

THE FOYLE AND CARLINGFORD FISHERIES (NORTHERN IRELAND) ORDER 2007

S.I. 2007 NO. 915 (N.I. 9)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (“the Order”) was made on 21st March 2007.
2. This Explanatory Memorandum has been prepared by the Department of Agriculture and Rural Development (“the Department”) in order to assist the reader in understanding the Order. It does not form part of the Order.

BACKGROUND AND POLICY OBJECTIVES

3. The purpose of this Order is to extend the functions of the Foyle, Carlingford and Irish Lights Commission (FCILC) in line with the North / South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 in relation to the licensing and development of aquaculture and the development of inland fisheries in the Foyle and Carlingford Areas. It also updates various provisions of the Foyle Fisheries Act (NI) 1952 relating to the conservation and protection of inland fisheries in line with other fisheries legislation and makes minor amendments to the Fisheries Act (NI) 1966 and other legislation relating to fisheries.

CONSULTATION

4. The Department conducted an 8 week public consultation between the 17th November 2006 and 15th January 2007 to seek the views of interested parties. The consultation documentation was placed on the Department’s website and advertised in the local press. Three hundred and eleven notification letters were also sent to known interested parties and to those existing fish culture licence holders within those parts of the Foyle and Carlingford Areas which lie within Northern Ireland. The Department felt it appropriate to hold an 8 week consultation period, rather than the standard 12 weeks, due to the necessity to synchronise with the passage of parallel legislation through the Irish Parliament, and also due to the fact that a full consultation on the policy took place in 2000. During the public consultation a substantial number of responses were submitted to the Department requesting that provision be made in the legislation for the regulation of wild shellfisheries in the Foyle and Carlingford Areas. The Order was therefore subsequently amended to extend the Loughs Agency’s existing fisheries regulatory powers accordingly.

EQUALITY IMPACT ASSESSMENT

5. The Order raises no equality issues.

MAIN ELEMENTS OF THE ORDER

6. The main purpose of the Order is to provide for the development and licensing of aquaculture and for the exercise of a development function in relation to inland fisheries by the FCILC in line with the North / South Co-operation (Implementation Bodies) (NI) Order 1999 and to update certain provisions of the Foyle Fisheries Act (NI) 1952 in relation to inland fisheries in the Foyle and Carlingford Areas.
7. The Order includes the following provisions:
 - Provision to prohibit the carrying out of aquaculture without a licence or in contravention of the terms and conditions of a licence;
 - Provision to empower the FCILC to grant aquaculture licences under such conditions as it determines;
 - Provision to enable the FCILC to regulate aquaculture licence application procedures and fees payable in respect of licences;
 - Provision to vest ownership of aquaculture stocks in the licensee;
 - Provision to allow for the recapture of escaped stock from licenced sites;
 - Provision for the variation, revocation, transfer and surrender of licences;
 - Provision for the establishment of a register of aquaculture licences;
 - Provision for penalties for offences relating to aquaculture;
 - Provision for existing fish culture licences, shellfish fishery licences and marine fish fishery licences to continue to be valid;
 - Provision to establish an Appeals Board and provide for appropriate appeals procedures in relation to aquaculture licences;
 - Provision to enable the FCILC to acquire fishing rights in the Foyle and Carlingford Areas;
 - Provisions relating to the form and conditions of fishing licences;
 - Provision for the reinstatement of polluted waters and recovery of associated costs;
 - Provision to improve the conservation and protection of fish stocks;
 - Provision to strengthen enforcement powers and increase penalties for fisheries offences;
 - Provision to increase control over the appointment and activities of Private River Watchers;
 - Provision to allow the FCILC to provide services and to charge fees;
 - Provision to allow for the regulation and prohibition of the sale of rod caught fish in Northern Ireland.

- Provision to allow for the FCILC to regulate for the conservation and protection of oysters, mussels, sea bass and tope within the Foyle and Carlingford Areas.

COMMENTARY ON ARTICLES

8. Comments are not given where the wording is self-explanatory.

Part I

TITLE AND COMMENCEMENT

9. *Article 1* provides for Articles 1 and 2 of this Order to come into operation 7 days following the day on which the Order was made. It also provides for other provisions of the Order to come into operation on such day or days as the Department may by Order appoint and for any provision to be limited to a particular geographical area.

Part II

AQUACULTURE

10. *Article 3* inserts a new Part VIA (New Sections 52A to 52X) into the Foyle Fisheries Act (NI) 1952 (Ch. 5) providing for the introduction of a new aquaculture licensing system in the Foyle and Carlingford Areas under the control of the Foyle, Carlingford and Irish Lights Commission (FCILC).
11. It confers powers on the FCILC to grant aquaculture licences and creates the offence of engaging in aquaculture without a licence and failing to comply with the terms and conditions of a licence. It also sets out the procedures relating to the granting, variation, revocation, transfer and surrender of licences.
12. It also provides for the establishment of a Foyle and Carlingford Aquaculture Licensing Appeals Board and provides for persons aggrieved by a decision of the FCILC to appeal against decisions on aquaculture licences. It also deals with the procedures relating to appeals and the Appeals Board.
13. It also provides officers of the FCILC with the power to undertake inspections of a licensed area and sets out the actions which an authorised person may take in carrying out such inspections.
14. It also provides for existing fish culture licences, shellfish fishery licences and marine fish fishery licences, so far as they relate to the doing of any act in the Foyle and Carlingford Areas, to continue to have effect as if granted by the FCILC under the new section 52A.

PART III

AMENDMENTS TO THE FOYLE FISHERIES ACT (NORTHERN IRELAND) 1952

15. *Article 4* amends the definition of river, waters and fish and inserts a definition of a several fishery in section 2 of the Foyle Fisheries Act (Northern Ireland) 1952 (the 1952 Act).
16. *Article 5* clarifies the functions of the FCILC in section 11 of the 1952 Act to take account of the functions conferred on the FCILC by the North / South Co-operation (Implementation Bodies) (NI) Order 1999.

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17. *Article 6* amends section 13 of the 1952 Act by enabling the FCILC to make regulations in relation to the charging of concessionary fees, the exemption from payment of fees, documentation to accompany applications, the form and conditions attaching to fishing licences, the transfer of fishing licences and the attaching of tags issued by the FCILC to fish. This section also makes provision for the issue of fish tags by the FCILC and updates the procedures for making regulations under section 13 of the 1952 Act. Provision is also made for the Agency to introduce regulations regulating or prohibiting the sale of rod caught fish. It also extends the FCILC's existing fisheries regulatory powers to cover the regulation of oysters, mussels, sea bass and tope within the Foyle and Carlingford Areas.
18. *Article 7* amends section 14 of the 1952 Act by enabling the FCILC to restrict the number of commercial fishing licences issued within a particular area of the Foyle or Carlingford Areas.
19. *Article 8* inserts a new section 14A in the 1952 Act which confers power on the FCILC to acquire by agreement fishing rights in any waters, including any estate in land where such rights are exercisable or estates in land which are required for the safeguarding of such rights for the purpose of developing or improving facilities for angling.
20. *Article 9* inserts a new section 14B in the 1952 Act to enable the FCILC to issue and charge for permits to fish in waters in which it owns or manages the fishing rights. It also makes it an offence to fish without a permit or in contravention of the conditions of a permit or to use a permit for fraudulent purposes.
21. *Article 10* amends section 27 of the 1952 Act to extend the provisions in relation to close seasons to cover other types of fish other than salmon and trout as may be prescribed and provides for the FCILC to prescribe different close seasons for different kinds of fish.
22. *Article 11* inserts a new section 35A in the 1952 Act to prohibit unlicensed fishing and make it an offence to fish without a licence or in contravention of the terms and conditions of a licence or to be in possession of an unauthorised fishing engine. This article also inserts a new section 35B in the 1952 Act to provide certain exceptions in relation to offences under the new section 35A and also provides certain defences for persons charged with an offence under new section 35A.
23. *Article 12* amends section 37 of the 1952 Act by updating the current references to imperial measurements to metric measurements.
24. *Article 13* amends section 38(2) of the 1952 Act by making it an offence to fail to leave open a channel of sufficient width and depth to facilitate the passage of salmon.
25. *Article 14* amends section 41 of the 1952 Act by extending the existing powers of the FCILC to carry out restocking of waters following a pollution incident to enable it to carry out works necessary for the reinstatement of waters to restore the fish population. It also provides the FCILC with the power to recover the costs of reinstating such waters from the person convicted of a pollution offence.
26. *Article 15* amends section 42 of the 1952 Act by tightening the controls on unlawful fishing by extending the existing prohibitions on the use of certain devices to facilitate the unlawful taking of fish to include electrical or acoustical apparatus. It also prohibits the use of a gaff.

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27. *Article 16* amends section 43 of the 1952 Act by defining cross lines as referred to in section 43(2).
28. *Article 17* amends section 45 of the 1952 Act by adding private river watchers to the list of persons with power to remove any unlawfully killed or diseased salmon or trout from any river. The amendment also requires those who exercise such powers to notify the FCILC of any such removal.
29. *Article 18* amends section 46 of the 1952 Act by providing certain defences to charges under subsection 46(1) (a) relating to the taking of spawn, smolts or fry of salmon or trout. It also provides for it to be an offence to remove material from the bed of the freshwater portion of a river without the consent of the FCILC.
30. *Article 19* amends section 53 of the 1952 Act by replacing references to a “river watcher” with “fishery officer”.
31. *Article 20* amends section 55 of the 1952 Act by updating the procedures for the appointment of river watchers.
32. *Article 21* amends section 58(1) of the 1952 Act to permit an authorised person to seize any equipment which has been or is being used to facilitate the unlawful taking of fish. It also amends section 64 of the 1952 Act to make it compatible with the amendment to section 58(1).
33. *Article 22* amends section 58 of the 1952 Act to permit an officer of the FCILC to be accompanied by an officer of the Department of Agriculture and Rural Development, the Department of Culture, Arts and Leisure or the Fisheries Conservancy Board. It also extends the powers of authorised persons by permitting such persons to enter and transverse any land for the purpose of preventing or detecting offences. It also requires authorised persons to secure any such land against trespass when exercising such powers.
34. *Article 23* amends section 59 of the 1952 Act by updating the existing provisions in relation to the issue of warrants.
35. *Article 24* amends section 61 of the 1952 Act to permit an authorised officer to apprehend someone engaged in unlawful activity under the 1952 Act who fails to give his or her name to the satisfaction of the authorised officer. It also updates provisions relating to the apprehension of offenders.
36. *Article 25* amends section 63 of the 1952 Act to permit an authorised officer to demand and take the name, address and date of birth of persons fishing. It also provides that these powers do not permit entry by authorised officers into enclosed gardens and dwelling houses or the curtilage thereof.
37. *Article 26* revises the penalty provisions in section 68 of the 1952 Act.
38. *Article 27* amends section 69 of the 1952 Act to provide that for the FCILC to issue permits in writing authorising any act for the purposes of artificial propagation, scientific purposes or the improvement of the fisheries which might otherwise be prohibited under the 1952 Act. This amendment also sets out the procedures to be followed in relation to the issue of such permits.
39. *Article 28* amends section 75 of the 1952 Act by amending the existing statutory forfeiture provisions to allow the courts to adjudicate on forfeiture.

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40. *Article 29* amends Paragraph 2 of the Third Schedule to the 1952 Act by conferring powers on the FCILC to enable it to enter into an agreement to enforce the fishing rights of any owner or occupier of land on payment of the sum specified.
41. *Article 30* amends the transitional period referred to in Paragraph 3 of the Third Schedule to the 1952 Act.
42. *Article 31* inserts a new section 82 into the 1952 Act which clarifies the meaning of any time period referred to under that Act or any regulations made under it.
43. *Part IV* of the Order makes supplementary provision.
44. *Schedule 2* makes minor amendments to the Foyle Fisheries Act (NI) 1952 and other Northern Ireland legislation including an amendment to section 26 of the Fisheries Act (NI) 1966 to enable the Fisheries Conservancy Board to regulate or prohibit the sale of rod caught fish.

COMMENCEMENT

45. Articles 1 and 2 will come into operation on the expiration of 7 days from the day on which the Order is made. Other provisions of the Order will come into operation on such day or days as appointed by the Department by order.

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