



Initial NILGA comments in response to the DOE Discussion Document “Environmental Governance in Northern Ireland”

The following is the NILGA response to the consultation document published by the Department and requiring response by 9th September 2011. This paper has been drafted in liaison with SOLACE, the Technical Advisers Group and the Chief Environmental Health Officers Group, and was considered by the NILGA Executive Committee on 9th September 2011.

The discussion paper sets out five options for future environmental governance in Northern Ireland, giving ‘pros’ and ‘cons’ for each option. Options are as follows:

A – Maintaining the Status Quo

B – The Status Quo ‘plus’

C – Transfer all NIEA functions to an independent agency

D – Full Reorganisation

E – A Regulation-Oriented Independent Agency

For further information or to discuss any of the issues highlighted, please contact Karen Smyth at the NILGA Offices:

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Key Issues

NILGA has no preferred option at present, but would make the following comments, prior to more detailed deliberation within its working group and member structures:

Resourcing

NILGA is keen to ensure that environmental legislation is effectively enforced in Northern Ireland, by the relevant regulators working together to ensure that any ‘gaps’ are addressed and that government resources are used in the most efficient way possible. There is a critical need to ensure the adequate resourcing of regulation, and full support for enforcement, that no change to structures will address.

It is the experience of NILGA that enforcement of environmental legislation is woefully underfunded, to the extent that regulation of certain issues e.g. fly-tipping does not occur to a satisfactory level. Regardless of the agency or organisation responsible for regulation, if

adequate resources are not provided to protect the environment, the noble aims of the Department are highly unlikely to be achieved. The importance of paragraph 4.12 (p 12), which highlights the need to properly resource a new Agency, can therefore not be over-emphasised.

Timing

There is awareness in the Discussion Document that changes to the current structure could cut across any changes to be made within the ongoing Review of Public Administration (RPA) and could have a particular impact on the future of the Department of Environment. In 2007-8 when the potential for an independent Environment Agency was last considered, it was agreed to revisit the idea in the 2011-15 electoral period. Part of the reason for this was due to the belief that more clarity would, by this stage have been established regarding the RPA. This clarity has not been achieved, and given the fact that there is still a great deal of uncertainty surrounding local government reform, NILGA would query if the timing is yet right for the formation of an independent agency. Further discussion will be required with local government on these issues.

If the timing is not right, a 'half measure' designed as an interim solution may prove more costly in the long run. In addition, ongoing change to the structures of DOE, Planning Service and NIEA are not conducive to the development of transparent government. If one of the key drivers is to improve public perception and develop understanding of the services provided, a 'one time deal' that is clear and well-communicated would be preferable.

NILGA also notes the current UK government's recent actions to streamline or 'de-agentise' independent agencies, bringing their functions back into government departments, although these wider political issues should not distract the Department from making the 'one time deal' decision which is best for Northern Ireland, at the best time.

Relationship with Councils

Councils are currently in the unenviable position of being both regulator and regulated when it comes to environmental legislation. Councils share responsibility with NIEA for implementation and enforcement of pollution prevention and control, biodiversity, waste management, and conservation and heritage. We are also required to comply with the numerous pieces of waste management legislation, through the implementation of our waste management plans in compliance with the NI Waste Management Strategy. It is therefore surprising that, beyond consideration of the timing of the RPA, councils have not been given much consideration within this discussion document. This is particularly the case regarding Section 2, which focuses on issues in paragraphs 2.6 – 2.8 that are clearly council responsibilities.

Regardless of the structure eventually agreed, councils will wish to continue to work in partnership on regulation of environmental legislation. From experience in working with other independent agencies, NILGA would assert that it is vital to ensure that any funding mechanisms and streams to the agency, and onward from the agency to partners, are transparent, and information on finance open. The agency must be financially accountable, and it must be clear to whom.

It will also be vital to initiate early discussions with local government regarding any potential 'hiving off' or transfer of functions, and the future of current joint arrangements for functions such as the Drinking Water Inspectorate. As NILGA has made clear in discussions with the Minister, any transfer of functions to councils must be properly managed, adequately resourced, and strategically planned, in full consultation with local government.

NILGA notes with concern, paragraph 2.5 which states; "the ongoing financial constraints will tend to lead Government away from more resource intensive, or directly managed interventions (e.g. direct project or programme management) towards less resource intensive interventions (e.g. legislation and regulation)."

There is merit in considering the option of co-locating with councils or in operating locally within the new council clusters, once clarity is obtained on the RPA.

Section 7.18 should be expanded to include a bullet point on partnership working with councils, although it is acknowledged that 'enforcement concordats' are mentioned.

Accountability

NILGA notes the various comments within the Discussion Document regarding the desire to remove decision-making on environmental protection away from political influence, and the perception that this would "*create a greater sense of trust in the system*" (p12, para 4.13).

NILGA also notes that there is a potential for any future agency to be given greater opportunities to raise income, including powers to enable it to develop new charging schemes, increase charging for licenses and permits. It is therefore queried how the Department sees "a governance system with a level of independence" as being "more attractive to business", and what kind of accountability there would be regarding any fees and charges set.

In studying the various examples of Environmental Protection Agencies in the UK and Ireland, the following is clear:

- The Scottish, English and Welsh Agencies are all accountable to Ministers.
- The Scottish, English and Welsh agencies all have local government representation on their Board (through either COSLA or the LGA).
- In England, the sub-regional groupings of the EA each have three committees, with local government representation.
- The EPA in Ireland is organised differently, in that it is operated by an Executive Board, but this Board is required to report to both Houses of the Oireachtas on an annual basis, as well as submitting itself to an annual audit.

NILGA would suggest that none of these agencies are truly independent from the political process in which case, as set out in paragraph 7.11 of the Document, consideration needs to be given to the relationship of any future agency with the Minister.

Political accountability is necessary in any modern democracy, but concerns regarding perceived 'political interference' must be addressed.

It will be important to ensure that there is local government representation on any new Board, as in other areas of the UK, given the vital role played by councils in developing social, environmental and economic well-being. Any Board should be required to report to the Minister.

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