



Northern Ireland  
Assembly

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**COMMITTEE FOR  
CULTURE, ARTS AND LEISURE**

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**OFFICIAL REPORT  
(Hansard)**

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**Waterways Ireland: Pre-consultation  
briefing on draft Waterways Ireland Bye-  
laws (Northern Ireland) Order**

3 June 2010

**NORTHERN IRELAND ASSEMBLY**

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**Waterways Ireland: Pre-consultation briefing on draft Waterways  
Ireland Bye-laws (Northern Ireland) Order**

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3 June 2010

**Members present for all or part of the proceedings:**

Mr P J Bradley (Deputy Chairperson)

Thomas Burns

Lord Browne

Mr Trevor Clarke

Mr Billy Leonard

Mr Raymond McCartney

Mr David McClarty

Mr Ken Robinson

**Witnesses:**

Mr Brian D'Arcy ) Waterways Ireland

Ms Caroline McCarroll )

**The Deputy Chairperson (Mr P J Bradley):**

Good morning. You are very welcome. My name is P J Bradley, and I am the Deputy Chairperson of the Committee. I am in the Chair today in the absence of our Chairman, Mr McElduff, whose father passed away yesterday. Please make a brief presentation, and after you have done that, we will ask questions.

**Mr Brian D'Arcy (Waterways Ireland):**

Thank you very much. I pass on Waterways Ireland's condolences to the Chairman on his very recent bereavement. I am very sorry to hear about that.

Good morning, ladies and gentlemen. It is very nice to have the opportunity to speak to the Committee for Culture, Arts and Leisure once again. My name is Brian D’Arcy, and I am the director of operations with Waterways Ireland. With me here today is Caroline McCarroll, who, I can definitely tell you today, is the head of administration in our operations division.

We are here today to give you an update on the position with the draft by-laws since we spoke to the Committee previously in Enniskillen on 28 May 2009. On that occasion, we gave you a pre-consultation briefing on Waterways Ireland’s proposals to introduce new by-laws that will cover its entire navigational network. We are virtually at the start of the public consultation process, and I am aware that Ms McCarroll has forwarded copies of the latest version of the draft Waterways Ireland Bye-laws (Northern Ireland) Order to members. I am aware that there have been changes to the Committee’s membership since that briefing, so I am happy to go over anything that has been discussed previously. I intend to deal with the detail of the Order in so far as I can, and Ms McCarroll will deal with the legislative aspects of what had to be done to get us this far and where we go from here.

First, I will give members an update on the progress that we have made since we last met. Back in May 2009, Waterways Ireland briefed the Committee for Culture, Arts and Leisure on its proposals to introduce a single set of navigational by-laws for Northern Ireland and Ireland. That included the introduction of a by-law that would allow for the imposition of fixed payment notices for certain contraventions of the by-laws. Legal advice that we received from the departmental solicitor in the Department of Culture, Arts and Leisure (DCAL) following the submission of the briefing papers to the Committee advised that important legislative differences between the two jurisdictions would not allow for the introduction of a single set of navigational by-laws. We were also advised that Waterways Ireland would have to draft a set of by-laws for Northern Ireland that is separate to those for Ireland.

In addition, the departmental solicitor advised that no enabling legislative powers were in place to allow Waterways Ireland to introduce a by-law that could impose a fixed payment notice for certain contraventions of the by-laws. Primary legislation would have to be enacted, and it would need to be sponsored by a Department while incorporating the other legislative requirements of all Departments. We were told that that process could take a number of years.

In June 2009, Waterways Ireland set about drafting a separate set of navigational by-laws for Northern Ireland. That was ready to issue for public consultation in December 2009. Some of the by-laws that were outlined to the Committee previously were edited further. In December 2009, the former Department of Community, Rural and Gaeltacht Affairs (DCRGA), now called the Department of Community, Equality and Gaeltacht Affairs (DCEGA), which is our sponsor Department in Ireland, questioned the enactment of separate navigational by-laws in each jurisdiction, citing precedents in other cross-border bodies. Thereafter, that Department sought a separate legal opinion from the Office of the Attorney General in the South, and it was unable to get back to Waterways Ireland until February 2010. The Attorney General approved having separate by-laws for Northern Ireland and Ireland so that both sets could have legal effect independently in each jurisdiction.

In March 2010, Waterways Ireland updated DCAL on the by-law revision and enactment process. It confirmed its then intention to proceed with the planned public consultation programme. At that time, Waterways Ireland was asked not to proceed with the public consultation programme until it had provided a second oral briefing to the CAL Committee on the by-law revision programme. The date that was agreed was 3 June 2010, which is today.

There are a total of 37 articles or by-laws in the final draft Order, which is going to public consultation. Over the course of the consultation, I am sure that the by-law proposals will attract much comment, initiate much debate and elicit many and varied opinions on how we should legislate for and regulate our waterways. That is really what this iterative process is all about. As I said, the main reason for introducing new by-laws is to bring cohesion and consistency to the enforcement of navigational rules to all the waterways that are under Waterways Ireland control right across the island of Ireland. That means that, whether someone is in Kilrea on the Lower Bann, Killyhevlin on the Erne or Killaloe on the Shannon, the same basic rules apply.

Waterways Ireland's main aim is to attract people to our waterways and to do what we can to ensure that they have an enjoyable experience, and that as a result, they will return time and again. It is not our aim to penalise people for minor transgressions. We much prefer to solve difficulties by dialogue. That approach helps our customers to understand where they went wrong, it helps to educate them so that they will conduct themselves in such a manner as to be responsible for no harm or nuisance to others who enjoy the waterway, and it minimises possible damage to the natural or heritage environment in which we operate. Our marketing and

communications division in Waterways Ireland would be very unhappy if people started turning away from the water as a result of overzealous enforcement of the by-laws.

Chairman, I need some direction from you at this point. There are three ways in which I can proceed with the briefing: I can take the Committee through each of the 37 articles, which, I have to say, is a task that is unlikely to be achieved by 12.15 pm; I can take the Committee through selected articles that might be of most interest; or I can ask the Committee to get the ball rolling and I will attempt to address members' observations, comments or queries about the articles of their choice. I obviously recommend option three.

Before I finish, I stress again that this is an iterative process and that Waterways Ireland has included the odd deliberate mistake in the draft Order. We have also discovered that some of the legal language in one article will need to be reconsidered and tightened so that the aim of that article can be achieved. That requirement is based on recently received legal advice about the enforcement of an existing by-law.

Unless you wish me to comment further, I will hand back to you.

**The Deputy Chairperson:**

Thank you. I do not think that the Committee will be able to go through all 37 articles.

**Mr McCartney:**

I am really disappointed with that.

**The Deputy Chairperson:**

Members will, no doubt, have a series of questions that will cover the most important points. Draft by-law 37 relates to complaints and appeals and states that complaints can be submitted to Waterways Ireland's customer service co-ordinator. What happens after a complaint has been lodged? Does an independent body deal with it?

**Mr D'Arcy:**

The complaint is dealt with as part of Waterway Ireland's customer service requirements. Depending on whether the complainant was satisfied with the reply, there are options for them to pursue it further by challenging the by-law itself in court. However, that would be a legal

process. That may be one of the procedures that we need to tease out a little more so that we can into the details fully, but so far, the customer services co-ordinator has dealt with a number of complaints, very few of which were not satisfactorily dealt with. Indeed, the number of complaints that has come in is not that great.

**The Deputy Chairperson:**

Does an independent body deal with the initial complaint?

**Mr D’Arcy:**

No. For the moment, Waterways Ireland itself deals with complaints. If it becomes evident during the consultation process that an intermediate step is necessary, such as handing complaints over for an independent examination, it may be considered. However, that is not in our plans at the moment.

**Mr McCartney:**

By-law 7(4)(b) states that:

“The master of a craft shall ensure that any person on board the said craft who has not attained the age of 16 years shall wear a suitable personal flotation device while the craft is underway”.

Are passengers who are over the age of 16 exempt from that requirement?

**Mr D’Arcy:**

Currently, such a statutory obligation does not apply to adults travelling on particular craft. Some statutory obligations in the South are recommendations in the North, and Waterways Ireland applies those. However, to answer your specific question, anyone under the age of 16 must wear a personal flotation device when the craft that they are travelling in is under way.

**Mr McCartney:**

Would most people over the age of 16 voluntarily wear a personal flotation device?

**Mr D’Arcy:**

Much of the literature that Waterways Ireland produces asks customers to wear safety jackets.

**Mr McCartney:**

Draft by-law 19 refers to zoning. Is there a particular purpose for the zoning of areas?

**Mr D'Arcy:**

There are several, one of which is to give protection to certain areas. For example, part of Lough Erne is a Natura 2000 site, with areas of high biodiversity, and Waterways Ireland comes under pressure for allowing craft to go through certain areas. I am not suggesting that any major changes should be made, but zoning provides the opportunity to restrict movement on the water at different times of the year, different days of the week, and different types of craft can even be restricted. Normally, the complaint is that personal watercraft tend to upset the natural habitat and the breeding seasons and that they can cause injury to breeding birds, for instance. We want to have the option to regulate in such a way that may mean that certain types of vessels will not be allowed through an area during a particular time of the season.

**Mr McCartney:**

How are individuals notified of that?

**Mr D'Arcy:**

We have to advertise that information and give people time to come back and comment on it. I think that they are allowed 28 days before we make the final decision on carrying out the actual zoning, whether that be through prohibition or an allowance.

**Mr K Robinson:**

Thank you for your presentation and for your consideration towards the Committee this morning. I want to go back to the new by-laws that you hope will reduce "harbour hogging", which is a term that I have not come across before. It relates to vessels that are on public moorings for more than five days in a calendar month. You are proposing a £22.30 a month charge for individuals who break that regulation. How will you police that? It is such a relatively small fine that it is not a proper deterrent. Do you see a situation where you would increase the level of fine so that it could almost pay for the policing?

My next question relates to more a personal matter. An individual may have good reason for being on the mooring for longer than you would like them to be; someone in the group might be ill, for instance. Is there flexibility that will allow that time extension? It seems a bit strange to

say this when we are talking about water, but people have been known to be marooned in all sorts of exotic places because of volcanic ash. If an individual has hired a charter vessel and knows that their flights are going to be delayed because of volcanic ash, is there flexibility to allow that individual to extend their contract with the vessel owner and remain on a specific spot to allow them to make alternative arrangements?

**Mr D'Arcy:**

I refer to my remarks about our being in the business of encouraging people to come on the water. I use the word “people”, because they are very much to the forefront. We have had to try to put together legislation to cater for those in the other extreme, which is people who abuse the fact that moorings are available. Such people leave vessels in public moorings for weeks on end. We are trying to put in place a reasonable figure that we can use as an enforcement tool to prevent that happening. We are not trying to penalise people who are on-board.

You talked about flexibility. I have made it clear from the word go that we are looking to encourage people to come on to the water. If people come on to the water and want to stay beyond three consecutive days or for more than five days, we will look at any reasonable request, as long as they are on-board. We will deal as positively as possible with many of the circumstances that you mentioned; indeed, we do that already. However, we have to write the language in such a way that will tighten up on the cases against people who continually transgress. We have difficulty with some of the legal language that is required to secure prosecutions, as is the situation with part of the case to which I referred.

In the South, as part of the original by-law process, we had hoped to introduce fixed payment notices, which are on-the-spot fines. However, due to the need for primary legislation, that is unlikely to happen in the North. We have the powers to do so in the South under the Maritime Safety Act 2005. We intend to fine people up to €150 for transgressions where they continue to transgress, but, as I stated at the previous CAL Committee meeting that I attended, we do not intend to turn the waterways into a police state. We are not chasing people. We are there to encourage people to enjoy themselves. We will pursue those people who turn up their noses at what we are trying to do. We will listen to anybody who has a bona fide case for being moored in an area, and we will consider whether they should be moored there. Generally, we will react positively to them.



**Mr K Robinson:**

We are not looking at a doomsday situation in which traffic wardens afloat are going to put the fear of God into everyone.

**Mr D'Arcy:**

Absolutely not. We have a warden system and an inspection system, but where numbers are concerned, it is a skeleton service. Our main focus is on public liaison and meeting the people. If someone does something wrong, we inform them where they went wrong and we ask them to take heed of what we are saying and to try not to do it again. Some people do not understand that they are causing other people difficulty or discomfort, and when it is pointed out to them, they understand.

**Mr K Robinson:**

From a practical point of view, how are your wardens identified? Do they wear uniforms and a badge?

**Mr D'Arcy:**

Yes. All the authorised officers carry a warrant and will, generally, be in uniform. The craft is identified as an inspectorate craft, so it will be fairly obvious to everyone.

**Mr K Robinson:**

It will be crystal clear who they are.

**Mr D'Arcy:**

Yes.

**Mr T Clarke:**

I hope that you do not mind me asking a supplementary question; your answer inspired me to develop the point. I appreciate that you are not there to drive people off the water. I do not think that £22.30 a month —

**Mr D'Arcy:**

I am sorry; I did not answer that part of the question. The £22.30 monthly charge is applicable in the off-season only — from 1 November to the following 31 March. That charge is applied

because not many people use the navigation at that time of the year — it is the winter, and few people are out. The result is that space is available. We give it to people for a nominal sum; we do not give them security or indemnity, and it is entirely at their own risk. We do not want to get into competition with anyone else.

**Mr T Clarke:**

I appreciate that, but £22.30 a month to break the restriction of hogging —

**Mr D’Arcy:**

There is no hogging problem at that time of the year. There is no movement. We are trying to make space available all the time for the casual boater, who can arrive at a destination at 5.00 pm and find a space on the quay wall and do the same tomorrow at the next destination. However, if people leave vessels during the summer — from April to the end of October — it creates restrictions and makes people uncomfortable, especially those who are less experienced. Most of the external trade comprises less experienced boaters who feel compromised coming into a harbour where there are lots of other vessels, especially if they have to raft up double or treble a raft. It is not something that they fancy doing, and they will take themselves off elsewhere. That means that that venue will lose revenue that might have accrued to it from a whole crew coming in for the evening.

**Lord Browne:**

I want to follow up on your previous answer. Draft by-law 23 permits houseboat owners to moor in excess of the three-day rule in designated areas, provided that they have a berthing licence and have paid a fee. Obviously, the fee is related to the location and the services that are provided, as well as to the size of the houseboat. What is the average fee, and does it have to be paid every time that the houseboat owner re-enters the designated zone?

**Mr D’Arcy:**

We are slightly ahead of ourselves. The policy on houseboats is in final draft form, but we have not put it into practice because we do not have a facility available. We are coming close to having one in the South, at a place called Shannon harbour. When that comes on stream, the policy will be a formal Waterways Ireland policy. However, the draft by-law reflects the policy. Houseboats will be able to locate only in particular areas with particular services. Those vessels must be seaworthy and in good condition. We will grant houseboat owners an annual berthing

licence, which will be particular to one vessel only and will be non-transferable. The local pump-out facility will be remote from the houseboat site, so the houseboats will have to move regularly and not be stationed in one place.

There are no immediate plans for houseboat locations in Northern Ireland. However, we have the option, should the need arise, to have the basis on which to commission such a facility.

**Lord Browne:**

Does that mean that no fees have been set because we do not have those facilities?

**Mr D'Arcy:**

If the Shannon harbour facility is built, a houseboat owner based there will not be expected to pay the same rate as someone using the Grand canal dock in Dublin 4. I imagine that someone using a location on the Erne system near Enniskillen would be paying a lot more than someone who is in a much more remote location.

**Mr Burns:**

You may have touched on the question that I wanted to ask. When Waterways Ireland briefed the Committee in May 2009, it was indicated that the consultation process would have been completed by now. However, the process has been delayed due to a legal query that the former Department of Community, Rural and Gaeltacht Affairs raised. What was the query, and how was it resolved?

**Mr D'Arcy:**

Caroline has dealt with most of the legal issues, so it would be fair for her to answer that.

**Ms Caroline McCarroll (Waterways Ireland):**

As outlined in the briefing paper, the context of the query related to whether we were running with one single set of by-laws for all navigations across our jurisdictional remit, that is, whether there was to be one set of by-laws for Northern Ireland and Ireland. That is what we proposed at the previous briefing in May 2009. The query that the departmental solicitor raised on behalf of DCAL stated that Northern Ireland had to have a set of by-laws that were separate to those in Ireland. That was a departure from where the Department in the South stood on the matter. That Department then obtained separate legal opinion through its Attorney General to verify whether

we needed to go down the road of having two separate sets of by-laws — one for Northern Ireland and one for Ireland — in order for the by-laws to have independent legal effect in their jurisdictions. The Attorney General subsequently came back in February 2010 to confirm that we had to have two sets of by-laws. At that time, and even up to the end of last year, we were at the point of proceeding with our planned public consultation programme, but, through our engagement with the Department of Culture, Arts and Leisure, we were advised that we could not proceed with the programme until we had a second oral briefing with the Committee at a date to be scheduled. We waited for that date, and here we are.

**Mr Burns:**

Thank you.

**Mr Leonard:**

You are very welcome. It is good to see you. I do not have a question about particular by-laws, so going one step further, I am thinking about your interaction with the other bodies that have responsibility for different parts of life on the river. Where I live, there is an anachronism, in that an organisation with an interest in river life owning a river bed. The harbour commissioner is responsible for a small section of the river. How does that work? I can see that it may be piecemeal, but I may be totally wrong.

**Mr D’Arcy:**

We have a rainbow of various arrangements right across Waterways Ireland. We completely own the Grand canal and Royal canal and that part of the Shannon-Erne waterway in the South. We have property on the Shannon navigation, and we regulate the waterway and the bed and soil on behalf of the state. On the Erne system, the Crown Estate has responsibility for the bed and soil through the Department of Agriculture and Rural Development (DARD). Some of that is also operated through the Rivers Agency.

As far as I am aware, the bed and soil of the Lower Bann is in the ownership of the Honourable the Irish Society. We have to deal with them as landowners or title holders to the property, so any properties that we own on the Erne or Lower Bann systems have been passed to us from ownership of either the Rivers Agency or the Department of Agriculture and Rural Development in Northern Ireland. We have gone through a legal process to make that happen under the terms of the British-Irish Agreement.

I do not know whether that answers your question. Although we are purely the navigational authority for most of the water on the Erne system, we do not have planning control. That lies with the Planning Service. If we wish to develop a new harbour or marina, we would have to either work up a long-term lease or purchase the fee simple of the property before putting our plans through the normal public consultation process through the Planning Service.

**Mr Leonard:**

Is the conclusion that there can be consistency in most, or all, bodies? Are there gaps in the waterway? I am sorry for being parochial, but if jet-skiers were out ruining the environment above Coleraine harbour, they might not get away with that on another stretch of the river. Are we talking about taking a piecemeal approach? That will obviously affect the effectiveness of by-laws.

**Mr D'Arcy:**

One very positive thing that has come out of the Lower Bann is that, up to now, it has operated a voluntary code of conduct. There are no by-laws for that navigation at the moment. All this is entirely new for the Lower Bann navigation. I must say that 99% of the voluntary code of conduct works extremely well, and there is respect for the various designated areas. It is one navigation that has active zoning. Zoning has been included in the proposed by-laws, because it did not apply elsewhere before now. I expect that to continue. For example, those areas in which waterskiing is allowed do not mix with areas that are used for jet-skiing and so on. That will be reinforced in the zoning under the by-laws. We will then formally designate in legislation those areas that have been part of a voluntary code that, as I say, has worked extremely well.

**Mr Leonard:**

Are you happy for that to be joined up?

**Mr D'Arcy:**

Yes. There are other areas where we are not the main stakeholder in property, but we will work with whoever has the statutory obligations for that usage. The by-laws will contain a section on water abstraction. We will have very little control over water abstraction in the North of Ireland, simply because we own very little of it. However, we might have comment to make about somebody who proposes water extraction if the loss of that water might be detrimental to the

navigation, causing low flow or drought, or there might be a drop in the water level as a result.

**Mr Leonard:**

Does that mean that where you do not have the legal powers for by-laws, you can work with others in the same spirit?

**Mr D’Arcy:**

Yes.

**Ms McCarroll:**

Our jurisdictional limits are prescribed in legislation. Our limits in, for example, the Lower Bann is from Lough Neagh to the downstream side of the old bridge in Coleraine. That is the jurisdiction in which the by-laws take effect. The Coleraine Harbour Commissioners have separate legislation, and, as I understand, they have revised their own by-laws for the remaining stretch of the navigation. They have engaged with us in that process, and, similarly, we will engage with them in our revision process.

**Mr K Robinson:**

The explanatory memorandum defines a boat, a craft, a vessel, a fast power craft, a personal watercraft and a pleasure craft. Is there a definition for a houseboat? You referred to that at various stages. What, technically, is a houseboat?

**Mr D’Arcy:**

No, there is not such a definition. We would define a houseboat as a vessel in the navigation that provides either a part-time or full-time permanent residence. Does that answer the question?

**Mr K Robinson:**

Yes. I had a great big gin palace on mine, with lights and sound belting out all over the countryside.

**Mr D’Arcy:**

The draft policy that I referred to states that a vessel must also look right in the environment. There are quite a lot of houseboats in the London area, for example, some of which are entirely appropriate and some of which are not.

**Mr T Clarke:**

That definition is very loose. It almost includes any boat, because a person could have a temporary stay on any boat.

**Mr D’Arcy:**

We use the term “vessel” and prescribe what the definition of that is, because we had a legal difficulty in the South with the definition of a vessel compared with that of a personal watercraft. In the old days, we thought that a vessel was a catch-all term for anything that floats. The court decided otherwise, and we now use the word “craft” to encapsulate anything that floats on the water.

**Mr McCartney:**

Is a motorised skimmer a jet ski?

**Mr D’Arcy:**

No. I did not know what a motorised skimmer was until I came to Enniskillen. I think that they are particular to the Erne system. I have never heard of them or seen them anywhere else. A motorised skimmer is a very low, fast, powerful craft that is similar to boats that are used for powerboat racing on television. They are not jet skis. I thought that they perhaps were, but they are not. They are operated by a single person and, therefore, have similar controls to a jet ski in that if somebody falls off, the engine cuts out straight away.

**Mr McCartney:**

Are they single craft?

**Mr D’Arcy:**

From what I know, they appear to be single-person craft.

**The Deputy Chairperson:**

That concludes the questions. Thank you for the presentation and for your excellent and fairly detailed answers to the questions. After you leave, we will discuss what was said.

**Mr D'Arcy:**

If there is anything else that you want to know, feel free to come back to us and we will do what we can to help you. Thank you very much indeed.