

Fisheries & Environment Division

Fisheries Bill Team



Department of

**Agriculture and
Rural Development**

www.dardni.gov.uk

AN ROINN

**Talmhaíochta agus
Forbartha Tuaithe**

MÁNNYSTRIE O

**Fairms an
Kintra Fordèrin**

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29 January 2016

Dear Stella,

Further to my letter dated 25 January in regard to the Committee's consideration of a research paper entitled "Fisheries Bill – Assessing the Costs".

Although the CAL Committee will not be undertaking scrutiny of the DCAL provisions within clauses 10-13 of the Bill, please see attached, as promised, updated input to include information in respect of the issues outlined within the research paper with respect to the inland fisheries clauses.

I would be grateful if you would bring this information to the attention of Committee members, for their information.

Yours sincerely,

John Terrington
Fisheries Bill Team

If you have a hearing difficulty you can contact the Department via Text Relay.
Making a call from a textphone dial 18001 + number.
Making a call from a telephone dial 18002 + number.



cc Paul Mills
DARD Private Office

Attachments:

Annex A: Departmental response to Issues for Consideration in Assembly Research Paper “Fisheries Bill – Assessing the Costs” (Up-dated to include DCAL input).

Annex B: Table of Costs of the Fisheries Bill, as introduced (Up-dated to include DCAL input).

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DEPARTMENTAL RESPONSE TO ISSUES FOR CONSIDERATION OUTLINED WITHIN A NORTHERN IRELAND ASSEMBLY RESEARCH AND INFORMATION SERVICE PAPER, 7 JANUARY 2016: "FISHERIES BILL - ASSESSING THE COSTS"

Issue for consideration: 1 - In light of the Assembly's SO 41, the Assembly may wish to ask the DARD and the DCAL to provide an estimated cost, or range of costs, of all costs relative to the revised Bill proposals (i.e. the Bill progressing to the consideration stage).

DARD response.

The attached table sets out the costs of the Bill, as introduced. This concludes that there are no (or negligible) ongoing (implementation, recurrent or operating) costs related to the Bill, and that any new/amended powers which would have stemmed from the Bill would have formed part of the core activities of DARD and DCAL fisheries, and therefore would be funded from within existing resources as part of each department's normal business.

Contingency

Issue for consideration: 2 - The Assembly may wish to clarify whether there are any contingency plans in place to address the issues arising from the Bill progressing to consideration stage, if the Bill does not complete its passage through the Assembly by the end of March.

DARD response.

Dealing with clause 6 in particular – the Department did consider whether this matter could be dealt with via subordinate legislation, which may have helped in the short term. However, the underlying problem that clause 6 seeks to address will remain and the EU Commission will continue to be unhappy that we cannot directly enforce all EU fisheries legislation immediately that it comes into operation (as they expect member states to do). Furthermore, given the potential size of the subordinate legislation required to implement the EU Control Regulation, it is difficult to see how this could have been brought forward in a timetable that would satisfy the Commission. Given the amount of already anticipated additional new legislation on the horizon (e.g. EU revisions of technical conservation regulations, and the introduction of long term management plan regulations), it is likely that any short term fix would only serve to store up problems for further down the line.

If the Bill was not to become law in the current mandate, it would be necessary to return to the Commission and set out a revised timetable, and the Commission has signalled that it would only suspend further action in respect of the current Pilot Case upon confirmation that Clause 6 has been enacted. We would therefore continue to face the very real threat of EU sanction becoming a reality.

Dealing with other aspects in the Bill that are now unlikely to be taken forward within the Bill, as introduced, the new Department (DAERA) will seek the agreement of a new Minister to proceed with a new Bill to bring forward any outstanding issues. It will be for that new Minister to consider, and the resources to take forward any

outstanding issues in a Bill within the next Assembly mandate will have to come from within the new Department's baseline depending on other priorities.

Costs

Issue for consideration: 3 - To ensure that the Assembly has a clear understanding of what the DARD and the DCAL considers to be 'significant', the Assembly may wish to ask both departments what 'significant' means and what range does it cover?

DARD response.

As set out in the attached table, the Department does not consider that any of the clauses in the Bill, as introduced, have any additional costs. Therefore 'no significant costs' in this context means there are only negligible, one off costs e.g. bringing forward legislation or guidance that would be part of the normal key business activities of fisheries work and these would be built into the departmental business planning exercise.

Threat of Infraction

Issue for consideration: 4 - Given the potential for infraction fines outlined above, is that potential greater or lesser in relation to the DARD or the DCAL non-compliance with EU obligations?

DARD response.

Currently the potential for infraction is very real, and greatest, in respect of DARD which has a live pilot case which would be closed upon clause 6 being enacted within this current mandate.

However, when the Bill was first proposed there was no reason to expect that the timetable for dealing with this matter would lead to any action from the Commission, such that there was no specific reason to consider that infraction was an issue at that point.

In terms of this clause and indeed a number of the other proposals that underpinned the Bill, these were intended to ensure that the Departments continue to meet EU obligations generally and in the longer term e.g. with respect to the Water Framework Directive, the EU Services Directive and the Common Fisheries Policy etc. Therefore when the Bill was first proposed there was no specific threat of infraction but the opportunity to take measures to avoid such a risk by ensuring that legislation remains compliant was recognised.

Issue for consideration: 5 - In light of the above reply, did that reply factor into decisions made by the DARD and the DCAL about the Bill; and if so specify how?

DARD response.

A number of the clauses in the Bill seek to ensure compliance with EU and other statutory obligations in the medium to longer term, and it was for this reason that they were included in the Bill, as introduced.

Clause 6

Issue for consideration: 6 - An estimate for the costs involved in reviewing existing licenses.

DARD response.

Sea fishermen operate under a general fishing licence and there are only four variants of this licence. The general licence conditions are reviewed annually and licences are also varied in-year to open and close fisheries. A review is therefore not a case of reviewing hundreds of individual licences. Only the few variants are reviewed.

Since licences are regularly reviewed as part of normal business and therefore the costs of deleting redundant conditions is negligible.

Issue for consideration: 7 - Information about how the DARD gained the appropriate level of assurance that the costs and savings involved with the review of licenses would be offset over time, when no apparent information is available in respect of costs.

DARD response.

As the costs of reviewing a licence can be absorbed within the routine annual and in-year review process and should be a one-off exercise to remove redundant conditions, any savings in not having to add additional clauses in future will be almost fully realisable.

Issue for consideration: 8 - If calculations were carried out; the DARD's calculations on how the costs would be "offset over time" and the length of time it envisages that this would take.

DARD response.

Given that the work involved is negligible no calculations were required.

Issue for consideration: 9 - If the payback period is over one year, the Assembly may wish to ask where the financing for the upfront costs would be accessed.

N/A

Issue for consideration: 10 - An estimate for the costs involved in reviewing and revoking SRs (Statutory Rules) and redundant legislation.

DARD response.

The review would involve legislation that has both UK wide application (UK Statutory Instruments) and NI Statutory Rules. DEFRA has already reviewed UK SIs in consultation with the other devolved administrations as part of its deregulation exercise. Therefore the UK SIs that extend to NI have already been identified.

A review of NI SRs would be carried as part of DARD's normal work programme using existing resources. There would therefore be no additional costs arising from the review.

Post review, subordinate legislation would be required to revoke redundant legislation. Again this would be done within the normal DARD work programme and would use existing resources.

Issue for consideration: 11 - Information about how the DARD gained the appropriate level of assurance that the costs involved with reviewing and revoking SRs and redundant legislation would be offset by savings in the drafting of future SR, when no apparent information is available in respect of costs.

DARD response.

The costs in both cases are nominal and would form part of "business as usual".

Savings from revocations would arise from not having to include this legislation in future reviews and maintenance of other records and reports that otherwise would require its inclusion.

Not having to draft future SRs to implement EU legislation means in particular that inshore fisheries (non EU) legislation that has had to be deferred due to lack of resources may now be taken forward as part of normal business and within existing resources.

Issue for consideration: 12 - If calculations were carried out, the DARD's calculations on the number of SRs and pieces of legislation that would be necessary for its staff to review and potentially revoke, as compared to the annual number of SRs that would be required to be introduced due to EU obligations.

DARD response.

No calculations were specifically carried out. A review and revocation exercise would involve one single piece of legislation to revoke all redundant legislation whereas the costs of drafting new legislation to implement EU rules would be recurrent year after year with at least one new piece of NI legislation for each new or amended EU regulation. Numbers of future EU fisheries regulations will vary but can be expected to be at least one per year, given new areas requiring legislation and regular replacement of existing EU Regulations every 5 years.

Issue for consideration: 13 - If the staff time diverted from drafting new SRs on an annual basis does not match the amount of time necessary to carry out the review of SRs and legislation, how does the DARD intend to finance the review?

DARD response.

It is not possible to specify how much time would be saved in not needing to draft SRs – however, there is a potentially large amount of further new legislation on the horizon in relation to EU controls, new landing obligations, technical conservation

regulations and long term management plans, such that this would be the mainstay of policy work in the coming period if clause 6 did not come into law. This is likely to involve drafting of several pieces of legislation, whereas the review and revocation would involve just one piece of legislation. As stated earlier, a review of UK SIs has already been done and only NI SRs need to be reviewed.

That said, should it not be possible to complete a review of existing legislation in the short term, this would not have any specific implication for the Department or for stakeholders, but it would be normal best practice to carry out such an exercise as time allows for reason of better regulation.

Inland Fisheries

Issue for consideration: 14 - The Assembly may wish to request that the DCAL and the Northern Ireland Environment Agency (NIEA) provide an estimate of the costs involved with the introduction of the new regulatory system in respect of the removal of material from beds of lakes.

DCAL already operates a system of authorisations under Section 48 of the Fisheries Act (NI) 1966 with regard to the removal of material from river beds. Each authorisation is site-specific and costs are dependent on the works proposed and the potential impact on spawning beds and habitat. On average, a site inspection and associated paperwork would involve 1 x Senior Fishery Officer for 4 hours (£23.30 x 4 hrs = £93) and 1 x Administrative Officer for 2 hours (£12.32 x 2 = £25). Total cost would average at £118 and the Department would anticipate no more than 10 additional applications per year. These costs will be met from within existing budgets.

Issue for consideration: 15 - The Assembly may wish to enquire whether DCAL estimated the cost of carrying out an audit on all rivers in NI to identify the volume of potential barriers to fish.

An audit of NI rivers is currently being conducted by the NI Environment Agency as part of their obligations under the Water Framework Directive. There would therefore be no additional cost to DCAL. When completed DCAL will have access to this data which will facilitate a full assessment of current barriers to fish passage.

Issue for consideration: 16 - If not, the Assembly may wish to enquire how the DCAL assured itself that *'there were no direct nor substantial financial implications from the policy proposals'*?

Please see above.

Issue for consideration: 17 - The Assembly may wish to request that DCAL provide an estimate of the costs involved for the removal of one dam, together with the potential number of dams in NI where the owner is not identifiable – e.g. by extrapolating data from previous NIEA surveys, as appropriate.

Costs relating to dam removal very much depend on the scale of the structure and associated impacts. At the lower end of the scale, the removal of a small dam structure may amount to no more than the cost of a digger hire at approx. £300 per day. The costs for larger structures would depend on site complexity and impact on the surrounding environment. Such work will be prioritised within existing budgets where possible. Where budgets are inadequate, bids will be made for additional resources.

Clause	Recurring/Implementation/Operating Costs
<p>Clause 1 Sea-Fishing (Permits)</p>	<p>This is an amendment to existing regulatory powers and will have no ongoing costs associated with it.</p> <p>There may be some negligible and one-off costs in training officers, in issuing guidance and in drafting new subordinate legislation to reflect the policy contained in the Bill, but this would form part of business as usual and would be undertaken within existing resources as part of sea fisheries policy key objectives.</p> <p>Similarly enforcing any new permit scheme made under the new regulatory powers would form part of key enforcement activities and would fall within existing enforcement resources.</p>
<p>Clause 2 – Size limits for sea fish</p>	<p>This is an amendment to existing regulatory powers and will have no additional ongoing costs.</p> <p>There may be some negligible and one-off costs in training officers, in issuing guidance and in drafting new subordinate legislation, but this would form part of business as usual and would be undertaken within existing resources as part of sea fisheries policy key objectives.</p> <p>Enforcing any such order would fall within existing enforcement activities/resources as part of key activities.</p>
<p>Clause 3 - Grant of licences subject to conditions imposed for environmental purposes</p>	<p>This is an amendment to existing licensing powers and will have no additional ongoing costs.</p> <p>Sea fisheries licences are updated on an ongoing basis and using this amended power would form part of business as usual and would be undertaken within existing resources as part of sea fisheries policy key objectives.</p> <p>Any amendment normally only involves amending 4 general licence types. All fishermen in receipt of a general fishing licence will get one of these 4 types of licence.</p> <p>Enforcing any new licensing condition under this amendment would fall within existing enforcement activities/resources.</p>
<p>Clauses 4 & 5 – Powers of British sea-fishery officers to enforce sea fisheries legislation Interpretation etc</p>	<p>DARD is already empowered to enforce fisheries legislation. The majority of the 'new' powers in these clauses are already in place albeit tailored to each piece of legislation and these clauses broadly bring these into one Act.</p> <p>There may be some negligible and one-off costs in</p>

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	<p>training officers and in issuing guidance, but this would form part of business as usual and would be undertaken within existing resources as part of sea fisheries key objectives.</p>
<p>Clause 6 - Enforcement of EU rules</p>	<p>This is an amendment to existing powers and will have no additional ongoing costs.</p> <p>Reviewing licences is already an ongoing activity (annual complete review and in-year variations to open and close fisheries) and, as part of this, the opportunity would be taken to remove any conditions that become redundant as a result of direct enforcement of EU legislation. This will form part of business as usual and would be undertaken within existing resources as part of sea fisheries policy key objectives.</p> <p>Any amendment usually only involves amending 4 general licence types. All fishermen in receipt of a general fishing licence will get one of these 4 types of licence.</p> <p>Within existing resources, legislation is regularly reviewed, and this will be used to consider the scope to revoke any redundant legislation as a result of direct enforcement. This will form part of business as usual and would be undertaken within existing resources as part of sea fisheries policy objectives.</p> <p>Fisheries legislation that applied to all regions of the UK (UK Statutory Instruments) has already been reviewed by the other devolved administrations as part of DEFRA's de-regulation exercise and any additional review would only have to focus on NI Statutory Rules.</p>
<p>Clauses 7 & 8 – Penalties for certain offences under the 1966 Act & 1967 Act</p>	<p>No recurring etc. costs.</p> <p>DARD is empowered to enforce sea fishing legislation as it pertains to sea-fishing and aquaculture. Criminal sanctions would continue to underpin the effective management of marine ecosystems and fish stocks, but higher penalties will have no additional or recurring etc. costs</p>
<p>Clause 9 – Offences by director, partners etc</p>	<p>No recurring etc. costs.</p>
<p>Clause 10 – Fish dealer's licence: no need for certificate of Justice of the Peace</p>	<p>No recurring etc. costs.</p>
<p>Clause 11 – Restriction on removal of material from bed of lake.</p>	<p>DCAL already operate a system of authorisations under Section 48 of the Fisheries Act (NI) 1966 with regard to the removal of material from river</p>

	<p>beds. Each authorisation is site-specific and costs are dependent on the works proposed and the potential impact on spawning beds and habitat. On average, a site inspection and associated paperwork would involve 1 x Senior Fishery Officer for 4 hours (£23.30 x 4 hrs = £93) and 1 x Administrative Officer for 2 hours (£12.32 x 2 = £25). Total cost would average at £118 and the Department would anticipate no more than 10 additional applications per year. These costs will be met from within existing budgets.</p>
<p>Clause 12- Dams in rivers-fish passes etc</p>	<p>Costs relating to dam removal (where no owner can be identified) very much depend on the scale of the structure and associated impacts. At the lower end of the scale, the removal of a small dam structure may amount to no more than the cost of a digger hire at approx. £300 per day. The cost for larger structures would depend on site complexity and the impact on the surrounding environment. Such work will be prioritised within existing budgets where possible. Where budgets are inadequate, bids will be made for additional resources.</p>
<p>Clause 13 - Gratings in certain watercourses</p>	<p>This will only apply to new mill dams which must comply with existing obligations regarding fish passes. Any additional costs will be small in comparison to the overall cost of any new scheme and will relate to the extra metal required to construct gratings of 10mm spacing rather than the current 25mm. It should be noted that exemptions can be granted if the installation can demonstrate adequate protection for fish through other means. It should be further noted that the vast majority of new installations are already compliant and that there will be savings to owners who will no longer have to purchase and fit wire lattices during the Springtime to protect runs of fish. This requirement will also not be implemented retrospectively so there will be no additional costs to existing mill owners.</p>
<p>Clauses 14 & 15 – Fixed Penalty Notices.</p>	<p>There may be some minimal and one-off costs in training officers, in issuing guidance and in drafting new subordinate legislation to reflect the policy contained in the Bill, but this would form part of business as usual and would be undertaken within existing resources as part of sea fisheries policy key objectives.</p> <p>Similarly enforcing any rules made under these powers would form part of key enforcement activities and would fall within existing</p>

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	enforcement resources. (A system is already in place for sea fisheries in relation to EU offences and this will simply be extended, so changes, and costs, will therefore be negligible).
Clause 16- Interpretation	No costs.
Clause 17- Power to make consequential amendments	There may be some minimal and one-off costs in drafting new subordinate legislation (if needed), but this would form part of business as usual and would be undertaken within existing resources as part of sea fisheries policy key objectives.
Clause 18- Commencement	There may be some minimal and one-off costs in drafting new subordinate legislation (if needed), but this would form part of business as usual and would be undertaken within existing resources as part of sea fisheries policy key objectives.
Clause 19- Short title	No costs.