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Dr Dan Hull

Summary of proposals for an Environmental Protection Agency in Northern Ireland, and its implications for DCAL and fisheries governance

This briefing paper summarises a proposal made in 2007 by the review *Foundations for the Future: A Review of Environmental Governance* that an independent Environmental Protection Agency (EPA) be set up. In particular, the potential ramifications of this for the fisheries governance responsibilities of the Department of Culture, Arts and Leisure (DCAL) are set out.

1 Previous concerns

Previous submissions and correspondence to the CAL Committee during this session have highlighted a number of concerns about the governance arrangements in place for inland fishing in Northern Ireland. In written and oral submissions, the Ulster Angling Federation (UAF) has raised a number of issues. Among these concerns, UAF described the following five issues¹:

¹ Written submission and oral briefing to CAL Committee 7.10.10.

- Licensing arrangements are complex and act as an impediment to tourism
- Insufficient cover is provided by DCAL water bailiffs, in comparison to the Loughs Agency
- DCAL and the Northern Ireland Environment Agency (NIEA) have 'still not finalised a service level agreement to establish the process following a fish kill'
- Governance arrangements are complex, with too many agencies and departments involved. The UAF suggests that the Loughs Agency take on DCAL's role for angling, and NIEA take on fish protection
- The Fisheries Act 1966 is now out-of-date, especially given subsequent European Union legislation

In addition, the Irish Trout Fly Fishing Association wrote to the committee on 7 July 2010 complaining of a decline in water quality in Lower Lough Erne and its impact on competitions². In particular, concern was expressed that a Local Management Plan for the lough was not being implemented.

A briefing paper supplied by DCAL to the CAL Committee on 14 October 2010 provided information on the legislative and strategic responsibilities of the department, the organisation of fisheries protection functions within the department following the transfer of responsibilities from the Fisheries Conservancy Board in 2009, and their fisheries protection and inspection activities. Among the figures provided in this briefing, it was reported that:

'DCAL staff have detected 72 incidents of suspected illegal activity warranting recommendation for prosecution action in the first three months of the 2010/11 financial year compared with the overall figure of 130 for the period June 2009 to March 2010. A total of 66 boat patrols have been carried out in this period compared with the overall figure of 125 for the period June 2009 to March 2010.'³

The submission confirmed that at present just eleven Fisheries Protection Officers operate throughout Northern Ireland, and that part of this team is on loan from the Department of Agriculture and Rural Development.

It was also confirmed that the Memorandum of Understanding between DCAL and NIEA on fish kills response activities (referred to by UAF as a 'service level agreement') has not yet been agreed, though it is 'in final draft stage'.

² Irish Trout Fly Fishing Association. Correspondence sent to the CAL Committee, 7.9.10.

³ DCAL written submission to the CAL Committee: 14.10.10: p6.

A recent research paper on the Fisheries Act 1966 highlighted the fact that at least five separate bodies currently oversee, or impact upon, inland fisheries in Northern Ireland. These bodies, and their responsibilities, are as follows:

Department	Responsibility
Culture, Arts and Leisure	Absorbed functions of Fisheries Conservancy Board (FCB) in 2009: responsibility for the conservation and protection of the salmon and inland fisheries of Northern Ireland (other than those which fall within the responsibility of the Loughs Agency). The functions of the FCB included the issuing of fishing licences, enforcement of fishing regulations and byelaws and assisting in the investigation of pollution incidents which involve fish kills.
Agriculture and Rural Development	Joint responsibility with DoE for the Nitrates Directive and specific responsibilities in the Water Framework Directives. Responsibility for the Northern Ireland Countryside Management Scheme which aims to increase water quality and biodiversity.
Environment	Overall responsibility for protecting and promoting the natural environment. Lead department for implementation of the Habitats Directive and the Water Framework Directives, and joint responsibility for Nitrates Directive.
Northern Ireland Environment Agency	Executive Agency within DoE with responsibility for implementing DoE's environmental policy and strategy. Responsible for water quality, and therefore applications for effluent discharge and inspecting illegal pollution events.
Loughs Agency	A cross-border body responsible for conservation and protection across the Foyle and Carlingford catchments, including the development of fisheries and aquaculture, conservation and protection of inland fisheries and sustainable development of marine tourism.

Table 1: Responsibilities for inland fisheries governance in Northern Ireland⁴

2 An independent Environmental Protection Agency

In 2007, an independent Review of Environmental Governance was published⁵. *Foundations for the Future* made a series of recommendations about environmental governance in Northern Ireland. The review stated that, 'the present fragmentation of responsibility for environmental policy has created a policy system that is not fit for purpose'⁶, especially with regard to the pressure and pace of EU policy making. To combat this, the report recommended that responsibility for all environmental matters should transfer to the Department of the Environment, including inland fisheries and waterways, both of which are over-seen by DCAL at present.

⁴ Table taken from: Assembly Research Paper. 1.10.10. 'A summary of the Fisheries Act 1966 in the context of European legislation'. NIAR 458-10

⁵ Bell, G., Burke, T., & Turner, S. 2007. *Foundations for the Future: The Review of Environmental Governance*.

⁶ Bell, G., Burke, T., & Turner, S. 2007. *Foundations for the Future: The Review of Environmental Governance*: p43.

The review also recommended the creation of an Environmental Protection Agency with responsibility for regulation and enforcement on the ground, funded and over-seen by DoE, but independent from it. It was proposed that a new EPA would have regulatory responsibility for a number of the functions which are currently split across various bodies, such as pollution prevention and control, the protection of species and habitats, river basin catchment management, and sustainable inland fisheries.

The structure and operation of the proposed agency were as follows⁷:

- A non-departmental public body sponsored by the Department of the Environment
- The duties and functions of the agency should be embodied in statute
- It should be governed by a Board of no more than 12 members
- The Board should comprise the Chair, Chief Executive and members providing specific expertise in relevant areas
- Members of the Board should be appointed by the Minister of the Environment in accordance with the principles and procedures of the published guidance from the Office of the Commissioner for Public Appointments for NI
- A Chief Executive should be appointed and be responsible to the Board for the day-to-day running of the proposed Agency
- The staff of the proposed agency should be employees of the agency and not the Northern Ireland Civil Service
- The proposed agency should issue an annual report on the conduct of its statutory duties
- The proposed agency should be located in an iconic building or state-of-the-art new building reflecting best practices in sustainable building

It was also recommended in the review that the Planning and Water Appeals Commissions should be restructured to create a new Environmental Tribunal for Northern Ireland⁸, and that the Northern Ireland Assembly should create an Environmental Audit Committee, with 'statutory responsibility for auditing environmental governance in Northern Ireland.'⁹

3 Implications for fisheries governance

The review noted a number of challenges presented by current arrangements, including the 'very fragmented arrangements' regarding water management leading to difficulties in coordinating management across a number of different bodies and two

⁷ Bell, G., Burke, T., & Turner, S. 2007. *Foundations for the Future: The Review of Environmental Governance*: p59.

⁸ Bell, G., Burke, T., & Turner, S. 2007. *Foundations for the Future: The Review of Environmental Governance*: p70.

⁹ Bell, G., Burke, T., & Turner, S. 2007. *Foundations for the Future: The Review of Environmental Governance*: p75.

different jurisdictions. It is stated that the following bodies are responsible for different aspects of water resources, quality and access:

- The Rivers Agency
- Fisheries Conservancy Board
- Loughs Agency
- Drainage Council
- Waterways Ireland
- Office of Public Works in Ireland

These six different bodies are over-seen by three different departments: the Department of Culture, Arts and Leisure, Department of the Environment, and the Department of Finance, Ireland.

It was concluded that one of the key ramifications of this fragmentation is that meeting the requirements of the EU Water Framework Directive are made more difficult.

The review recommended that 'the functions of the Fisheries Conservancy Board and the Loughs Agency should therefore be transferred to the proposed EPA'. This would have the consequence of removing all fisheries governance responsibilities from DCAL. Under these plans Waterways Ireland, as a body responsible largely for the tourism potential of waterways, would remain in its current form and under the remit of DCAL.

It was proposed in the review that the new EPA be designated a Non-Governmental Public Body (NDPB), on the grounds that:

- An NDPB would provide increased public confidence and transparency
- It will give the proposed agency sufficient freedom to provide effective public leadership on the environment
- It allows for greater clarity and focus of mission in separating from the policy-making role of DOE
- An NDPB is a model successfully followed for such an agency throughout the rest of the UK and Ireland

At the time the review was published, the Minister of the Environment declared that he was 'open minded as to whether or not there should be an Environmental Protection Agency'¹⁰. A motion on 25 September 2007 calling for the 'Establishment of an Independent Environmental Protection Agency' was passed, though concerns were expressed during the debate about the costs and benefits of this recommendation¹¹.

¹⁰ Response to Assembly question AQW 222/07 by the Minister of the Environment, 23.5.07.

¹¹ Official Report. 25.9.07. Private Members' Business: Establishment of an Independent Environmental Protection Agency.

However, on 27 May 2008, the Minister for the Environment made a statement to the Assembly which concluded the following:

‘The review of environmental governance’s central recommendations involved organisational change. The review team proposed the transfer of environment-related responsibilities from other Departments to mine. It also suggested that an environmental protection agency be created by merging the responsibilities of DOE’s Environment and Heritage Service (EHS) with those of the Rivers Agency and the Loughs Agency in the Department of Agriculture and Rural Development (DARD) and some Department of Culture, Arts and Leisure (DCAL) functions.

Although there may be arguments for moving all environment-related functions to DOE, strong arguments also exist for leaving them exactly where they are. The Minister for Regional Development, the Minister of Agriculture and Rural Development and the Minister of Culture, Arts and Leisure have all set out practical, and even constitutional, reasons why the transfer of functions is not appropriate at this time. As the Assembly knows, the Programme for Government commits us to a review of Departments by 2011. It seems obvious that that is the proper context in which to consider any fundamental restructuring of departmental responsibilities.’¹²

4 Comparisons with the UK and Republic of Ireland

The following table provides a comparison of governance arrangements for inland fisheries across UK and Republic of Ireland departments and agencies.

Jurisdiction	Body
Northern Ireland	Responsibility is split between DCAL (fishing regulations, investigating fish kills) and DoE (water quality and biodiversity, through NIEA), as summarised in table 1, above
England & Wales	Environment Agency
Scotland	Aquaculture and Freshwater Fisheries division of Marine Scotland
Republic of Ireland	Inland Fisheries Ireland

Table 2: Comparison of governance arrangements for inland fisheries across UK and RoI

¹² Statement by the Minister of the Environment, Arlene Foster. ‘Environmental Governance’: 27.5.08.