



Northern Ireland
Assembly

Committee for Culture, Arts and Leisure

OFFICIAL REPORT (Hansard)

Fisheries Bill: DCAL Officials

19 March 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Nelson McCausland (Chairperson)
Mr Leslie Cree
Mr David Hilditch
Mr William Humphrey
Ms Rosaleen McCorley
Mr Basil McCrea
Mrs Karen McKeivitt
Mr Oliver McMullan

Witnesses:

Mr Seamus Connor	Department of Culture, Arts and Leisure
Mr Fergus Devitt	Department of Culture, Arts and Leisure
Mr Liam Devlin	Department of Culture, Arts and Leisure

The Chairperson (Mr McCausland): Fergus Devitt is staying with us, and we are joined by Seamus Connor, the chief fisheries officer of DCAL, and Liam Devlin, the deputy principal in the inland fisheries group in DCAL. As this briefing deals with legislation, it will be reported by Hansard. I invite you to make your opening statement.

Mr Fergus Devitt (Department of Culture, Arts and Leisure): Thank you very much, and thank you for the opportunity to update the Committee on the outcome of the consultation on amendments to the inland fisheries provision in the Fisheries Act.

In response to stakeholder concerns arising during the consultation, a number of amendments have been made to the original proposals. The Committee has already received a written summary of the final proposals that are intended to be taken forward. The amended proposals will help to modernise enforcement activity and realign the 1966 Act with its obligations under EU directives, such as the water framework directive and the EU services directive.

Overall, the aim is to ensure that the powers under the 1966 Act remain fit for purpose and that DCAL has the flexibility to respond to evolving fisheries management practice and its EU obligations. Liam is responsible for processing the inland fisheries legislative programme, and he will take the Committee through some of the detail of the consultation outcome.

Mr Liam Devlin (Department of Culture, Arts and Leisure): Thanks, Fergus. The joint consultation on the new Fisheries Bill was launched on 18 August and concluded on 10 November last year. Over 1,800 individuals and organisations were notified of the consultation and it was advertised in the three

main local papers and on the DARD and DCAL websites. Committee members were briefed on the detail of the proposals on 24 September last year.

We received 57 written responses. To recap, the DCAL proposals focus on the following four key areas: fixed penalties for minor fishing offences; the transfer of powers relating to fishing permits from DARD to DCAL; the streamlining of fish dealer licence applications, and protection and free passage for fish. Over 90% of the respondents agreed with proposals to introduce a system of fixed penalties for minor fishery offences. Specific offences will be determined and set out in regulations, which will also detail the penalty level for those offences, the issuing authority, the payment process and the mechanism for reviewing the level of penalties. Essentially, if a penalty is paid on time and within a specified number of days, the person will not be liable for conviction. Any criminal proceedings will not be taken before the period specified on the notice is over. This will have the effect of decriminalising angling activities, so that angling errors need not end up in the criminal justice system. This will free up invaluable resources to allow the Department to focus on the protection of wild fisheries, the management of commercial fishing activity and to extend its community outreach programmes.

Likewise, there was also overwhelming support for the transfer of the powers to issue permits for the public angling estate from DARD to DCAL. This is an administrative exercise to address an issue that may have been overlooked when powers were transferred on the creation of DCAL in 1999.

The removal of the requirement for a Justice of the Peace to approve a fish dealer's application generated more comment, mainly related to the need to tighten up the regulation of dealer activity, which falls outside the scope of the consultation and can be addressed through regulations. Taking forward this amendment will help to ensure compliance with the EU services directive by removing a barrier for service providers to trade across borders and facilitate an uninterrupted online application system. With regard to the proposals relating to fish passage, following further consideration and legal advice, a number of proposals have been amended or will not be taken forward.

DCAL had originally proposed to seek new powers to remove man-made obstructions in rivers to allow free passage of fish, remove exemptions for fish passage on structures built before 1842 and for powers to remove dams where the owners have not complied with the requirements to provide fish passage. A number of concerns were raised by hydro and dam owners that these new powers are excessive and represent an infringement of property rights. Moreover, legal advice has clarified that the 1966 Fisheries Act already empowers DCAL to direct that a fish passage can be constructed in the majority of cases. Exemptions are important where it would be unreasonable to force a fish pass to be built or where alteration may impact on the historic environment. Instead, DCAL will review its application of existing powers and will work with dam owners to ensure that all is done to facilitate fish passage wherever possible. It should be further noted that DCAL has the powers to construct a fish pass in cases of non-compliance and can pass those costs on to the owner.

So, the proposals that will be included in the draft Fisheries Bill are as follows. DCAL intends to take powers for the removal of man-made obstructions in rivers where an owner cannot be identified and where the construction of a fish passage is not considered appropriate. This should allay the fears of dam and hydro owners who contested that unfettered interference with their property would be disproportionate and would be an infringement of their human rights. DCAL will of course liaise with such owners to ensure that they comply with the fish passage requirements of the 1966 Act. DCAL also proposes new powers to enter lands for the purposes of such removals.

There are also a number of measures to improve the protection and free passage of fish, which were largely accepted by consultees or on which there were no overriding legal concerns. These include a new requirement to seek the Department's permission, before removing any material from the bed of a river or lake, in order to protect the spawning grounds of fish. This requirement currently applies to rivers only. Current legislation places an onus on dam owners to provide and maintain fish passage in river dams for salmon, trout and eels. That will be widened to include lampreys, which also find it difficult to pass such barriers.

DCAL will also require any new mills that are coming into operation to install gratings with bar spacings of not more than 10 millimetres. This would negate the requirement to fit wire lattices in springtime to protect small fish that are descending the river at that time.

That was a brief summary of the DCAL legislative proposals, which will be taken forward into a draft Bill. Following members' consideration, DCAL will publish a summary of the consultation responses on its website. The proposals have also been subject to equality impact screening tests. As outlined, a number of amendments have been made to the proposals in light of legal advice and consultee

concerns regarding interference with property rights, and the proposals are now believed to be compatible with human rights and have no differential impact on section 75 groups.

The draft partial regulatory impact assessment that accompanied the consultation on the proposals concluded that there were no direct or substantial financial implications of the policy proposals. Any minor costs were outweighed by the benefits. Consultees were asked to comment on the conclusions, and, where issues were raised, particularly with regard to interference with hydros and property rights, policy proposals have been amended accordingly.

A joint paper seeking Executive approval to the draft Bill has been tabled, and early indications are that all Ministers are content with the final proposals. We will continue to update the CAL Committee as the Bill progresses through the Assembly stages. We are happy to take members' questions.

Mr Cree: On the fish bypass or other systems that are installed whereby fish can go about their normal business, there was a major kill at Ballyshannon recently because of a system not being — I guess "maintained" is the charitable way to say it. Is there any possibility of that happening in any of the systems in Northern Ireland?

Mr Seamus Connor (Department of Culture, Arts and Leisure): The site at Ballyshannon is very unique in the sense that it is —

Mr Cree: Very unique?

Mr Connor: It is unique in the sense that it is a very big operation; it is quite a high dam. The issue there relates to the passage of eels upstream and downstream. When eels come in, they are fairly small, and they are collected in a box and transported to Lough Erne and areas in the Republic where they are stocked out.

Mr Cree: It is a mechanical system then.

Mr Connor: Yes, a mechanical system. They are essentially transported by truck. Most of those are smaller operations, where there are very small dams. What we propose is that a lot of stuff will be able to be put in place that will allow elvers to move up naturally, for example, and allow eels to move down naturally, so there will not be the same implications.

Mr Cree: That sounds sensible. Obviously, all those young elvers would be coming north for their holidays, would they not?

Mr Connor: Yes, for around 15 to 20 years.

Mr McMullan: The removal of some of these dams was one of the main things that some fishing clubs brought up in the consultation. They are on private ground and private fishing fees are charged, and all the rest of it. Is there anything we can do with that at all? We know that we cannot knock them down because of human rights etc, but when we talk about maintaining rivers, is there an onus on the owner to maintain a river as well as you doing the work and passing the cost on to them?

Mr Connor: There are probably two things in that. With regard to drainage, which, I suppose, is one of the main responsibilities that falls to some landowners, there is a requirement under the Drainage (Northern Ireland) Order 1973 for them to maintain the free passage of water. Obviously, one of the things we are interested in is how they carry out those works because timing is essential and how they physically move habitat is also critical with regard to how it impacts on fish. The issue of dams and the presence of dams on rivers can be very convoluted. You can have a landowner who has purchased land. Normally he will own to the middle of a river, but a dam may be present there that he, effectively, has no use for. Historically, it can be very difficult to find out who actually owns some of those dams. That is why we were keen to move this forward. Where there is a dam and there is an option to remove it without any impact on the landowner or the person who owns the dam, that could be taken forward as opposed to maybe creating a fish pass, which can be very expensive.

Mr McMullan: Some of the fish passes on these dams are not terribly good. That was another thing that the clubs said in the consultation. Could those be improved? Clubs, when they hear this now, will come back to us again.

Mr Connor: Some clubs have taken proactive steps where a fish pass has been put in place that may have been approved by the Department many years ago, based on the technology and technical assessment then, and have actually attracted funding to replace it with a much better system. Some tweaks can be made on the ground. There are other ways, even creating an additional fish pass around the existing one if it does not seem to be working. We can certainly work with clubs to identify the best solution and, if there is one, who then needs to take it forward. There is an onus on dam owners that, where a fish pass is provided, regardless of who provides it, they must maintain it and look after it. That is very clear in the legislation.

Mr McMullan: With councils now amalgamating, a lot of them now own or will be taking over reservoirs, for example. Are you talking to them to bring them up to speed on what is going on?

Mr Connor: Dam ownership is slightly different. It is covered under the Reservoirs Bill, which will require councils, as dam owners, to look after the infrastructure. In most cases, it will tend to be the case that there is maybe not a requirement for a fish pass, or there has not been a fish pass, because the dam is very far up the system. In other cases, fish passes have been installed to allow fish to get around dams. Certainly, the Reservoirs Bill is quite clear to them about looking after the infrastructure. If they own a fish pass, there is a legal requirement for them to maintain it under the Bill as well.

Mr B McCrea: This will be a joint Bill. How does that work?

Mr Devitt: DARD officials and ourselves are working together on the legislation. Both Ministers will introduce it to the Executive, then they will be responsible for taking it through the legislative passage.

Mr B McCrea: I am just looking at the briefing for the DCAL side of things; fixed penalty notices, the removal of JP authorisation and the free passage of fish. Is that it?

Mr Devitt: Those are broadly the areas that fall to our responsibilities.

Mr B McCrea: Is DARD doing a lot more?

Mr Devlin: It is dealing with sea fisheries and aquaculture as its part of the Bill. Essentially, DARD set up a Bill team to take forward its priorities in sea fisheries legislation. It offered us the opportunity to have limited input into that process, but it manages the entire process and it has a Bill team set up for that purpose.

Mr B McCrea: In the earlier presentation, we talked about angling, sport and things like that. Any time there is legislation going through, there is an opportunity to use it as a vehicle to add in things that you might like. Have you considered how you might enhance the tourism product or deal with some of the shortcomings in that regard?

Mr Devitt: One of the areas we definitely considered in that respect was the issue of fixed-penalty notices. Our research shows that a lot of tourists who come here are not necessarily aware of the licences and permits required, and they might accidentally not have the relevant permit. That could, in some cases, lead to a conviction, which, clearly, you would not want to happen. The opportunity for education and a fixed-penalty notice is something that we have considered around enhancing the tourism product that we talked about earlier. I am not sure whether there are any others that are directly related.

Mr Connor: There is probably some stuff that we are taking forward through normal regulations. We are doing some consultation on fishery management plans. One of the ideas behind it is to try to simplify the legislation. For example, do we require a coarse fishing licence and a game fishing licence? Would it not be better to have just one licence that allows you to cover both species and would allow you to use up to two rods, for example? That is one way of trying to simplify the whole process.

Mr B McCrea: That is interesting. Where is the responsibility for things like fish kills? We hear, every three or four months, that somebody has wiped out a river.

Mr Connor: The Northern Ireland Environment Agency (NIEA) is responsible for investigating fish kills and any pollution incident. We assist it in identifying the species killed, the number of species

involved, and we try to identify the stretch of water affected as well. We support the NIEA in that investigation by providing a kind of technical side.

Mr B McCrea: I realise that there may be a bit of crossover here — you might tell me that this is not right — but it seems that the penalties for fish kills are pretty light.

Mr Devitt: Ultimately, that is a matter for the courts to —

Mr B McCrea: No, it is a matter for legislation. There will be limits on what you can do. It seems that repeat offenders ought to get a more severe penalty than first offenders. Maybe I am wrong, but it seems to have quite a significant impact on fish stocks in rivers; it takes five or six years to recover.

Mr Devitt: It can do, obviously depending on the severity. As Seamus said, responsibility in the first instance lies with the NIEA to investigate the kill, its sources, the reasons for it, and whether there is an individual or business that can be identified as being responsible. Any penalties would lie in its legislation.

Mr Connor: There are probably two elements to it. One is the pollution offence. The second is in terms of costs. If several thousand fish are knocked out in the process, that will be identified as a separate additional cost. So, there may be an original cost for the breach of the pollution guidelines, and the second cost will be for whatever restocking or habitat —

Mr B McCrea: If you are trying to create angling tourism, then it is not about financial restitution, important as that is; it is the fact that someone can wipe out a tourist centre or opportunity. People could come along from Germany or wherever and discover that there are no fish. I know that this is a matter for different agencies, but maybe we ought to be looking at taking the opportunity to protect what is a regional asset.

Mr Devitt: This may be something that comes up during the passage of the legislation through the Assembly. If Members feel that there are opportunities, from a DARD or DCAL perspective, to enhance the legislation, it is something that there may well be an opportunity to do.

Mr Connor: There is an issue where the fishery owner can also apply for costs for loss of amenity. It will not replace what is lost, because it takes time to put that back in place. However, when costs have been awarded, they have been quite significant. On the loss of amenity side, which is probably the bigger bulk of it, £10,000 and sometimes more has been awarded.

Mr B McCrea: I am aware that people come on television and say that, unfortunately, nitrates or whatever were washed into the river and that they are terribly sorry, and then the same thing happens again about three months later.

There is one last bit about opportunities that we might take. Without being critical, it seems to me that a lot of the fishing stands in some of our best fishing areas have become a little dilapidated. They were put in with gusto, but they are beside the water. There must be a health and safety aspect, and even an amenity aspect to those. Should we not be considering how we make sure that they are up to the standards that we need? The last thing you want is someone wrecking themselves when they are on their holidays.

Mr Connor: Our waters are inspected twice a year, and all facilities are checked twice a year. We carry out whatever repairs are necessary. You are right. There was quite a provision made 10 or 15 years under the old Eureka scheme and schemes like that. However, there is quite a lot of other stuff out there that does not belong to fisheries. We also work along with Waterways Ireland and councils in the provision of new and updated facilities. There is an opportunity to create car parking, fishing stands etc and to upgrade areas, and we do that wherever we can. We currently inspect them twice a year.

Mr B McCrea: I am sorry, as I said I was finished, but, if the Chair will allow me one more question, I will follow up on that. We looked at Waterways Ireland and the capital funds it has available, which are limited shall we say. As there is no statutory responsibility to do things then, in the current climate, nothing gets done. With the Bill coming through, we would wish to put on a statutory basis that whoever is responsible should face up to their responsibilities. My original reading of the papers is that the DCAL input to the Bill is fairly limited. I can understand why you say that that is a good thing

because it means that it is more likely to get through. There must be areas where we could put in statutory provision to make sure that sports, angling and water management facilities and so on are up to speed. It could be everything from the provision of structures to access to areas and car parks. It just seems to me that we do not have enough yet. I encourage you to look to see if there is a way of taking this opportunity when you are going through.

Mr Devitt: As Liam said, DARD is in the lead and we can work with them on this. As I mentioned earlier, Basil, there is the opportunity, as the Bill goes through the Assembly, for amendments to be made. On the point that Seamus made about stands, I talked in the presentation specifically about the work we have done on improving the stands for people with disabilities, which has been a significant part of our work. A very good piece of work has been done in increasing access to those stands.

Mr Hilditch: Thanks for your presentation. It has been very flowery in relation to tourism and all the nice images of fishermen. However, on the potential introduction of fixed penalty notices, there have already been some unsavoury incidents in my area that I have been made aware of. People fishing have been approached by staff about permits and the such like. They claim that they do not speak English, and it has become confrontational and, indeed, very unsavoury. What safeguards are there for staff who get involved in these sorts of issues?

Mr Connor: One of the big issues we have is that quite a lot of our staff work as lone workers, and there are a lot of safeguards from a health and safety perspective. We find that education is another big issue. For example, we have been working with a Polish angling group. They have converted all the DCAL literature into Polish in order to make people aware of it. We need to drive on and make people aware of that requirement.

People from Europe have a very different perspective on fishing. A lot of people here catch and release coarse fish whereas in Europe they actually eat them. We need to get the balance right and say, "Look, there is a limit on what you can take and on the size." We have not had major incidents to date, to be perfectly honest with you. We have cautions in different languages, and we have interpreters we can use. We also have, as a backup, the PSNI, who we can ultimately call on should something develop. There are a lot of precautions already in place so that staff know what to do and when to do it and, if necessary, to withdraw. We can always get somebody later on if we can identify them, and we have done so on many occasions.

Mrs McKevitt: Thanks very much for your presentation. Basil touched on something that pricked up my ears, namely the penalties or on-the-spot fines and the Reservoirs Bill. Would there be much point in this going forward if there is not a change in legislation at the Southern Government's end?

Mr Devitt: Sorry, Karen?

Mrs McKevitt: I am talking about the on-the-spot fines and penalties that are proposed in the Bill and how they would be brought in and policed. Would there be much point in bringing those in here if there were no change in legislation at the Southern end?

Mr Devitt: Liam can comment on some of the detail of that. Part of our rationale for bringing in fixed penalty notices is to stop criminalising individuals and save money and redirect it to other areas of spend within the Department.

Mr Devlin: That is right. In the South, there are now fixed penalties for certain offences. The Loughs Agency is also considering a fixed penalty regime, albeit that they could not take it forward in this Bill. There will be a consistent approach to fixed penalties across the island once the Loughs Agency and ourselves introduce ours.

Mrs McKevitt: OK, no problem. Thanks.

The Chairperson (Mr McCausland): Those are all our questions. Thank you.