
DRAFT STATUTORY INSTRUMENTS

2007 No.

The Foyle and Carlingford Fisheries
(Northern Ireland) Order 2007

PART III

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

Unlicensed fishing, etc.

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

“Unlicensed fishing, etc.

Prohibition of unlicensed fishing

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

- (a) under the authority of a fishing licence; and
- (b) in accordance with the terms and conditions of that licence and of any regulations relating to it.

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

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

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

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

(6) A person who—

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

- (b) uses or presents, as being a fishing licence of which he is the holder, a fishing licence issued in the name of any other person; or
- (c) uses or presents a fishing licence that has been to his knowledge either in any manner altered (otherwise than by a person duly authorised by the Commission) or fraudulently counterfeited;

shall be guilty of an offence against this Act.

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

- (a) where the contravention consists only of the use or possession of a rod and line or hand line, to describe the offence as “unlicensed angling contrary to section 35A of the Foyle Fisheries Act (Northern Ireland) 1952”; and
- (b) in any other case, to describe the offence as “fishing by unlicensed means contrary to section 35A of the Foyle Fisheries Act (Northern Ireland) 1952”.

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

- (a) a licence issued by the Commission under regulations made by the Commission under this Act; or
- (b) a licence corresponding to a licence mentioned in paragraph (a) and issued by a body approved for the purposes of this paragraph by NSMC.

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

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

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

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

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

- (a) who fishes lawfully by rod and line in a production pond at a licensed area (within the meaning of section 52X(1)); or
- (b) who has for that purpose in his possession a rod or line at or near a licensed area.

(3) In subsection (2) “production pond” means a pond—

- (a) used for the artificial propagation and culture of fish; and
- (b) designated by the Commission for the purposes of this subsection as a production pond in an aquaculture licence.

(4) Where a person is charged under section 35A with an offence which consists of taking fish which he is not licensed to take, it shall be a good defence for him to prove that—

- (a) at the time when that fish was taken, he was engaged in lawfully fishing for another kind of fish; and
- (b) that the first-mentioned fish was taken unintentionally and, immediately upon being taken, was returned to the water without any avoidable injury.

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

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

- (b) a failure to produce a fishing licence for a fishing engine in any of the circumstances referred to in subsection (4) of that section,

it shall be a good defence for him to prove that he had the fishing engine in his possession as manufacturer or seller of the fishing engine and not for the purpose of using it.

(6) A person shall not be charged with an offence under section 35A consisting of failure to produce a fishing licence for a fishing engine in any of the circumstances referred to in subsection (4) of that section if upon demand being made by an authorised person for the production of a fishing licence under that subsection, the first mentioned person—

- (a) then and there gives to the authorised person his name and address and any evidence of his identity then available and also gives a reasonable explanation of his failure to produce the fishing licence at that time; and
- (b) within 5 days thereafter, and in accordance with any reasonable requirement then communicated to him by the authorised person, produces to the authorised person or to any other person designated by him—
 - (i) a fishing licence authorising him to use the fishing engine at that place and time; and
 - (ii) evidence of his identity.”.