applicant and the clerk of petty sessions of its objection and of the grounds thereof.

(3) Where, within the time specified in subsection (2), the clerk of petty sessions has received no notice of an objection under that subsection, he shall confirm the appointment and endorse the instrument of appointment to that effect.

(4) Where the Commission notifies the applicant that there is an objection to the renewal of the appointment, the applicant may apply to the appropriate court for confirmation of the renewal of the appointment and Part VII of the Magistrates' Courts (Northern Ireland) Order 1981 shall apply to any such application as if it were an application referred to in Article 76(1)(b) of that Order.

(5) The confirmation of the renewal of the appointment of a person as a river watcher pursuant to an application under subsection (4) shall be effected by the resident magistrate endorsing the instrument of appointment.

(6) Where the appointment of a person as a river watcher has been renewed under this section, the clerk of petty sessions shall notify the Commission of that renewal as soon as practicable.".

Seizure and disposal of certain articles

21.—(1) In section 58(1) of the 1952 Act (powers of authorised persons) after paragraph (f) there shall be inserted—

"(ff) seize any equipment (of whatever nature) which has been, or is being, used for facilitating the unlawful taking of any fish;".

(2) In section 64 of the 1952 Act (procedure for disposal of boat or fishing engine)—

(a) for the words from the beginning to "any boat or fishing engine, he shall" there shall be substituted

"Where a person seizes in Northern Ireland—

(i) any boat or fishing engine in exercise of powers conferred on him by this Part; or

(ii) any equipment in exercise of the power conferred by section 58(1)(ff),

he shall";

(b) in paragraphs (a) and (c) for "had been" there shall be substituted "had recently been";

(c) after paragraph (c) there shall be inserted—

"(cc) if, in the case of any equipment seized under section 58(1)(ff), the court finds that at the time of its seizure it had been, was being, or was about to be used to facilitate the unlawful taking of fish, the court shall order it to be forfeited;"; and

(d) in paragraph (d) for "or fishing engine" there shall be substituted ", fishing engine or equipment".

Powers of authorised persons

22. In section 58 of the 1952 Act (powers of authorised persons) after subsection (1) there shall be inserted—

"(1A) An officer of the Commission exercising any power under this Act may be accompanied and assisted by—

(a) an officer of the Department; or

(b) an officer of the Department of Culture, Arts and Leisure; or

(c) an officer of the Fisheries Conservancy Board for Northern Ireland.

(1B) Without prejudice to subsection (1)(a), an authorised person other than a private river watcher may for the purpose of preventing or detecting the commission of any offence 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.

(1C) Where by virtue of subsection (1B) 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.

(1D) 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.".

Warrants to enter certain premises

23. For section 59 of the 1952 Act (warrants) there shall be substituted—

"**59 Power of lay magistrate to grant warrant to enter certain premises**

(1) If a lay magistrate is satisfied by complaint on oath that the first condition is satisfied and that the second or third condition is satisfied he may issue a warrant authorising an authorised person to enter any premises, if necessary using reasonable force, for any of the purposes mentioned in section 63(1).

(2) The complaint shall include—

(a) a statement as to whether any representations have been made by the occupier of the premises to an authorised person concerning the purpose for which the warrant is sought;

(b) a summary of any such representations.

(3) The first condition is that there are reasonable grounds for an authorised person to enter the premises for that purpose.

(4) The second condition is that each of the following applies to the occupier of the premises—

(a) he has been informed of the decision to seek entry to the premises and of the reasons for that decision;

(b) he has failed to allow entry to the premises on being requested to do so by an authorised person;

(c) he has been informed of the decision to apply for the warrant.

(5) The third condition is that—

(a) the premises are unoccupied or the occupier is absent and (in either case) notice of intention to apply for the warrant has been left in a conspicuous place on the premise, or

(b) an application for admission to the premises or the giving of notice of intention to apply for the warrant would defeat the object of entering the premises.

(6) A warrant issued under this section shall not continue in force for more than 7 days from the date of its issue by the lay magistrate, which date shall be clearly visible on the warrant.

(7) A warrant issued under this section shall be executed only at a reasonable hour unless otherwise authorised by the warrant.

(8) A person authorised to enter premises by virtue of a warrant issued under this section—

(a) may take with him such other persons and such equipment as 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.

(9) In this section "authorised person" does not include a private river watcher.".

Apprehension of offenders

24.—(1) In section 61 of the 1952 Act (apprehension of offenders), in subsection (1)(b), after "name and address" there shall be inserted "to the satisfaction of the authorised person".

(2) For subsection (2) of that section there shall be substituted—

"(2) If any person fails to give his name and address to the satisfaction of an authorised person when required to do so in accordance with subsection (1)(b), he shall be guilty of an offence against this Act.".

(3) Subsection (3) of that section shall cease to have effect.

Powers of inspection, examination and detention

25. In section 63 of the 1952 Act (powers of inspection, examination and detention)—

(a) in subsection (1)—

(i) in paragraph (g) after "take the name and address" there shall be inserted "and date of birth";

(ii) after paragraph (g), there shall be added—

"(h) to demand and take the name, address and date of birth of any person who is fishing or whom he reasonably suspects to be about to fish or to have fished within the preceding half hour.";

(b) in subsection (5) after "his own name and address" there shall be inserted "and date of birth to the satisfaction of the authorised officer";

(c) after subsection (5) there shall be inserted—

"(6) Nothing in this section shall be construed as authorising an authorised officer to enter—

(a) any enclosed garden; or

(b) any dwelling-house or the curtilage thereof.".

Penalties for offences

26.—(1) In section 41 of the 1952 Act (penalty for pollution), subsection (1A) shall cease to have effect.

(2) In section 68 of the 1952 Act (penalties for offences)—

(a) in subsection (1), the words from "and, in the case of a continuing offence" to the end of that subsection shall cease to have effect;

(b) subsection (2) shall cease to have effect.

Exemption for acts done for improvement of fisheries, etc.

27. For section 69 of the 1952 Act (saving for acts done for improvement of the fisheries) there shall be substituted—

"**69 Saving for acts done for artificial propagation, scientific purposes or improvement of the fisheries**

(1) Nothing in this Act shall prohibit anything done for the purpose of the artificial propagation of fish, for some scientific purpose or for the improvement of any fishery—

(a) by the Commission;

(b) by a person to whom a permit is issued under this section (or any other person acting under his directions), under the authority of, and subject to the conditions of, that permit.

(2) The Commission may, by permit in writing and subject to any specified conditions, authorise any named person to do, at any season of the year, any specified things for any of the purposes mentioned in subsection (1) and in particular, without prejudice to the generality of the foregoing—

(a) to catch fish of any specified kind 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 specified kind or to have in his possession and use any substance of a specified kind;

(b) to buy or sell ova or fry of fish of any specified kind 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 specified.

(3) A permit under this section shall not authorise anything to be done in relation to a several fishery otherwise than with the consent of the owner of that fishery.

(4) A person to whom a permit has been given by the Commission 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 this section "specified" means specified in a permit.".

Forfeiture of boats, fishing engines, etc.

28.—(1) In section 75 of the 1952 Act (forfeiture), for the words from "any fish" to the end of that section there shall be substituted

"the court by which he is convicted may make such other order as to the forfeiture of—

(a) any fish illegally taken by him or in his possession at the time of the offence;

(b) any boat, fishing engine, equipment or any other thing by means or in respect of which the offence is committed,

as the court thinks fit.".

(2) Section 76 of the 1952 Act (recording of forfeiture) shall cease to have effect.

Enforcement of private fishing rights

29. Paragraph 2 of the Third Schedule to the 1952 Act (powers of the Commission) shall be renumbered as sub-paragraph (1) of that paragraph and—

(a) at the end of that sub-paragraph there shall be added—

"(e) 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."; and

(b) after that sub-paragraph there shall be added—

"(2) Section 168(1) of the Fisheries Act (Northern Ireland) 1966 shall not apply in any case where the fishing rights in question are rights of an owner or occupier of land or waters with whom the Commission has entered into an agreement under sub-paragraph (1)(e).".

Powers to manage the Londonderry fishery

30.—(1) In the Third Schedule to the 1952 Act in paragraph 3(1) for "during the transitional period" there shall be substituted "during the period mentioned in sub-paragraph (2)".

(2) In that Schedule for sub-paragraph (2) of paragraph 3 there shall be substituted—

"(2) The period referred to in sub-paragraph (1) is the period beginning on the establishment date and ending on such date as the Department and the Minister may jointly direct.".

Calculation of time periods

31. After section 81 of the 1952 Act, there shall be inserted—

"**Calculation of time periods**

82.—(1) In this Act, or any regulations made under this Act, where a period of time is expressed to begin on, or be reckoned from, a particular day, that day shall not be included in the period.

(2) In this Act, or any regulations made under this Act, where a period of time is expressed to end on, or to be reckoned to, a particular day, that day shall be included in the period.

(3) In this Act, or any regulations made under this Act, where the time limited for the doing of anything expires on a Saturday, Sunday or a public holiday, the time so limited shall extend to and the thing may be done on the first following day that is not a Saturday, Sunday or a public holiday.

(4) Where any document or notice is received by the Commission or the Appeals Board outside the business hours of the Commission, or as the case may be, the Appeals Board, the document or notice shall be deemed to have been received on the first following day which is not a Saturday, Sunday or public holiday.

(5) In subsections (3) and (4)—

(a) "business hours" means such hours as may be prescribed for the purposes of this section;

(b) "public holiday" means any day which is prescribed for the purposes of this section.

(6) Subsections (2), (3), (4) and (8) of section 39 of the Interpretation Act (Northern Ireland) 1954 shall not apply to this Act.".

PART IV

SUPPLEMENTAL

Penalties

32. Nothing in any provision of this Order affects the punishment for an offence committed before the coming into operation of that provision.

Further provision

33.—(1) The Department may by order make such supplementary, incidental or consequential provision as it thinks appropriate—

(a) for the general purposes, or any particular purpose, of this Order;

(b) in consequence of any provision made by or under this Order, or for giving full effect to it.

(2) The Department may by order make such transitional or transitory provisions and savings as it considers appropriate in connection with any provision made by an order under paragraph (1).

(3) An order under this Article may modify any statutory provision.

(4) In paragraph (3), "modify" includes amend or repeal.

(5) An order under this Article shall be subject to negative resolution.

(6) The powers conferred by this Article are not restricted by any other provision of this Order.

Amendments and repeals

34.—(1) The statutory provisions mentioned in Schedule 2 shall have effect with the amendments specified there.

(2) Subject to any savings or transitional provisions made by or under this Order, the statutory provisions mentioned in Schedule 3 are repealed to the extent specified there.

Christine Cook
Deputy Clerk of the Privy Council