



# Foyle Fisheries Act (Northern Ireland) 1952

## 1952 CHAPTER 5

F1

An Act to authorise the making of a certain agreement with respect to fishing rights in the tidal waters of the Lough and River Foyle and its tributaries, to provide for the management, conservation, protection and improvement of the fisheries in the Foyle Area, to establish a Foyle Fisheries Commission and to define its functions, to dissolve the board of conservators for the Londonderry district, and to provide for other matters (including the charging of fees on certain fishing licences) connected with the matters aforesaid. [25th March 1952]

F1 Ext. (hovercraft), SI 1972/971

### Modifications etc. (not altering text)

C1 Act: any reference to the Royal Ulster Constabulary shall be construed as a reference to the Police Service of Northern Ireland by virtue of [Police \(Northern Ireland\) Act 2000 \(c. 32\), s. 78](#)

## PART I

### PRELIMINARY AND GENERAL

#### 1 Short title.

This Act may be cited as the Foyle Fisheries Act (Northern Ireland), 1952.

#### 2 Interpretation.

(1) In this Act—

*Definition rep. by SI 1999/859*

“authorised person” has the meaning given to it by section fifty-three;

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[<sup>F2</sup>“the Commission” means the Foyle, Carlingford and Irish Lights Commission;]

[<sup>F3</sup> “deleterious matter” means any substance (including an explosive) the entry or discharge of which into any waters is liable to render those or any other waters poisonous or injurious to fish, spawning grounds or the food of any fish or to injure fish in their value as human food or to impair the usefulness of the bed and soil of any waters as spawning grounds or their capacity to produce the food of fish;]

“establishment date” means the date appointed by order made under section ten;

<sup>F4</sup> .....

“the Fisheries Acts” means [<sup>F5</sup> the Fisheries Act (Northern Ireland) 1966 as amended by any subsequent enactment];

*Definitions rep. by SI 1999/859*

“fishing engine” means any engine, net or instrument whatsoever capable of being used for the taking of fish;

“fishing licence” means a licence issued by the Commission under regulations made by the Commission under this Act;

“the Foyle Area” has the meaning given to it by section three;

“inquiry” means an inquiry conducted under section eighty;

“the Irish Society” means the body entitled the Society of the Governor and Assistants, London, of the New Plantation of Ulster within the Realm of Ireland;

“the Londonderry Area” means the area which was constituted by the Fishery Districts (Northern Ireland) Order, 1925, as the Londonderry District;

“the Londonderry Board” means the board of conservators for the said Londonderry District;

“the Minister” means the Minister for Agriculture<sup>F6</sup> of the Republic of Ireland;

“the Ministry” means the Ministry of Commerce<sup>F7</sup>;

[<sup>F2</sup>“the Newry Area” means so much of the Carlingford Area as is in Northern Ireland;

“NSMC” has the same meaning as in the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999;]

“prescribed” means prescribed by regulations made by the Commission under this Act;

[<sup>F8</sup>“river” includes a branch of a river and any stream, lake, estuary or watercourse;]

“salmon” includes sea trout, all fish of the salmon species, and the spawn and fry thereof;

[<sup>F9</sup>“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;]

[<sup>F3</sup> “substance” includes any liquid or gas;]

“trout” includes all fish of the brown trout kind and their spawn and fry but does not include sea trout;

*Definition rep. by 1981 NI 7*

[<sup>F10</sup>“waters” includes any river or part of the sea;]

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[<sup>F11</sup>(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.]

*Subs. (3)#(5) rep. by SLR 1976*

<b>F2</b>	SI 1999/859
<b>F3</b>	1962 c. 5 (NI)
<b>F4</b>	S. 2(1): definition of "fish" repealed (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 34(2), <b>Sch. 3</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch.
<b>F5</b>	1966 c. 17 (NI)
<b>F6</b>	Ext. (other Ministers), 1962 c. 5 (NI)
<b>F7</b>	Functions transf. to D/Agric., SRO (NI) 1963/29
<b>F8</b>	S. 2(1): definition of "river" substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), <b>4(a)(i)</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch.
<b>F9</b>	S. 2(1): definition of "several fishery" inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), <b>4(a)(iii)</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch.
<b>F10</b>	S. 2(1): definition of "waters" substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), <b>4(a)(ii)</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch.
<b>F11</b>	S. 2(2)(3)(4) substituted (1.6.2008) for s. 2(2) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), <b>4(b)</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch.

### 3 The Foyle Area.

(1) In this Act “the Foyle Area” means the area comprising the fishery district, originally created and defined as the Londonderry District by an order made on the ninth day of July, 1855, by the Commissioners of Fisheries.

[<sup>F12</sup>(1A) In this Act “the Carlingford Area” means—

- (a) the whole of the sea along the coast between the low water line of the most southerly point of Cranfield Point in the County of Down and the low water line of the most easterly point of Ballaghan Point, in the County of Louth, and within a straight line between those points, and any islands or rocks within the same, with the whole of the tideway along the said coast; and

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- (b) the whole of all lakes, rivers and their tributaries which flow into the sea within the area defined in paragraph (a) and all of the land catchment from which water drains into those lakes and rivers.]

- (2) Judicial notice shall be taken of the boundaries of the Foyle Area<sup>F12</sup> and the Carlingford Area].

**F12** SI 1999/859

*S. 4 rep. by 1966 c. 17 (NI)*

*S. 5 rep. by SI 1999/859*

## **6 Deposit of copies of orders and regulations.**

A copy of every order or regulation made under this Act shall be deposited—

- <sup>F13</sup>(a) with the chief clerk for every county court division which or part of which is situate in the Londonderry Area<sup>F14</sup> or the Newry Area];
- (b) with the clerk of every petty sessions district which or part of which is situate in the Londonderry Area<sup>F14</sup> or the Newry Area]; and
- (c) in every Royal Ulster Constabulary Barracks situate in the Londonderry Area<sup>F14</sup> or the Newry Area].

**F13** SR 1979/103

**F14** SI 1999/859

*S. 7 rep. by SLR 1976*

## **PART II**

### ACQUISITION OF FOYLE FISHERY RIGHTS

## **8 Power to acquire fishing rights, etc.**

- (1) The Ministry is hereby authorised to enter into an agreement (in this Act referred to as the vesting agreement) with the Minister and the Irish Society in the terms of the draft set out in the Second Schedule to this Act.
- (2) On the date of execution of the vesting agreement this sub-section shall operate to vest in the Ministry and the Minister an absolute and indefeasible title to the fee simple in possession of all rights of fishing in the tidal portions of the Lough and River Foyle and of its tributary, the River Faughan, freed and discharged from all estates, titles, interests, incumbrances, rights, liberties and privileges whatsoever by whomsoever held, used, exercised or enjoyed, except the rentcharges referred to in the vesting agreement but indemnified therefrom as therein provided.
- (3) Sub-section (2) of this section shall not apply to a right vested, immediately before the date of execution of the vesting agreement, in any person, other than the Irish Society, to use a fixed engine under certificate granted under section six of the Salmon Fishery (Ireland) Act, 1863 .

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- (4) On the date of execution of the vesting agreement this sub-section shall operate to extinguish all the estate, right, title and interest of the Irish Society in and to the tidal portions of the Lough and River Foyle and of its tributary, the River Faughan, and the ground, soil and foreshore of those tidal portions.
- (5) The vesting agreement shall operate, without further assurance, to convey, assign and transfer, on the date of the making thereof, to the Ministry and the Minister all the property thereby agreed to be sold, other than rights of fishing to which sub-section (2) of this section applies.
- (6) The Irish Society shall, notwithstanding any limitations on its powers, have power to enter into the vesting agreement without the consent of any person.
- (7) It shall be the duty of the Ministry and the Irish Society, and each such party is hereby empowered, to carry out the vesting agreement so far as the provisions thereof are to be performed by such party.

*Subs. (8)(9) spent*

## **9 Exemption from stamp duties.**

- (1) Section twelve of the Finance Act, 1895 , shall not operate to require the delivery to the Ministry of Finance of a copy of this Act or the payment of stamp duty under that section on any copy of this Act.
- (2) Stamp duty shall not be chargeable on the vesting agreement or on any instrument executed in pursuance thereof.
- (3) Section nine of the Finance Act (Northern Ireland), 1936 , shall not apply to the vesting agreement or to any instrument executed in pursuance thereof.

## **PART III**

### **THE FOYLE FISHERIES COMMISSION**

## **10**

### *Commencement*

### **CONSTITUTION AND FUNCTIONS**

## **11 Establishment of Foyle Fisheries Commission.**

*Subs. (1) rep. by SI 1999/859*

- (2) The functions of the Commission shall be—
  - (a) the management of the property vested in the Ministry and the Minister under section eight;
  - (b) the conservation, protection and improvement of the fisheries of the Foyle Area<sup>F15</sup> and the Carlingford Area] generally [<sup>F16</sup>and

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

[<sup>F17</sup>(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.]

(3) The provisions of the Third Schedule to this Act shall apply to the Commission.

**F15** SI 1999/859

**F16** S. 11(2)(c) and preceding word added (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), **5(1)(a)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

**F17** S. 11(2A) inserted (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), **5(1)(b)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

## 12 Exemption from rates and taxes.

- (1) The Commission shall not be liable for any tax whatsoever in respect of the property in or occupation of any lands, tenements and hereditaments or in respect of any of its income.
- (2) The Commission shall, in respect of any hereditament ...<sup>F18</sup> used or occupied by the Commission, be exempt from liability for [<sup>F19</sup> regional rate and district rate].

*Subs. (3) rep. by 1972 NI 22*

**F18** 1972 NI 16

**F19** 1977 NI 28

## 13 Regulations.

(1) The Commission may, with the approval of [<sup>F20</sup> NSMC], make such regulations as appear to the Commission to be expedient for the management, conservation, protection and improvement of the fisheries of the Foyle Area [<sup>F20</sup> and the Carlingford Area] and, without prejudice to the generality of the foregoing, may make regulations in relation to all or any of the following matters:—

- (a) the regulation of fishing and preservation of good order amongst persons fishing;  
 (b) the times and seasons for the taking of fish or any kind of fish or for any mode of taking fish or any kind of fish and the conditions subject to which fish or any kind of fish may be taken;  
 (c) prohibiting any mode of taking or destroying fish or any kind of fish;  
 (d) the times and places or the mode at or in which any fishing engine may be used;

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- (e) the description and form of nets to be used and the size of the meshes of those nets;
  - (f) <sup>F21</sup> .....
  - (g) the making of applications for, and the issue, alteration, renewal, and revocation of [<sup>F22</sup>fishing licences], whether generally or in specified cases;
  - [<sup>F23</sup>(gg) the regulation or prohibition of the sale of any species of fish caught by rod and line;]
  - (h) the protection of waters from poisoning and pollution by any deleterious or poisonous matter, or from any predatory fish or animals;
  - (i) the prohibition of any practice whatsoever tending in the opinion of the Commission to impede the lawful capture of fish or to be in any manner detrimental to the fisheries;
  - (j) defining, by reference to a map or otherwise, the mouth of any river in the Foyle Area<sup>F20</sup> or the Carlingford Area], the mouth of any tributary river at its entrance into any other river therein, the boundary between the tidal and freshwater portions of any river therein, the point or points to or from which distances are to be measured under this Act, or the space within which it is prohibited by this Act or by regulations under this section to use or practise certain methods of fishing;
  - (k) anything referred to in this Act as prescribed;
  - (l) anything relating in any manner to the management and protection of the fisheries.
- (2) Regulations made by the Commission under this section may provide for charging in respect of any [<sup>F24</sup>fishing licence][<sup>F25</sup>, tag] or other document issued or varied by the Commission such fees, payable at such time and in such manner, as may be prescribed.
- [<sup>F26</sup>(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.

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- (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.]
- (5A) <sup>F27</sup> . . . . .
- (5B) <sup>F27</sup> . . . . .
- (6) If any person contravenes (whether by act or omission) any regulations under this section, he shall be guilty of an offence against this Act.

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| <b>F20</b> | SI 1999/859  |
| <b>F21</b> | S. 13(1)(f) repealed (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 34(2), <b>Sch. 3</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch.                        |
| <b>F22</b> | Words in s. 13(1)(g) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 34(1), <b>Sch. 2 para. 1(2)</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch. |
| <b>F23</b> | S. 13(1)(gg) inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), <b>6(1)(a)</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch.                             |
| <b>F24</b> | Words in s. 13(2) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 34(1), <b>Sch. 2 para. 1(4)</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch.    |
| <b>F25</b> | Word in s. 13(2) inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), <b>6(1)(b)</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch.                         |
| <b>F26</b> | S. 13(2A)-(5) substituted (1.6.2008) for s. 13(3)-(5) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), <b>6(1)(c)</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch.        |
| <b>F27</b> | S. 13(5A)(5B) repealed (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 6(1)(d), 34(2), <b>Sch. 3</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch.             |

**[<sup>F28</sup>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.]

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| <b>F28</b> | S. 14 substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), <b>7</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch. |
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#### [<sup>F29</sup>14A Acquisition and development of waters for angling

- (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.]

**F29** S. 14A inserted (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), 8 (with art. 32); S.R. 2008/232, art. 2, Sch.

#### [<sup>F30</sup>14B Permits to fish in Commission's waters

- (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.]

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**F30** S. 14B inserted (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), 9 (with art. 32); S.R. 2008/232, **art. 2**, Sch.

*Ss. 15#18 rep. by SI 1999/859*

## DISSOLUTION OF LONDONDERRY BOARD

### 19 **Dissolution of Londonderry Board.**

- (1) The Londonderry Board is hereby dissolved.
- (2) All property, rights and liabilities of the Londonderry Board are hereby transferred to the Commission.

*S. 20 rep. by SLR 1976*

*S. 21 rep. by SI 1999/859*

*Part IV (Ss. 22 - 26) rep. by SI 1999/859*

## PART V

### TIMES OF FISHING AND ANCILLARY PROVISIONS

### 27 **Close seasons and close time.**

- (1) The annual close season in the Foyle Area<sup>F31</sup> and the Carlingford Area] shall be the period prescribed for that purpose or, if no period is prescribed, the period beginning on the first day of September and ending on the fourteenth day of April next following.
- (2) The annual close season for angling in the Foyle Area<sup>F31</sup> and the Carlingford Area] shall be the period prescribed for that purpose, or, if no period is prescribed, the period beginning on the thirteenth day of October and ending on the thirty-first day of January next following.
- (3) The weekly close time in the Foyle Area<sup>F31</sup> and the Carlingford Area] shall be the period prescribed for that purpose or, if no period is prescribed, the period beginning at 6 o'clock a.m. on Saturday and ending at 6 o'clock a.m. on the following Monday.
- (4) Different periods may be prescribed under this section in respect of different parts of the Foyle Area<sup>F31</sup> and the Carlingford Area] and, where a period is so prescribed for a particular part of that area, 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 part as references to the period so prescribed.
- <sup>F32</sup>(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.

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

**F31** SI 1999/859

**F32** S. 27(5)(6) added (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), **10(1)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

## **28 Fishing during close seasons.**

If any person—

- (a) fishes for, takes, kills or attempts to take or kill salmon or trout [<sup>F33</sup>or any other fish of a kind prescribed for the purposes of this section](except with a rod and line), during the annual close season, or
  - (b) fishes for, takes, kills or attempts to take or kill salmon or trout [<sup>F33</sup>or any other fish of a kind prescribed for the purposes of this section] with a rod and line during the annual close season for angling, or
  - (c) aids or assists in any such act or attempt,
- he shall be guilty of an offence against this Act.

**F33** Words in s. 28 inserted (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), **10(2)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

## **29 Fishing during close time.**

If any person fishes for, takes, kills or attempts to take or kill salmon or trout [<sup>F34</sup>or any other fish of a kind prescribed for the purposes of this section] (except with a rod and line) during the weekly close time or aids or assists in any such act or attempt he shall be guilty of an offence against this Act.

**F34** Words in s. 29 inserted (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), **10(2)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

## **30 Obstruction of salmon and trout.**

- (1) If any person places any obstruction, uses any contrivance or does any act for the purpose of obstructing the passage of salmon or trout during the annual close season or weekly close time he shall be guilty of an offence against this Act.
- (2) Nothing in this section shall apply to lawful fishing with rod and line.

## **31 Removal of fixed engines during close season and close time.**

- (1) The occupier of any fixed engine for taking salmon or trout shall forthwith, after the commencement of the annual close season and until the end of that season, and also during the weekly close time, cause the fixed engine to be removed or rendered incapable of taking or obstructing the passage of salmon and trout.
- (2) If any person fails to comply with this section, he shall be guilty of an offence against this Act.

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- (3) In this section “fixed engine” means any net, implement, engine or device, fixed to the soil or secured by anchors or held by hand or made stationary in any other way and used solely for the purpose of taking or facilitating the taking of fish.

### 32 Removal of nets from banks of rivers during close season.

If any person engaged in fishing for salmon or trout by means of nets of any kind or description omits or neglects to remove and carry away from any strand or from the banks of any river or from the vicinity thereof such nets during the annual close season such person shall be guilty of an offence against this Act.

### 33 Use of nets during close season or close time.

If any person does any of the following things during the [<sup>F35</sup>annual close season for salmon or trout or weekly close time for salmon or trout]—

- (a) places, affixes or attaches any net to any stake, bridge, sluice or lock gates of a canal or other such fixed erections, or
  - (b) lays, draws or fishes with any net whatsoever,
- he shall be guilty of an offence against this Act.

**F35** Words in s. 33 substituted (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), **10(3)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

### 34 Prohibition of sale, etc., of salmon and trout unlawfully captured.

- (1) If any person buys, sells, exposes for sale or has in his possession any salmon or trout unlawfully captured, such person shall be guilty of an offence against this Act and shall be liable on summary conviction thereof to a fine not exceeding [<sup>F36</sup> level 2 on the standard scale], together with a further fine not exceeding two pounds for each salmon or trout so bought, sold, exposed for sale or found in his possession.
- (2) In any proceedings under this section, the onus of proving that the salmon or trout, the subject of the proceedings, was lawfully captured shall lie on the defendant.
- (3) Where a person, being a common carrier, is charged with the offence of having in his possession any salmon or trout unlawfully captured, it shall be a good defence to the charge for him to prove—
  - (a) that he had the salmon or trout in his possession as a common carrier and not otherwise, and
  - (b) that at the time at which the salmon or trout was accepted by him for carriage, the consignor delivered to him a certificate in writing signed by the consignor to the effect that the salmon or trout was lawfully captured.
- (4) <sup>F37</sup> .....

**F36** 1984 NI 3

**F37** S. 34(4) repealed (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), 6(2), 34(2), **Sch. 3** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

*S. 35 rep. by 1966 c. 17 (NI)*

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## PART VI

### PROTECTION OF FISHERIES

*f<sup>F38</sup>Unlicensed fishing, etc.*

**F38** Ss. 35A, 35B and preceding cross heading inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 11 (with art. 32); S.R. 2008/232, art. 2, Sch.

#### 35A Prohibition of unlicensed fishing

- (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—

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- (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.

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

- (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

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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.]

## REGULATIONS AS TO NETS

### 36 Restrictions on use of nets.

If any person—

- (a) makes use of or fishes with any net formed with a false bottom (except nets for the taking of eels), or
- (b) places two or more nets one behind the other, or
- (c) uses any nets covered with canvas, hide, or other substance for the purpose of taking small fish, or
- (d) affixes or keeps up continued nets stretched across any river,

he shall be guilty of an offence against this Act.

### 37 Mesh of nets for the taking of salmon in the sea and tideways.

- (1) If, on any part of the coast or within any bay, estuary or tideway thereof, any person uses any net to which this section applies with a mesh of less size than [<sup>F39</sup>4.5 centimetres] from knot to knot, to be measured along the side of the square, or [<sup>F40</sup>18 centimetres] to be measured all round each such mesh, such measurement being taken in the clear when the net is wet, then, subject to sub-section (2) of this section, he shall be guilty of an offence against this Act.
- (2) The Commission may by regulation under section thirteen permit the use of nets to which this section applies having meshes of a less size than that specified in sub-section (1) of this section.
- (3) In this section the expression “net to which this section applies” means any net or other engine which is not formed of a rigid material and which is used for the taking of salmon.

**F39** Words in s. 37(1) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **12(1)(a)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

**F40** Words in s. 37(1) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **12(1)(b)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

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### 38 Use of salmon nets near mouths of rivers.

(1) If any person (other than the owner of a several fishery within the limits thereof) shoots, draws, or uses any net for taking salmon at the mouth of any river or within [F41805 metres] seaward or [F41805 metres] inwards or along the coast from the mouth of any river, he shall be guilty of an offence against this Act.

[F42(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.]

(3) Where regulations under this Act define the mouth of any tributary river, references in this section to the mouth of any river shall be construed as including references to the mouth of that tributary river.

**F41** Words in s. 38(1) substituted (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), **12(2)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

**F42** S. 38(2) substituted (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), **13** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

### 39 Restriction on possession of unlawful net, etc.

(1) No person shall have in his possession or control in any river or on or near the banks of any river any net or other instrument or lure or bait the use of which for the purpose of taking salmon, trout or other fish is unlawful.

(2) Any person who has in his possession or control any net or other instrument or lure or bait in contravention of this section shall be guilty of an offence against this Act.

(3) Where—

- (a) a person is found in possession of or has in his control any net in the vicinity of the boundary between the tidal and freshwater portions of any river, and
  - (b) by reason thereof such person is charged with an offence under this section,
- it shall be a good defence to such charge for such person to prove that he is the holder of a [F43 fishing licence] to use such net and that such net is intended for use in such tidal portion.

**F43** Words in s. 39(3) substituted (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), 34(1), **Sch. 2 para. 1(6)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.



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PROHIBITION OF CERTAIN METHODS OF FISHING FOR, AND OF PRACTICES LIABLE TO DESTROY, SALMON AND OTHER FISH

**[<sup>F44</sup>40 Penalty for use or possession of deleterious matter.**

- (1) If any person uses in any waters any deleterious matter for the capture, destruction or injury of fish he shall be guilty of an offence against this Act.
- (2) If any person being on the bank of or near any waters has in his possession or under his control any deleterious matter he shall be guilty of an offence against this Act.
- (3) It shall be a good defence to a charge under sub-section (2) for the defendant to prove that the deleterious matter was in his possession or under his control for an innocent purpose.
- (4) Every person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding [<sup>F45</sup> £100], or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment;
  - (b) on conviction on indictment to [<sup>F45</sup> an unlimited fine] or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.

*Subs. (5) rep. by 1996 NI 24*

F44 1962 c. 5 (NI)

F45 1984 NI 3

**[<sup>F46</sup>41 Penalty for pollution.**

- (1) <sup>F47</sup> . . . If any person causes or knowingly permits any deleterious matter to enter any river he shall be guilty of an offence against this Act and shall be liable
  - [<sup>F48</sup>(a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.]

(1A) <sup>F49</sup> .....

(2) <sup>F50</sup> .....

[<sup>F51</sup>(3) Where a person (in this section referred to as “the person convicted”) has been convicted of an offence under subsection (1), the Commission]

- (a) after consulting the owner of the fishing rights in the waters affected by the pollution; or
- (b) without such consultation if the [<sup>F51</sup> Commission], upon making reasonable enquiries, is unable to ascertain the name and address of the owner,

may—

- (i) carry out such [<sup>F52</sup>reinstatement] of the waters as is reasonable in the circumstances, and
- (ii) recover the cost thereof from the person convicted.

(4) Any question as to—

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- (a) the reasonableness of any [<sup>F53</sup>reinstatement] to be undertaken under paragraph (i) of subsection (3); or
  - (b) the costs to be recoverable under paragraph (ii) of that subsection,
- shall be referred to arbitration under and in accordance with the provisions of [<sup>F54</sup>Part I of the Arbitration Act 1996].

- (5) Nothing in this section shall affect any right of the owner of fishing rights in the waters affected by the pollution to bring civil proceedings against the person convicted; but in assessing damages in any such proceedings the court shall take into account the value of any [<sup>F55</sup>reinstatement] carried out by the [<sup>F51</sup>Commission] under subsection (3).

[<sup>F51</sup>(6) Subsection (5) applies in relation to any such right vested in the Commission.]

- F46** 1962 c. 5 (NI)
- F47** Words in s. 41(1) repealed (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308, **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F48** 1994 NI 15
- F49** S. 41(1A) repealed (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 26(1), 34(2), **Sch. 3** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F50** S. 41(2) repealed (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308, **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F51** 1991 NI 13
- F52** Words in s. 41(3)(i) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **14(a)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F53** Word in s. 41(4)(a) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **14(c)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F54** Words in s. 41(4) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **14(b)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F55** Word in s. 41(5) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **14(c)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

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

- C2** S. 41 restricted by Water (Northern Ireland) Order 1999 (S.I. 1999/662 (N.I. 6)), art. 10(a) (as substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **281(1)** (with arts. 8(8), 121(3), 307)); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

## 42 Penalty for using, etc., certain devices for taking fish.

- [<sup>F56</sup>(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) If, for the purpose of taking any fish, any person uses or has in his possession or control in any river or on or near the banks thereof, any otter, [<sup>F57</sup>tailer or snare,] spear, strokehaul, gaff or other instrument of a similar kind, he shall, subject to sub-section (3) of this section, be guilty of an offence against this Act.

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- (3) Sub-section (2) of this section shall not apply to the use, possession or control of—
- (a) a <sup>F58</sup> . . . [<sup>F57F58</sup> . . . tailer] used or to be used solely as an auxiliary to lawful angling between sunrise and one hour after sunset, or
  - (b) a <sup>F58</sup> . . . [<sup>F57F58</sup> . . . tailer] used or to be used by the holder of a fishing licence in respect of any box in a fishing weir or fishing mill dam solely for the purpose of lawfully removing fish therefrom, or
  - (c) an eel spear used for taking eels.
- [<sup>F59</sup>(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) Every person guilty of an offence under sub-section (1) or (2) of this section shall be liable on summary conviction thereof to a fine not exceeding [<sup>F60</sup> level 3 on the standard scale] or to imprisonment for any term not exceeding [<sup>F61</sup> six] months or to both such fine and such imprisonment.

[<sup>F62</sup>(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.]

**F56** S. 42(1) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **15(1)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

**F57** 1962 c. 5 (NI)

**F58** Words in s. 42(3)(a)(b) repealed (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 15(2), 34(2), **Sch. 3** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

**F59** S. 42(3A) inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **15(3)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

**F60** 1984 NI 3

**F61** 1968 c. 31 (NI)

**F62** S. 42(5) added (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **15(4)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

#### 43 Fishing for salmon or trout in a river by cross lines.

[<sup>F63</sup>(1)] If any person takes, catches or fishes for any salmon or trout by means of cross lines in any river, he shall be guilty of an offence against this Act.

[<sup>F64</sup>(2) In subsection (1) “cross lines” means fishing lines—

- (a) reaching from one position to another across water and fixed or held at each of their ends; and
- (b) having attached to them one or more baited hooks or lures, artificial or otherwise.]

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- F63** S. 43 renumbered (1.6.2008) as s. 43(1) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **16** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F64** S. 43(2) added (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **16** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

**44 Damming, etc., river or mill race for purpose of taking salmon or trout.**

If any person dams, teems or empties any river or water-course for the purpose of taking or destroying any salmon or trout, such person shall be guilty of an offence against this Act.

**45 Taking fish unlawfully killed or found dead.**

- (1) Every person who by any means removes or causes to be removed from any river—
- (a) any salmon or trout which have been killed otherwise than by lawful means, or
  - (b) any salmon or trout which have been found dead, from any cause whatever, by such person,
- shall be guilty of an offence against this Act.

- (2) This section shall not apply to—
- (a) any person acting under the authority of the Ministry, or
  - (b) any member or officer of the Commission, or
  - (c) any owner of a fishery or his agent acting under the written authority of the Commission, or
  - (d) so far as respects the removal or causing to be removed of any diseased salmon or trout, or any salmon or trout found dead from any cause, any member of the Royal Ulster Constabulary or any [<sup>F65</sup>person acting under the authority of a district council][<sup>F66</sup>or
  - (e) a private river watcher appointed to protect the waters in question.]

[<sup>F67</sup>(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.]

- F65** Words in s. 45(2)(d) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **17(a)(i)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F66** S. 45(2)(e) and preceding word added (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **17(a)(ii)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F67** S. 45(3) added (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **17(b)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

PROTECTION OF YOUNG AND BREEDING FISH

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

[<sup>F68</sup>(1)] If any person—

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- (a) wilfully takes, sells, purchases, or has in his possession the spawn, smolts or fry of salmon or trout, or
- (b) wilfully obstructs the passage of the smolts or fry of salmon or trout, or
- (c) injures or disturbs the spawn or fry of salmon or trout, or
- (d) injures or disturbs any spawning bed, bank or shallow where the spawn or fry of salmon or trout may be,

he shall be guilty of an offence against this Act.

[<sup>F69</sup>(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.]

**F68** S. 46 renumbered (1.6.2008) as s. 46(1) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), **18** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

**F69** S. 46(2)-(8) added (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), **18** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

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**47 Disturbing fish on spawning beds.**

If any person disturbs fish on the spawning beds or attempts (except by means of lawful angling with rod and line) to catch fish thereon, he shall be guilty of an offence against this Act.

**48 Penalties for taking, buying, etc., unseasonable salmon or trout.**

- (1) Every person who at any time wilfully takes, kills, destroys, buys, sells, exposes for sale or has in his custody or possession any unclean or unseasonable salmon or trout, shall be guilty of an offence against this Act and shall be liable on summary conviction thereof to a fine not exceeding<sup>[F70]</sup> level 3 on the standard scale] or to imprisonment for any term not exceeding<sup>[F71]</sup> six] months or to both such fine and such imprisonment.
- (2) Where a person is charged with taking a salmon or trout in contravention of this section it shall be a good defence to prove that such salmon or trout was taken accidentally, and was returned without injury to the water immediately upon being taken.

**F70** 1984 NI 3

**F71** 1968 c. 31 (NI)

MISCELLANEOUS OFFENCES

**49 Obstructing persons lawfully fishing.**

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

**50 Placing fishing engine with intent to prevent fish entering nets lawfully set.**

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

**51 Giving warning to persons unlawfully fishing.**

If any person gives or causes to be given or aids or assists in giving any signal or warning to any person engaged in fishing unlawfully of the approach of any member or officer of the Commission, member of the Royal Ulster Constabulary or river watcher appointed under section fifty-five, he shall be guilty of an offence against this Act.

**[F72] 51A Use of boat or vehicle as aid to commission of offence.**

- (1) If any person uses a boat or vehicle as an aid to the commission of an offence against this Act or, within the Foyle Area<sup>[F73]</sup> or the Carlingford Area], against the provisions of the Fisheries Acts or the corresponding law of the Republic of Ireland he shall be guilty of an offence against this Act.
- (2) Every person guilty of an offence under this section shall be liable—

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- (a) on summary conviction, to a fine not exceeding<sup>[F74]</sup> level 3 on the standard scale], or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment;
  - (b) on conviction on indictment, to<sup>[F74]</sup> an unlimited fine] or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.
- (3) If the offence under this section is committed in respect of a vehicle section seventy-five of this Act shall not apply in relation to the vehicle, but ...<sup>F75</sup> the court [<sup>F76</sup> by which the person is sentenced] may order the vehicle to be forfeited.]

<b>F72</b>	1962 c. 5 (NI)
<b>F73</b>	SI 1999/859
<b>F74</b>	1984 NI 3
<b>F75</b>	1968 c. 31 (NI)
<b>F76</b>	1968 c. 31 (NI)

AGENTS FOR FISHERY OWNERS

**52 Appointment**

- (1) Any fishery owner may by power of attorney under his hand appoint an agent to act for him for the purposes of this Act.
- (2) All things which by this Act are directed to be done by or with relation to any person may be lawfully done by or with relation to an agent appointed by him under this section and the agent may be dealt with in all respects as that person himself might have been dealt with under this Act.
- (3) Every agent appointed under this section shall have full power, in the name and on behalf of his principal, to take part in or act upon any inquiry, or prosecute, oppose or defend any complaint, appeal, action, writ, suit or other proceeding or to attend, vote at and take part in any meeting or do or suffer any other act for the purposes of this Act.
- (4) Every person who appoints an agent under this section shall be bound by the acts of the agent, according to the authority committed to him, as fully as if that person had so acted.
- (5) Every power of attorney under this section shall be produced, inspected or registered and copies and extracts thereof made at such times and places and in such manner as the Commission may prescribe.
- (6) A power of attorney under this section may be in the following form—

“I, A. B.  
of .....  
hereby appoint C. D.  
of .....

to be my lawful attorney to act for me in all respects as if I myself were present and acting, and I make this appointment under the Foyle Fisheries Act (Northern Ireland), 1952.

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Dated this ..... day  
of .....  
19.....

(Signed) A. B.”

- (7) Where a person is convicted of an offence against this Act, he shall thereafter be disqualified from being appointed an agent under this section for a period of seven years from the date of conviction.

## [<sup>F77</sup>PART VIA

### AQUACULTURE

**F77** Pt. VIA (ss. 52A-52X) inserted (1.6.2008 so far as inserting for certain purposes ss. 52B, 52C, 52G, 52H, 52M, 52N, 52O, 52P, 52U and 52X, otherwise prosp.) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), **3(1)** (with art. 32); S.R. 2008/232, art. 2, Sch.

### *Aquaculture licences*

PROSPECTIVE

#### **52A Aquaculture licences**

- (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;



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

## **52B Applications for aquaculture licences**

- (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.

## **52C Determination of applications for aquaculture licences**

- (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.

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- (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.

PROSPECTIVE

## **52D Form and conditions of aquaculture licences**

- (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—

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- (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.

PROSPECTIVE

## 52E Duration of aquaculture licences

- (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.

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## PROSPECTIVE

### 52F Effect of aquaculture licence

- (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.

### 52G Variation of aquaculture licences by Commission

- (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.

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- (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.

## **52H Variation of aquaculture licences: applications by holder of licence**

- (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.

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PROSPECTIVE

## 52I Revocation of aquaculture licences

- (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.

PROSPECTIVE

## 52J Surrender of aquaculture licences

- (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

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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.

PROSPECTIVE

#### **52K Vesting of aquaculture licences on death or bankruptcy of holder**

- (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.

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## PROSPECTIVE

**52L Transfer, etc. of aquaculture licences**

- (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.

**52M Register of aquaculture licences**

- (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



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- (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.

## **52N Fees in respect of applications for aquaculture licences, etc.**

- (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*

## **52O Foyle and Carlingford Aquaculture Licensing Appeals Board**

- (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.

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## **52P Appeals from decisions with respect to aquaculture licences**

- (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.

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- (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.

PROSPECTIVE

## 52Q Reasons to be given for decisions

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*

PROSPECTIVE

## 52R Recapture of escaped stock

- (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—

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- (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.

PROSPECTIVE

## 52S Offences of making false or misleading statements or false entries

- (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.

PROSPECTIVE

## 52T Inquiries and inspections

- (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;

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

## 52U Regulations

- (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.

PROSPECTIVE

## 52V Transitional provision – existing licences in the Foyle and Carlingford Areas

- (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.

PROSPECTIVE

## 52W Transitional provision – applications, etc. for certain licences in the Foyle Area and the Carlingford Area

- (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—

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- (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.

## 52X Interpretation

(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.

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- (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.]

## PART VII

### POWERS OF AUTHORISED PERSONS

#### 53 Definitions.

In this Part—

“authorised person” means (except where the context otherwise requires) a member of the Royal Ulster Constabulary, a member or officer of the Commission or a private river watcher;

“officer of the Commission” means an inspector or [<sup>F78</sup>fishery officer] appointed under section fifty-four;

“private river watcher” means a river watcher appointed under section fifty-five.

**F78** S. 53: words in definition of “officer of the Commission” substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **19(1)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

#### 54 Appointment of inspectors and river watchers.

- (1) The Commission may by instrument under its common seal appoint a person to be—
- (a) an inspector, or
  - (b) a [<sup>F79</sup>fishery officer],
- and may revoke such instrument.

- (2) An instrument under this section shall not be subject to stamp duty.

**F79** Words in s. 54(1)(b) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **19(2)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

#### 55 Appointment of river watchers by persons interested in fisheries.

- (1) Each of the following persons—
- (a) any person interested in the preservation of the fish of any river in the Londonderry Area [<sup>F80</sup> or the Newry Area],
  - (b) any persons who have united themselves into a society for the preservation of any fishery in any such river,
  - (c) the owner of any fishery in any such river,
  - (d) the owner of any salmon fishery on the sea coast,
- may, from time to time, by instrument in writing in the form set out in the Fifth Schedule to this Act, appoint any person to be a river watcher for the protection of the fisheries on such part of the sea coast or in any such river or the tributaries thereof.

[<sup>F81</sup>(2) A person appointed to be a river watcher shall not act in that capacity until his appointment is confirmed by the appropriate court.

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- (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.]

**F80** SI 1999/859

**F81** S. 55(2)-(11) substituted (1.6.2008) for s. 55(2)-(4) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), **20(1)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

## **[<sup>F82</sup>55A Duration of appointment of river watchers**

- (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



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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.

**F82** Ss. 55A, 55B inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 20(2) (with art. 32); S.R. 2008/232, art. 2, Sch.

## **55B Renewal of appointment as river watcher**

- (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.]

**F82** Ss. 55A, 55B inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 20(2) (with art. 32); S.R. 2008/232, art. 2, Sch.

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## 56 Limitations on exercise of powers.

- (1) The powers conferred by this Part on a private river watcher shall be exercised only for the protection of the fisheries specified in his instrument of appointment.
- (2) The powers conferred by this Part on a member or officer of the Commission shall be exercised only for the protection of the fisheries of the Foyle Area<sup>F83</sup> or the Carlingford Area].

F83 SI 1999/859
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## 57 Warrant for exercise of powers.

The production by an officer of the Commission or a private river watcher of his instrument of appointment under this Part shall be a sufficient warrant for his exercising the powers conferred on him by this Part, but the production of such instrument by him shall not be necessary in exercising those powers unless he has been first required to produce it.

## 58 General powers.

- (1) An authorised person may, for the purposes of the protection of the fisheries, do all or any of the following things—
  - (a) enter into and pass through or along <sup>F84</sup> or remain on] the banks or borders of any rivers frequented by salmon or trout or of the tributaries thereof,
  - (b) with boats or otherwise enter upon any such rivers,
  - (c) enter upon and examine all weirs, sluices, mill dams, mill races and watercourses communicating with such rivers,
  - (d) enter any boat which has been or is engaged or is about to engage in fishing,
  - (e) examine all standing, floating or other nets whatsoever,
  - (f) seize any unlawful fishing engine or any lawful fishing engine which is being unlawfully used,
  - <sup>F85</sup>(ff) seize any equipment (of whatever nature) which has been, or is being, used for facilitating the unlawful taking of any fish;]
  - (g) do all such other acts and things as he is authorised to do by or under this Act.
- <sup>F86</sup>(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.

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- (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.]
- (2) Nothing in this section shall be construed as authorising any person to enter any enclosed garden or any dwelling-house or the curtilage thereof except where the ordinary road or passage to any weir, dam or dyke traverses such garden or curtilage.

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|------------|--|
| <b>F84</b> | 1968 c. 31 (NI)  |
| <b>F85</b> | S. 58(1)(ff) inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), <b>21(1)</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch. |
| <b>F86</b> | S. 58(1A)-(1D) inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), <b>22</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch.  |

**[<sup>F87</sup>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—

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- (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.]

**F87** S. 59 substituted (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), **23** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

## 60 Boarding and examination of fishing vessels.

- (1) A member or officer of the Commission or member of the Royal Ulster Constabulary may, subject to any directions and regulations given or made by the Commission, do with respect to any vessel employed in fishing, all or any of the following things—
  - (a) board such vessel,
  - (b) examine the certificate of registry and the fishing engines of such vessel, and ascertain whether the provisions of this Act or the Fisheries Acts have been complied with and whether the master or other persons on board are carrying on fishing in the manner required by this Act,
  - (c) seize any unlawful fishing engine or any lawful fishing engine unlawfully used.
- (2) If the master of any fishing vessel refuses to produce the certificate of registry of such vessel when required to do so by a member or officer of the Commission or member of the Royal Ulster Constabulary, he shall be guilty of an offence against this Act.

## 61 Apprehension of offenders.

- (1) If, within the Foyle Area<sup>F88</sup> or the Carlingford Area], any person (in this section referred to as the offender) is found offending against the provisions of the Fisheries Acts or this Act or the corresponding law of the Republic of Ireland, the following provisions shall have effect:—
  - (a) an authorised person may require the offender to do either or both of the following things—
    - (i) desist from such offence;
    - (ii) give his name and address;
  - (b) if the offender, after being so required, wilfully continues such offence or fails or refuses to give his name and address <sup>F89</sup>to the satisfaction of the authorised person], the authorised person and any persons acting under his directions may apprehend the offender;
  - (c) where the offender is apprehended under this section by an authorised person who is not a member of the Royal Ulster Constabulary, that person shall, subject to sub-section (2) of this section, forthwith deliver the offender into the custody of a member of the Royal Ulster Constabulary to be dealt with according to law.
- <sup>F90</sup>(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.]

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(3) <sup>F91</sup> .....

<b>F88</b>	SI 1999/859
<b>F89</b>	Words in s. 61(1)(b) inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), <b>24(1)</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch.
<b>F90</b>	S. 61(2) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), <b>24(2)</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch.
<b>F91</b>	S. 61(3) repealed (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 24(3), 34(2), <b>Sch. 3</b> (with art. 32); S.R. 2008/232, <b>art. 2</b> , Sch.

## 62 Powers in relation to fishing engines, etc.

Where an authorised person finds—

- (a) during the annual close season or the weekly close time—
  - (i) any passage in any fishing engine or contrivance closed or obstructed, or
  - (ii) any fishing engine or other contrivance whatsoever placed or used in contravention of this Act or any instrument made thereunder, or
- (b) at any time, any obstruction in a fish pass, or
- (c) at any time, any obstruction in the waste gate appurtenant to any mill or factory when such waste gate is required by law to be open,

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

## 63 Powers of inspection, examination, and detention.

- (1) Every person (in this section referred to as an authorised officer) being a member or officer of the Commission or member of the Royal Ulster Constabulary is hereby authorised to do all or any of the following things—
  - (a) to stop and search any person conveying or suspected to be conveying fish of any kind or any instrument, poison or explosive used or adapted for killing or taking fish unlawfully and to [<sup>F92</sup> examine] any fish, instrument or substance which such person is found to be conveying and for that purpose to open and search any vehicle or package in which any fish, instrument or substance is being or is suspected to be conveyed;
  - (b) at all reasonable times to enter upon and have free access to the interior of—
    - (i) any premises in which fish is or is believed to be sold, or kept, exposed or stored for sale, or
    - (ii) any premises in which any instrument or substance intended for the destruction of fish is or is believed to be kept, or
    - (iii) the premises of any person engaged in the business of carrying goods for reward, or
    - (iv) any aerodrome, pier, quay, wharf, jetty or dock or premises thereon, or
    - (v) any ship, boat, aircraft, railway wagon, motor lorry, cart, or other vessel or vehicle used for the conveyance of goods, [<sup>F93</sup> or
    - (vi) any hotel, guest house, restaurant or other premises or place at which board and lodging or meals are provided for reward;]

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- (c) to examine all fish found in any place which he is authorised by this section to enter and for that purpose to open any package found in such place and containing or suspected to contain fish;
  - (d) to stop, enter and search, on any river or the banks thereof or any part of the sea or the shores thereof any boat used or suspected to be used for fishing or containing or suspected to contain fish unlawfully captured and to examine all fish and all fishing engines found therein and for that purpose to open any package which contains or is suspected to contain any fish or fishing engine;
  - (e) to take, remove and detain in his custody any fish (either together with or without any package in which the same may be contained) found in the course of the exercise of any of the powers conferred by this section in respect of which an offence under [<sup>F94</sup> the Fisheries Acts or] this Act is being or is suspected of being committed or which have been or are suspected of having been unlawfully captured;
  - (f) to take, remove and detain in his custody any fishing engine [<sup>F95</sup>, boat, vehicle or article] liable or believed to be liable to forfeiture under the Fisheries Acts or this Act;
  - (g) to demand and take the name and address [<sup>F96</sup>and date of birth] of the person having custody of any fish or other article which the authorised officer is authorised under this section to examine and also demand and take from such person the name and address of the owner of such fish or other article.
  - [<sup>F97</sup>(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.]
- (2) Where an authorised officer detains in his custody under the authority of this section any fish or other article he shall, as soon as may be, take such steps as may be proper to have the person guilty or suspected to be guilty of the offence committed or suspected to have been committed in relation to such fish or other article dealt with according to law.
- (3) Where an authorised officer detains in his custody under the authority of this section any fish and such fish is likely to become unfit for human food before the matter can conveniently be dealt with by any court, he shall produce such fish to a justice of the peace, and if authorised so to do by such justice of the peace shall destroy or otherwise dispose of such fish.
- (4) A justice of the peace to whom any fish is produced in pursuance of this section shall, if he is of opinion that the fish ought in the circumstances to be destroyed or otherwise disposed of, give to the person producing the fish a certificate in writing describing the fish and any marks, peculiarities or other particulars thereof pointed out to him by such person and authorising such person to destroy or otherwise dispose of the fish, which certificate shall be conclusive evidence of all such matters of fact as aforesaid stated therein.
- (5) Every person who refuses to give his own name and address [<sup>F98</sup>and date of birth to the satisfaction of the authorised officer] or the name and address of any other person (so far as known to him) when lawfully demanded under this section shall be guilty of an offence against this Act [<sup>F99</sup> and shall be liable on summary conviction to a fine not exceeding £200].
- [<sup>F100</sup>(6) Nothing in this section shall be construed as authorising an authorised officer to enter—

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- (a) any enclosed garden; or
- (b) any dwelling-house or the curtilage thereof.]

- F92** 1968 c. 34 (NI)
- F93** 1962 c. 5 (NI)
- F94** 1962 c. 5 (NI)
- F95** 1962 c. 5 (NI)
- F96** Words in s. 63(1)(g) inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **25(a)(i)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F97** S. 63(1)(h) added (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **25(a)(ii)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F98** Words in s. 63(5) inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **25(b)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F99** 1981 NI 7
- F100** S. 63(6) inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **25(c)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

#### **[<sup>F101</sup>64 Procedure for disposal of boat or fishing engine seized.**

<sup>F102</sup> 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], as soon as may be, apply to a court of summary jurisdiction sitting for the petty sessions district in which it was seized for an order for its disposal under this section and thereupon the following provisions shall have effect:—

- (a) if, in the case of a boat, the court finds that, at the time of its seizure, it [<sup>F103</sup>had recently been], was being, or was about to be, used for a purpose which under this Act is unlawful, the court shall order it to be forfeited;
- (b) if, in the case of a fishing engine, the court finds that it is one the use of which is prohibited by law, the court shall order it to be forfeited and destroyed;
- (c) if, in the case of a fishing engine, the court finds that it is a lawful fishing engine which at the time of its seizure [<sup>F104</sup>had recently been], was being or was about to be, unlawfully used in any part of the Foyle Area<sup>F105</sup> or the Carlingford Area], the court shall order it to be forfeited;

- <sup>F106</sup>(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;]

- (d) in any other case, the court shall order the boat [<sup>F107</sup>, fishing engine or equipment] to be returned to the person who appears to the court to be the owner thereof.]

- F101** 1962 c. 5 (NI)
- F102** Words in s. 64 substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **21(2)(a)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F103** Words in s. 64(a) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **21(2)(b)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F104** Words in s. 64(c) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **21(2)(b)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F105** SI 1999/859

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**F106** S. 64(cc) inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **21(2)(c)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

**F107** Words in s. 64(d) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **21(2)(d)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

## 65 Protection of authorised persons.

No authorised person shall be liable for any loss or damage occasioned by or in the course of the exercise of any of the powers conferred on him by this Part unless such loss or damage was caused by him wantonly or maliciously.

## 66 Penalty for assaulting or obstructing authorised persons.

If any person assaults, obstructs or impedes any person exercising any power conferred by this Part, he shall be guilty of an offence against this Act and shall be liable on summary conviction to a fine not exceeding<sup>F108</sup> £20] or to imprisonment for any term not exceeding two months or to both such fine and such imprisonment.

**F108** 1984 NI 3

# PART VIII

## LEGAL PROCEEDINGS

## 67 Application of penal provisions of Act.

The provisions of this Act relating to offences apply to—

- (a) acts and omissions in the Londonderry Area<sup>F109</sup> or the Newry Area] by any person, and
- (b) acts and omissions in any part of the Foyle Area<sup>F109</sup> or the Carlingford Area] by a person resident in Northern Ireland.

**F109** SI 1999/859

## 68 Penalties for offences.

- (1) Any person who commits an offence against this Act for which a penalty is not provided by any other provision of this Act shall be liable on summary conviction to a fine not exceeding<sup>F110</sup> level 2 on the standard scale<sup>F111</sup> . . . .

- (2)<sup>F112</sup> . . . . .

**F110** 1984 NI 3

**F111** Words in s. 68(1) repealed (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 26(2)(a), 34(2), **Sch. 3** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

**F112** S. 68(2) repealed (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 26(2)(b), 34(2), **Sch. 3** (with art. 32); S.R. 2008/232, **art. 2**, Sch.



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[<sup>F113</sup>69 **Saving for acts done for artificial propagation, scientific purposes or improvement of 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.]

**F113** S. 69 substituted (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), **27** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

**70 Residence of body corporate.**

For the purposes of this Part a body corporate shall be deemed to be resident in Northern Ireland if it is incorporated under the law of Northern Ireland.

**71 Offences by bodies corporate.**

Where an offence against this Act was committed by a body corporate and is proved to have been so committed with the consent or approval of, or to have been facilitated by any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, that person shall also be guilty of the offence and may be proceeded against and punished accordingly.

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## 72 Trial of offences.

Notwithstanding anything contained in any other enactment, an offence against this Act may be heard and determined by a court of summary jurisdiction upon the complaint, oral or otherwise, of the Commission or an officer of the Commission or a member of the Royal Ulster Constabulary but not of any other person, except with the consent of the Commission.

## 73 Evidence of mouths of rivers, boundaries between tidal and freshwater portions of rivers, points of mouths of rivers to or from which distances are to be measured.

- (1) Where any regulations define—
- (a) the mouth of a river, or
  - (b) the mouth of any tributary river, or
  - (c) the boundary between the tidal and freshwater portions of any river, or
  - (d) the point or points to or from which distances are to be measured under this Act,

such mouth, boundary, point or points shall for the purposes of any proceedings under this Act be as so defined.

- (2) Where any regulations define the space within which it is by or under this Act prohibited to use certain fishing engines, the space so defined shall for the purposes of any proceedings under this Act be taken to be the area within which it is prohibited to use those fishing engines.

## 74 Forfeiture of licences.

- (1)<sup>F114</sup> (a) If the person who is the holder of a [<sup>F115</sup>fishing licence] issued by the Commission is convicted of an offence to which this sub-section applies the court may direct the [<sup>F115</sup>fishing licence] to be forfeited and declare that person to be disqualified for holding a [<sup>F115</sup>fishing licence] of the Commission for such period, not exceeding one year, as the court may direct.
- (b) This sub-section applies to—
- (i) an offence under any section of this Act,
  - (ii) an offence under any section of the Fisheries Acts.

- (2) Where a person who is the holder of a [<sup>F115</sup>fishing licence] issued by the Commission is convicted by a court of justice in the Republic of Ireland of an offence under the law of the Republic of Ireland relating to fisheries, and as a result of such conviction, the [<sup>F115</sup>fishing licence] is declared to be forfeited and that person is declared to be disqualified for a particular period for holding a [<sup>F115</sup>fishing licence] of the Commission, the Commission shall direct the [<sup>F115</sup>fishing licence] to be forfeited and that person shall be disqualified for holding a [<sup>F115</sup>fishing licence] for that period.

- (3) Where a [<sup>F115</sup>fishing licence] is directed to be forfeited under this section, it shall thereupon cease to be in force.

- <sup>F116</sup>(4) Where a person is convicted by a court of an offence against this Act or against the Fisheries Acts, the clerk of the court shall as soon as may be in either case forward to each of the Commission and the [<sup>F117</sup>Department of Culture, Arts and Leisure] a duly authenticated certificate of the conviction,<sup>F118</sup> . . . ]

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- (5) A document purporting to be a copy of a conviction or order made by a court of justice in the Republic of Ireland and to be certified in accordance with the law of the Republic of Ireland shall, for the purposes of this section, be evidence of such conviction or order without further proof, unless the contrary is shown.

- F114** Where a licence is forfeited and its holder disqualified, any corresponding licence issued by the Fisheries Conservancy Board for NI is forfeited and the holder disqualified for holding a licence of the Board, 1966 c.17 (NI) s.200(3)
- F115** Words in s. 74 substituted (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), 34(1), **Sch. 2 para. 1(7)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F116** 1966 c. 17 (NI)
- F117** Words in s. 74(4) substituted (1.6.2009) by [Public Authorities \(Reform\) Act \(Northern Ireland\) 2009 \(c. 3\)](#), ss. 1(3)(b), 7(1), **Sch. 1 Pt. 2 para. 1** (with Sch. 1 Pt. 1 para. 4(3)) ; S.R. 2009/172, **art. 2(b)**
- F118** 1991 NI 13

## 75 Forfeiture of boats, fishing engines, etc., as statutory consequence of conviction.

Where a person is convicted of an offence against this Act,<sup>F119</sup> 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.]

- F119** Words in s. 75 substituted (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), **28(1)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

## 76 Non-obligation of Court to pronounce or record forfeiture.

<sup>F120</sup> .....

- F120** S. 76 repealed (1.6.2008) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), 28(2), 34(2), **Sch. 3** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

## 77 <sup>F121</sup> Disposal of fines.

- (1) Save as provided in sub-section (2) of this section, all fines imposed for offences under this Act shall, notwithstanding any other enactment, be paid to the Commission.
- (2) When a fine has been imposed for an offence under this Act and a member of the Royal Ulster Constabulary was the means of bringing to justice the person by whom the offence was committed, then—
  - (a) one-third of that fine shall be paid to the Ministry of Home Affairs<sup>F122</sup> and shall be appropriated in aid of the moneys provided by [<sup>F123</sup> the Parliament of the United Kingdom] for defraying the costs, charges and expenses of the said Constabulary; and
  - (b) the remainder of that fine shall be paid to the Commission.

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**F121** App., 1966 c. 17 (NI)

**F122** Now S of S, SI 1973/2163

**F123** SI 1973/2163

## 78 Disposal of forfeitures.

- (1) Where any thing is forfeited under this Act, the Ministry may direct that it be sold or otherwise disposed of in such manner as the Ministry thinks fit or be returned to the person who appears to the Ministry to be the owner.
- (2) The net proceeds of a sale under sub-section (1) of this section shall be paid to or disposed of for the benefit of the Commission in such manner as the Ministry shall direct.

## 79 Proof of regulations, bye-laws, etc.

- (1) In any proceedings, a document purporting to be a copy of any instrument in writing made or issued (whether before or after the passing of this Act) under the Fisheries Acts or this Act in relation to the Foyle Area<sup>F124</sup> or the Carlingford Area] or any part thereof shall, if it is certified under the common seal of the Commission to be a true copy, be *prima facie* evidence of the instrument.
- (2) The Documentary Evidence Act, 1868 , as amended by the Documentary Evidence Act, 1882 , shall apply to the Commission in like manner as the said Acts apply to certain rule-making authorities under section three<sup>F125</sup> of the Rules Publication Act (Northern Ireland), 1925 .

**F124** SI 1999/859

**F125** 1958 c. 18 (NI) see now 1979 NI 12

## 80 Inquiries.

- (1) The Commission may from time to time hold an inquiry in relation to the fisheries of the Foyle Area<sup>F126</sup> or the Carlingford Area] or any of them and the best means to be adopted for the management, conservation, protection or improvement thereof.
- (2) An inquiry may be conducted by the Commission or by a person appointed by it for the purpose.

**F126** SI 1999/859

## 81 Powers in relation to inquiry.

- (1) The Commission or person holding an inquiry may—
  - (a) summon witnesses to attend at the inquiry,
  - (b) examine on oath (which any member of the Commission or that person, as the case may be, is hereby authorised to administer) witnesses attending at the inquiry,

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- (c) require any witness to produce any documents in his power or control which the Commission or that person, as the case may be, considers necessary for the purposes of the inquiry.
- (2) A witness at an inquiry shall be entitled to the same immunities and privileges as if he were a witness before the High Court.
- (3) If any person—
- (a) on being duly summoned to attend as a witness at an inquiry makes default in attending, or
  - (b) being in attendance, refuses to take an oath which he is lawfully required to take, or to produce any document in his power or control which he is lawfully required to produce, or to answer any question which he is lawfully required to answer,
- he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding<sup>F127</sup> £25].

F127 1984 NI 3

## [<sup>F128</sup>82 Calculation of time periods

- (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.]

F128 S. 82 inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 31 (with art. 32); S.R. 2008/232, art. 2, Sch.

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## SCHEDULES

*First Schedule rep. by 1966 c. 17 (NI)*

### SECOND SCHEDULE

Section 8.

*The Schedule sets out details of the sale of the fishery, including lands, chattels, etc.*

### THIRD SCHEDULE

Sections 5 and 11.

#### THE FOYLE<sup>F129</sup>, CARLINGFORD AND IRISH LIGHTS] COMMISSION

<b>F129</b> SI 1999/859
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*Para. 1 rep. by SI 1999/859*

*Particular powers of the Commission.*

- 2 <sup>F130</sup>(1) The Commission shall have, in addition and without prejudice to any powers given to it under any other provision of this Act, power to do any of the following things—
- (a) to take legal proceedings for the enforcement of any provision of this Act or of any regulations made under this Act <sup>F131</sup> or in the Foyle Area<sup>F132</sup> or the Carlingford Area] of any law with respect to fisheries;]
  - (b) to purchase or take on lease any fishery or any establishment for the artificial propagation or rearing of salmon, trout or other freshwater fish and to operate any fishery and any such establishment;
  - (c) to apply and expend, subject to the provisions of this Act, all money paid to the Commission in such manner as the Commission thinks proper<sup>F133</sup> . . . . .;
  - (d) to execute such works and do such things as the Commission considers expedient for the purpose of its functions.
  - <sup>F134</sup>(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.]

<sup>F135</sup>(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

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or waters with whom the Commission has entered into an agreement under sub-paragraph (1)(e).]

- F130** Sch. 3 para. 2 renumbered (1.6.2008) as Sch. 3 para. 2(1) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **29** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F131** 1962 c. 5 (NI)
- F132** SI 1999/859
- F133** Words in Sch. 3 para. 2(1)(c) repealed (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), 5(2), 34(2), **Sch. 3** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F134** Sch. 3 para. 2(1)(e) added (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **29(a)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F135** Sch. 3 para. 2(2) added (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **29(b)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

*Special powers during transitional period.*

- 3 (1) Notwithstanding anything contained in this Act, the Commission may at its discretion, [<sup>F136</sup>during the period mentioned in sub-paragraph (2)], control, manage and deal with the fishing in that part of the tidal waters of the Foyle Area vested in the Ministry and the Minister which lies between an imaginary straight line drawn across the River Foyle to join the points where the southernmost boundary of the county of Londonderry meets the river on each side and the defined mouth of the river.

[<sup>F137</sup>(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.]

- F136** Words in Sch. 3 para. 3(1) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **30(1)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.
- F137** Sch. 3 para. 3(2) substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **30(2)** (with art. 32); S.R. 2008/232, **art. 2**, Sch.

*Paras. 4#14 rep. by SI 1999/859*

*Power to acquire and dispose of land.*

- 15 The Commission may purchase and take on lease such land and build, equip and maintain such premises as it considers necessary for the performance of its functions and may sell or lease any such land or premises no longer required by it for that purpose.

*Paras. 16#19 rep. by SI 1999/859*

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PROSPECTIVE

## [<sup>F138</sup>SCHEDULE 3A

### FOYLE AND CARLINGFORD AQUACULTURE LICENSING APPEALS BOARD

**F138** Schs. 3A, 3B inserted (prosp.) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), 3(2), **Sch. 1** (with art. 32)

#### *INCORPORATION*

- 1
- (1) The Appeals Board shall have the legal capacities of a body corporate.
  - (2) The Appeals Board shall have the power to acquire, hold and dispose of land or other property.
  - (3) The Appeals Board shall not acquire, hold or dispose of land without the consent of NSMC and the Finance Departments.
  - (4) Judicial notice shall be taken of the seal of the Appeals Board.

#### *MEMBERSHIP*

- 2
- (1) Subject to the provisions of this paragraph, the remuneration, allowances and expenses of the Chairperson and other members of the Appeals Board, and any other terms and conditions on which they hold office, shall be determined by NSMC with the approval of the Finance Departments.
  - (2) A member of the Appeals Board shall hold office for such period as may be determined by NSMC.
  - (3) A person may resign as a member or Chairperson of the Appeals Board by notice in writing to NSMC.
  - (4) NSMC may dismiss a person from his office as a member or as Chairperson of the Appeals Board, if—
    - (a) he fails without reasonable excuse to discharge his functions for a continuous period of 3 months;
    - (b) he is convicted of an offence on indictment and is sentenced to a term of imprisonment of not less than 3 months;
    - (c) a bankruptcy order is made against him [<sup>F139</sup>or he is the subject of a bankruptcy restrictions order, or a debt relief order has been made in respect of him or he has become the subject of a debt relief restrictions order,] or he makes a composition or arrangement with his creditors; or
    - (d) in the opinion of NSMC, he is unable or unfit to carry out his functions.
  - (5) If a member of the Appeals Board dies, resigns or is removed from office, NSMC may appoint a person to fill the vacancy, and the person so appointed shall be appointed in the same manner as the member who occasioned the vacancy.
  - (6) A person appointed under sub-paragraph (5) shall hold office for such period as may be determined by NSMC.



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(7) In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (disqualifying offices) there shall be inserted at the appropriate place in alphabetical order— Member of the Foyle and Carlingford Aquaculture Licensing Appeals Board..

**F139** Words in Sch. 3A para. 2(4)(c) substituted (7.3.2016) by The Debt Relief Act (Northern Ireland) 2010 (Consequential Amendments) Order (Northern Ireland) 2016 (S.R. 2016/108), art. 1, Sch. para. 1

#### STAFFING

- 3 (1) The Appeals Board may for the purposes of its functions, with the approval of NSMC—
- (a) employ staff; and
  - (b) engage the services of such other persons as the Appeals Board considers necessary or expedient.
- (2) The Appeals Board shall, with the approval of NSMC and the Finance Departments, determine the remuneration, grading, numbers and terms and conditions of service of staff employed by the Board.
- (3) The Appeals Board may, in the case of such of its staff as may be determined by it with the approval of NSMC and the Finance Departments, pay such pensions, allowances or gratuities, or provide and maintain such pension schemes, as may be so determined.

#### PROCEDURE

- 4 At a meeting of the Appeals Board—
- (a) the quorum shall be 5 members;
  - (b) the Chairperson when present shall preside;
  - (c) in the absence of the Chairperson the members present shall appoint one of their number to preside; and
  - (d) every question shall be determined by a majority of votes of the members present and, in the event of an equality of votes, the Chairperson or other member presiding shall have a casting vote in addition to his or her deliberative vote.
- 5 The seal of the Appeals Board shall, when applied to a document, be authenticated by the signature of the Chairperson or other member authorised by the Appeals Board to act for that purpose.

#### CODE OF CONDUCT

- 6 (1) The Appeals Board shall, as soon as practicable, draw up a code of conduct for approval by NSMC.
- (2) Without prejudice to sub-paragraph (1), the code shall cover the obligations of the Appeals Board to the public and the accountability and conduct of its members and staff (including membership of, or employment by, other organisations, acceptance of gifts or other benefits and the disclosure of other interests relevant to the work of the Appeals Board and confidentiality).

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#### *ACCOUNTS*

- 7 (1) The Appeals Board shall, in such form as may be determined by NSMC, keep proper accounts and financial records and shall prepare a statement of accounts in respect of each year containing such information and in such form as NSMC may direct.
- (2) The Appeals Board shall submit copies of the statement prepared in pursuance of sub-paragraph (1) to—
- (a) NSMC;
  - (b) the Comptroller and Auditor General for Northern Ireland and the Irish Comptroller and Auditor General who will in co-operation examine and certify the accounts.
- (3) The statement prepared under sub-paragraph (1) shall be laid before the Assembly.
- (4) Any report concerning the Appeals Board by the Comptroller and Auditor General for Northern Ireland and the Irish Comptroller and Auditor General shall be laid before the Assembly.
- (5) The Appeals Board shall permit officers of the Comptroller and Auditor General for Northern Ireland access to all records as may be required to carry out the above functions.

#### *ANNUAL REPORT*

- 8 (1) The Appeals Board shall submit a report on its activities in each year to NSMC at such date and in such form as NSMC may direct.
- (2) A copy of the report submitted under sub-paragraph (1) shall be laid before the Assembly.

#### *INTERPRETATION*

- 9 In this Schedule, “the Finance Departments” means the Northern Ireland Department of Finance and Personnel and the Irish Department of Finance.

PROSPECTIVE

### SCHEDULE 3B

#### PROCEDURE IN RELATION TO APPEALS

##### *NOTICE OF APPEAL*

- 1 (1) A notice of appeal shall—
- (a) be made in writing;
  - (b) state—
    - (i) the name and address of the appellant;
    - (ii) the name and address of the appellant's legal representative, if appropriate; and
    - (iii) an address for service;
  - (c) contain—

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- (i) a brief statement of the facts;
      - (ii) a summary of the principal grounds for contesting the decision of the Commission and the arguments supporting those grounds;
      - (iii) a statement of the relief sought by the appellant and any directions sought pursuant to paragraph 14;
      - (iv) a schedule listing all the documents annexed to the notice of appeal; and
    - (d) be accompanied by such fee (if any) as may be prescribed.
  - (2) If the appellant wishes to request confidential treatment for any part of his appeal, he shall indicate in the notice of appeal, or within 14 days of sending it to the Appeals Board, the relevant passages or documents, together with the reasons for the request, and, if so directed by the Appeals Board, supply a non-confidential version of the notice of appeal.
  - (3) There shall be annexed to the notice of appeal a copy of every document on which the appellant intends to rely.
- 2
- (1) If the Appeals Board considers that the notice of appeal does not comply with paragraph 1, or is incomplete, or is lacking in clarity, the Appeals Board may give such directions as may be necessary to ensure that the notice of appeal is put in order and dealt with justly.
  - (2) The Appeals Board may, if satisfied that the efficient conduct of the proceedings so require, defer service of the notice of appeal on the Commission until after the directions referred to in sub-paragraph (1) have been complied with.
- 3
- (1) The Appeals Board may strike out a notice of appeal at any stage in the proceedings if—
    - (a) having considered the grounds of appeal set out in the notice of appeal—
      - (i) it considers that the notice of appeal discloses no valid ground of appeal; or
      - (ii) it is of the opinion that the appeal is vexatious, frivolous or without substance or foundation; or
    - (b) the notice of appeal does not comply with paragraph 1 in a substantial respect, and the appellant has not remedied the defect pursuant to a direction under paragraph 2(1); or
    - (c) the appellant fails to comply with a direction of the Appeals Board.
  - (2) Where the Appeals Board strikes out a notice of appeal it may make any consequential order it considers appropriate.
- 4
- (1) The appellant may amend the notice of appeal only with the permission of the Appeals Board.
  - (2) Where the Appeals Board grants permission under sub-paragraph (1) it may do so on such terms as it thinks fit, and shall give such further or consequential directions as may be necessary.
  - (3) The Appeals Board shall not grant permission to amend the notice of appeal in order to add a new ground for contesting the decision unless—
    - (a) such ground is based on matters which have come to light since the notice of appeal was sent to the Appeals Board; or
    - (b) it was not practicable to include that ground in the notice of appeal; or

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- (c) the circumstances are, in the opinion of the Appeals Board, exceptional.

*WITHDRAWAL OF APPEAL*

- 5 (1) The appellant may withdraw his appeal only with the permission of the Appeals Board.
- (2) Where the Appeals Board gives permission under sub-paragraph (1) it may—
- (a) do so on such terms as it thinks fit;
  - (b) notify such parties to the appeal as the Board thinks fit in such manner as it thinks fit; and
  - (c) publish notice of the withdrawal in such manner as the Board thinks fit.

*RESPONSE TO NOTICE OF APPEAL*

- 6 On receiving a notice of appeal the Appeals Board shall—
- (a) send an acknowledgement of its receipt to the appellant; and
  - (b) subject to paragraphs 2(2) and 3, send a copy of the notice of appeal to the Commission.
- 7 (1) The Commission shall send a response to the Appeals Board in the form required by this paragraph so that the response is received within six weeks, or such further time as the Appeals Board may allow, of the date on which the Commission received a copy of the notice of appeal sent in accordance with paragraph 6(b).
- (2) The response shall contain—
- (a) a copy of the decision which is the subject of the appeal;
  - (b) a succinct presentation of the arguments upon which the Commission will rely in opposing the notice of appeal;
  - (c) the relief sought by the Commission and any directions sought pursuant to paragraph 14; and
  - (d) a copy of the documents on which the Commission intends to rely and a schedule listing those documents.
- (3) On receiving the response, the Appeals Board shall send a copy of the response to the appellant.
- 8 If the Commission wishes to request confidential treatment for any part of its response, it shall indicate in the response, or within 14 days of sending it to the Appeals Board, the relevant passages or documents, together with the reasons for the request, and, if so directed by the Appeals Board, supply a non-confidential version of the response.
- 9 (1) If the Appeals Board considers that the response does not comply with paragraph 7, or is incomplete, or is lacking in clarity, the Appeals Board may give such directions as may be necessary to ensure that the response is put in order and dealt with justly.
- (2) The Appeals Board may, if satisfied that the efficient conduct of the proceedings so require, defer service of the response on the appellant until after the directions referred to in sub-paragraph (1) have been complied with.
- 10 (1) The Appeals Board may, after hearing the parties, strike out the response at any stage in the proceedings if—
- (a) it considers that the response discloses no valid ground of defence;

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- (b) the response does not comply with paragraph 7 in a substantial respect, and the Commission has not remedied the defect pursuant to a direction under paragraph 9(1); or
  - (c) the Commission fails to comply with a direction of the Appeals Board.
- (2) When the Appeals Board strikes out a response it may make any consequential order it considers appropriate.
- 11 (1) The Commission may amend the response only with the permission of the Appeals Board.
- (2) Where the Appeals Board grants permission under sub-paragraph (1) it may do so on such terms as it thinks fit, and shall give such further or consequential directions as may be necessary.
- (3) The Appeals Board shall not grant permission to amend the response in order to add a new ground for contesting the decision unless—
  - (a) such ground is based on matters which have come to light since the response was sent to the Appeals Board; or
  - (b) it was not practicable to include that ground in the response; or
  - (c) the circumstances are exceptional.

#### *CONSOLIDATION, LOCATION AND CONDUCT OF PROCEEDINGS*

- 12 (1) Where two or more notices of appeal have been received in respect of the same decision or which involve the same or similar issues, the Appeals Board may, on the request of a party or of its own motion, direct that the appeals or any particular issue or matter raised in the notices of appeal be consolidated or heard together.
- (2) Before giving a direction under this paragraph, the Appeals Board shall invite the parties to the relevant proceedings to submit their observations on the consolidation of the proceedings.
- 13 The Appeals Board may hold any meeting or hearing or give any directions in such place as it thinks fit having regard to the just, expeditious and economical conduct of the proceedings.

#### *DIRECTIONS AND WITNESSES*

- 14 (1) The Appeals Board may at any time, on the request of a party or of its own motion, give such directions as are provided for in sub-paragraph (2) or such other directions as it thinks fit to secure the just, expeditious and economical conduct of the proceedings.
- (2) The Appeals Board may give directions—
  - (a) as to the manner in which the proceedings are to be conducted and, in particular, as to whether any part of the proceedings should take the form of an oral hearing;
  - (b) as to any time limits to be observed, including any time limits in respect of the conduct of any oral hearing;
  - (c) for any party to file a reply to the response or other pleadings;
  - (d) requiring persons to attend and give evidence or to produce documents;
  - (e) as to the evidence which may be required or admitted in proceedings before the Appeals Board and the extent to which it shall be oral or written,

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- including, where a witness statement has been submitted, whether the witness is to be called to give oral evidence;
- (f) as to the submission in advance of a hearing of any witness statements or expert reports;
  - (g) as to the examination or cross-examination of witnesses;
  - (h) as to the fixing of time limits with respect to any aspect of the proceedings;
  - (i) as to the abridgement or extension of any time limits, whether or not expired;
  - (j) for the disclosure between, or the production by, the parties of documents or classes of documents;
  - (k) in relation to the inspection of any area;
  - (l) for the appointment and instruction of experts, whether by the Board or by the parties and the manner in which expert evidence is to be given; and
  - (m) for the award of costs or expenses, including any allowances payable to persons in connection with their attendance before the Appeals Board;
  - (n) in relation to such other matters as it thinks fit.
- (3) The Appeals Board may, in particular, of its own motion—
- (a) put questions to any party to the appeal;
  - (b) invite any party to the appeal to make written or oral submissions on certain aspects of the proceedings;
  - (c) ask any party to the appeal for information or particulars;
  - (d) ask any party to the appeal to produce any documents or papers relating to the appeal.
- (4) A request by a party for directions shall be made, as far as practicable, in the notice of appeal or response.
- (5) A request for directions made otherwise than in the notice of appeal or response shall be made in writing and shall be—
- (a) served by the Appeals Board on any party to the appeal who might be affected by such directions; and
  - (b) determined by the Appeals Board taking into account the observations of the parties.
- 15 (1) Subject to sub-paragraphs (2) and (3), the Appeals Board may at any time, either of its own motion or on the request of any party, issue a summons, requiring any person to do one or both of the following—
- (a) to attend as a witness before the Appeals Board at the time and place set out in the summons; and
  - (b) to answer any questions or produce any documents or other material in his possession or under his control which relate to any matter in question in the proceedings.
- (2) A request by a party for the issue of a summons under this paragraph shall specify—
- (a) upon which facts the witness is to be questioned and the reasons for the examination;
  - (b) the documents required to be produced.
- (3) No person may be required to attend in compliance with a summons under this paragraph unless—
- (a) he has been given at least 7 days notice of the hearing; and

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- (b) he is paid such sum as the Appeals Board may determine.
- (4) The Appeals Board may make the summoning of a witness on the request of a party conditional upon the deposit with the Appeals Board of a sum determined by the Appeals Board as sufficient to cover—
- (a) the costs of the summons;
  - (b) the sum referred to in sub-paragraph (3)(b).
- (5) The Appeals Board shall advance the funds necessary in connection with the examination of any witnesses summoned by the Appeals Board on its own motion.
- (6) If any person—
- (a) on being duly summoned to attend as a witness before the Appeals Board does not attend; or
  - (b) being in attendance, refuses to produce any document or other material in his possession or under his control which he is lawfully required to produce, or to answer any question which he is lawfully required to answer,
- he shall be guilty of an offence under this paragraph and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.
- 16 If any party fails to comply with any direction given in accordance with this Schedule, the Appeals Board may, if it considers that the justice of the case so requires, order that such party be debarred from taking any further part in the proceedings without the permission of the Appeals Board.
- ORAL HEARING TO BE IN PUBLIC*
- 17 Any oral hearing shall be in public except for any part of the hearing where the Appeals Board is satisfied that it will be considering information which is, in its opinion, confidential information.
- DECISION OF THE BOARD*
- 18 (1) The decision of the Appeals Board shall be delivered in such manner as may be determined by the Board.
- (2) The Appeals Board shall send a copy of the decision to each party to the appeal.]

*Schedule 4 rep. by SI 1999/859*

## FIFTH SCHEDULE

Section 55.

### FORM OF APPOINTMENT OF RIVER WATCHER UNDER SECTION 55

I, A. B. (or we, A. B. and C. D., as the case may be) of (name the place or places of residence),  
do hereby appoint E. F., of

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(name the place of his residence),

a river watcher to protect the fishery of

(name the fishery, river, or sea coast, as the case may be),

pursuant to the Foyle Fisheries Act (Northern Ireland), 1952; and the said E. F., of

(name the place of his residence),

is hereby authorised to do all lawful acts as such river watcher according to the provisions of the said Act.

(Signed)

To all whom it may concern.

I, the undersigned resident magistrate, do hereby approve of the above appointment.



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