BHA Response to Fisheries, Aquaculture & Water Environment Bill Consultation

The British Hydropower Association (BHA) is the leading trade association for the UK hydropower sector. We represent scheme owners and operators, developers, manufacturers, consultants and other specialist businesses throughout the hydropower supply chain.

The BHA operates nationwide and represents members across Northern Ireland, including scheme owners and operators with direct experience of the existing inland fisheries legislation and regulatory framework. Our response is informed by their practical experience, alongside the BHA's wider understanding of hydropower regulation across the UK.

We understand that Andrew Frazer, a BHA member and hydropower operator in Northern Ireland, has separately asked the Clerk of the Committee for an opportunity to give oral evidence.

BRITISH HYDROPOWER ASSOCIATION

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Chapter 1: Inland Fisheries Policy Objectives and Policy Statement

Clause 1: Policy Objectives

(Chapter 1 relates to Clauses 1 - 4)

Clause 1 lists and defines the inland fisheries policy objectives. The objectives are the subject of the Inland Fisheries Policy Statement which is provided for in clause 2.

Question 6

Do you consider each of the seven inland fisheries policy objectives in Clause 1 to be clearly defined and relevant?

For each objective, please select **Yes**, **No** or **Unsure**.

a. The sustainability objective

☐ No

b. The precautionary objective

☐ No

c. The ecosystem objective

☐ Yes

d. The scientific evidence objective

☐ No

e. The bycatch objective

☐ Yes

f. The national benefit objective

☐ No

g. The climate change objective

☐ No

Please provide any further comments to support your responses:

Policy Objectives

The Bill proposes seven objectives to guide inland fisheries policy, covering sustainability, precaution, ecosystems, scientific evidence, bycatch, national benefit and climate change.

The BHA considers the ecosystem and bycatch objectives to be broadly appropriate as drafted, provided that they are implemented on an evidence-based and proportionate basis.

Sustainable objective

The sustainable objective must take account of other activities undertaken in inland waters, including recreation and power generation, both of which are recognised in regulation 15(1)(a)(ii) and (iii) of the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017 (S.R. 2017 No. 81).We propose adding the following to Clause 1(2)(c):

"(c) activities other than fishing or aquaculture are managed so that the economic benefits outweigh any ecological damage caused by such activity and so that the economic losses caused by such management are not greater than the ecological benefits.

Precautionary objective

The precautionary principle is relevant only when the uncertainties and risks are considerable. The precautionary approach may be used by the Department where scientific information is incomplete, but not to support measures based on risks that are remote, hypothetical or unsupported by evidence.

We propose adding the following to Clause 1(3):

"(c) measures taken in reliance on the precautionary approach must be proportionate to the nature, likelihood, seriousness and potential effect of the risk identified and must be reviewed when further relevant evidence becomes available."

The definition of "precautionary approach to fisheries management and the aquatic environment" in Clause 1(9)(b) should also include:

"measures taken in reliance on the precautionary approach must be proportionate to the nature, likelihood, seriousness and potential effect of the risk identified and must be reviewed when further relevant evidence becomes available."

Scientific evidence objective

The scientific evidence objective does not explain how incomplete or disputed evidence should be treated. The Department should be required to identify the nature of any uncertainty and should not treat an absence of evidence of harm as evidence that harm is likely.

We propose adding the following to Clause 1(5):

"(c) where evidence is incomplete or disputed, the Department must identify the nature and materiality of the uncertainty and must not treat the absence of evidence of harm as evidence that harm is likely to occur."

National benefit objective

The national benefit objective is too narrow because it refers only to the social or economic benefits of fish and aquaculture activities. It should recognise the wider benefits arising from inland waters and associated infrastructure, including rural employment, renewable energy, energy security, heritage, flood resilience and climate adaptation.

We propose replacing Clause 1(7) with:

"(7) The 'national benefit objective' is that the management of inland fisheries and the exercise of functions relating to inland waters will—

(a) secure social, economic and environmental benefits for Northern Ireland;

(b) have regard to the contribution made by inland waters and associated infrastructure to—

(i) sustainable rural employment and economic activity,

(ii) renewable energy generation and energy security,

(iii) the preservation and beneficial use of structures of archaeological, architectural, industrial or historic interest,

(iv) flood resilience, water management and climate adaptation, and

(v) the long-term resilience of rural communities; and

(c) seek, so far as reasonably practicable, to reconcile those benefits with the conservation and improvement of the aquatic environment."

Climate change objective

The climate change objective should address both adaptation and mitigation. It should also recognise the contribution of renewable-energy generation to emissions reduction and energy security.

We propose replacing Clause 1(8) with:

"(8) The 'climate change objective' is that—

(a) the adverse effect on the climate caused by fishing and aquaculture activities in inland waters is minimised;

(b) fisheries, aquaculture and the aquatic environment adapt to the current and anticipated effects of climate change; and

(c) in exercising functions under this Act or the 1966 Act, the Department has regard to—

(i) the need to reduce greenhouse-gas emissions,

(ii) the contribution of renewable energy generation to climate-change mitigation and energy security, and

(iii) the need to avoid regulatory decisions which unnecessarily prevent or reduce the generation of renewable energy."

These amendments would retain the seven-objective structure while ensuring that the objectives properly address proportionality, evidential uncertainty and the wider public benefits associated with inland waters and related infrastructure.

Question 7

Do you consider that any other objectives should be included?

☐ No

Please provide any further comments to support your response:

We do not propose adding a further standalone inland fisheries policy objective. Instead, we consider that the existing precautionary, scientific evidence, national benefit and climate change objectives should be amended as set out in our response to Question 6.

Those amendments would ensure that the existing objectives provide a sufficiently comprehensive framework by addressing proportionality, evidential uncertainty, rural and economic benefits, existing river infrastructure, heritage, renewable-energy generation, energy security, flood resilience and climate adaptation.

Provided that the existing objectives are amended accordingly, an additional policy objective should not be necessary.

Clause 2: Policy Statement

This clause places a duty on the Department to prepare and publish an Inland Fisheries Policy Statement. The statement must set out the Department's policies for achieving, or contributing to the achievement of, the inland fisheries objectives listed in Clause 1.

The Department must publish the statement and keep it under review. It may also amend or replace the statement.

Question 8

Do you consider the provisions relating to the Inland Fisheries Policy Statement to be appropriate?

☐ No

Please provide any further comments to support your response:

We support the requirement for the Department to prepare and publish an Inland Fisheries Policy Statement. However, the provisions in Clause 2 are not sufficiently detailed to ensure that the Statement provides a clear, balanced and consistent framework for regulatory and enforcement decisions affecting inland waters.

In particular, the Statement should explain how competing policy objectives will be balanced and should establish the principles, evidential standards and enforcement approach that the Department will apply. It should also provide arrangements for technical review and the resolution of disputes concerning statutory interpretation.

We therefore propose adding the following subsection after Clause 2(2):

"(2A) The Inland Fisheries Policy Statement must also set out—

(a) how the Department will identify and balance competing inland fisheries policy objectives;

(b) the principles governing the exercise of regulatory and enforcement functions affecting existing dams, weirs, sluices, mill races, fish passes, abstraction structures and renewable-energy installations;

(c) the evidential standards to be applied when requiring consent, imposing conditions, issuing a notice or commencing enforcement action;

(d) how the Department will assess environmental risk, actual environmental harm, culpability and the wider public interest;

(e) the circumstances in which advice, warning, remedial action, a fixed penalty or prosecution will ordinarily be considered appropriate; and

(f) the arrangements for technical review, escalation and resolution of disputes concerning statutory interpretation."

The Policy Statement must be in place before the Department begins exercising the proposed fixed-penalty powers. This would allow affected persons to understand the principles and standards that will govern enforcement before the new regime becomes operational.

We therefore also propose adding:

"(3A) The Department must publish the first Inland Fisheries Policy Statement before exercising any power to issue fixed penalty notices under regulations made under Part 4."

These additions would make the Policy Statement a practical and transparent framework for decision-making, rather than simply a high-level statement of policy.

Clause 3: Preparation, Publication and Laying

This clause requires the Department to consult on a draft of the Inland Fisheries Policy Statement (or an amendment) and to have regard to any representations made to it about the draft. The Department must publish the Statement as soon as reasonably practicable and lay it (or an amendment) in the Assembly.

Question 9

Do you consider the provisions for publishing, consulting on and laying the Inland Fisheries Policy Statement to be sufficient?
☐ No

Please provide any further comments to support your response:

We support the requirements to consult on the draft Inland Fisheries Policy Statement, consider representations, publish the final Statement and lay it before the Assembly. However, Clause 3 does not provide sufficiently clear requirements concerning the manner of publication, the persons who must be consulted or the Department's response to the consultation.

The Department should be required to take reasonable and proportionate steps to publish the consultation draft and bring it to the attention of those likely to be materially affected.

We therefore propose amending Clause 3(1)(b) to provide:

"(b) publish the consultation draft in such manner as is reasonable and proportionate, and"

The Department should also be expressly required to consult those whose interests, assets or activities may be materially affected by the Statement. We propose adding the following paragraph to Clause 3(1):

"(d) consult such persons as appear to the Department to represent—

(i) owners and operators of infrastructure in or adjacent to inland waters,

(ii) renewable-energy generators,

(iii) fisheries, angling and environmental interests, and

(iv) such other persons as are likely to be materially affected by the Statement."

The existing requirement in Clause 3(2) for the Department to have regard to representations should be retained. In addition, the Department should be required to explain publicly how it has responded to the consultation.

We therefore propose adding the following subsection after Clause 3(2):

"(2A) When publishing the Statement or an amendment, the Department must publish a report summarising—

(a) the representations received;

(b) the principal issues raised;

(c) the changes made in response to those issues; and

(d) the reasons for rejecting any material recommendation that was not accepted."

These amendments would ensure that consultation is sufficiently targeted, that affected interests have a meaningful opportunity to participate and that the Department is transparent about how consultation responses influenced the final Statement.

Clause 4: Duties of the Department

This clause requires the Department to exercise its functions relating to inland fisheries, freshwater salmon fisheries, fishing in inland waters and aquaculture in inland waters in accordance with the policies contained in the Inland Fisheries Policy Statement, unless a relevant change in circumstances indicates otherwise.

The clause provides a non-exhaustive list of circumstances that may constitute a relevant change. If the Department does not act in accordance with the statement, it must publish its reasons. This exception is intended to provide flexibility where it is necessary to diverge from the policies in the statement.

Question 10

Do you agree that the Department must act in accordance with the Inland Fisheries Policy Statement when exercising its functions?

☐ Yes

Please provide any further comments to support your response:

We agree that the Department should act in accordance with the Inland Fisheries Policy Statement. However, Clause 4 should apply to the full range of regulatory and enforcement functions affecting inland waters and should set clear standards for evidence, proportionality, decision-making and written reasons.

We propose expanding Clause 4(1) by inserting the following functions after the existing reference to aquaculture in inland waters:

"the protection of the aquatic environment, the regulation of works in or affecting inland waters, the issuing of consents or permissions, and the investigation or enforcement of suspected offences relating to inland waters"

Clause 4 should also set out the standards that the Department must follow when exercising these functions. We therefore propose adding:

"(1A) When exercising a function to which subsection (1) applies, the Department must—

(a) act on the basis of relevant and available evidence;

(b) identify the statutory provision under which the function is exercised;

(c) identify any environmental harm or material risk of environmental harm relied upon;

(d) have regard to the nature, likelihood, scale, duration and reversibility of that harm or risk;

(e) have regard to the economic, social, employment, heritage, energy-security and climate consequences of the decision;

(f) adopt the least burdensome measure capable of achieving the legitimate environmental purpose;

(g) act consistently, transparently and within a reasonable period; and

(h) give written reasons in accordance with subsection (1B).”

Where the Department makes a decision affecting a person’s rights, activities or infrastructure, the reasons and evidence supporting that decision should be clear. We therefore propose adding:

“(1B) A written decision requiring consent, imposing a condition, refusing or delaying an application, issuing an enforcement notice or alleging an offence must state—

(a) the statutory provision relied upon;

(b) the material facts and evidence relied upon;

(c) the environmental harm or risk identified;

(d) why the requirement or action is necessary;

(e) why the requirement or action is proportionate;

(f) any material evidence or representations submitted by the affected person and how they were considered;

(g) any review, appeal or escalation mechanism available; and

(h) any applicable time limit.”

Affected persons should also have an opportunity to respond to disputed evidence before a decision is made. The Department should not be able to justify a decision retrospectively by relying on evidence obtained afterwards.

We therefore propose adding:

“(1C) Where material scientific or technical evidence is disputed, the Department must not determine the matter without giving the affected person a reasonable opportunity to respond to the evidence upon which the Department proposes to rely.”

“(1D) The Department may not rely upon evidence obtained after a decision as retrospectively supplying the reasons or evidential basis for that decision, except where the decision is reconsidered and remade in accordance with this section.”

The Department should also publish practical guidance and service standards so that affected persons understand when consent is required, what evidence must be supplied and how applications and disputes will be handled.

We therefore propose adding a new Clause 4A:

“Regulatory guidance and service standards

4A.—(1) The Department must prepare and publish guidance concerning the exercise of its regulatory and enforcement functions affecting inland waters.

(2) The guidance must include—

(a) definitions and illustrative examples of routine maintenance, repair, emergency works, improvement works and new works;

(b) the circumstances in which consent is or is not required;

(c) the information and evidence ordinarily required from an applicant;

(d) the evidential and technical standards to be applied by the Department;

(e) procedures for dealing with urgent safety, flood-risk or asset-integrity works;

(f) arrangements for resolving disputes between relevant divisions or public authorities; and

(g) service standards for acknowledging, assessing and determining applications and requests for regulatory advice.

(3) The Department must consult persons likely to be affected before publishing or materially amending the guidance.

(4) The Department must publish an escalation procedure to be used where—

(a) a service standard has not been met;

(b) delay may cause a seasonal environmental or construction window to be missed;

(c) delay may prejudice public safety, asset integrity, renewable-energy generation or environmental protection; or

(d) two or more public authorities have adopted inconsistent positions.

(5) Where the Department fails to determine an application within the applicable service standard, it must—

(a) notify the applicant;

(b) explain the reason for the delay;

(c) identify any outstanding information;

(d) provide a revised determination date; and

(e) refer the matter to a senior officer independent of the original decision-maker if requested by the applicant.

(6) The Department must report annually on its performance against the service standards."

These amendments would support the Department's duty to act in accordance with the Policy Statement by ensuring that decisions are evidence-based, proportionate, transparent and made within a reasonable period.

Question 11

Do you agree that the Department should be able to depart from the policy where there is a "relevant change in circumstances", as outlined in the Bill?

☐ Yes

Please provide any further comments to support your response:

We agree that the Department should be able to depart from the Inland Fisheries Policy Statement where a genuine relevant change in circumstances makes this necessary. Some flexibility is required to respond to changes in legal obligations, scientific evidence or material social, economic or environmental circumstances.

However, departure from the Statement should remain exceptional and should not allow the Department to avoid the evidential, proportionality and transparency requirements proposed in our response to Question 10.

Where the Department departs from the Statement, it should identify the relevant change in circumstances, explain how that change affected its decision and demonstrate that the resulting action is necessary and proportionate. The decision should also comply with the proposed requirements concerning written reasons, disputed evidence and available review or appeal mechanisms.

Subject to those safeguards, the proposed ability to depart from the Policy Statement is appropriate.

Clause 5: Interpretation of this Chapter

Question 12

Do you consider the definitions set out in Chapter 1, Clauses 1–4, to be appropriate?

☐ Yes, some of the definitions are appropriate

Please provide any further comments to support your response:

The definition of “fish and aquaculture activities” is circular and therefore meaningless.

Sensitive species (c) should exclude those species of birds that are controlled by the Department or that are deemed to be a pest.

Chapter 2: Fisheries and Inland Waters Regulations

Chapter 2 relates to Clauses 6–20, including the final provisions, Schedule and other enactments.

Clause 6: Power to Make Regulations

Clause 6 amends the 1966 Act by replacing Section 26, concerning regulations, with a broad power to make regulations for the purposes of:

- Managing, conserving, protecting and improving salmon fisheries and inland fisheries
- Conserving, improving and developing fish stocks
- Protecting the aquatic environment
- Protecting or improving the health of fish and other aquatic animals

It also allows regulations to address the matters listed in the new subsection (2), confer functions, impose fees and create criminal offences.

The clause enables the Department to make regulations that amend, repeal or revoke other statutory provisions. A draft of these regulations must be laid before the Assembly and approved by a resolution of the Assembly.

Question 13

Do you consider the purposes set out in Clause 6(1)(1), for which regulations may be made, to be appropriate?

☐ Yes

Please provide any further comments to support your response:

The purposes listed in Clause 6 are broadly appropriate. However, the power to make regulations is extensive and should be expressly limited to measures that are necessary and proportionate.

We therefore propose amending the opening words of the substituted section 26(1) to provide:

"The Department may make such regulations as are necessary and proportionate for any of the following purposes—"

Before making regulations, the Department should also be required to consider the evidence supporting the proposed intervention, whether a less burdensome measure could achieve the same purpose and the wider consequences of the regulations.

We therefore propose adding:

"(1A) Before making regulations under subsection (1), the Department must have regard to—

(a) the nature and scale of the environmental problem to be addressed;

(b) the available scientific and technical evidence;

(c) whether the purpose could be achieved by guidance, voluntary agreement or a less burdensome regulatory measure;

(d) the effect of the proposed regulations on rural businesses, existing infrastructure, renewable-energy generation, heritage assets and employment; and

(e) the inland fisheries policy objectives."

These amendments would retain the Department's ability to regulate for the listed purposes while ensuring that the proposed intervention is justified, evidence-based and no more burdensome than necessary.

Question 14

Do you consider the range of matters listed in Clause 6(1)(2) to be sufficiently comprehensive?

☐ Yes

Please provide any further comments to support your response:

The range of matters listed in Clause 6(1)(2) is sufficiently comprehensive. However, the breadth of the matters covered reinforces the need for the necessity, proportionality, consultation and impact-assessment safeguards proposed in our responses to Questions 13 and 15.

The inclusion of a matter in the list should not, by itself, justify regulation. The Department should be required to identify the problem being addressed, assess the available evidence and consider whether guidance, voluntary agreement or another less burdensome measure would be sufficient.

Question 15

Do you consider it appropriate that the Department should have the power, through regulations, to confer functions, impose fees and create criminal offences, as provided for in Clause 6(1)(3)?
☐ No

Please provide any further comments to support your response:

We do not consider it appropriate for these broad powers to be exercised without additional statutory safeguards. The ability to confer functions, impose fees and create criminal offences may be necessary in some circumstances, but the Department should first demonstrate that the proposed measure is necessary, proportionate and supported by evidence.

Affected persons should be consulted, and the environmental, economic, social, equality, rural, climate and regulatory effects of the proposal should be assessed and published.

We therefore propose adding:

"(4A) Regulations under this section may not be made unless the Department has—

(a) consulted persons likely to be materially affected;

(b) published an assessment of environmental, economic, social, equality, rural, climate and regulatory impacts; and

(c) published a statement explaining why the proposed provision is necessary and proportionate."

Requirements carrying criminal or regulatory consequences should be contained in, or clearly authorised by, legislation. Guidance should explain statutory requirements but should not extend an offence or create additional obligations without legislative authority.

We therefore also propose adding:

"(4B) Guidance issued by the Department may not extend the scope of a criminal offence or impose a requirement which is not contained in, or authorised by, a statutory provision."

Subject to these safeguards and the Assembly approval requirements already contained in the Bill, the Department would retain sufficient flexibility to make regulations while ensuring appropriate accountability and legal certainty.

Question 16

Do you agree that the definitions set out in Clause 6(1)(6) are appropriate?

☐ Yes

Please provide any further comments to support your response:

The definitions in Clause 6(1)(6) are broadly appropriate for the purposes of the regulation-making power.

Their application should nevertheless remain consistent with the inland fisheries policy objectives and with the proposed requirements that regulations be necessary, proportionate and supported by relevant scientific and technical evidence.


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Clause 7: Enforcement Powers

This clause provides that for the purposes of enforcing sea fisheries legislation, authorised officers (persons who are "British sea-fishery officers" by virtue of section 7(1) of the Sea Fisheries Act 1968) have the Common Enforcement Powers and Fisheries Enforcement Powers set out in Chapter 8 of Part 2 and Chapter 4 of Part 8 respectively, of the Marine and Coastal Access Act 2009. This provides Northern Ireland enforcement officers with the powers available to officers in other jurisdictions.

17. Do you consider the enforcement powers in relation to sea fisheries to be clear and sufficient?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

No amendments

Clause 8: Section 7 - Interpretation etc.

18. Do you agree that the common enforcement powers are those set out in Chapter 2 of Part 8 of the Marine and Coastal Access Act 2009, including as per Clause 8(3) – "with any appropriate modifications"?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

No amendments

19. Do you consider the definitions in this clause at 8(6) to be clear and appropriate?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

No amendments

Clause 9: Mode of trial and penalty for offences

This clause gives effect to the provisions in the Schedule to the Bill. These provisions increase the maximum penalties that a court of summary jurisdiction may impose where a person is found guilty of having committed certain offences under the 1966 Act, the Sea Fish (Conservation) Act 1967 and the Water (Northern Ireland) Order 1999; and, in some cases, change the mode of trial so that offences become triable either-way instead of being triable summarily-only. The Schedule also provides for consequential and transitional provisions. The changes are being introduced to account for inflation and to achieve consistency with neighbouring jurisdictions. In effect, these changes provide the Department with greater capacity to uphold compliance with requirements imposed by the relevant legislation, allowing for prosecution of breaches with higher maximum fines, and where applicable prosecution on indictment for the most serious cases.

20. Do you consider the amendments listed for Parts 1 to 3 of the Schedule to be appropriate and proportionate? (See Q30 – Q40 for questions on Schedule 1)

☐ No

Please provide further comment to support your response

Irrespective of the level of the revised penalties, the Bill should provide a clear and proportionate framework for determining the appropriate enforcement response in an individual case.

The Department should be required to consider the environmental harm involved, the person's culpability, any remedial action taken, the clarity of the guidance provided and whether the alleged breach concerns a genuinely disputed interpretation of the law.

We therefore propose inserting the following new Clause 9A after Clause 9:

"9A.—(1) In determining whether to issue a warning, require remedial action, offer a fixed penalty or refer a matter for prosecution, the Department must have regard to—

(a) the actual or reasonably foreseeable environmental harm;

(b) the culpability of the person concerned;

(c) whether the conduct was deliberate, reckless, negligent, accidental or based on a reasonable interpretation of the law;

(d) any steps taken to prevent, mitigate or remedy harm;

(e) the person's regulatory history;

(f) whether the Department had provided clear and consistent guidance;

(g) whether the alleged breach concerns a genuinely disputed question of statutory interpretation; and

(h) the public interest in enforcement.

(2) The Department must publish and keep under review an enforcement policy addressing the matters in subsection (1).”

This addition would ensure that the availability of increased penalties or alternative enforcement measures does not lead to an automatic or disproportionate enforcement response. It would require the Department to select the appropriate response by reference to the facts, evidence, harm, culpability and wider public interest in each case.

Clause 10: Meaning of Fixed Penalty Notice

21. Do you consider the definition of a “fixed penalty notice” to be appropriate?

☐ Unsure

Please provide further comment to support your response

Clause 11: Certain offences under the 1966 Act

The enforcement powers within the 1966 Act and the Water (Northern Ireland) Order 1999 are limited to criminal prosecutions, which on conviction, result in fines and/or imprisonment. In other jurisdictions modern enforcement systems use fixed penalty notices as an alternative to prosecution in cases where issuing a notice is a proportionate response to the offence that has been committed.

Clause 11 provides that the Department may by regulations make provision for and in connection with the giving of fixed penalty notices in respect of any offence under any provision of the 1966 Act which is listed in subsection (2) or any regulations made under section 26 of that Act

22. Do you consider the range of offences listed in Clause 11(2) to be appropriate?
☐ No

Please provide further comment to support your response

We do not consider that the Bill should prescribe a broad list of offences as automatically suitable for fixed-penalty treatment. The suitability of an offence for a fixed penalty should be assessed by reference to its nature, seriousness and evidential requirements.

The regulations should specify the offences to which fixed penalties may apply, and the Department should publish its reasons for considering a fixed penalty to be a proportionate enforcement response.

We therefore propose replacing Clause 11 with:

"11.—(1) The Department may by regulations make provision for fixed penalty notices in respect of offences under the Fisheries (Northern Ireland) Act 1966, or an order or regulations made under it, only where—

(a) the offence is specified in the regulations;

(b) the offence is suitable for determination by fixed penalty having regard to its nature, seriousness and evidential requirements; and

(c) the Department has published reasons for considering a fixed penalty to be a proportionate enforcement response."

This approach would ensure that fixed penalties are used only for offences that are suitable for determination through that process and where their use can be justified as a proportionate enforcement response.

Clause 12: Offences under the 1999 Order

The enforcement powers within the 1966 Act and the Water (Northern Ireland) Order 1999 are limited to criminal prosecutions, which on conviction, result in fines and/or imprisonment. In other jurisdictions modern enforcement systems use fixed penalty notices as an alternative to prosecution in cases where issuing a notice is a proportionate response to the offence that has been committed.

Clause 12 permits the Department by way of regulations to make provision for and in connection with the giving of fixed penalty notices in respect of any offence under the Water (Northern Ireland) Order 1999 or any order or regulations made under that Order.

23. Do you consider the Department "may by regulation make provision for and in connection with the giving of fixed penalty notices in respect of any offence under the Water (Northern Ireland) Order 1999 or under any order or regulations made under that order?

☐ No

Please provide further comment to support your response

We do not consider that the Bill should prescribe a broad list of offences as automatically suitable for fixed-penalty treatment. The suitability of an offence for a fixed penalty should be assessed by reference to its nature, seriousness and evidential requirements.

The regulations should specify the offences to which fixed penalties may apply, and the Department should publish its reasons for considering a fixed penalty to be a proportionate enforcement response.

We therefore propose replacing Clause 12 with:

"12.—(1) The Department may by regulations make provision for fixed penalty notices in respect of offences under the Water (Northern Ireland) Order 1999, or an order or regulations made under it, only where—

(a) the offence is specified in the regulations;

(b) the offence is suitable for determination by fixed penalty having regard to its nature, seriousness and evidential requirements; and

(c) the Department has published reasons for considering a fixed penalty to be a proportionate enforcement response."

This approach would ensure that fixed penalties are used only for offences that are suitable for determination through that process and where their use can be justified as a proportionate enforcement response.

Clause 13 : Regulations - General

This clause sets out examples of what regulations made by the Department under clauses 11 and 12 may include. It also provides that any regulations made by the Department under those clauses must be laid before and approved by a resolution of the Assembly before being made.

24. 13 (1) Do you consider the provisions regarding regulations appropriate?

☐ No

Please provide further comment to support your response

Clause 13(1) gives the Department broad discretion over the contents of fixed-penalty regulations. Core procedural safeguards should be mandatory rather than matters that the regulations may include.

We therefore propose amending the opening words of Clause 13(1) to provide:

"Regulations under section 11 or 12 must make provision for the matters in paragraphs (a) to (n) and may make further provision about—"

The regulations should be required to address the evidence supporting a notice, the recipient's right to make representations and the availability of impartial or independent review.

We therefore propose adding:

"(k) the evidence and written reasons which must accompany a fixed penalty notice;

(l) the right of the recipient to make representations and request withdrawal;

(m) a review by a person who was not involved in the original decision and the Right of Appeal to Water Appeals Commission; and

(n) where the alleged offence depends upon disputed scientific, engineering or statutory interpretation, access to an independent technical review before the payment period expires."

These amendments would ensure that essential safeguards apply consistently to every fixed-penalty scheme made under Clauses 11 and 12.

25. Do you consider the provisions in 13 (2), (3) and (4) appropriate?

☐ No

Please provide further comment to support your response

The provisions in Clause 13(2), (3) and (4) are not sufficient on their own. Clause 13 should also prescribe the evidential and proportionality threshold that must be met before a fixed-penalty notice can be issued.

We propose adding:

"(2A) Regulations must provide that a fixed penalty notice may be given only where the authorised person is satisfied, on the balance of probabilities and on the basis of recorded evidence, that—

(a) the offence has been committed;

(b) the recipient is responsible for the offence;

(c) a fixed penalty is proportionate to the harm and culpability involved; and

(d) the case does not raise a material dispute of fact, expert evidence or statutory interpretation which ought reasonably to be determined by a court or independent reviewer."

A fixed-penalty notice should also provide sufficient information to allow the recipient to understand the allegation, assess the evidence and decide whether to pay or seek review.

We therefore propose adding:

"(2B) A fixed penalty notice must state—

(a) the offence alleged;

(b) the date, location and material facts;

(c) the evidence relied upon;

(d) the actual or potential environmental harm;

(e) the reasons why a fixed penalty is considered proportionate;

(f) the effect of payment;

(g) that payment does not constitute an admission of liability for any civil or regulatory purpose;

(h) the process for representations, review and withdrawal; and

(i) the consequences of declining to pay."

These additions would complement the existing provisions on penalty amounts, transitional arrangements and Assembly approval by ensuring that notices are evidence-based, proportionate and procedurally fair.

Clause 14 : Effect on Prosecution

This clause provides that, where a person is given a fixed penalty notice in respect of an offence, proceedings against the person in respect of the offence may not be brought before the end of the period for payment of the penalty, unless the fixed penalty notice is withdrawn or a notice stating that that person does not intend to pay the fixed penalty is given.

It further provides that if a fixed penalty is paid before the end of the period for the payment of the penalty, the person in respect of whom the penalty is paid may not be convicted of the offence, unless the fixed penalty notice is withdrawn or the circumstances specified in regulations has been met for proceedings to be commenced after the payment of a fixed penalty in relation to that offence.

26. Do you consider the provisions relating to the effect on prosecution to be appropriate?

☐ Unsure

Please provide further comment to support your response':

No amendments

Clause 15: Aquaculture licences under the 1966 Act

Clause 15(1) firstly amends the heading before section 8 of the 1966 Act to refer expressly to aquaculture, given the subsequent amendments adding aquaculture licensing to the same part of the 1966 Act.

Clause 15(2) then makes a substitution of the current section 11 of the 1966 Act with a new section 11 to provide for the expanded "Aquaculture Licence" in place of the current "Fish Culture Licence".

This substituted section 11 replaces the narrower concept licensing of the operation of a "fish farm" (an undertaking for the culture of fish) with the broader one of licensing of the operation of an "aquaculture farm". The definition of "aquaculture farm" in the new section11(6) allows the licensing regime to apply to a wider range of aquaculture practices and species (as set out in the later definitions of "aquaculture" and "aquaculture activities"). This represents a significant broadening of the former "fish culture licence" regime and expands the Department's regulatory flexibility, and aligns the Act with contemporary aquaculture practices, including marine and inland operations.

Sections 11(2) to (4) sets out the operation of the license and the conditions which may be applied to it, in a similar manner as already applies to fish culture licences under the current section 11 of the 1966 Act.

Section 11(5) makes it a criminal offence to operate an aquaculture farm without a licence or to operate one otherwise in accordance with any conditions of that licence. This is an update of the equivalent offence in the current section 11(5), applying to the operation of a fish farm without a licence or not in accordance with fish culture licence conditions.

Section 11(9) provides for the definitions of "aquaculture", "aquaculture activities", "aquaculture organisms" and "processing" for the purposes of the relevant Part of the 1966 Act together with specifying the territorial extent of the operation of an aquaculture farm.

The substituted section 11 also permits the Department, by way of regulations under section 11(7), to provide that specified descriptions of undertakings are to be treated as included in, or excluded from, the definition of "aquaculture farm". Given the future-proofing and the wider type of activity captured by "aquaculture", a wider variety of persons may be carrying out some form of aquaculture. This power allows adjustment of the licensing regime should that be thought necessary. Any such adjustment is subject to the regulations being laid before, and approved by a resolution of the Assembly.

Clause 15(3) to 15(5) of the Bill makes consequential amendments to sections 11A to 11C of the 1966 Act, which are the existing provisions supporting the section 11 licensing power by making provision for applications, amendments, suspensions and revocations of licences. The consequential changes in the Bill adjust how these sections apply to "aquaculture licences", as an update of how they apply to FCLs.

27. Do you consider the amendments regarding "Aquaculture licences" to Section 11 of the 1966 Act to be appropriate?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

No amendments

Clause 16 : Amendments consequential on Section 15

This Clause makes a series of consequential amendments across the 1966 Act to ensure consistency with the new aquaculture licensing regime introduced with the new section 11. They update references to “fish culture licences”, “fish farms” and related terms with references to “aquaculture licences”, “aquaculture farm,”, etc. The amendments ensure that existing powers, offences, exemptions, and protections apply consistently to the new, broader aquaculture licensing framework established.

28. Do you consider the further amendments made to the 1966 Act by Clause 15 of this Bill to reflect the amendments to section 11 of the 1966 Act to be appropriate?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

No amendments

Clause 17: Continuation of fish culture licences as aquaculture licences

This clause introduces a set of transitional and consequential arrangements designed to ensure legal continuity and regulatory certainty when existing fish culture licences granted under the 1966 Act are renamed and continued as aquaculture licences following the substitution of the new section 11 of that Act.

The transition from a fish culture licence to an aquaculture licence happens automatically under this deeming provision. Existing licences holders do not need to make an application and there is no change in any existing fish culture licence conditions. All fish culture licences that are in force immediately before commencement are to be preserved, renamed, and treated as having been granted under the amended statutory powers.

In addition, these provisions safeguard the continuity of ongoing regulatory decisions and processes, such as applications, appeals, or enforcement actions, ensuring that these can continue uninterrupted under the new legislative framework.

This clause also permits the Department by way of regulations to provide for further transitional, transitory, saving provisions regarding the continuation and renaming of licences together with incidental, supplementary or consequential provisions in order to give full effect to this Part. These regulations are subject to the negative resolution procedure in the Assembly except if the regulations amend primary legislation, in which case the regulations require to be laid before, and approved by a resolution of the Assembly.

29. Do you consider the provisions for existing fish culture licences (under Section 11 of the 1966 Act) to be known as aquaculture licences to be appropriate from the day the Act comes into operation?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

Clause 18 : Transfer of aquaculture licences

This clause inserts a new section 11D into the 1966 Act which introduces, an express statutory mechanism for the transfer of aquaculture licences to another person or business. The 1966 Act currently provides for the granting, amendment, suspension, and revocation of licences, but it does not contain a clear or comprehensive power to transfer a licence between operators. In practice, this has limited flexibility for businesses, succession planning, or restructuring within the aquaculture sector.

The new section 11D addresses this by establishing a formal, regulated transfer process that allows an application to be made to the Department to transfer a licence. Following an application, the clause allows the Department to refuse or approve a transfer and, where approved, the Department may amend a licence as it considers appropriate.

Both the licence holder and the proposed transferee must be notified of the decision. Either may appeal to the Appeals Commission against a refusal or against amendments made as part of a transfer. The provisions also make clear that responsibility for any breach of licence conditions occurring before the transfer takes effect remains with the original licence holder.

30. Do you consider the amendments to Section 11 of the 1966 Act for the transfer of a license to another person to be appropriate, including the right of appeal to the Appeals Commission (including the 28-day time limit).

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

Clause 19: Fitness for fish dealer's licence

This clause amends section 114 of the 1966 Act to remove the requirement for an application for a fish dealer's licence to be accompanied by a certificate from a justice of the peace confirming the applicant's fitness to be licensed. It also makes changes to sections 114 and 115 in connection with this change, to clarify that the grant and renewal of a dealer's licence are matters for the Department's discretion in each case (including in relation to questions about a person's fitness to hold a licence). Existing requirements relating to applications under section 114 (which are currently contained in section 114(1)(a) and (b) and (2)) are restated in subsections (1A) and (1B). These restated provisions provide a flexible framework for administering licenses by enabling the application form and fee to be set and updated by regulations and reinforce the integrity of the regime by maintaining the prohibition on the grant of a licence to any person who is disqualified under section 200 of the 1966 Act (Forfeiture of licences).

These amendments operate prospectively only and do not disturb the validity of licences granted or renewed before the commencement of this clause.

31. Do you consider the provisions for the application and renewal of a fish dealer's licence to be appropriate?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

No amendments

Clause 20: Material removed from river bed

This clause amends section 48 of the 1966 Act (taking etc. spawn or fry of salmon, trout or eels) to insert a provision which provides that where a person is convicted of an offence under section 48(5) added in 2003) in relation to the bed of any river, the Department may carry out such remedial works to the bed of that river as the Department considers necessary and recover from that person any expenses reasonably incurred in doing so.

32. Do you agree with the Department's powers in connection with remedial works to the bed of a river where a person commits an offence relating to activities affecting the river bed (as laid out in section 48 of 1966 Act)?

☐ No

Please provide further comment to support your response

We agree that the Department may have proportionate powers to address proven environmental harm arising from unlawful activities affecting the natural bed of a river. However, the powers in Clause 20 in the Bill are too broad as drafted and do not provide sufficient safeguards concerning routine maintenance, the necessity and proportionality of remedial works, representations, cost recovery or appeal. Clause 48 (5) of the Act must be amended to clarify the difference between the natural bed of a river or watercourse and an artificial channel constructed by man for a specific purpose. Clause 54 of the Act should be amended accordingly.

Routine maintenance, repair and renewal works to a weir or associated structure in a natural river or watercourse

Maintenance repair and renewal works that preserve an existing structure without materially altering its location, dimensions, hydraulic effect or use should not constitute an offence.

We therefore propose the following new provision, subject to consequential renumbering:

"Maintenance, repair and renewal works

20.—(1) The Fisheries Act (Northern Ireland) 1966 is amended as follows.

(2) After section 48(5B) insert—

'(5C) For the purposes of this section, a person does not take or remove material from the natural bed of a river merely by carrying out routine maintenance or repair of an existing lawful structure, provided that—

(a) the works do not materially alter the structure's location, dimensions, hydraulic effect or previous authorised use;

(b) any material temporarily displaced is replaced;

(c) reasonable measures are taken to avoid or minimise harm to fish, spawning areas and the aquatic environment; and

(d) the works are carried out in accordance with any applicable published code of practice.

(5D) Subsection (5C) does not exempt works which involve substantial excavation, dredging or permanent removal of the natural bed of the river.

(3) After section 54 insert—

'54A Maintenance and repair of weirs, fish passes and associated structures

(1) Routine maintenance or like-for-like repair of an existing fish pass, screen, sluice, weir or associated structure does not require a new approval under this Part solely because the works replace, restore or maintain the existing function of the structure.

(2) Subsection (1) applies where—

(a) the works do not materially reduce fish passage or materially alter river flow;

(b) the person carrying out the works gives the Department such prior notice as may reasonably be required by published guidance; and

(c) reasonable environmental protection measures are followed.

(3) The Department may require an application for approval where it gives written reasons demonstrating that the proposed works are reasonably likely to cause material harm to fish passage or the aquatic environment.

(4) In this section—

"routine maintenance" means work undertaken to preserve the condition or operation of an existing structure without materially altering its character, dimensions, capacity or environmental effect;

"repair" includes like-for-like replacement and work reasonably necessary to restore the safety, integrity or function of an existing structure;

Remedial works and recovery of expenses

Where an offence has caused environmental harm, the person responsible should ordinarily be given an opportunity to undertake specified remedial works. If the Department carries out the works itself, it should first identify the harm, prepare a proportionate remediation plan, give notice of the proposed works and estimated cost and allow representations, except where urgent action is necessary.

We therefore propose replacing the introduced river-bed remediation provision with:

"(5B) Where a person is convicted of an offence under subsection (5A) in relation to the bed of a river, the Department may—

(a) require that person to undertake specified remedial works within a reasonable period; or

(b) where the person fails to comply, or urgent action is reasonably necessary, carry out remedial works itself and recover expenses in accordance with subsection (5C).

(5C) Before carrying out works or recovering expenses, the Department must—

(a) identify the environmental harm caused by the offence;

(b) prepare a proportionate remediation plan;

(c) give the person written notice of the proposed works and estimated cost;

(d) provide a reasonable opportunity to make representations, except where urgent action is necessary;

(e) consider whether natural recovery or less intrusive remediation would be sufficient; and

(f) ensure that the works do not result in environmental or structural harm disproportionate to the harm being remedied.

(5D) The Department may recover only expenses which are reasonably and proportionately incurred.

(5E) A person from whom expenses are sought may appeal to the Water Appeals Commission against—

(a) the necessity or proportionality of the works; or

(b) the amount sought.

(5F) An appeal under subsection (5E) must be brought within 28 days of notice of the amount being served."

(5G) The maintenance, repair or renewal of any works within an artificial channel is exempt from the conditions of Section 48 (5) and the execution of any works within this artificial channel does not constitute an offence.

Clause 206 of the Act should be amended as follows—

"artificial channel" is a man-made watercourse, channel, conduit or pipe which is separate from a river constructed for the purpose of transferring water for a specific use and returning the water to the river

These amendments would preserve effective remediation powers while distinguishing legitimate maintenance from unlawful river-bed removal and ensuring that remedial action and cost recovery are necessary, proportionate and subject to appropriate procedural safeguards.

The proposed provisions will require consequential renumbering because both sets of amendments currently use the same clause and subsection numbers.


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Clause 21: Interpretation

33. Do you agree with the interpretation of the Bill?

☐ No

Please provide further comment to support your response

The interpretation provisions in Clause 21 should be expanded to support the proposed evidential, proportionality, maintenance and remediation provisions elsewhere in the Bill.

In particular, the Bill should define "environmental harm" and "material risk" so that regulatory and enforcement decisions are based on identifiable and material effects rather than risks that are remote or purely hypothetical.

We propose adding:

"'environmental harm' includes material adverse effects on fish, fish passage, water quality, habitats or the ecological functioning of inland waters;"

"'material risk' means a risk supported by evidence which is more than remote or purely hypothetical;"

The Bill should also define maintenance and clarify the meaning of "river", particularly in relation to artificial or man-made channels used to convey water to mills or hydropower installations.

We propose adding:

"'river' includes a tributary or natural branch of a river and any stream or watercourse but excludes any Artificial Water Body or any man-made channel, conduit or pipe for the purpose of conveying water to a mill or hydropower installation."

These definitions would provide greater legal certainty and support the consistent application of the proposed duties concerning evidence, environmental harm, maintenance, remediation and proportionality.

Clause 22 : Commencement

34. Do you agree with the commencement of the Bill?

☐ No

Please provide further comment to support your response

We do not agree that all provisions other than Part 5 should come into operation automatically on the day after Royal Assent.

The core policy and interpretation provisions may appropriately commence immediately. However, the regulation-making, fixed-penalty, enforcement and remediation provisions should not become operational until the necessary Policy Statement, guidance, service standards, review arrangements and impact assessment are in place.

We therefore propose replacing the commencement arrangements with:

"(1) Sections 1 to 5, 21, 22 and 23 come into operation on the day after Royal Assent.

(1A) Sections 6 and 9 to 14, Clause 20 and the Schedule come into operation on such day or days as the Department may by order appoint.

(1B) The Department may not make an order under subsection (1A) unless—

(a) the Inland Fisheries Policy Statement has been published;

(b) the regulatory and enforcement guidance required by this Act has been published;

(c) applicable service standards and review arrangements are operational;

(d) the Department has published the impact assessment required by section (22A) 23; and

(e) the Department has laid before the Assembly a statement confirming its readiness to implement the relevant provisions."

This approach would ensure that the Department does not begin exercising significant regulatory or enforcement powers before the supporting policy framework and procedural safeguards are operational.

The reference in proposed subsection (1B)(d) to "section (22A) 23" requires correction, and the final commencement provision should ensure that every remaining provision of the Bill has a clear commencement route.

Clause 23: Short Title

35. Do you agree with the short title of the Bill?

☐ No
☐ Unsure

Please provide further comment to support your response

No amendments

SCHEDULE – Mode of Trial and Penalty for Offences

PART 1: The 1966 ACT

36. Do you consider the revised penalties for the unauthorised use of fishing engines to be appropriate?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

37. Do you consider the revised penalties for offences relating to fishing licences to be appropriate?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

38. Do you consider the revised penalties for offences relating to the protection of fisheries to be appropriate?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

39. Do you consider the revised penalties for offences relating to the fishing for salmon, eels and freshwater fish to be appropriate?

☐ Yes
☐ No
☐ Unsure

40. Do you consider the revised penalties for offences relating to fishing during closed seasons and times to be appropriate?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

41. Do you consider the revised penalties for offences relating to the sale and handling of illegal catch to be appropriate?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

42. Do you consider the revised penalties for offences relating to sea fisheries to be appropriate?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

43. Do you consider the revised penalties for offences in respect of authorised officers to be appropriate?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

44. Do you consider the revised general penalty provisions to be appropriate?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

None of the revised penalties above may be considered to be appropriate until the Department has provided the necessary evidence and demonstrated that the penalty is proportionate to the alleged offence.

PART 2: OTHER ENACTMENTS

45. Do you consider the revised penalties for offences in the Sea Fish (Conservation) Act 1967 to be appropriate?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

46. Do you consider the revised penalties for water pollution and related offences to be appropriate?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

PART 3: CONSEQUENTIAL AND TRANSITIONAL

47. Do you have any comments on the Consequential and Transitional provisions?

☐ Yes
☐ No
☐ Unsure

Please provide further comment to support your response

BRITISH HYDROPOWER ASSOCIATION

Additional Information/Comments

48. Please provide any additional information or comments on any aspect of the Bill that you feel is relevant.

The British Hydropower Association supports the protection of fish stocks, natural migration and the wider aquatic environment. Hydropower operators have no interest in damaging the watercourses on which their schemes depend. However, the BHA is concerned that the Bill would grant the Department substantial additional powers without providing sufficiently clear safeguards governing how those powers will be exercised or how their effectiveness will be assessed. At the same time, the Department should take into account how other parts of the UK interpret the Water Framework Directive in respect of how hydropower is treated in Artificial and Heavily Modified Water Bodies.[1]

It is also necessary to point out that the Bill fails to address the issues relating to Section 58 and 59 of the Act by as interpreted by Inland Fisheries. There is no requirement for greater powers to resolve these but there is an urgent need to rewrite these Sections which are out of date and everyone knows should no longer be applied.

The Bill's objectives may be broadly supported, but it is not clear how the proposed powers and increased penalties will contribute to their delivery. The Department should explain the evidence connecting each measure to its intended environmental outcome, establish measurable indicators of progress and report regularly on whether those outcomes are being achieved. The Bill does not, for example, explain how increased penalties will increase fish populations or address significant pressures occurring outside inland waters, including salmon mortality at sea.

This is particularly important given the hydropower sector's experience of regulation in Northern Ireland. Since approximately 2016, operators have faced increasingly restrictive interpretations of the 1966 Act and related legislation, creating substantial barriers to the redevelopment, maintenance and operation of hydropower schemes. The BHA is concerned that further powers, if introduced without clear definitions, guidance and rights of review, could deepen this uncertainty and unnecessarily restrict responsible renewable-energy generation.

Public confidence and trust in the exercise of expanded departmental powers must also be considered. Recent controversy surrounding the culling of 51 cattle at a farm near Fivemiletown, together with subsequent public statements attributed to the DAERA Minister and a senior civil servant, has raised wider concerns within the rural community about departmental decision-making and accountability.

The Department has not mentioned that they have no evidence of fish mortality caused by hydropower schemes in Northern Ireland. By contrast, recorded pollution incidents have caused substantial and demonstrable fish mortality. Regulation and enforcement activity should be directed according to the evidence and the scale of environmental harm, rather than assuming that particular infrastructure or activities present a risk without supporting evidence.

The BHA is also concerned that the Bill does not adequately recognise the wider public benefits associated with hydropower and existing water infrastructure. These include renewable-energy generation, energy security, rural employment and investment, the preservation of historic

infrastructure and contributions to climate objectives. **The protection of fisheries should be pursued alongside these interests rather than considered in isolation.**

Effective regulation requires evidence, proportionality, transparency and accountability. The Inland Fisheries Policy Statement should therefore establish clear standards for departmental decision-making and enforcement, including when advice, remedial action, a fixed penalty or prosecution will be appropriate. It should also provide procedures for representations, internal review and independent appeal, including access to the Water Appeals Commission where appropriate.

The Department should publish practical guidance and service standards covering routine maintenance, repairs, emergency works, consent requirements and application timescales. These should recognise the distinction between natural watercourses and man-made operational infrastructure, including headraces, mill races, weirs and sluices, which must be maintained to remain safe and functional.

The BHA's objective is not to weaken environmental protection or prevent proportionate enforcement. It is to ensure that the Bill creates a regulatory framework that is evidence-based, accountable and capable of protecting the aquatic environment while supporting hydropower generation and the rural economy. Without these checks and balances, the proposed expansion of departmental powers risks increasing uncertainty and conflict without demonstrating that it will deliver measurable improvements to fish stocks or inland waters.