



TRANSPARENCY AND TRUST

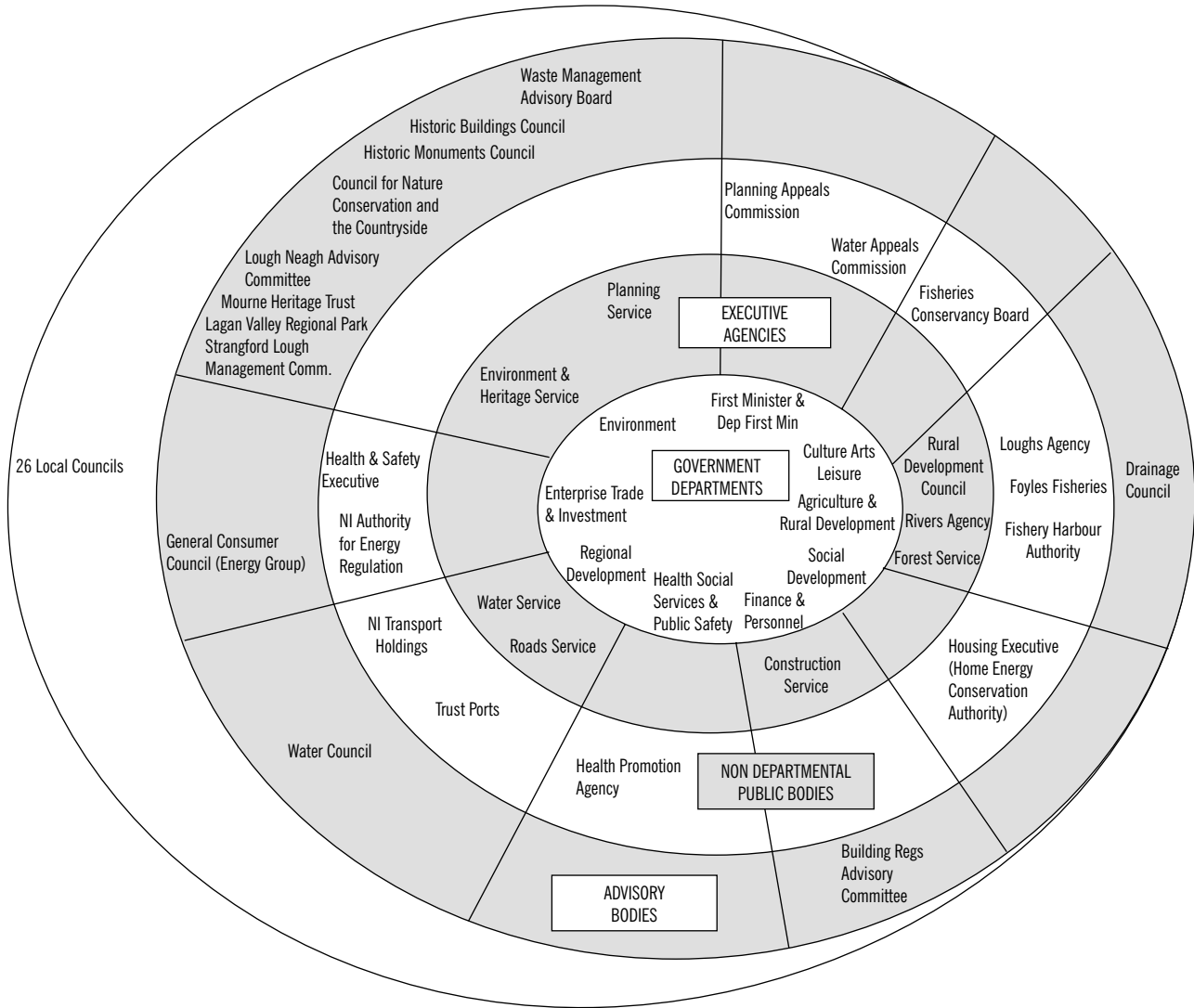
Reshaping Environmental Governance
in Northern Ireland

Executive Summary

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2004



Environmental Governance in Northern Ireland

The diagram focuses on Northern Ireland departments and bodies and does not include certain UK wide bodies such as the Food Standards Agency, and Crown Estates who will also have an interest in certain NI environmental issues.

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1. This Report is concerned with developing and strengthening ways in which Northern Ireland deals with environmental policy. It was commissioned and funded by a coalition of non-governmental organisations, but the analysis and recommendations reflect the independent judgement of the author. The Report deliberately avoids making overly prescriptive recommendations – the intention is that the analysis will provide the basis for a serious debate on how existing structures could be improved. It was written at a time when devolution was suspended, but assumes that at some point the process of devolution will be re-continued – in the meantime suspension should not inhibit discussion on improving current arrangements.
2. Environmental policy and law have developed rapidly in the last decade. On the horizon is a range of challenging new environmental requirements, many deriving from European Community legislation, which will need to be fully implemented in Northern Ireland. This report considers ways of improving governmental arrangements in Northern Ireland in order to ensure more effective development and implementation of environmental policy. Useful lessons can be learnt from structures that have been set up in other parts of the United Kingdom and in other European countries. This does not mean that Northern Ireland should slavishly copy arrangements in other jurisdictions, but equally there is a danger it could find itself left behind in developing the best of contemporary practice.
3. Current governmental structures in Northern Ireland for handling environmental policy are complex. This is hardly surprising. Contemporary environmental concerns do not readily fall into discrete categories which can readily be handled by a single government department or body. They can legitimately encompass local issues, such as noise, waste disposal or river pollution, which may have immediate impacts on individuals and local communities, but they also raise wider, longer-term challenges such as biodiversity, transport patterns, resource use and, in the global context, climate change which are bound to cut across the interests of many departments. The Diagram of Environmental Governance provides a snap-shot of the key government departments and their associated bodies in Northern Ireland with a direct interest in environmental policy. Government departments have responsibility for the development of policy but, in order to ensure better implementation of policy, many have also established bodies such as Executive Agencies (which are part of the department but act with a degree of managerial independence) or Non-Departmental Public Bodies (which are legally independent from their sponsoring department). In addition, many departments have set up various bodies which have no executive function but whose role is to provide advice on specific policy issues.
4. In 1990 the House of Commons Environment Select Committee described the quality of the environment as one of Northern Ireland's greatest assets. There have been improvements in the way that government handles the environment, but there have also been a number of recent official reports in areas such as water pollution and nature conservation which have highlighted problems of poor resourcing, inadequate management systems and poor enforcement. Northern Ireland has also gained a reputation for late transposition of European Community Directives concerning the environment and is currently facing a number of infraction actions brought by the European Commission. In recent years much more effort has been made to ensure that the formal legislation transposing EC obligations into Northern Irish law is up to date and comprehensive. The challenge in the future will be to ensure proper implementation in practice. Failure to do so can also lead to infraction proceedings before the European Court of Justice, and the possibility of severe financial penalties which will fall on the Northern Ireland Government.
5. Against this background, this Report is based around three core themes – (i) *Delivery arrangements* – the nature of the governmental bodies responsible for delivering core environmental policy and for ensuring that the requirements of environmental law are fully implemented in practice, (ii) *Accountability*

mechanisms – the methods by which such bodies are held accountable to the public for what they do and (iii) *Provision of Policy Advice* – the arrangements by which government secures independent policy advice on environmental matters. These are all important issues which are common to many areas of government, but the distinctive cross-cutting nature of environmental issues poses particular challenges in developing suitable effective arrangements. Within each of these three themes the Report suggests a number of options for Northern Ireland, together with their main benefits and disadvantages. The themes are clearly connected with each other but they are not necessarily mutually dependent. For instance, it might be decided to retain the existing structure of the Environment and Heritage Service (Theme 1), but this would not invalidate the need to consider both ways to improve accountability (Theme 2) or provide for improved sources of independent policy advice to government (Theme 3).

DELIVERY MECHANISMS

Environment and Heritage Service

6.1 As the Diagram on Environmental Governance indicates, a number of different government departments have a direct responsibility for various environmental issues. This Report does not examine the allocation of different environmental policy responsibilities between individual departments, though some of the divisions may appear somewhat perplexing, both to the general public and to companies subject to environmental regulation who may find themselves dealing with a confusing range of departments and their agencies. At the core, though, lies the Department of the Environment and its key body for implementing environmental policy and law, the Environment and Heritage Service (EHS). The Environment and Heritage Service is currently an Executive Agency, meaning that it has no independent legal status from the Department though it operates with a degree of financial and managerial freedom.

6.2 When it comes to comparisons with environmental agencies now operating in other parts of the United Kingdom, two features of the EHS are striking. First,

it is the only environmental regulator structured on the Executive Agency model rather than as a Non-Departmental Public Body, and therefore lacks formal independent legal status from its Department. As a consequence, it has not developed the transparency of decision and policy making now practiced by environmental regulators in other parts of the United Kingdom (though not yet by the Irish Environmental Protection Agency), nor has it been able to develop a distinctive, and more independent voice in policy debate. The second distinctive feature is the broad sweep of its environmental responsibilities which encompasses pollution control, nature conservation, and heritage protection. These are much more expansive than those available to other Agencies in the United Kingdom. EHS is also unencumbered by heavy operational responsibilities, such as those relating to flood management, which account for a large proportion of the staff and budget of the Environment Agency in England and Wales.

Options for the Future

6.3 Against that background, and in the light of future demands on environmental regulation, there are a number of key options concerning the future structure of Environment and Heritage Service.

Option 1. No change in the current status of the Agency. This is the least costly option, both in terms of institutional disruption and financial costs. However, it will fail to satisfy the demands for a more independent regulator and a governmental body that can engage in debate and policy development. The opportunities of providing government with a distinctive and more independent source of policy advice based on operational experience would be lost.

Option 2. Remove the Executive Agency status of EHS and fully incorporate it within the Department of the Environment. This would ensure a closer connection between policy development and policy delivery, and recognize that in a country the size of Northern Ireland a more independent environment agency is too costly an exercise. It would acknowledge that the Executive Agency model, while suited for some types of public service delivery, is less appropriate for a body

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with extensive regulatory functions, and may give the impression that it is more independent than it is in reality. Political accountability would rest clearly with the Minister and there would be a closer integration of policy development and its delivery. The disadvantages are that this would reduce the mechanisms for performance accountability associated with Executive Agencies and, as with Option 1, would fail to meet demands for a more independent regulatory body. It is likely to inhibit moves towards standards of greater transparency which non-elected public bodies such as the Environment Agency now adopt.

Option 3. Transform EHS into an environmental protection authority with separate legal status based on the structure of a non-departmental public body. This would be consistent with structures now familiar in other parts of the United Kingdom, and satisfy concerns for an environmental regulator with more independence from government departments. Its focus on the delivery of regulatory outcomes is likely to assist Northern Ireland in meeting the requirements of both existing and future European Community environmental legislation. Assuming that all or many of the existing responsibilities of EHS were transferred to the new body, its combination of functions across the environment would give Northern Ireland a distinctive new authority that could bring greater coherence in approach than is possible in other parts of the United Kingdom. Such a body would provide a valuable independent source of policy expertise to government and, in line with practices adopted by other non-departmental public bodies, would find itself acting in a more transparent way than is often possible in government departments or their agencies.

There are, however, disadvantages with such a route. Legislation would be required for the establishment of such a body. There will be real extra costs involved, following the loss of common services currently supplied by the Department such as legal, personnel and finance. By its very nature, such an authority would be less directly politically accountable than the Department or an Executive Agency within it, though accountability can to some extent be met by greater transparency in its procedures. The precise jurisdiction of a new

Authority would be a matter for government to decide though, were this route taken, the opportunity could be taken to consider whether any of the environmental regulatory powers currently resting with other departments or bodies might be consolidated within the new authority.

Option 4. Transform the EHS into a new non-ministerial government department. This follows the model of a body such as the Food Standards Agency, which in formal terms is a Government Department but is headed by an appointed Board rather than a Minister. It would give the authority even more independent legal status than a non-departmental public body but, as with Option 3, would require legislation for its establishment and incur real extra costs. Such an authority would no longer be financially dependent on the Department of the Environment but would directly negotiate its own budget from the Department of Finance. A key disadvantage of such a model is decreased political accountability (there being no Minister directly responsible for the Agency) and a much greater detachment from the Department of the Environment. A non-ministerial government department may be considered problematic in constitutional terms, and one that should be reserved for rare cases or where there has been a dramatic loss of public confidence in a policy issue, such as that preceding the establishment of the Food Standards Agency.

Option 5. Revert the delivery of major areas of environmental regulation back to existing elected local authorities or new forms of local regional government if developed. This has the advantages of ensuring greater local political accountability and may be seen to be consistent with the principle of subsidiarity and the local delivery of services. EHS (or its replacement body) could exercise a supervisory role. This approach, however, does not meet the perceived advantages of an independent regulator which can deliver a consistent approach divorced from direct political interference. It would reverse the trend seen in other parts of the United Kingdom, where local authorities lacked sufficient resources and the technical expertise needed to deliver many areas of contemporary environmental regulation. It would

make it more difficult to ensure the consistency of approach now required by European Community legislation and could increase the risk of infraction proceedings. There would be considerable disruption during the years while local authorities acquired the skills and staffing needed to perform new functions.

IMPROVING ACCOUNTABILITY

- 7.1 There already exist a number of mechanisms designed to hold executive agencies such as Environment and Heritage Service accountable for their actions. As part of the Department, the Minister is ultimately politically answerable for the Agency, and EHS (through the Department) can be subject to judicial review where its actions may be illegal. It is equally clear from the experience of environmental agencies in other parts of the United Kingdom, where board members are appointed rather than elected, that considerable efforts have been made to develop openness and transparency as a way of compensating for the lack of conventional political accountability. Open board meetings and public access to full board papers are clear examples.
- 7.2 The accountability of governmental bodies can also be substantially strengthened by the creation of institutions with a specific role and sufficient resources to investigate the performance of government agencies and bodies. Already a number of bodies can perform this role; the Ombudsman (on reference from an Assembly Member), Select Committees and the Northern Ireland Audit Office, which has already produced a number of detailed reports on particular aspects of the performance of Environment and Heritage Services. Nevertheless, the opportunity should be taken to consider to what extent these mechanisms could be strengthened. It is clear that the challenges of effectively implementing environmental regulation and policy will grow in Northern Ireland over the next decade. Non-governmental environmental organizations are growing in sophistication, and the public needs to have confidence that there is sufficient government machinery to hold the performance of official bodies to account where there are failings, and to identify lessons for the future.

A new cross-departmental Assembly Committee on Sustainable Development

The Assembly Environment Committee can perform an important role in monitoring the performance of the Department of the Environment and its associated agencies, but many contemporary environmental issues do not readily fall within discrete boundaries which can easily be handled by a single Government department or agency. It is sometimes still all too easy for officials and others to view the environment in a narrow way and assume it falls outside their sphere of interest. Within Northern Ireland many policy issues with profound environmental implications – such as transport, energy, housing and agriculture – either fall within the prime responsibility of departments other than the Department of the Environment or require a coordinated approach between a number of departments. These types of issues often fall within current concepts of sustainable development.

It would therefore be valuable for the Assembly to establish a new cross-departmental Committee on Sustainable Development, following the model of the Westminster Environmental Audit Committee. It would not replace the Assembly Committee on the Environment. Its primary role would be to focus on cross-cutting environmental issues which involve a number of departmental interests other than those of the Department of the Environment, and which might otherwise escape sufficient scrutiny from Assembly committees.

Options for new Environmental Audit Bodies

The current machinery for carrying out independent auditing of departments and public bodies with environmental responsibilities could also be strengthened.

Option 1. Create a Commission of the Environment. This would be a new, independent body with specific responsibility to investigate and report on the performance of governmental bodies in their exercise of environmental responsibilities. Its precise jurisdiction and powers would be a matter for government. The advantages of such a body is that it could develop the specialist environmental knowledge and expertise needed for investigations

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and, unlike the more general accountability bodies, it would avoid being distracted by other responsibilities. The establishment of such a body would be a clear signal by government of the seriousness with which it is now taking the environment and of the need to ensure public trust in the performance of its bodies and agencies. Nevertheless, it would be necessary to establish that the environment is sufficiently distinctive from other areas of government policy to warrant a dedicated new body. There are real costs involved in establishing such a body, and it could lead to unnecessary duplication with the functions of other bodies such as the Northern Ireland Audit Office.

Option 2. Strengthen the capacity of the Northern Ireland Audit Office in the environmental field. This option has the advantage of building on an existing institution with the necessary powers and experience in investigating the performance of governmental bodies, and one that has already developed an interest in the environment with its two reports on the performance of Environment and Heritage Service. It would recognize that the environmental challenge is sufficiently broad to require greater resources and more specialized expertise that is presently available. This model has considerable attractions, though there remains a danger that the environment would still be lost within the wider responsibilities of the NI Audit Office. Furthermore, the rationale for the Audit Office's decisions to choose particular areas of investigation are not especially clear. There are, for example, no developed mechanisms of investigating complaints by members of the public.

Option 3. Create a dedicated Environment Audit body and/or Environment Commissioner within the existing Northern Ireland Audit Office. This is a variation of the second option, but one that gives a more visible significance to the environment, and acknowledges the distinctive challenges it raises. This model in many ways would mirror the Canadian Commissioner of the Environment and Sustainable Development, established in 1996 within the Office of the Auditor General. This option, though also involving costs, has the advantage of building on the strengths of an existing institution and avoiding

unnecessary overlap of functions between institutions but creates a visible, distinctive entity within the Audit Office.

PROVISION OF INDEPENDENT POLICY ADVICE ON THE ENVIRONMENT

- 8.1 The Department of the Environment has already established a number of official bodies with a responsibility to provide it with independent advice on particular aspects of environmental policy. This report does not examine the effectiveness of these existing arrangements, nor does it question the need for their continued existence. Experience in other parts of the United Kingdom shows that a more independently structured environment regulator can also provide government with a valuable source of policy advice based on its experience in actually operating on the ground and its technical expertise.
- 8.2 Experience in Europe shows that, in addition to these types of bodies, there are considerable gains to be made in setting up an independent advisory environmental body that can provide government with a longer term examination of environmental issues that do not necessarily fall within existing departmental boundaries. Broadly two forms of bodies have developed. Bodies such as the UK Royal Commission on Environmental Pollution or the German Council on Environmental Advisers are composed of individual experts from different disciplines or with particular experience. The second type of body, which includes many of the more recent sustainable development commissions that have been established in other European countries, is more in the way of stakeholder body whose members tend to represent particular sectors of society with an interest in the environment. Such bodies are not mutually exclusive, though an expert rather than a stakeholder body has particular attractions, provided it adopts a multi-disciplinary approach and operates with an open mind. It is important to recognize that the existence of such a body does not replace the need for more specialized departmental advisory bodies. It is essential to the effectiveness of such a body that, in addition to the appointment of members of distinction and

expertise, it is given the freedom to choose its own areas for study and has sufficiently resourced secretariat support to ensure depth and authority in its reports.

Key Options for Cross-Departmental Policy Advice

8.3 Both the Royal Commission on Environmental Pollution and the UK Sustainable Commission are UK wide bodies which take an interest in Northern Ireland. However, Northern Ireland currently lacks any dedicated arrangement which provides for an authoritative and independent analysis of the longer term environmental challenges facing it and one which is detached from existing departmental boundaries. If the model of an expert body were adopted there are a number of options.

Option 1. Strengthen links with the Royal Commission on Environmental Pollution. The Royal Commission is a United Kingdom wide body, and although in recent years it has engaged more fully with the devolved administrations, more might be done to ensure that the interests and concerns of Northern Ireland are fully reflected in its inquiries. This would require departments to be more fully engaged with the development of the Commission's reports. Ideally, there should be at least one member appointed with a Northern Ireland background, though this may not always be possible since, in the final analysis, members should be appointed for their individual expertise and experience rather than as representing any particular region or sector of society.

Option 2. Establish a new Northern Ireland Commission on the Environment. This would be along similar lines to the RCEP, and would reflect the fact that as a UK wide body the RCEP is unlikely to have the time and resources to examine in depth environmental issues relating specifically to Northern Ireland. It would not replace the RCEP, but its establishment

could lead to difficult issues of overlap of functions, and might lead to a detachment of RCEP concerns with Northern Ireland in its consideration of environmental issues facing the United Kingdom. It might also lead to demands from other devolved administrations to create their own Commissions, diminishing the distinctive authority of the Royal Commission. It may also be that the costs of establishing such a body solely concerned with Northern Ireland are not justified relative to the benefits that would result.

Option 3. Establish a Commission on the Environment in Ireland. This is a more challenging proposal and envisages an expert advisory body established jointly by both the Northern Ireland Government and the Irish Government under the auspices of the British-Irish Council, and reporting to both governments. It would be based on the premise that there are environmental issues where in-depth, independent studies on the longer term implications of current trends and policies as they effect the whole of the island would be a valuable input to policy thinking to both governments. Transport patterns, water management and waste management might be good examples. Environmental issues were already identified in the Good Friday Agreement as a suitable area for cooperation, and there already exist examples of cross-border cooperation in fields such as water pollution and fisheries. However these arrangements develop, it should be stressed that the proposed Commission would have no executive functions or powers to bind governments, but would be a source of independent expert advice to both governments from a distinct perspective. An advantage of this option is that it would be less likely to create problems of overlap with a UK body such as the Royal Commission on Environmental Pollution. The establishment and running costs would be shared between the governments.

SUMMARY OF KEY OPTIONS**1. DELIVERY MECHANISMS SURROUNDING ENVIRONMENT AND HERITAGE SERVICE (EHS)**

- Option 1 No change of existing status as an Executive Agency within the Department of the Environment
- Option 2 Abandon Executive Agency status and incorporate functions of EHS fully within the Department of the Environment
- Option 3 Create a new Environment Authority structured as a non-departmental public body
- Option 4 Create a new Environment Authority structured as a non-ministerial government department
- Option 5 Give local authorities prime responsibility for implementing environmental regulation with EHS (or its replacement body) having enhanced supervisory powers

2. IMPROVING ACCOUNTABILITY**Assembly Committee**

Create a new cross-departmental Sustainable Development Assembly Committee

Options for Auditing Mechanisms

- Option 1 Establish a new independent Environment Audit Commissioner
- Option 2 Strengthen environmental capacity within the NI Audit Office
- Option 3 Create a dedicated Environmental Unit/Commissioner within the NI Audit Office

3. CROSS-DEPARTMENTAL INDEPENDENT POLICY ADVICE on the ENVIRONMENT

- Option 1 Strengthen links with the Royal Commission on Environmental Pollution
- Option 2 Establish a Northern Ireland Commission on the Environment
- Option 3 Establish a Commission on the Environment for the island of Ireland reporting to both governments

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Copies of the full report can be downloaded from the following web-sites:

www.epconsultni.org.uk

www.ucl.ac.uk/laws/environment (under 'contracted research')

This summary and the full report derive from independent research funded jointly by the following organizations. The analysis and conclusions are those of the author:

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