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Printed by Pims Digital (01268 530100)

8 Repton Close, Burnt Mills, Basildon, Essex SS13 1LJ

Printed on Greencoat Plus 80% recycled

Water based inks

# TRANSPARENCY AND TRUST

Reshaping Environmental Governance  
in Northern Ireland

Professor Richard Macrory CBE



Centre for Law and the Environment  
Faculty of Laws, University College, London  
2004

**“The quality of its environment is one of Northern Ireland’s greatest assets; and the Province’s future success depends in large measure on maintaining this.”**

HOUSE OF COMMONS SELECT COMMITTEE ON THE ENVIRONMENT (1990)

## **RICHARD MACRORY**

Richard Macrory is a barrister and professor of environmental law at University College, London where he directs the Centre for Law and the Environment. Professor Macrory is board member of the Environment Agency (England and Wales) and retired as a long serving member of the Royal Commission on Environmental Pollution in 2003. He was first chairman of the UK Environmental Law Associations and in 2001/2 chaired the board of the European Environmental Advisory Councils, a network of official bodies advising governments on environmental issues.

**ISBN No 0-905955-02-1**

**Published by Faculty of Laws University College, London**



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Recent concerns over the implementation of European environmental legislation have brought the protection and governance of the environment in Northern Ireland into sharp focus. The question of how the environment is best protected and regulated in Northern Ireland is, however, nothing new. Indeed this issue has been debated for at least two decades.

There is no doubt that our environment would benefit both from increased accountability of government activities and from a level of scrutiny and regulation which is independent of government departments. However, there has been no fundamental review since the Balfour report in 1984 and it is clear that problems with environmental regulation are mounting.

Now, for the first time, a coalition of environmental organisations has pooled resources to explore and analyse the mechanisms for protecting our environment. In this report Professor Macrory from University College, London considers the effectiveness of our current structures and explores new approaches for the delivery of a better environment. The report examines a range of options for addressing reform of the regulatory role (such as maintaining the status quo, enhanced responsibility for local authorities, and the establishment of a new Environmental Authority for NI) as well as looking at options to meet the need for external policy advice and auditing.

This report is only the first step in the process upon which the contracting organisations have embarked. The document will form the basis of a wider consultation process where the views of a wide range of stakeholders, including government, are being sought. The timing of this exercise, which coincides with ongoing reviews including the Review of Public Administration and Water Service Reform, is also extremely important.

The debate that follows can only help to bring the environment and its protection higher up the political agenda. There is an urgent need for us collectively to manage our environment more effectively and to protect the natural resources upon which we all depend. We would urge anyone with an interest in Northern Ireland's environment to participate in this debate.

CONSERVATION VOLUNTEERS NORTHERN IRELAND  
FRIENDS OF THE EARTH  
THE NATIONAL TRUST  
NORTHERN IRELAND ENVIRONMENT LINK  
ROYAL SOCIETY FOR THE PROTECTION OF BIRDS  
ULSTER WILDLIFE TRUST  
WILDFOWL AND WETLANDS TRUST  
WOODLAND TRUST  
WWF NORTHERN IRELAND

I am very grateful to my sponsors both for supporting this project and providing advice throughout the research period. Nevertheless, the final analysis and recommendations stem from my own independent assessment of the key options for the future of environmental governance in Northern Ireland, and any errors or omissions are my own responsibility. My own direct experience with various forms of governmental environment bodies has provided me with insights on how these sorts of organisation can best work in practice, but again the report was conducted in my personal capacity rather than on behalf of any of these bodies.

**Richard Macrory**

University College, London

*February 2004*

## ACKNOWLEDGEMENTS

In addition to the sponsors, a large number of individuals gave me advice and assistance during the development of this report. I am most grateful for their input, though needless to say the final analysis in this report is my own, and does not necessarily reflect their views or those of organisations with which they are associated. I am also acutely conscious that in the time available there were many individuals with relevant experience and expertise in Northern Ireland with whom I was unable to make contact. I apologise to them and I very much hope they will be become engaged in the discussions that will follow this report.

Dr John Barry, Queen's University, Belfast  
Declan Burns, Irish Environmental Protection Agency  
Tom Burke, Board Member, English Nature  
Noel Casserly, Irish Heritage Council  
Jonas Ebesson, University of Stockholm, Sweden  
Neil Faris, solicitor, Belfast  
Joe Furphy, Ulster Wildlife Trust  
John Gilliland, Ulster Farmer's Union  
Wilmer Harper, Secretary, Forestry Commission  
Dr Christian Hey, Secretary, German Council of Environmental Advisers  
Dr Peter Hinchcliffe, Secretary, Royal Commission on Environmental Pollution  
Kertstin Lederof, Swedish Environment Protection Agency  
Paul Leinster, Environment Agency, England and Wales  
Inga Niestroy, European Environmental Advisory Councils  
Donald MacCrae, Head of Legal Services, Dept of Environment, Food and Rural Affairs  
Greg McConnell, Review of Public Administration, Northern Ireland  
Derek Osborn, UK Sustainable Development Commission  
Howard Pearce, Environment Agency, England and Wales  
Stephen Peover, Department of the Environment, NI  
Professor Ekhard Reh binder, University of Frankfurt, Germany  
Dr Roy Ramsay, Environment and Heritage Service, DoE NI  
Aine Ryall, University of Cork  
Colin Reid, University of Aberdeen  
Donald Reid, Scottish Environmental Law Association  
Richard Rogers, Environment and Heritage Service, DoE NI  
Professor Yvonne Scannell, Trinity College, Dublin  
Professor Sharon Turner, Queen's University, Belfast  
Roger Vallance, Environment Agency, England and Wales  
Professor Gerd Winter, University of Bremen, Germany



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## EXECUTIVE SUMMARY

### BACKGROUND TO THE REPORT

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.

### THE ENVIRONMENTAL CHALLENGE FOR NORTHERN IRELAND

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 implemented fully in Northern Ireland. The 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, but this does not mean that Northern Ireland should slavishly copy arrangements in other jurisdictions. 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 easily 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, that are bound to cut across the interests of many departments. The diagram on Environmental Governance (page 11) 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 their departments 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 also set up bodies which have no executive function but whose role is to provide advice on specific areas of policy.

4. In 1990 the House of Commons Environment Select Committee described the quality of the environment as one of Northern Ireland's greatest assets. Since then 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 as a result the United Kingdom is currently facing a number of infraction actions brought by the European Commission. In recent years much effort has been made to ensure that the formal legislation transposing EC obligations into Northern Ireland 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 lead to infringement proceedings before the European Court of Justice and the possibility of severe financial penalties that will fall on Northern Ireland.

## THE THREE CORE THEMES OF THE REPORT

5. Against that background, the 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 government departments and their executive 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 cross-cutting nature of the modern environmental agenda poses particular challenges in developing effective arrangements. Under each of these three themes the report suggests a number of key 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 in Northern Ireland (Theme 1), but this would not avoid the need to consider both ways to improve accountability (Theme 2) and provide for cross-departmental sources of independent policy advice to government (Theme 3).

## THEME 1: DELIVERY ARRANGEMENTS

### *Environment and Heritage Service*

- 6.1 As the diagram on Environmental Governance shows, a number of different government departments have a direct responsibility for various environmental issues. This report does not re-examine the present allocation of different environmental policy responsibilities between individual departments, though some of the divisions

may appear somewhat perplexing. At the core, though, lies the Department of the Environment together with its key body for implementing environmental policy and law within its responsibility, Environment and Heritage Service (EHS). Environment and Heritage Service is currently an Executive Agency, meaning that it has no independent legal status distinct from the Department, although 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 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 independence from the Department of the Environment. As a consequence, it has not developed the transparency of decision-making now seen in equivalent environmental regulatory bodies in other parts of the United Kingdom, nor has it been able to develop a distinctive, authoritative, and more independent voice in policy debate in Northern Ireland. The second distinctive feature of EHS is the broad sweep of its environmental responsibilities, which encompass pollution control, nature conservation and heritage protection. These are much wider in scope than those available to other environmental agencies in the United Kingdom, and could be seen as providing a sound basis for a truly integrated approach to the delivery of environmental policy and regulation.

### *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. It would allow EHS to improve services within its existing structure, but will fail to satisfy the demands for a more independent regulator, and for a governmental body that can engage more openly in debate and policy development. The

## EXECUTIVE SUMMARY

opportunities for providing the Government with a distinctive, and more independent, source of environmental policy advice based on operational experience and technical expertise 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 avoid the extra costs of establishing a more independent environment agency. It would acknowledge that the Executive Agency model, while suited for some types of public service delivery, is less appropriate for a body with extensive regulatory functions, and may indeed give a misleading impression to the general public that it is more independent than is the reality. Political accountability would rest more clearly with the Minister. 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 concerns for a more independent regulatory body. It is likely to inhibit moves towards standards of greater transparency in decision-making now being seen in environmental agencies in other parts of the United Kingdom.

*Option 3. Transform EHS into an environmental protection authority with separate legal status based on the structure of a non-department public body.* This would be consistent with structures now familiar in other parts of the United Kingdom, and satisfy desires 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 become one of the leading integrated environmental authorities in Europe. Such a body would provide a valuable independent source of policy expertise to Government and, in line with practices adopted by environmental authorities in the

rest of the United Kingdom, would find itself acting in a far more transparent way than is possible with government departments or Executive Agencies.

However, there are disadvantages with such a route. Legislation would be required for the establishment of such a body. There would 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, though accountability can to some extent be met by greater transparency in its procedures. Once such a body is established, flexibility in changing its functions is reduced, and such bodies can become institutionalised and over-defensive of existing structures rather than responsive to public policy needs.

*Option 4. Transform 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 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 would involve real extra costs. Such an authority would no longer be financially dependent on the Department of the Environment. A key disadvantage of such a model is greater lack of 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 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 in which local authorities acquired the skills and staffing needed to perform new functions.

## THEME 2: 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 of the Environment, the Minister is ultimately politically answerable for its performance and, through the Department, it can be subject to judicial review where its actions might be illegal. 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), Assembly Committees, and the Northern Ireland Audit Office, which has already produced a number of detailed reports on particular aspects of EHS performance. Nevertheless, the opportunity should be taken to consider to what extent these mechanisms could be strengthened. It is clear that the challenge of effectively implementing environmental regulation and policy will grow in Northern Ireland over the next decade. Non-governmental environmental organisations are growing in sophistication and the public needs to have confidence that there is effective government machinery to hold the performance of departments and their associated agencies to account where there are failings, and to identify lessons for the future.

### *A new cross-departmental Assembly Committee on Sustainable Development*

7.2 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*

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

*Option 1. Create an Environmental Audit Commissioner.* This would be a new, independent position with specific responsibility to investigate and report on the performance of governmental bodies in their exercise of environmental responsibilities. The Commissioner would develop the specialist environmental knowledge and expertise needed for investigations and, unlike the more general

accountability bodies, would avoid being distracted by other responsibilities. Creating such a Commissioner would be a clear signal by Government that it is now taking the environment seriously. However, 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 recognise that the environmental challenge is sufficiently broad to require greater resources and more specialised 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 is not especially clear. There are, for example, no developed mechanisms for 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 which 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.

### **THEME 3: 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 various 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. Independently structured environment agencies can also provide government with a valuable source of policy advice, based both on their experience in actually operating on the ground and their technical expertise.
- 8.2 However, experience in Europe shows that, in addition to these types of bodies, there are considerable gains to be made in setting up an independent environmental advisory 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 of Environmental Advisers are composed of individual experts from different disciplines or with particular experience. One of their key roles is to provide an independent, authoritative and in-depth analysis of key environmental challenges. 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 a stakeholder body, with its members tending to represent particular sectors of society with an interest in the environment. These two types of 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 recognise that the existence of such a body does not replace the need for more specialised 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 a sufficiently resourced secretariat support to ensure depth and authority in its reports.

8.3 Both the Royal Commission on Environmental Pollution and the UK Sustainable Development Commission are UK wide bodies that take an interest in Northern Ireland. However, Northern Ireland currently lacks any dedicated arrangement that provides for an authoritative and independent analysis of longer-term environmental challenges for the region, and one that is detached from existing departmental boundaries. If the model of the multi-disciplinary 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 concern 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 against 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 affect 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. The advantages of this option are 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 two 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 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 environment 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

## 1. The Context

- 1.1 This report is concerned with ways of developing and improving environmental governance in Northern Ireland. Environmental law and policy have developed rapidly in the last decade, and on the horizon there is a range of new environmental requirements, many deriving from European Community legislation, which will need to be implemented effectively. But the detailed substance of existing and future environmental law is not the prime concern of this report; rather, it considers how existing institutional arrangements in Northern Ireland could be developed to secure more effective policy and practical outcomes for the future.
- 1.2 The report is based on three key themes:
- (i) **Delivery Arrangements** – the nature of the governmental bodies responsible for delivering core environmental policy and 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 that are common to many areas of government, but the cross-cutting nature of the modern environmental agenda poses particular challenges in developing effective arrangements to handle each of them. Under 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 in Northern Ireland (Theme 1), but this would not invalidate the need to consider both ways to improve accountability (Theme 2) or provide for better sources of independent cross-departmental policy advice to Government (Theme 3). The Report

deliberately avoids making prescriptive recommendations – the intention is that the analysis will provide the basis for a serious debate on how existing structures could be improved. The Report was written at a time when devolution was suspended, and assumes that at some point the process of devolution will be resumed – the suspension should not in the meantime inhibit discussion on improving current arrangements.

The Report also considers institutional structures in other parts of the United Kingdom and other European countries since these may provide useful lessons and pointers for the future. This does not mean that Northern Ireland should slavishly duplicate arrangements in other jurisdictions, but equally it should not allow itself to be left behind in the development of structures for contemporary environmental governance.

### *The Review of Public Administration*

- 1.3 Any such study has to be seen in the context of the wider Review of Public Administration that was established by the Northern Ireland Executive in 2002 as the first major review in 30 years of how public services in Northern Ireland are organized and delivered. The Review identified over 140 organisations operating within the public sector, and in 2003 issued a consultation document, “*The Review of Public Administration in Northern Ireland*” which identified a number of key themes and issues which are likely to shape future models of governance. This study is not intended to pre-empt the outcome of the Review, and some of the principles already being highlighted by the Review, such as efficient and effective delivery and arrangements for accountability, also feature strongly in this Report. The Review is not examining the detailed operation of all the governmental organisations falling within its terms of reference, and bodies concerned with environmental protection have not been a focus for its study to date.

1.4 As section 2 indicates, the current governmental structures in Northern Ireland for handling environmental policy are complex and diffuse. This is hardly surprising. Contemporary environmental concerns do not readily fall within discrete boundaries which can be handled by a single government department or agency. They can legitimately encompass local issues such as noise, waste disposal or river pollution, which may have immediate impact on individuals and localities; but they also raise wider, longer-term challenges such as biodiversity, transport patterns, resource use and climate change – policy issues which are bound to cut across many departmental interests. In fact, under

current arrangements in Northern Ireland, the majority of departments can be said to have a direct interest in environmental policy issues, but it is sometimes still all too easy for officials and others to view the environment in a narrow way and as mainly the responsibility of specialised departments or bodies. This would be a mistake in the light of contemporary debates on longer-term sustainability issues, and a particular challenge for Northern Ireland is how to devise suitable arrangements for tackling these cross-departmental aspects of environmental policy.

## CURRENT ARRANGEMENTS

### 2. Mapping Current Arrangements in Northern Ireland

#### DEPARTMENTAL RESPONSIBILITIES

2.1 Nearly all areas of government policy have implications for the environment, and the existing policy responsibilities currently assigned to different departments within the NI Executive underline the complexities involved, and the need for effective interlinkages and co-operation. Excluding the Office of the First Minister and Deputy First Minister, all of the 10 departments have policy responsibilities with significant environmental content.

Some of the divisions may appear somewhat perplexing, both to the general public and to individuals or companies subject to environmental regulation who can find themselves dealing with a confusing range of departments and their agencies. In the future there may well be opportunities for rationalization and simplification, although this study is not primarily concerned with re-evaluating the responsibilities of differing government departments. Instead, it focuses on the key aspects of the institutional structures for the delivery of environmental policy requirements.

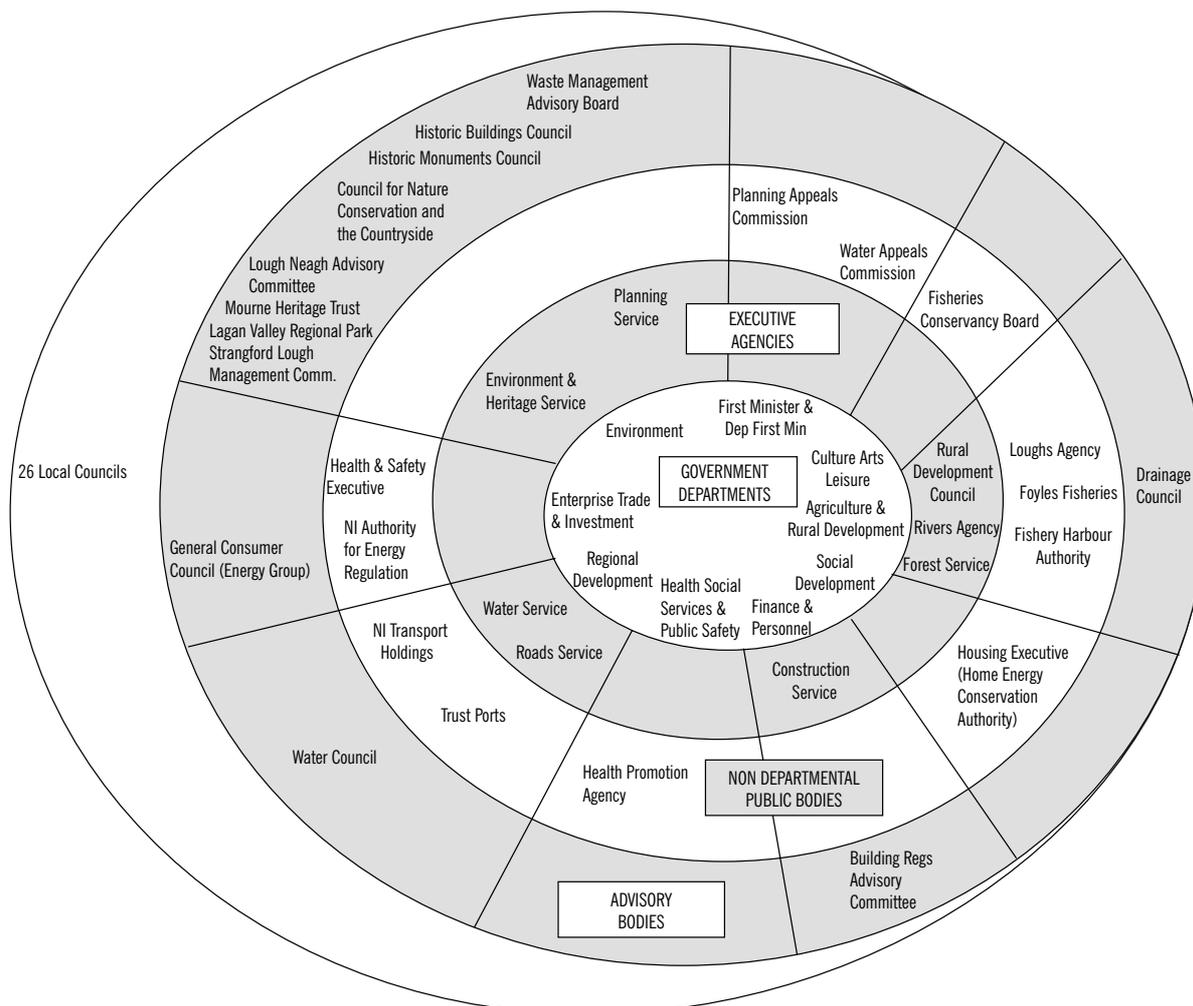
Department of the Environment	Land use planning control, pollution control, countryside protection, nature conservation and biodiversity, local government, road licencing, marine environment, climate change, promotion of sustainable development across NI Executive
Department for Regional Development	Strategic land use planning, transport planning, roads, provision of water and sewerage services, ports and harbours, energy efficiency in private sector
Department for Social Development	Urban regeneration and housing, energy efficiency in domestic housing
Department of Agriculture and Rural Development	Flood defence, agriculture, agri-environment, inshore fisheries regulation
Department of Culture, Arts and Leisure	Fishery protection
Department of Education	Education curriculum, teaching of environmental education in schools
Department of Enterprise, Trade and Investment	Energy, tourism, mineral development, health and safety at work
Dept of Finance and Personnel	Building regulations, public sector energy efficiency, purchasing policy including green purchasing
Department of Employment and Learning	Education in colleges and university, professional training
Department of Health, Social Services and Public Safety	Public health including effects of air pollution and noise

# CURRENT ARRANGEMENTS

## THE DELIVERY OF ENVIRONMENTAL POLICY

2.2 Over the years, government departments have established various arrangements for the delivery of environmental policy in Northern Ireland. These include different forms of public bodies, such as executive agencies and more independently structured bodies, which operate with various degrees of managerial and financial freedom from their core departments. They also include a number of advisory bodies which have no operational functions as such, but have been established to provide expert advice to departments on various aspects of environmental policy. Figure 1 provides an overall picture of the key arrangements currently in place, and identifies governmental bodies whose responsibilities and functions are most likely to have environmental implications.<sup>2</sup> The Department of the Environment has, of course, a central interest in the

environment, but if one took, for example, the policy implications of climate change the number of additional departments and bodies potentially involved becomes considerable; to take some examples, the NI Authority for Energy Regulation, the Home Energy Conservation Authority, the Building Regulations Advisory Committee (for energy efficient building standards), and the Rivers Agency (for flood risk management). The figure does not claim to be comprehensive and, while it deliberately places bodies in concentric circles reflecting in broad terms degrees of operational independence from departments, the precise arrangements and relationships with departments will often vary considerably, both as a matter of law and in practice. Section 5 of this Report considers the implications of the distinctions between the various forms of arrangements that government can adopt.



**Figure 1 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 which will also have an interest in certain NI environmental issues.

## CURRENT ARRANGEMENTS

### IMPLEMENTING MODERN ENVIRONMENTAL REGULATION

2.3 In thinking about current governmental arrangements it is important to stress that the implementation and enforcement of contemporary environmental regulation is not a straightforward, mechanistic exercise. Regulation based on the licensing or permitting of processes or discrete activities (such as discharges into waters) has long formed the key element of environmental protection. This type of direct regulation can achieve much in improving environmental quality and will continue to do so, though many environmental regulators are now looking for smarter ways of implementing this form of regulation – avoiding, for example, a ‘tick-box’ mentality towards implementation, and focussing on ensuring positive environmental outcomes, using risk-based approaches to concentrate resources on activities most likely to give rise to problems. At the same time, the nature of many contemporary environmental challenges will also require new approaches towards designing and enforcing regulation which involve the use of mechanisms such as environmental taxes, trading schemes and negotiated agreements.

Appendix 1 provides an indicative list of key environmental legislation currently in force in Northern Ireland, together with the government departments and public bodies charged with its implementation. Although the Department of the Environment and its Executive Agency, Environment and Heritage Service, have major responsibilities in many areas, it will be seen that significant powers rest with other departments and bodies that they sponsor, reflecting the division of core policy responsibilities.

2.4 It is also important to recognise that many of those bodies or individuals who are subject to existing or new regulatory requirements are likely to need authoritative and consistent advice on how to meet their legal requirements. This will especially be the case for smaller and medium sized enterprises, or

where sectors are faced with new sets of environmental obligations. It is clear that in some sectors such as agriculture those subject to regulation will, under current arrangements, find themselves dealing with a potentially confusing number of departments and governmental bodies with a legitimate interest in their activities. One ideal model would have those subject to environmental regulation dealing with a single regulatory body while technical advice and appropriate financial assistance would be sought from a parallel but similarly focussed government body. In practice it is not easy to make such a sharp distinction of functions, nor, given the range of modern environmental requirements, is consolidation easy to achieve. However, it is important to acknowledge the confusion that the present picture must present to many who are seeking to comply with environmental requirements

2.5 The Better Regulation Task Force, an advisory body to the UK Government, has established five key principles for modern regulatory regimes: transparency, accountability, consistency, proportionality, and the need to assess performance against actual outcomes. Regulatory bodies can also provide government with an important source of policy advice, based on their distinctive practical experience. In the environmental field it is therefore clear that, when we talk of a regulatory body or agency, it would be wrong to view such a body as one that is simply concerned with enforcing regulation in a mechanistic way. The functions are much richer and rather more subtle. It is equally clear that demands on bodies in Northern Ireland with the responsibility for implementing environmental regulation will grow, both in complexity and substance. The next section therefore focuses on the Department of the Environment and its core agency for delivering much of Northern Ireland’s environmental policy, Environment and Heritage Service. These are the bodies with the core environmental responsibilities in Northern Ireland.

### 3. Department of the Environment and Environment and Heritage Service

#### DEPARTMENT OF THE ENVIRONMENT AND ITS CURRENT STRUCTURE

3.1 The Department of the Environment is currently structured on the basis of a number of central policy divisions together with four Executive Agencies: Environment and Heritage Service, the Planning Service, Driver and Vehicle Licensing (Northern Ireland) and the Driving and Vehicle Testing Agency. In addition, there are three statutory advisory bodies, the Council for Nature Conservation and the Countryside, the Historic Buildings Council, and the Historic Monuments Council; and more recently a non-statutory Waste Management Advisory Board. Co-ordinating and monitoring of the work of the Department is carried out by a Departmental Board, consisting of the Permanent Secretary, the Deputy Secretary (Planning and Local Government Group), the Deputy Secretary (Environment and Road Safety Group) and the Director of Corporate Services.

#### ENVIRONMENT AND HERITAGE SERVICE

3.2 Environment and Heritage Service (EHS) was established in 1996 as an Executive Agency of DoE(NI) following a decade or so of discussion concerning possible new structures in governmental arrangements for the environment. In the context of nature conservation, the 1984 Balfour Review had recommended against following the practice in the rest of the United Kingdom of establishing a separate agency for nature and countryside protection.<sup>3</sup> Instead, the review recommended that these functions remain within the government department, mainly on the grounds that the distribution of central and local government functions (especially in land use planning) was distinct in Northern Ireland. It was felt that more influence would be achieved by working ‘on the inside’ of government rather than from a more independent position.

In its 1990 report on Environmental Issues in Northern Ireland (the Rossi report) the House of Commons Select Committee on the Environment (HC 39 Session 1990-91) recommended that an independent regulatory environmental agency

should be established in Northern Ireland. It did not want Northern Ireland to lose out on developments in effective, independent environment agencies that had taken place in other parts of the United Kingdom, and envisaged an agency that would develop its own character and be a focus for local pride in the environment. At the time of the Rossi report, the Department of the Environment NI was responsible both for the enforcement of environmental controls and the provision of water and sewerage services, and the Committee was particularly concerned that the Department’s “poacher-gamekeeper” role inevitably compromised its effectiveness as a regulator and undermined public confidence. In 1994 a ‘prior options’ study carried out by government considered the model of an independent environment agency, but rejected it in favour of establishing the Environment and Heritage Service as an Executive Agency within the Department. According to the 1998 Report of the Comptroller and Auditor General for Northern Ireland, the main reasons given were that (i) an agency model would be more effective in regulating other government agencies such as the Water Service and (ii) it would be inappropriate for an independent agency to regulate agencies falling within government departments.

#### *Structure and Responsibility of EHS*

3.3 As an Executive Agency EHS has no legal status independent from the Department of the Environment, but operates with a degree of managerial and financial independence against specified performance targets established by the Department. In the area of environmental regulation, the Department has delegated the main responsibility for implementation and enforcement to EHS, including key areas such as industrial process control, water pollution, nature conservation and, most recently, waste management licensing. The main aims of EHS, according to its Corporate Plan, are “to protect and conserve the natural environment and built heritage and to promote its appreciation for the benefit of present and future generations”. In support of these aims, its key objectives are to implement the Department’s responsibilities for:

- protecting and improving the quality of air, land and water (including marine protection)

- conserving biodiversity and the countryside and protecting species
- protecting, recording and conserving historic monuments and buildings
- promoting awareness and appreciation of the environment and heritage

Environment & Heritage Service	2002-3 <sup>4</sup>
Staffing	521
<i>Main income sources</i>	
Government grant	£34.8m
Environmental charges	£1.6m
Other income sources including admission charges	£0.9m

EHS is similar in size, both in staff numbers and resource costs, to the Scottish Environment Protection Agency, though with a different range of responsibilities. According to the Corporate and Business Plan of the Department of the Environment NI,<sup>5</sup> it is planned to recruit an additional 162 staff to EHS in 2003/4 with an increased cost allocation to total £54.7m; thereafter, until 2006, the figures are planned to remain roughly level.

### *Concerns about Environment and Heritage Service*

3.3 This study is not designed to provide a fresh evaluation of the effectiveness of EHS in achieving all its objectives, and in recent years it has been subject to scrutiny by official bodies in certain fields of its operations. In a 1998 report, *The Control of Water Pollution in Northern Ireland*, the Northern Ireland Audit Office<sup>6</sup> was concerned that EHS failed to have effective systems in place to measure data against its policy objectives for water pollution control. It recommended that a formal target for compliance with water discharge consents be introduced. The Report welcomed steps that had been taken to provide better controls of discharges by the Water Service but concluded that much remained to be done. It identified weaknesses in dealing with pollution incidents and the enforcement of discharge consents by industry and urged the introduction of detailed and unambiguous policy guidance to ensure effective enforcement in a consistent and equitable manner.

3.4 In 2001 the report of the Public Accounts Committee of the Assembly, *The Control of River Pollution in Northern Ireland*<sup>7</sup>, welcomed new increases in EHS staff resources and the reduction in numbers of pollution incidents reported, but expected EHS to set a firm target for bringing Northern Ireland into line with the standard of response service provided elsewhere in the United Kingdom. It considered that EHS must take more robust action against all who cause pollution incidents and demonstrate that the action it takes against Water Service is as rigorous as possible, given the constraints imposed by the latter's Crown immunity. The Public Accounts Committee was pleased that EHS had increased dramatically the length of rivers being monitored but was concerned that almost 50% of consented discharges were not subject to systematic monitoring. The PAC noted improvements in the development of an enforcement policy but was generally extremely concerned at the slow progress being made by DoE – described as *'slow to the point of lethargic'* – in implementing recommendations of the 1998 Audit Office Report. It accepted that resources had previously been a problem, but this was symptomatic of the *'deplorably low priority'* that had been given to environmental issues in the past.

3.5 In 2003 the Northern Ireland Audit Office reported on Areas of Special Scientific Interest.<sup>8</sup> It noted that, in the continuing absence of sufficient resources, EHS had not yet produced a long-term strategy for completing designation of the ASSI network in Northern Ireland, which had fallen behind the rest of the United Kingdom. There was no comprehensive database on candidate sites, and it was not possible to estimate the extent of damage occurring due to delays in designation. The Report recommended that EHS draw up a more challenging timetable for completion and establish a formal ASSI management information system. The Report noted that EHS had no comprehensive, up-to-date picture of the condition of ASSIs similar to that available in other parts of the United Kingdom. In relation to enforcement, the Report acknowledged weaknesses in the existing Northern Ireland legislation which are intended to be met by what is now the

Environment Order 2002, but it criticised the continuing failure of EHS to produce fully documented and consistently applied enforcement policies and procedures as representing ‘*poor management practice*’.

### ***Calls for EHS to become a More Independent Environmental Regulator***

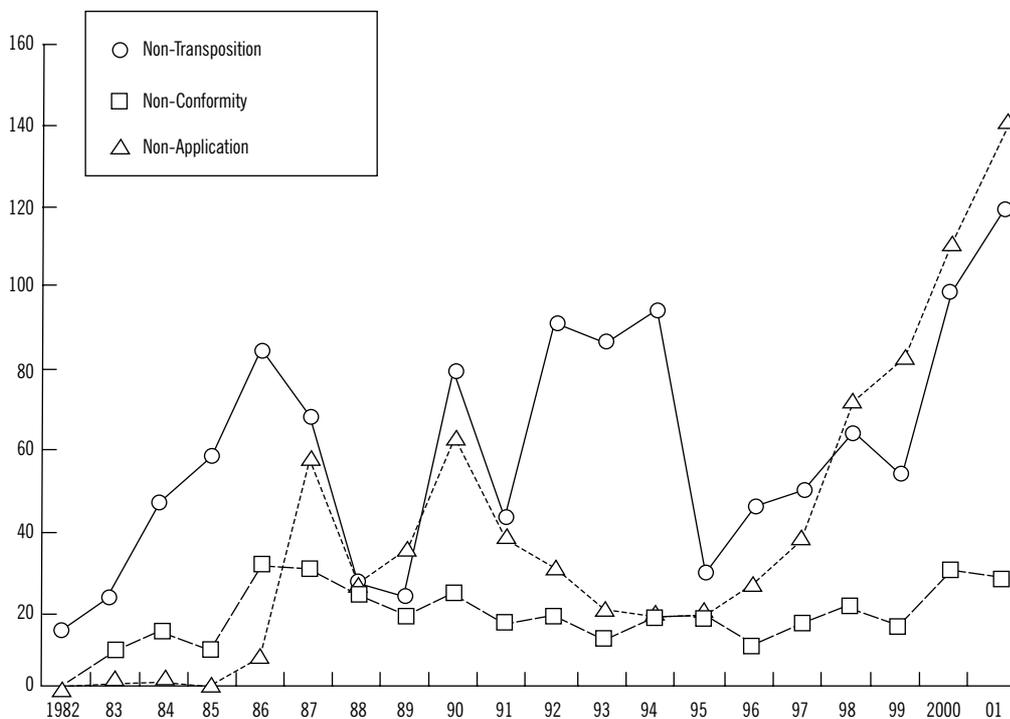
- 3.6 The original Rossi report had called for the establishment of an independent environmental regulator comparable to those then being developed in the rest of the United Kingdom. One of the main reasons then given by Government for preferring the model of an agency within the Department was the fact that key functions concerning water and sewerage services in Northern Ireland remained fully within the public sector, and it was considered that an executive agency within a department would be in a better position than a more independent body to influence and regulate part of government services. Whatever the merits of the argument at the time, the current consultations taking place on new models for the delivery of water and sewerage services, even if not resulting in full privatization,<sup>9</sup> clearly provide an opportunity to re-evaluate the current regulatory arrangements.
- 3.7 Other bodies have continued to make the case for a more independent environment regulator. The Public Accounts Committee, in its 2001 report, noted that “*Despite all the promises of progress, we remain deeply concerned about a situation where NI is the only part of the United Kingdom without an independent environmental protection body. The totally unsatisfactory nature of the watchdog role within government up until now strongly suggests that real independence is essential for building up long-term public confidence that our environment is being properly safeguarded.*”<sup>10</sup>
- 3.8 In October 2002, EHS was directed by the Minister of the Environment to cease its practice of formally objecting to planning applications for new housing where existing sewerage infrastructure would fail to meet legal standards, although the Minister stated that EHS would continue to ‘*alert the Planning Service to the environmental issues*’. The European Commission is now investigating a complaint concerning 22 sewerage treatment works which are claimed to fail to comply with European Community law. Against this background, Friends of the Earth is campaigning for an independent Environment Protection Agency.<sup>11</sup>
- 3.9 In its 2003 report “*Worth the Paper*”,<sup>12</sup> Northern Ireland Environment Link, whose members include 41 environmental and conservation organisations in Northern Ireland, also called for the establishment of an independent environmental protection authority for Northern Ireland.

## EUROPEAN COMMUNITY DIMENSION

### 4. The Significance of the European Community Dimension

- 4.1 Establishing new institutions can be costly, both in real financial terms and in the distraction and administrative upheaval inevitably caused. But in weighing up the costs and benefits of change, the significance of the European Community dimension and the very real financial risks facing Northern Ireland should it fail to comply with the requirements of existing and future Community environmental law are significant factors that now need to be taken into account.
- 4.2 Community environmental legislation now represents a dominant influence in many areas of environmental regulation. Once a Community law is agreed, Member States are obliged to implement Community laws within the time-scales prescribed (normally two or three years), and under the European Treaty the European Commission has a supervisory duty to ensure that Member States comply with their obligations. This can lead to enforcement action by the Commission against the Member State concerned and eventually to a case before the European Court of Justice. In 1997 the Treaty was amended, largely at the initiative of the UK Government, to allow the European Court of Justice to impose financial penalties on a Member State which failed to comply with a judgement of the Court. Penalties are suggested by the Commission based on a Commission policy document. The first such penalty imposed by the Court concerned an illegal landfill site in Greece and resulted in a daily penalty of 20,000 Euros on Greece for as long as the relevant EC law was breached. In giving its judgment in *Commission v Greece*<sup>13</sup>, the Court endorsed the approach to penalties being taken by the Commission.
- 4.3 Most EC environmental legislation takes the form of Directives, and the initial obligation of Member States is to formally transpose the obligations of Directives into their national legal systems. In 1990, the Rossi report noted that, compared to the rest of the United Kingdom, Northern Ireland was failing to give sufficient priority to the issue of timely transposition of EC environmental law into Northern Ireland legislation. One excuse given was the distinct and more time-consuming procedures for introducing Northern Ireland legislation, but the European Court of Justice has consistently held that internal constitutional difficulties in national law-making is not a good legal defence for a Member State which fails to transpose in time.<sup>14</sup> Despite the recommendations in the Rossi report, there have continued to be significant delays in transposition in Northern Ireland, though the Department of the Environment is now making strenuous efforts to ensure that all necessary legislation is in place and the legislative backlog is shortly to be cleared.
- 4.4 Ensuring formal transposition of EC law is the responsibility of the Department's Environmental Policy Division rather than EHS. But the European Commission has long insisted that even where national legislation is in place, failure to ensure compliance with EC laws *in practice* is equally a breach of Community law by the Member State, and this approach has been fully endorsed by the European Court of Justice.<sup>15</sup> In the environmental field, the Commission possesses no direct power of inspection within Member States to determine the extent to which Community obligations are complied with in practice. Instead, it has sometimes commissioned reports from consultants on actual practice, and has also encouraged individuals and environmental organisations to alert it to potential areas of non-compliance through a citizen's complaint procedure. If such complaints reveal a *prima facie* case of non-compliance, they are followed up by inquiries to the Member State concerned which may then result in formal enforcement procedures.
- 4.5 Ensuring compliance in practice is a key responsibility for the body charged with implementing environmental regulation. Although in 1996 the Commission indicated that its first priority would be to ensure that national legislation was in place, it is clear from the table below that the number of enforcement actions in the environmental field concerning non-compliance in practice is still growing.

## EUROPEAN COMMUNITY DIMENSION



**Figure 2. Numbers and types of infraction proceedings initiated by the European Commission in environmental cases 1982–2001.**

'Non-transposition' means that the Member State has not sent the Commission any national legislation implementing EC Directives within time-limits; 'Non-conformity' means that legislation sent is considered to be defective; 'Non-application' refers to examples in practice where, whatever the state of the national law, EC requirements are not actually being met. Note that these now represent the largest number of environmental actions brought by the Commission. Source: Hatton (2003).<sup>16</sup>

4.6 The European Court of Justice has held that, in the absence of express provisions concerning derogation in a particular EC law, financial or practical difficulties offer no defence to non-compliance in practice<sup>17</sup>. The UK Government has agreed that, where the failure is the responsibility of a regional administration, the financial costs of any penalty imposed by the European Court on the UK will fall to that administration. These sums can be considerable. In the landfill case against Greece, Greece ended up paying a fine of around EUR5m before the landfill site in question was closed. A recent study<sup>18</sup> has listed 11 other cases where the Commission has sought penalty payments in the environmental field for non-compliance with a judgment of the Court, although these were all settled before reaching court. The sums sought were

considerable, including, for example, daily penalty payments of EUR106,800 (United Kingdom) and EUR105,500 (France). In November 2003 in *Commission v Spain*<sup>19</sup> the European Court of Justice considered its second case concerning penalties. The case resulted from Spain's continuing failure to comply in practice with the Bathing Water Directive following a decision of the Court in 1998. Although Spain had secured an improvement of compliance of bathing waters from 54.5% in 1992 to around 80% in 2000, the Court imposed a penalty payment of EUR 624,150 per year for non-compliance and the same figure per percentage of bathing waters not in compliance, amounting to over EUR9m.

## EUROPEAN COMMUNITY DIMENSION

4.7 According to the European Commission, in April last year there were 16 environmental cases against the United Kingdom involving Northern Ireland, either on its own or as part of a case against the United Kingdom as a whole, that had reached Reasoned Opinion stage or beyond<sup>20</sup>. It is thought that about half of these involve non-implementation in practice as opposed to formal transposition issues. It is clear from the current case-law referred to in the previous paragraph that the exposure of Northern Ireland to large penalty payments is now considerable. This is a factor that now needs to be taken into account in weighing up the financial costs of new arrangements, and underlines the need to have in place the most effective institutional

machinery for ensuring that EC environmental obligations are met *in practice*. The implementation challenge does not concern simply existing EC environmental law, concerning such areas as habitat protection and sewerage treatment. On the horizon is a range of new EC laws, often involving challenging new targets and mechanisms, and these will also require full implementation both in law and in practice (see Figure 3).

### **Selected new and anticipated EC environmental legislation**

Strategic Environmental Assessment  
 Emissions trading for greenhouse gases  
 Emissions Ceilings for key air pollutants  
 Producer responsibility for waste and electrical equipment  
 Restrictions on hazardous substances in electrical and electronic equipment  
 Water Framework  
 New Chemicals Regulation  
 Civil Liability for Environmental Damage  
 End of Life Vehicles  
 Traceability of Genetically Modified Organisms and GMO Products  
 Expansion and amendment of Integrated Pollution and Prevention Control Directive  
 Hazardous waste from mining  
 Amendment of Packaging Waste targets  
 Battery and accumulator waste

**Figure 3. Selected new and anticipated EC environmental legislation.**

## ORGANISATIONAL STRUCTURES

### 5. Organisational Structures for the Delivery of Policy

5.1 Governments employ various different arrangements for delivering policy objectives, and in many areas there is now an increasing recognition of the need for working in partnership with the voluntary and private sector. Government departments may exercise powers directly but, where it is thought helpful to separate departmental policy making from the actual implementation of policy on the ground, there are four main types of body currently employed in the United Kingdom:

- Executive Agencies (e.g. Environment and Heritage Service, Water Service),
- Executive Non-Departmental Public Bodies, (e.g. NI Authority for Energy Regulation, Health and Safety Executive for Northern Ireland),
- Non-Ministerial Government Departments (e.g. UK Food Standards Agency) and
- Elected local authorities.

This section considers in more general terms the nature of these bodies, and in doing so reflects a number of significant recent government studies on the issue. This is an important backdrop to evaluating possible options for change in the structures of existing bodies such as Environment and Heritage Service, which are responsible for delivering environmental policy in Northern Ireland.

#### EXECUTIVE AGENCIES

5.2 Executive agencies were launched in the United Kingdom by the 1988 Ibbs Report<sup>21</sup>, and used to be more commonly known as ‘Next Steps Agencies’. Ibbs advocated the use of agencies within government departments to carry out executive functions of government within a policy and resources framework set by government departments, and with an underlying aim to improve managerial efficiency and re-orientate systems towards the delivery of services. In legal terms, executive agencies remain part of their department but operate with a degree of independence. In its 1998 *Next Steps Report*,<sup>22</sup> the Government acknowledged that executive agencies were not the complete answer to the delivery of better services but that the principles they embodied were a step in the right direction. Executive agencies have been the subject of a number of recent high-level reviews in the United Kingdom. In July 2002 the Cabinet

Office and HM Treasury published *Better Government Services – Executive Agencies in the 21st Century*.<sup>23</sup> Its main conclusions were that the agencies had provided a flexible and responsive structure for the delivery of executive functions of central government, but there were concerns that in some cases departments had allowed their agencies to become too divorced from their own strategic thinking.<sup>24</sup>

5.3 The National Audit Office 2003 report, “*Improving Service Delivery – The Role of Executive Agencies*”<sup>25</sup> highlighted the central role that executive agencies now play in the delivery of public services. It analysed the role of targets in improving service delivery in 30 executive agencies and, although the study found the majority of existing targets applying to the agencies studied were being met, it made a number of key recommendations to improve performance standards.<sup>26</sup>

#### NON-DEPARTMENTAL PUBLIC BODIES

5.4 Non-departmental public bodies (NDPB) remain the most common alternative form of governmental executive body. The key distinction from an executive agency is that an NDPB is given a legal entity separate from its sponsoring department with its core structure and functions defined by legislation. Generally, overall management of the body is entrusted to a board appointed by government. This lack of direct accountability through an elected representative was one of the reasons why the 1970 Review Body on Local Government in Northern Ireland<sup>27</sup> concluded that what it then described as ‘autonomous boards’ were not suitable except for a very limited range of technical or operational functions. While the concern about accountability remains real, it is noteworthy that in recent years bodies such as the Environment Agency in England and Wales have made great efforts to conduct their affairs as transparently as possible, as is illustrated in section 6.

5.5 The degree of independence is, in legal terms, determined by the Statute establishing the NDPB and may vary subtly from body to body. Ministers are generally given the power to issue formal directions, sometimes only on general matters, but in other

## ORGANISATIONAL STRUCTURES

cases on any specific issue. Such formal directions generally must be published. Income may be derived solely from grant-in-aid from the sponsoring department, but may also include sources of revenue from service functions such as granting licences.

5.6 The recent UK government reviews of executive agencies and non-departmental public bodies have tended to focus on the issue of improving service delivery, and there has been less in the way of agreed principles concerning the choice of the models available and their suitability for particular types of function or activity. Policy development, especially in the environmental field, is a complex process and it is clear that the concept that a government department makes policy while an executive body (whether such a body is in formal terms an executive agency or a non-departmental public body) merely implements policy on the ground is too simplistic. Ideally, final policy-making should remain the responsibility of politically accountable Ministers and government departments, but an implementing agency can also provide a significant source of policy influence and advice based on its specialised expertise and operational experience. When it comes to the implementation of regulation, the recent report on Independent Regulators<sup>28</sup> from the UK Better Regulation Task Force noted that nearly all consultees who were subject to regulation<sup>29</sup> agreed that being regulated by an independent regulator was preferable to being regulated by a government department.<sup>30</sup>

5.7 More recently, the Haskins review<sup>31</sup> on the delivery of government policies in rural England, published in October 2003, recommended the establishment of a new body, the Land Management Agency, to incorporate the function of various existing bodies including English Nature. In considering the status of such a body, Lord Haskins recommended a non-departmental public body: *“I believe that incorporating it in DEFRA (for example, as a ‘next steps’ agency) would not provide the level of independence that is necessary for such a body to work in the decentralized and devolved delivery landscapes to which government is committed.”* In February 2004, The Government agreed that the status of the new agency should be a non-departmental public body.<sup>32</sup>

5.8 In considering a choice between an executive agency and a non-departmental public body the main advantages and disadvantages can be summarised as follows:

### EXECUTIVE AGENCY

#### Benefits

- Flexible to establish, no legislation needed, and functions easily changed
- Economical since common support services (such as finance, personnel, legal) are provided by the department
- Managerial and resource efficiencies through defined service agreements
- Focus on delivery of services

#### Disbenefits

- No separate legal status from department
- Form and structure implies greater independence that is the reality
- Form less suitable for a body with regulatory functions
- Role in providing policy advice to the department is often unclear and not properly resourced or accounted for in service agreements with department
- Difficult for agency management to establish fully transparent working practices

### EXECUTIVE NON-DEPARTMENTAL BODY

#### Benefits

- Separate legal status from department
- Greater trust as a regulator in operating consistently, fairly and free from political interference
- Ability to develop longer term perspectives
- Role in providing independent policy advice to government and greater freedom to engage in public debate
- Able to develop transparent working practices (open board meetings etc.)
- Powers and responsibilities clearly defined

## ORGANISATIONAL STRUCTURES

### Disbenefits

- Legislation needed to establish body, and to change functions at later date
- Costly to operate – no common services provided by department
- Distanced from direct political accountability with board members appointed rather than elected
- Can become too detached from policy making, and lead to over-separation of policy development and policy delivery.
- Can become over-institutionalised and unresponsive to structural changes
- Funding streams can be complex and too short-term

### NON-MINISTERIAL GOVERNMENT DEPARTMENT

5.9 A further variation of organisation, but one found rarely, is a non-ministerial government department. Unlike a non-departmental public body, such an organisation has no formal sponsoring department and funding is sought directly from the government treasury or financial department. Ministers have no power to give directions to such bodies, though clearly they can establish the policy and legal framework within which they operate. Examples of regulatory bodies with this status include the Inland Revenue in England and Wales, where it is considered that impartial decision-making without the possibility of any Ministerial interference is essential. A more recent example of a non-ministerial government department operating in a policy sensitive field is the Food Standards Agency, established under the Food Standards Act 1999, where the need for even sharper independence was considered necessary following a loss in public confidence in the wake of the BSE crisis. Non-ministerial government departments are accountable to Select Committees, the National Audit Office and the Ombudsman, but the need for such a department to develop open and consultative procedures to counteract its lack of direct political accountability is even stronger than in the case of non-departmental public bodies. The National Audit Office in England and Wales recently singled out the Food Standards Agency as demonstrating a range of good practice initiatives in an area where public trust and confidence were essential.<sup>33</sup>

### LOCAL GOVERNMENT

5.10 An alternative model to establishing various forms of independent agencies is to give more power to elected local government. The question of whether major public services in Northern Ireland should be provided by enhanced local government bodies, perhaps operating on a regional basis, is one of the models now being considered by the Review of Public Administration in Northern Ireland. In other parts of the United Kingdom local government retains a number of important environmental regulatory functions such as noise control, public nuisances, and contaminated land. Unlike current arrangements in Northern Ireland, land use planning control is primarily the responsibility of local government with central government exercising an appeal function.

5.11 The advantages of a greater role for local government include the more direct political accountability through locally elected representatives and the fact that local government may be more sensitive to local needs and issues. Nevertheless, the trend in many core areas of environmental regulation such as water pollution, waste management licensing, habitat protection, chemical controls and the regulation of industrial processes has been to assign these functions to specialised agencies rather than local government. This is due in part to the high level of specialised technical and scientific expertise required for implementation, and the need for consistency in approach, especially where the implementation of European Community legal requirements is involved. Whatever the future shape and responsibilities of local government in Northern Ireland, it is probably unlikely that these types of more specialised environmental functions are appropriate to revert back to local government, even if it were structured along more regional lines. Nevertheless, it will be important for an environmental agency (whatever model is adopted) to develop cooperative relationships with local government, both at a strategic level (such as the 'Working Better Together' plan agreed in England and Wales between the Environment Agency and the Local Government Association) and at local level.

## OTHER MODELS OF ENVIRONMENT AGENCIES

	<b>Environment and Heritage Service</b>	<b>Environment Agency (England and Wales)</b>	<b>English Nature</b>	<b>Scottish Environment Protection Agency</b>	<b>Irish Environmental Protection Agency</b>
<b>Status</b>	Executive Agency of Dept of the Environment (NI)	Non-Departmental Public Body	Non-Departmental Public Body	Non-Departmental Public Body	Non-Departmental Public Body
<b>Management</b>	Chief Executive plus senior management team	Chair, Chief Executive, and Non-Executive Members appointed by Ministers	Chair, Chief Executive, and Non-Executive Members appointed by Ministers	Chair, Chief Executive, Non-Executive Members appointed by Minister	Director-General plus 4 directors appointed by Government plus Advisory Committee appointed by Minister from list
<b>Board Meetings</b>	Not open to the public	Open to the public and papers on web-site	Open to the public and papers on web-site	Open to the public and papers on web-site	Not open to the public
<b>Key Executive Functions</b>	Regulation of Pollution, Nature Conservation, and protection of Built Heritage	Pollution and Waste Regulation, Fisheries and Navigation, Flood Management	Nature conservation and regulation	Pollution and Waste regulation, water management in sensitive areas	Industrial pollution and waste regulation; supervision of local authority environmental functions
<b>Staffing</b>	520	10,000	900	900	250
<b>Income Sources</b>	Government grant 93% Regulatory charges 4.3% Misc. Sources 2.7%	Government grant 18% Flood levies/grants 47% Regulatory charges 35%	Government grant 84% Other sources 16%	Government grant 58% Regulatory charges 42%	Government grant 69% Regulatory charges 23% Other 8%
<b>Independent Policy Adviser to Government?</b>	No	Yes, established in 2002 Government Statutory to Government Guidance	Yes, established in legislation	Yes, role as policy adviser acknowledged in Management Statement from Scottish Executive	Yes, role established in legislation

**Figure 4 Summary comparison of main environment agencies in the United Kingdom and Ireland.**

*(note: staffing levels and income sources are rounded)*

## OTHER MODELS OF ENVIRONMENT AGENCIES

### 6. Experience of Other Models of Environment Agencies

6.1 This section considers a number of different environment agencies with a focus on the key agencies currently operating in other parts of the United Kingdom and Ireland. Given the European dimension to so much of contemporary environmental policy and law, the section also includes an overview of some environmental agencies operating in other European Community Member States, together with more detailed analysis of the Swedish Environment Protection Agency. It is not the purpose of this section to advocate that any particular model must be slavishly followed in Northern Ireland and, as the Review of Public Administration stated in its 2003 consultation document “*Northern Ireland is a society with distinctive characteristics and needs, and it may therefore continue to require arrangements which are different, in various ways, from those found elsewhere.*”<sup>34</sup> Equally, however, Northern Ireland should not remain in a backwater in the design of modern environmental governance and the intention is to provide food for thought. As the summary table indicates, Northern Ireland now remains unique within the United Kingdom and Ireland in that its key environmental regulatory body is an executive agency rather than a non-departmental public body. The more detailed analysis of the bodies operating indicate that there are important and often subtle differences in structure and style which also need to be taken into consideration in any detailed evaluation of possible future models.

### ENVIRONMENT AGENCY (ENGLAND AND WALES)

#### *Structure and functions*

6.2 The Environment Agency was created under the Environment Act 1995 as a non-departmental public body. The background to its creation was an increasing policy concern for a more coherent and integrated approach towards pollution control and a series of official reports highly critical of the inconsistent approach to the regulation of waste, which was then the responsibility of local authorities. Following water privatisation in England and Wales in 1989, a National Rivers Authority (NRA) was created which was responsible for both flood defence and the protection of surface and groundwater, including fisheries and navigation. One model considered at the time of the Agency’s creation was to hive off solely the regulatory aspects of the NRA’s responsibilities to the new Agency, leaving water operational functions to the NRA, but this was eventually considered too destructive of the cohesive approach towards water management that had been developed. The result is that, in contrast with most other examples of environmental agencies, the Environment Agency has extensive operational responsibilities in the field of water management in addition to its broad environmental regulatory responsibilities. This is reflected in both staffing numbers and finance. The creation of the Agency was complex in organisational terms since establishing its core involved bringing together into one organisation three groupings with distinct cultures and expertise – the National Rivers Authority, Her Majesty’s Inspectorate of Pollution (a small central government inspectorate regulating emissions from certain industrial processes), and waste management staff from over 80 local authorities.

## OTHER MODELS OF ENVIRONMENT AGENCIES

The Agency's core current responsibilities encompass:

- waste management regulation,
- radioactive waste regulation,
- regulation of industrial processes under IPPC and PPC regimes,
- contaminated land on special sites,
- water pollution and water abstraction control,
- fisheries and navigation and
- flood defence and management.

Environment Agency <sup>35</sup>	2001/02
Staffing	10569
Income	
Government grant (DEFRA)	£107.7m
Government grant (Welsh Assembly)	£13.7m
Capital Grants (flood defence)	£56.8m
Flood defence levies and precepts	£258m
Fee income from charges	£230m

The Agency's budget is based on three main sources: flood defence based mainly on levies, grant in aid from both DEFRA and the Welsh Assembly, and charges and fees from licences. These used to be in roughly equal proportions but, with continual financial pressures on DEFRA's own resources, government grant is reducing while the proportion of income from environmental charging schemes is increasing.

6.3 Under the Environment Act 1995 the Agency was structured as a non-departmental public body under a board of between 8 and 15 members appointed by the government, and as such has separate legal identity from government departments, with its staff being employees of the Agency rather than civil servants. The Act gives a reserve power to the Secretary of State to give the Agency binding directions on both general and specific matters relating to its functions. Directions have to be published, and while a number of directions concerning general policy issues have been made (concerning implementation of EC targets, for example) there appears to have been no direction yet made on a specific matter.

6.4 The Act states that in discharging its functions the Agency's principal aim, subject to other statutory responsibilities, is to make a contribution towards attaining the objective of sustainable development. Statutory guidance must be given by government on how it should fulfil those objectives and this must be taken into account by the Agency in the exercise of its functions. The Guidance was last revised in 2002 and is intended to provide a new framework of accountability and context for the Agency

### *Regulatory enforcement*

6.5 In its regulatory functions the Agency possesses a range of enforcement tools such as the service of warning letters and enforcement notices but, unlike the Northern Ireland EHS or the Scottish Environment Protection Agency, the Agency may undertake its own prosecutions. It was one of the first environmental agencies to publish an explicit Enforcement and Prosecution Policy,<sup>36</sup> which is supplemented by Functional Guidelines which are also published. The policy states that, assuming there is sufficient evidence, the Agency will normally prosecute for (a) incidents or breaches with significant consequences for the environment (b) carrying out an operation without a licence and (c) excessive or persistent breaches of regulatory requirements. In 2002 there were 1387 events leading to prosecution by the Agency, leading to 1712 successful charges.<sup>37</sup>

6.6 As with many environmental agencies, the Environment Agency has a continuing concern about the low level of average fines imposed by the courts, especially at magistrates court level, and in 1998 for the first time published a report which named convicted companies sector by sector and in league tables based on levels of fine. This gave rise to extensive national and local press coverage, but there was also criticism both from parliament and industries that the 'name and shame' approach was too crude and negative. Since then the Agency has published an annual report, "*Spotlight on Business Environmental Performance*", which continues to include 'naming and shaming' sections on prosecutions but also includes information on regulated industries that have significantly improved their performance.

## OTHER MODELS OF ENVIRONMENT AGENCIES

### *Environment Agency's role as an independent voice*

- 6.7 The Environment Agency is a government body that is nevertheless independent from governmental departments, and it is here that some of the most telling comparisons with Environment and Heritage Service lie. The most damning official evaluation of the Agency's performance to date was the 2000 Report of the House of Commons Select Committee on the Environment, Transport and Regional Affairs<sup>38</sup> which touched on this issue. The Committee urged the Agency to be more of a "*champion of the environment*" than simply a regulatory arm of Government, and as the chairman of the Committee noted in the Parliamentary debate on the Report, "*I would like the Environment Agency to take a much stronger role in giving the Government advice...I think the Agency should be pushing harder than the Government, whereas my impression is that the Government are pushing hardest and the Environment Agency is following behind.*"<sup>39</sup>
- 6.8 The 2000 Parliamentary report probably represented the low point in the Agency's reputation, and since then there have been considerable improvements. A Financial Management and Performance Review carried out by the government confirmed the continuation of the Agency,<sup>40</sup> while Stage 2 of the Report<sup>41</sup> published in 2002 was more concerned with improving efficiency and accountability for its performance which the review stated was important in maintaining public confidence in the Agency as an independent regulator. The Agency followed SEPA's lead and initiated open meetings of its board (bar some categories of confidentiality such as those relating to personnel or judicial proceedings), where journalists and members of the public could watch the Board discussions and decisions being made. Full board papers are now available on the Internet before the meetings. Management was reorganized to ensure greater consistency in operations, and a new chairman and chief executive gave a stronger public profile to the Agency. The Board initiated a new 'Corporate Scorecard' system to provide it with greater high-level information on the Agency's performance achievements against its corporate targets, and a risk-based approach to regulating activities has been developed with the aim of ensuring that resources are better employed.
- 6.9 The Agency acknowledged that it should be more focussed on achieving outcomes in its regulatory and operational roles and, in 2001, following extensive stakeholder consultation, published "*An Environmental Vision – the Environment Agency's contribution towards Sustainable Development*" based on nine key themes and identifying the long term goals which it wished to see happen. It might be argued that such a vision document should have been produced by government rather than the Agency, but the assessment at the time was that the Government's own material, including its Sustainable Development Strategy, failed to provide a long term vision for the environment. The document has had two main effects. It has set a framework for both the Agency's own accountability, but also identified clearly that many of the outcomes could not be achieved by the Agency alone using conventional regulatory instruments. There was a much greater need in many areas for partnerships with industry, local government and the public. The Agency is committed to measuring trends and assessing environmental information against the longer-term vision and targets. As it states in its latest Corporate Plan "*We will put this information in the public domain where it will act as a catalyst for environmental change.*"<sup>42</sup>
- 6.10 The 2002 Government Statutory Guidance to the Agency marked an important stage in recognizing the Agency's value as an independent source of policy advice. For the first time in a document with legal force it defined that one of the key roles of the Environment Agency was to be an '*independent advisor*' on environmental matters affecting policy making both within government and more widely. The Guidance notes that the Agency will be one of the government's main sources of expert advice on environmental matters, and is also well placed to influence the actions of others in relation to environmental matters. It recognises that it is legitimate for the Agency to play a role beyond its core regulatory and flood defence functions and refers, for example, to the Agency's role in land use planning, both in advising on regional planning guidance and development plans, and on individual planning applications. In this context, the Agency regularly objects to planning applications where, for

## OTHER MODELS OF ENVIRONMENT AGENCIES

instance, they relate to development on flood plains. All this type of activity, however, has to be funded from government grant imposing internal demands on prioritisation. In its recent report on Environmental Planning,<sup>43</sup> the Royal Commission on Environmental Pollution expressed concern that the Agency was not playing a fully effective role in influencing local and regional authorities at the strategic level of land use planning, and more effort is likely to be devoted to these tasks in the future. In 1999 the Agency and the Local Government Association signed an agreement<sup>44</sup> which stated ten commitments to improving working relations and to act as a framework for more specific local agreements.

- 6.11 In its open board meetings, which are regularly reported by the specialist press, the nature of the discussion often underlines the Agency's distinctive and independent voice. For example, in its December 2000 Board Meeting it discussed openly funding problems posed by the imposition of new regulatory duties mainly under EC legislation, with the Chairman stating it was a '*complete fantasy*' to believe the Agency could deliver its new duties within current resources, while the Director of Environmental Protection criticised the Government Department's legal capacity for transposing Directives – "*there is not sufficient lawyer capacity within DEFRA to take these things through at a pace we would like.*"<sup>45</sup> Another example of an independent perspective being presented by the Agency occurred at the 2001 waste summit organized by the Secretary of State for the Environment and attended by over 60 representatives from stakeholder interests. In presenting the Agency's proposals to strengthen the Government's waste strategy, the Chairman of the Agency observed that the Government's strategy "*fails to inject sufficient urgency about the pace and scale of the change that will be necessary to turn the problem around.*"<sup>46</sup> Clearly, at the end of the day, it is important that these examples of the Agency visibly acting as an independent arm of the government rather than a constituent part of a government department represent a constructive

tension that assists the development of improved policy and leads to greater public understanding of the difficult choices that are often involved. The Agency's own opinion survey work indicates that trust in the Agency as a body is increasing, and the Board has decided that this is one of the key attributes for the Agency to seek. Although sometimes uncomfortable for government departments, these more open discussions are usually accompanied by a great deal of co-operative working between Agency officers and government officials, and by regular Ministerial meetings. It is unlikely that these sorts of changes towards more open policy development could take place in Northern Ireland as long as Environment and Heritage Service remains a constituent part of the Department of the Environment.

### ENGLISH NATURE

#### *Structure and functions*

- 6.12 English Nature (formally the Nature Conservancy Council for England) was established under the Environmental Protection Act 1990, following a politically controversial decision of the government to split the original Nature Conservancy Council which covered the whole of Great Britain into three separate organisations covering England, Wales, and Scotland. English Nature is a non-departmental public body with members appointed by the Secretary of State, though in formal legal terms it is rather more independent than the Environment Agency. For example, while the Secretary of State may give general or specific directions to English Nature, these powers do not extend to its regulatory functions. The Environmental Protection Act 1990 also expressly states that one of the functions of English Nature is to provide advice to the Secretary of State on the development and implementation of nature conservation policies, while in the case of the Environment Agency this role is now stated in statutory guidance rather than in the body of the primary legislation.

## OTHER MODELS OF ENVIRONMENT AGENCIES

2002/2003 <sup>47</sup>	
Staffing	906
Income	
Grant in aid	£63.1m
Aggregates Levy	£2.7m
Shared conservation income	£3.4m
Activities and other income	£5.9m

6.13 English Nature's functions in the field of nature conservation encompass regulatory activity, advice to government at national, regional and local level, and operational activities. It plays a key role in advising government on the selection of protected sites under European and international legislation, and is responsible for notification and protection of Sites of Special Scientific Interest. Its regulatory powers in this context have been considerably strengthened by the Countryside and Rights of Way Act 2000 and, according to its current Corporate Plan, it aims to ensure that 72% of the over 4,000 SSSIs in England are in a favourable condition by 2006 (from a figure of 57% in 2003). English Nature is the lead organisation for achieving the government's goals in its Biodiversity Strategy for England<sup>48</sup>, and has agreed concordants with other bodies such as the Environment Agency where they have more direct means of protecting particular species and habitats. In addition to its regulatory functions, English Nature is responsible for the management of national nature reserves, including marine nature reserves, and provides grants under a Biodiversity Grant Scheme.

#### *Role as independent policy adviser*

6.14 English Nature has a statutory function of providing advice to the government on nature conservation and, though largely funded by government grant-in-aid, it has established a reputation as being fearlessly independent of government. Compared to the Environment Agency it has tended to be more overtly critical of government policy – due in part to its tighter environmental remit, and the personalities of lead officers. English Nature was one of the first statutory bodies to express concern over the potential damage to biodiversity from GM crops which led to extensive farm scale evaluations by the

government, and is the lead agency for British statutory conservation agencies on biotechnology. It regularly responds to government consultations and provides evidence to Parliamentary Select Committees,<sup>49</sup> and has not refrained from being robust in its criticism of government policy. For example, in evidence before a 1999 House of Lords inquiry on GM crops, it told the inquiry, "*There has been little, if any, direction given by Government on the development of GMOs, giving rise to an 'anything goes' attitude within the biotechnology industry.*"<sup>50</sup> Its responses often raise concerns about the impact of Government proposals on nature conservation. For example, its 2002 evidence to the Parliamentary Select Committee on the proposals of the Office of the Deputy Prime Minister for an extra 200,000 homes in southeast England highlighted their impact on water supply and waste/sewage disposal. Similarly, it has recently expressed concern about the effect on wildlife that might arise from the Department of Transport's consultation proposals on airport expansion.

6.15 English Nature now faces a major challenge following the publication in October 2003 of the Haskins review on the delivery of government policies in rural England.<sup>51</sup> The review was mainly concerned with making more effective the delivery of the government's rural policies, and raised concerns at both excessive centralization and the complex nature and number of organisations now involved which caused confusion to customers and stakeholders. One of the institutional recommendations made by Lord Haskins was for the creation of a new Land Management Agency as a non-departmental public body that would incorporate English Nature, some functions of the Countryside Agency, and the Government Department's own Rural Development Service. The government has in principle endorsed the recommendation (though is less convinced about the case for abolishing the Countryside Agency). The extent to which English Nature is perceived as an independent body was reflected in much of the initial press coverage. The director of Friends of the Earth, for example, was quoted as stating "*English*

## OTHER MODELS OF ENVIRONMENT AGENCIES

*Nature was becoming an increasingly effective independent wildlife protection agency, and no matter what arrangements results from the review, that must remain*<sup>52</sup>, while the Opposition environment spokesperson noted, “*It is no surprise that the government seeks to abolish an agency that openly criticizes and hinders them.*”<sup>53</sup> In truth, muzzling English Nature does not appear to be the rationale for either Lord Haskin’s recommendations or the government’s response,<sup>54</sup> but some of the immediate response was a compelling example of the distinctive reputation that the organisation has established in the public eye.

### SCOTTISH ENVIRONMENT PROTECTION AGENCY

#### *Structure and functions*

6.17 The Scottish Environment Protection Agency (SEPA) was established under the Environment Act 1995 as a non-departmental public body, with a board of between 8 and 12 members appointed by Scottish Ministers. It is, though, a much smaller body than the Environment Agency with around 900 staff at present. This reflects not simply a smaller jurisdiction, but a tighter range of functions that are more focussed on pollution control and prevention. Unlike the Environment Agency, SEPA is not directly responsible for flood defence and management, which rest with local authorities, though it is responsible for flood warnings.

6.18 SEPA’s principal regulatory responsibilities include:

- Control of discharges to surface and groundwater, and tidal waters to the 3 mile limit. This is mainly achieved through the setting of consents, with around 30,000 consents currently in place.
- Regulation of water abstraction in sensitive areas.
- Regulation of industrial processes under integrated pollution control. There are around 200 permits currently in operation.
- Regulation of ‘Part B’ industrial processes for air emissions. There are around 1000 authorizations currently in force.

- Licensing of waste management sites, regulation of waste shipments, special waste transfers, registration of waste carriers, regulation of packaging producers. There are currently around 1000 licensed waste activities. Regulation of radioactive waste.
- Preparation of National Waste Strategy for Scotland.
- Regulation of ‘special sites’ under the contaminated land regime.

2001/2002 <sup>54a</sup>	
<i>Staffing</i>	879
Operations	79%
Finance and Corporate	10%
Strategic Planning	7%
Public affairs	3%
Chairman/Chief Executive	1%
<i>Income</i>	
Grant in Aid	23.5m
Fee income from charges	17.5m

6.19 Unlike the Environment Agency in England and Wales, SEPA has no general aim relating to sustainable development specified in its constituent legislation, the difference being explained by the Government during the Parliamentary passage of the Environment Act as due to the fact that the narrower functions of SEPA made such a statement of legislative aims unnecessary. Under Section 31 EPA 1995 the Scottish Executive must give SEPA guidance from time to time with respect to aims and objectives, and in performing its functions SEPA must have regard to the guidance. There are also equivalent powers to those available to government with respect to the Environment Agency for the Scottish Executive to give directions of both a general and specific character with respect to carrying out of any of its functions.

## OTHER MODELS OF ENVIRONMENT AGENCIES

- 6.20 The overall goal of SEPA, as set down by the Scottish Executive, is to provide *“an efficient and integrated environmental protection system for Scotland that will improve the environment and contribute to the Scottish Minister’s goal of sustainable development.”* A Management Statement, last issued in July 2002, sets out the formal relationship of SEPA with the Scottish Executive. It acknowledges that, in addition to its regulatory functions, SEPA functions include the collation of data to provide an overview of the state of the environment in Scotland, and the provision of advice during the development of policy at Scottish, UK, European and international level.
- 6.21 In terms of regulatory enforcement, SEPA has a range of responses equivalent to those of EHS, such as the service of warning notices and enforcement notices. Unlike the Environment Agency, it has no independent power of prosecution but must refer reports to the Procurator Fiscal, and in this respect it is in a similar position to EHS. On average SEPA submits around 65 such reports a year, with around 68% going on to court, a rather higher success rate compared to the average ratio of reports handled by the Procurator Fiscal.
- 6.22 The Review also recognised that SEPA’s role should not be confined solely to implementing environmental regulation. If it were to achieve its longer-term environmental corporate targets, *“It must play a wider, complementary role as an environmental champion”*. This included forging of strategic partnerships and acting as an advocate for best environmental practice in pursuit of its agreed corporate targets. The Review acknowledged that the Board of SEPA was crucial to its accountability. SEPA was the first environmental non-departmental public body to initiate board meetings that were open to the general public. The Environment Act 1995 also required SEPA to establish Regional Boards, but did not specify their function. The Review felt that the Regional Boards that had been set up were essentially too inward looking, and that their core function should change from one of monitoring SEPA’s local performance to that of engaging directly and proactively with local communities and other stakeholders.
- 6.23 SEPA has two main sources of income: grant in aid and fees from charges for licences and consents. The proportion of its income from charges has risen substantially from around 22% in its first year of operation to around 42% in 2002-2003 and, although the Review recommended that SEPA needs to improve the transparency of its charging schemes, it endorsed the general approach of recovering all costs of its work performed in support of its regulatory activity (including, for example, the development of internal guidance and electronic licence management systems) as well as direct costs. This was in line with the polluter pays principle. Grant-in-aid should be a quite separate source of income given to fund those non-regulatory activities that SEPA is legally obliged to carry out, or in response to Ministerial policy or requests.
- 6.24

### *Government evaluation of SEPA*

- 6.22 The most recent comprehensive evaluation of SEPA’s performance was the 2002 Financial Performance and Management Review conducted by the Scottish Executive.<sup>55</sup> One of the underlying themes of the Review is to recognise and indeed strengthen SEPA’s independent role in environmental policy development and delivery. As part of a public awareness survey conducted by the Review, it was found that SEPA had achieved a high level of recognition among the Scottish public and that, in terms of effectiveness in protecting the environment, SEPA was ranked higher than the Scottish Executive and local authorities. The Review called for more regular high-level meetings between SEPA and the Scottish Executive and stated that if environmental policy and legislation was to be well founded and workable the Scottish Executive should continue to draw extensively on SEPA’s *“wealth of experience in implementing existing legislation and on its expertise in the field of the environment.”*

## OTHER MODELS OF ENVIRONMENT AGENCIES

6.25 The Review welcomed the increased consistency in the approach to regulation being achieved by SEPA. Consultation suggested that SEPA was too focussed on regulatory activity, and needed to develop a more outcome driven approach, and one that was more risk-based. As one local authority noted “*Reliance on regulation by role rather than being based on objective measures of risk appears to be the main modus operandi*”. However, the Review acknowledged that these goals were not easy to achieve. SEPA has legal duties concerning regulation and monitoring, and rigorous and consistent regulation necessarily involved a measure of repetitive activity if its credibility with the public and operators was to be maintained.

### IRISH ENVIRONMENTAL PROTECTION AGENCY

#### Functions

6.26 The Irish Environmental Protection Agency was established as non-departmental public body under the Environmental Protection Agency Act 1992. The background to the legislation was a commitment by the then Government to overhaul the regime for environmental regulation in Ireland in the light of public concern over the effectiveness of planning and local authorities in regulating industry, and against the need for a more integrated approach towards pollution control.

2001/2 <sup>56</sup>	
Staffing	237
Income	
Government Grants	EUR 17m
Licence charges	EUR 5.6m
Regional laboratories	EUR 1.6m
Other income sources	EUR 0.3m

6.27 The mission statement of the EPA is “*to promote and implement the highest practicable standards of environmental protection and management which embrace the principles of sustainable and balanced development.*” Its core regulatory activities include:

- licensing and regulation of industries under Integrated Pollution Control with just over 500 licences issued since 1994. The legislation has recently been strengthened under the Protection of the Environment Act 2003 which is intended to fully reflect the provisions of the EC IPPC Directive.
- licensing and regulation of waste management facilities under the Waste Management Act 1996.
- GMO regulation for contained use and release.

6.28 These regulatory functions are clearly narrower than those of Environment and Heritage Service in Northern Ireland. For example, the protection of natural and man-made heritage falls to Duchas, the heritage service of the Department of the Environment, Heritage, and Local Government. Nor does the Irish EPA have extensive direct regulatory powers over water and sewerage pollution which mainly fall to local authorities, as do land use planning powers. But the legislation gives the Agency a supervisory role to oversee the performance by local authorities of their environmental protection functions, and this supervisory role is more akin to the role of the Swedish Environment Protection Agency in relation to municipal and regional government. This supervisory role is exercised in part by the publication of assessment reports on subjects such as the quality of bathing waters and drinking water, and the Agency has recently developed a management system for better identifying and assessing the performance of local authorities. Its supervisory powers have recently been strengthened as discussed in paragraph 6.30.

## OTHER MODELS OF ENVIRONMENT AGENCIES

### *Distinctive management structure*

6.29 The structure of the Irish EPA presents some distinctive features. In contrast to the more usual model of non-departmental public bodies led by a board of members appointed by government, the EPA is managed by a small executive board composed of senior officials and chaired by its Director General. The main reasons for choosing this model appear to have been to ensure greater independence of the new authority by avoiding undue political interference in the choice of individual members, coupled with the fact that in its licensing activities the board was seen to be acting in a quasi-judicial function where the need for independence was even more important. External input is provided by an Advisory Committee of 12 members, also chaired by the Director General. Members are appointed by the Minister for the Environment and Local Government and mainly selected from nominees proposed by organisations with an interest in environmental and development matters. It can therefore be seen more as a stakeholder advisory body, and in 2002 it met three times. Under the EPA Act, the Advisory Committee has a duty to make recommendations relating to the functions of the Agency, though it cannot bind the Agency in any way. It is difficult to judge the effectiveness of the Advisory Committee though it may be that it would establish a clearer, more independent voice if it were not chaired by the Director General but by a separate chairman.

### *Enforcement and supervisory role*

6.30 The EPA has both direct enforcement powers and a supervisory role in respect of local authorities. In 2003 it established a new office within the Agency, the Office of Environmental Enforcement, designed to provide more focus and expertise for both these roles within a dedicated unit and with extra government funding from revenue raised from the plastic bags tax. Its powers have been strengthened under provisions of the Protection of the Environment Act 2003 both in relation to its direct regulatory role (including, for example, increased maximum fines and improved powers concerning obtaining of evidence) and its supervisory role of

local authorities. In the case of the latter, it may request information from local authorities in both general and specific cases, and provide advice and recommendations. It may issue a binding direction to a local authority which fails to follow its recommendation, or where significant environmental pollution has resulted or may result from a failure of the local authority to carry out its statutory functions. Under the original legislation directions could only be given if the local authority had the funds to carry out the required actions, and there was no sanction for non-compliance other than the Agency doing the work itself and recovering the costs from the local authority. The 2003 legislation has considerably strengthened these powers by removing the reference to funds being available to the local authority as an excuse for non-compliance, and making it a criminal offence for an authority to fail to comply with a direction. Directions to local authorities have been given in the past, but no criminal prosecution for non-compliance has yet been issued. Given the large areas of environmental regulation which remain with local authorities in Ireland, these are potentially significant powers and can be seen as a more cost-effective and efficient route than judicial review. The Agency has a published prosecution policy which reflects those developed in the United Kingdom, and is based on the five key principles of proportionality, consistency, transparency, targeting, and that the polluter pays..

6.31 The EPA suffered somewhat of a baptism of fire in that shortly after it was established it was charged with investigating a major industrial fire at the Hickson Pharmaceutical chemical plant in Cork. Its subsequent report identified the unauthorised discharges of chemicals, but no significant environmental damage, and in some quarters its approach was criticised as unduly technocratic and cautious.<sup>57</sup> Since then the EPA has tended to be criticised by industry for being over-prescriptive in its approach to IPC licensing,<sup>58</sup> while at the same time it has been condemned by environmental groups for a failure to implement effective environmental standards, especially in relation to EC legislation.<sup>59</sup> In relation to IPC licensed activities, the

## OTHER MODELS OF ENVIRONMENT AGENCIES

EPA issued nearly 300 notices of non-compliance in 2001 and took 13 prosecutions, 12 of which resulted in convictions. Its annual report on IPC Licensing includes a degree of 'naming and shaming,' including names and details of prosecutions and lists of the IPC facilities that received the highest number of complaints.<sup>60</sup> Currently, the new Office of Environmental Enforcement has set illegal dumping of waste as a key priority, which is recognised as a major problem against a background of declining legal sites and growing costs.<sup>61</sup> Its effectiveness in dealing with this issue, together with the use of its enhanced powers of supervision over local authorities, is likely to be a key test for the EPA's reputation over the next few years.

### *Independent status of the EPA*

6.32 Compared to bodies such as English Nature and the Environment Agency in England and Wales, the legislation establishing the Irish Environmental Protection Agency contains many more express provisions establishing its independent status. The appointment of the Director General, for example, is not solely within the discretion of the Secretary but is made from nominees proposed by a committee of different interests. The Minister has powers to give directions but these may only be general directions relating to policy concerning environmental protection. The Act gives express authority to the Agency, both of its volition and at the request of a Minister, to give advice, information, or recommendations concerning the progress of environmental protection, and Ministers must have regard to such advice. There is a specific offence to attempt to influence the Agency in an improper manner. The Agency assiduously promotes its status as an independent body, with its documentation stating that *"Independence is assured through the selection procedures for the Director General and Directors, and the freedom, as provided in the legislation, to act on its own initiative."*<sup>62</sup>

6.33 The EPA publishes an extensive range of policy and technical material, and has regular meetings with sectoral groups, including non-governmental organisations. It has, however, not yet developed the sorts of transparent decision-making now seen in agencies such as English Nature and the Environment Agency. Neither the meetings of its management board nor its advisory committee are held in public, nor are full papers available on the Internet. Some have considered that the EPA should be more openly vociferous in its engagement in issues of controversial public policy, though when the current Director General recently spoke in favour of waste incineration this led to a degree of local uproar, and it was subsequently made clear this was a personal opinion rather than EPA policy.<sup>63</sup> The EPA has recently undergone a substantial internal restructuring which includes the creation of a small strategic planning unit, and greater delegation of formal licensing powers from the management board to its officers. As a result the Agency is likely in the future to play a more visible role in contributing towards policy development in addition to carrying out its regulatory functions.

## OTHER MODELS OF ENVIRONMENT AGENCIES

### MODELS OF ENVIRONMENT AGENCIES IN OTHER EUROPEAN COUNTRIES

6.34 Figure 5 provides an overview of the key environmental agencies operating in other European countries. European models are of interest in part because Member States are under common obligations in respect of the implementation of Community environmental legislation. But there is also increasing contact and cooperation between such agencies, through informal networks such as the EU Network for the Implementation and Enforcement of Environmental Law (IMPEL), and under the auspices of the European Environment Agency.<sup>64</sup> As can be seen, many such agencies are mainly concerned with the provision of technical advice to Ministries and the assessment of environmental information rather than direct regulation which often remains the responsibility of local or regional authorities. In some cases, and rather similar to the position of the Irish Environmental Protection Agency, the Agencies have a supervisory role in respect of local authorities. In this context, the following sections look more closely at the Swedish Environment Protection Agency, which is similar in size to Environment and Heritage Service and is one of the longest established environment agencies in Europe.

### SWEDISH ENVIRONMENT PROTECTION AGENCY.

6.35 The Swedish Environment Protection Agency was established in 1967 and claims to be the first national agency in the world with overall responsibility for environmental issues. It is headed by a Director General who also chairs the Board of the Agency, and is advised by a number of Advisory Councils, including an Enforcement and Regulations Council, Council for Recreation Issues, Scientific Council for Biological Diversity, and the Council for Predator Issues. It currently has around 550 staff.

6.36 The Agency's activities encompass a large range of environmental issues including nature protection, pollution control and resource management, and many of its activities are concerned with providing advice and keeping abreast of new policy developments in accordance with guidelines from the Swedish Parliament and Government. It has little direct regulatory role, and in this capacity mainly acts to supervise the activities of regional and municipal authorities. In 1999 a new Swedish Environment Code came into force which consolidated some 15 previously separate environmental laws and included general principles of environmental protection. Under Chapter 26 of the Code the Swedish Environment Protection Agency is given a central supervisory role to ensure that the provisions of the Code and rules made under it are implemented. This can include the Agency taking direct legal action before the Swedish environment courts, reporting breaches to the relevant public authority, or providing local authorities with guidelines and technical advice to assist them in fulfilling their functions.

## OTHER MODELS OF ENVIRONMENT AGENCIES

Country	Name of Agency	Relevant Ministry	Main functions	Added observations
<b>Austria</b>	Federal Environment Agency	Environment Ministry	Specialist advice to Ministry; holding data bases and environmental analyses; evaluation of chemicals and contaminated land	Implementation and enforcement of environmental law largely responsibility of provincial government and municipalities
<b>Belgium</b>	Federal Service for Environmental Affairs	Ministry of Social Affairs, Public Health and Environment	Co-ordination of policy, product standards, waste transport, risk management, chemicals	Implementation of many environmental policies and laws conducted at regional level through variety of administrative bodies
<b>Denmark</b>	Environmental Protection Agency	Environment Ministry	Advice to Ministry, evaluation of structures of environmental protection, pollution control of air, soil, and water	Implementation and enforcement largely responsibility of local government; EPA handles complaints on their activities
<b>Denmark</b>	National Forest and Nature Agency	Environment Ministry	Implementation of legislation concerning nature protection, forestry, ancient monuments and mineral extraction	Agency also manages state forests
<b>France</b>	Agencies de l'Eau	Ministry of Environment	Implementation of water policies based on main watersheds	Public sector state bodies, independently financed by water charges
<b>France</b>	ADEME	Ministry of Environment	Research on renewable energy, waste, pollution, clean technologies	
<b>France</b>	ANDRA	Ministry of Environment	Research and management of radioactive wastes	
<b>Germany</b>	Federal Environment Agency (UBA)	Federal Ministry of Environment, Nature Conservation and Nuclear Safety	Scientific and technical support to Ministry, including assistance in preparation of environmental regulations	
<b>Germany</b>	Federal Agency for Nature Conservation (BfN)	Federal Ministry of the Environment, Nature Conservation and Nuclear Safety	Specialist advice to Ministry on nature conservation and landscape management; research	BfN approves imports and exports for protected animal and plant species
<b>Germany</b>	Federal Office of Radiation Protection (BfS)	Federal Ministry of the Environment, Nature Conservation and Nuclear Safety	Assistance to Federal Ministry in Ministry's supervisory functions under Federal Nuclear Safety	BfS has some enforcement tasks under Federal Nuclear legislation
<b>Greece</b>	No distinct national agencies	Ministry of Environment, Physical Planning and Public Work		Most responsibilities for implementation of environmental law and policy delegated to regional and local authorities

## OTHER MODELS OF ENVIRONMENT AGENCIES

Country	Name of Agency	Relevant Ministry	Main functions	Added observations
<b>Italy</b>	Agency for Protection of the Environment and for Technical Services (APAT)	Ministry for the Environment and Land Protection	Technical and scientific support to the Ministry, and advice of development of legislation; collection and evaluation of environmental data	
<b>Italy</b>	Regional Environment Protection Agencies	Regional governments	Organization of information, education, development of pollution control measures	Regional agencies have some responsibilities for inspection and regulation of processes
<b>Luxembourg</b>	No distinct national agency			Private consultancies acting under government authorization carry out number of functions including EIA and eco-audit
<b>Netherlands</b>	Inspectorate of Housing, Spatial Planning & the Environment	Ministry of Housing, Spatial Planning & Environment	Part of Ministry but 'relatively independent'; responsibility for enforcement of laws falling within Ministry competence, and supervision of local government implementation	Implementation, permitting etc largely responsibility of local government (Provinces and Municipalities); water management and flood protection carried out by Water Boards
<b>Portugal</b>	No distinct national agency			
<b>Spain</b>	No distinct national agency			Implementation and enforcement largely responsibility of strongly decentralized government (Autonomous Communities and Local Authorities)
<b>Sweden</b>	Environment Protection Agency	Ministry of Environment	Propose targets, measures etc, collate data on environment, supervision of implementation of Government and Parliamentary decisions on the environment	Licensing and Permitting largely responsibility of environmental courts and regional and local government; Environment Protection Agency exercises supervisory functions
<b>Sweden</b>	National Chemicals Inspectorate (KemI)	Ministry of Environment	Competent authority for many aspects of EU chemicals laws	Priority areas for Inspectorate laid down by Ministry
<b>Sweden</b>	Nuclear Power Inspectorate (SKI)	Ministry of Environment	Regulation of nuclear activities	

Figure 5 Overview of Key European Environment Agencies.

## OTHER MODELS OF ENVIRONMENT AGENCIES

- 6.37 The Agency is a legal entity in its own right and separate from government departments in the same respect as other Swedish Agencies. The status of the Agency as a distinct entity from government departments operates within a well developed constitutional framework and general understanding of the role of agencies in the Swedish political system which applies to all agencies, and is coupled with the specific role and responsibilities given to the Agency by legislation. Government annually prescribes the political priorities for the Agency, which may include the publication of reports and similar tasks, but it is not entitled to interfere directly in any individual case.
- 6.38 The Agency's core relationship is with the Ministry of the Environment, and where contacts are made directly with other departments the Ministry is kept informed. The annual budget is also negotiated with the Ministry of the Environment, and is largely directly financed by government, with a very small amount of extra income derived from the administration of an industry tax and a battery fund. Much of the Agency's research and policy priorities are determined by government, though it sometimes initiates work that strays beyond existing government policy and which has subsequently proved beneficial for later policy development. In practice, it would be rare for the Agency to be openly critical of government policy but, according to public opinion surveys, there is considerable public trust in the Agency. The Agency's relationship with government is currently rather more complex in the context of European Union policy development. Following Sweden's accession to the European Union, the Agency's main role was to handle relations with Community technical committees, leaving the Ministry to handle policy negotiations at European level. However, in recent years it has increasingly been drawn into supporting the Environment Ministry in negotiations at European Council and Parliament level.

## OPTIONS FOR CHANGE

### 7. Options for Change to Environment and Heritage Service in Northern Ireland

- 7.1 The previous section has examined various different models of environmental agencies currently operating in Europe. This report does not argue that one type of Agency will always work better than another since so much depends both on the political, historical, and legal context in which they operate, and on the policy priority given to the environment by the governments in office. Equally it is clear that if it is decided to give an environmental public body certain types of functions, some structures will allow it to perform these more effectively than others. For example, where an environment agency is given direct powers to regulate, all the recent studies in other parts of the United Kingdom suggest that the more the body is structured independently from government departments, the more it will be trusted to carry out its functions fairly and impartially, both by those who are subject to regulation and by the general public. On the other hand, where regulation and enforcement of environmental controls still largely rest with regional/local government (as is the case in many European countries) the advantages of an agency having independent legal status from central government are less obvious. The exception (as the Swedish and Irish examples show) is where the agency is given a supervisory/ enforcement function in respect of local government, and where the detachment from undue political interference which more independent legal status affords is important to preserve the impartial exercise of powers.
- 7.2 All environmental agencies can provide a valuable source of technical and specialist expertise to government in the development of environmental policies and controls. Clearly, where the agency has regulatory responsibilities, its expertise will be supplemented by experience of operating controls on the ground. But a crucial question for government is whether the development of effective environmental policies and confidence in government will be assisted by the existence of a government environment agency which is sufficiently independent from the relevant government department to be able to raise politically difficult issues, engage with the public and provoke policy discussion. This role – which may be summarised as the agency being described as a

*'champion for the environment'* as well as an agent for government – is one that is now firmly established for environment agencies operating in other parts of the United Kingdom, and the value of independence in this context has been endorsed by recent government reviews of bodies such as the Scottish Environment Protection Agency and the Environment Agency in England and Wales. At present, whatever its internal influence on policy, Environment and Heritage Service is unable to play an equivalent role because it remains part of the Department. Nor, given its current status as an Executive Agency, is it in a position to develop the sorts of transparent decision-making procedures now seen with environment agencies operating in other parts of the United Kingdom.

- 7.3 As to the range of responsibilities given to environmental agencies, these clearly vary widely and are often the result of historical and political developments rather than any 'rational' choice based on environmental reasons. However, it should be stressed that, compared to other agencies operating in the United Kingdom, Ireland and most other European countries, the Environment and Heritage Service now has the greatest sweep of environmental powers, encompassing pollution control, nature conservation, and heritage protection. This potentially allows it to take a truly integrated approach to the issue. Moreover, EHS is 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. This might well be considered a positive basis on which to think about future structures of environmental governance in Northern Ireland.

### KEY OPTIONS FOR CHANGE

- 7.4 Against that background, and in light of future demands on environmental regulation, there are a number of key options concerning the structure of Environment and Heritage Service. Under each option some of the most significant advantages and disadvantages are highlighted.

## OPTIONS FOR CHANGE

*Option 1. No change in the current status of the Agency, but the development of improved accountability mechanisms such as those outlined in Section 8.*

### Pros

- Least cost option
- No new legislation needed
- No staff disruption
- EHS can seek improvements without the distraction of major reorganisation

### Cons

- Fails to meet demands for a more independent regulator
- Opportunity for ‘champion of the environment’ role is lost
- Government loses out on a source of independent policy advice
- Northern Ireland structure is out of step with rest of the United Kingdom
- Transparent decision-making is difficult to achieve

*Option 2. Remove the Executive Agency status of the EHS and fully incorporate it within the Department of the Environment.*

### Pros

- Ensures closer connection between policy development and policy delivery
- Less costly than establishing a more independent authority
- Accepts that Executive Agency structure, while suited for some types of public service delivery, is less appropriate for a body with extensive regulatory functions
- Political accountability rests more clearly with the Minister
- Public is no longer misled into thinking the ‘Agency’ is more independent from Government Department than it is in reality

### Cons

- Mechanisms for performance accountability associated with executive agencies are lost
- Advantages of a more independent regulatory body and more independent source of policy advice are lost

- Likely to make moves towards greater transparency of decision-making more difficult
- Would be seen as a backwards step compared with developments elsewhere

*Option 3. Transform EHS into an environmental protection authority with separate legal status based on the structure of a non-department public body.*

### Pros

- Consistent with structures now familiar in other parts of the United Kingdom
- Satisfies concerns for an environmental regulator with more independence from government departments
- Provides government with a source of independent policy advice on environment, and a body able to stimulate and provoke public debate on environmental issues
- Focus on regulatory outcomes is likely to assist Northern Ireland in meeting obligations under both existing and future European Community environmental legislation, and thereby better controls the UK’s exposure to infraction fines due to regulatory failure in Northern Ireland.
- Stimulates development of transparent decision-making
- Using the basis of current EHS responsibilities, Northern Ireland could create one of the leading, integrated environment agencies in Europe
- Requirements for new legislation could provide an opportunity to rationalise some of the existing division of responsibilities

### Cons

- Legislation is needed to establish a new body and therefore interim disruption
- Extra costs through loss of common departmental services etc.
- Less direct political accountability via Minister
- Delivery of policy can become over-separated from its design
- Loss of flexibility to change structures once established
- Body can become over defensive of its existing structures and less responsive to change

## OPTIONS FOR CHANGE

*Option 4. Transform the EHS into a new non-ministerial government department.*

Pros

- Advantages in independent regulator and source of independent advice as with Option 3
- Operates with greater independence than a non-departmental public body and may gain greater public trust as a consequence
- More readily able to provide advice and influence policies of government departments other than Department of the Environment (NI) since no longer seen as an agency of that Department
- Able to negotiate for government funding directly rather than via departmental bids and allocations

Cons

- Legislation and disruption as with setting up non-departmental public body (Option 3)
- Greater operating costs involved than at present through loss of common services provided by department
- Greater detachment from Department of the Environment
- Less political accountability
- Constitutionally an anomaly which should be reserved for the rarest of cases

*Option 5. Revert the delivery of major areas of environmental regulation back to elected local authorities or forms of regional government if developed.*

Pros

- Ensures greater local political accountability
- Consistent with the principle of subsidiarity and the local delivery of services
- Supervisory role could be exercised by EHS

Cons

- Loss of opportunity to establish independent environment regulator and source of independent policy advice to government
- Local authorities lack technical expertise needed for many contemporary environmental policies and will need extra resourcing
- Disruption while local authorities acquire new skills and staffing
- Could lead to lack of consistency in application of controls and policies across Northern Ireland
- Northern Ireland would be more vulnerable to infraction proceedings under European Community law

### LESSONS TO BE LEARNED

7.5 If the decision were taken to create a more independently structured regulator out of EHS, there are some further lessons that can usefully be taken on board. These derive in part from the recent government overview studies on independent regulators and executive agencies, as well as from experience with existing bodies in other parts of the United Kingdom.

- (a) It is essential that a new authority acts as transparently as possible, not least to act as a counterbalance to the lack of direct political accountability. The best practices currently adopted by bodies such as the Food Standards Agency and the Environment Agencies in other parts of the United Kingdom should be followed. The public and press should be able to observe board meetings, and all papers before the board should be available on the Internet.

## OPTIONS FOR CHANGE

- (b) The authority would have a key role in the implementation and enforcement of environmental regulations, but needs to adopt an outcome focussed approach, and one that recognises the need to develop a range of regulatory approaches and partnerships in addition to traditional approaches.
- (c) In addition to its regulatory functions, the authority's role as an independent adviser to government on environmental policy needs to be formally acknowledged, ideally in the legislation that establishes it. Government needs to appreciate that at times this role will prove uncomfortable, even where practice is based on a 'no surprises' principle (i.e. government is given advance warning before the authority goes public on a potentially embarrassing issue). In the long run, though, public confidence is likely to improve and more effective policy may be developed.
- (d) Three year settlements for departmental funding should be established to provide a degree of continuity and a more secure base for forward planning. Inflation should be automatically included, and there should be the minimum amount of ring fencing.
- (e) The principle of full cost-recovery from holders of licences and consents should be adopted across the board, reflecting both the polluter pays principle and the need for income sources not wholly dependent on department funding in order to reinforce the authority's independence. Charge schemes should be sufficiently flexible to include an element of cost-reflectivity based on risk scores relating to the particular process or activity. It is important that government recognises that, before an authority can charge for a licensing scheme under new legislation, it will incur considerable costs in developing its capacity to handle a new regulatory regime. These development costs have to be reflected either in direct departmental grant or in future charge schemes.
- (f) Good lines of communication between the authority and its sponsoring department need to be established, both at high level (with regular meetings between the Minister and the Board) and at policy level, in order to ensure that the authority's expertise and experience are taken on board in the development of policy. This is likely to be especially important in the drafting of new regulations where the authority's operational knowledge of what works and what does not work can be critical to effectiveness.
- (g) A clear and transparent enforcement policy should be developed and publicised. Consideration should be given to allowing the environmental regulatory body to undertake its own prosecutions within such a framework.
- (h) Investment in good information and IT systems needs to be made early, and management structures kept as straightforward as possible. Matrix management systems where lines of accountability can easily become obscured are best avoided.

## ACCOUNTABILITY MECHANISMS

### 8. Accountability Mechanisms

8.1 This section considers a number of issues relating to accountability. As the Review of Public Administration put it, “*Regardless of the way in which services are delivered, whether by central or local government or by public bodies, there is a common concern that there should be enhanced and transparent accountability.*”<sup>65</sup> The question of accountability is one that runs parallel to the issue of delivery structures considered in the previous section, and there are proposals here concerning the Assembly Committees and audit mechanisms which need be addressed independently of decisions concerning the future structure of Environment and Heritage Service.

#### ACCOUNTABILITY OF ENVIRONMENT AND HERITAGE SERVICE

8.2 Before considering these issues, it is important to recognise that the five options for structures considered in para 7.4 affect issues of the accountability of EHS or its successor body in slightly different ways. Accountability is a concept that has many different facets, and the Review has also published a valuable briefing paper on what accountability can involve.<sup>66</sup> As the Briefing Paper notes, accountability derives from a desire of the public “*to receive an account from those to whom power and resources are delegated and also hold them to account*”. Or, in the present context, the question can be more simply put: “*Who regulates the regulator?*”

8.3 Environment and Heritage Service in its present form as an executive agency is already subject to a number of accountability mechanisms. Through the Department of the Environment it can be subject to judicial review where its actions may be illegal, and is subject to investigation by the Northern Ireland Ombudsman for maladministration. Also, EHS can be subject to investigation by the Northern Ireland Audit Office, the Public Accounts Committee, and the Assembly Environment Committee. Since EHS is part of the Department, the Minister is ultimately politically answerable to the Assembly for its actions, although this direct line of accountability is rather less clear in the case of Executive Agencies. Ensuring clearer accountability through an elected representative might be considered an advantage of Option 2 (re-merging EHS fully within the Department), or of Option 5 (reverting delivery to local government bodies).

8.4 Establishing EHS as a non-departmental public body along the lines suggested in Option 3 would loosen its direct political accountability through an elected representative. Indeed, one of the perceived benefits of a more independent status is a detachment from short-term political interference. Such an authority, though, would remain subject to external scrutiny by the Northern Ireland Audit Office, the Public Accounts Committee and the Assembly Environment Committee. It would also be subject to judicial review in its own capacity. The requirement on non-departmental public bodies to publish separate corporate plans and annual reports is another important mechanism by which performance can be judged.

8.5 It is equally clear from the experience of the environmental regulators in other parts of the United Kingdom 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 access to board papers are clear examples. In theory an executive agency could adopt similar standards of transparency, but the pressures for doing so are much greater in the case of a non-departmental public body. It is equally important that effective internal scrutiny machinery is developed, and here again board members have a critical role to play. Mechanisms can be established for ‘lessons learnt’ reviews to be conducted by the board, if necessary with the input of independent advice, which do not undermine the operational authority of staff but ensure that lessons for the future are taken on board.

#### ASSEMBLY COMMITTEES

8.6 Prior to suspension, the majority of the Assembly Committees were essentially organized along departmental lines, and could clearly perform a valuable function in holding departments (including their agencies) to account. To date, the major reports of the Environment Committee have been largely concerned with scrutinising new environmental legislation rather than picking up broad environmental issues along the lines of Westminster Select Committees. This in part reflects the fact that Assembly Committees were given express responsibilities for legislative scrutiny, more akin to

## ACCOUNTABILITY MECHANISMS

Westminster Standing Committees. The four reports published by the Committee in 2001–2002 covered the *Local Air Quality Bill*, the *Planning (Amendment) Bill*, the *Local Government (Misc. Provisions) Bill* and the *Pollution, Prevention and Control Bill*. These can be contrasted with reports published by their Westminster counterpart in the same period which included *Developments affecting Floodplains*, *Delivering Sustainable Waste Management*, *Inland Waterways* and *Rail Investment*. To be fair to the Northern Ireland Environment Committee, it did also pick up a number of discrete issues, though these were not subject to full reports. For instance, in a Press Notice issued in 2001, the committee expressed concern, following representations from the Woodland Trust, about the effectiveness of tree preservation legislation in Northern Ireland and called for DoE officials to come before the committee to explain “*why it has taken 28 years to recognise weaknesses that have been obvious to so many for so long.*”<sup>67</sup> On the resumption of devolution, it would be valuable if the Environment Committee were to investigate substantial environmental issues as well as the details of new legislation.

- 8.7 Consideration might also be given to establishing a cross-departmental Sustainable Development Committee. This would mirror the Westminster model where, in addition to the departmental Select Committees, there now exists an Environment Audit Committee. The intention is not to duplicate the work of the departmental committee, but to allow issues to be investigated which not do necessarily fall within conventional departmental lines and which might otherwise escape effective political scrutiny. This is one of the distinctive features of the environment as a policy issue, and one of the reasons that many governments have established broadly based advisory commissions as discussed in section 9.
- 8.8 Close co-ordination between a new Sustainable Development Committee and the existing Environment Committee would be needed to ensure no unnecessary duplication. A flavour of the types of issues that might be examined is reflected in the subject areas of some of the recent reports of the Westminster Environment Audit Committee: *Greening Government*, *The Sustainable Development*

*Headline Indicators*, *Learning the Sustainability Lesson*, *Energy White Paper – Empowering Change*, *Timber Trade and Public Procurement*, and *Waste – An Audit*. It would not have been possible for a departmental Select Committee to examine such issues from a cross-departmental perspective, yet a mechanism for doing so is an important element of ensuring improved political accountability.

### INDEPENDENT AUDITING

- 8.9 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 agencies. Although a number of existing bodies perform this role, 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 organisations 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. This is especially important if there is a move to create more independent bodies with substantial environmental responsibilities. Bodies such as the Audit Office perform a distinct and complementary audit role to that of Assembly Committees in that their main function is to examine the effectiveness and efficiency of departments and public bodies in the performance of their functions, holding them to account for the public money which they spend.

### OPTIONS FOR IMPROVING ACCOUNTABILITY MECHANISMS

- 8.10 In this context there are three main options that should be considered:

*Option 1. Create an Environmental Audit Commissioner.* This would be a new, independent post with specific responsibility to investigate and report on the performance of governmental bodies in the exercise of their environmental responsibilities. The Commissioner’s precise jurisdiction and powers would be a matter for government. The advantages

## ACCOUNTABILITY MECHANISMS

are that the Commissioner could develop the specialist environmental knowledge and expertise needed for investigations and, unlike the more general accountability bodies, would avoid being distracted by other responsibilities. The establishment of such a post would be a clear signal by the 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 position. There are real establishment costs involved, 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 recognise that the environmental challenge is sufficiently broad to require greater resources and more specialised expertise that is presently available. It would, for example, reflect the concerns of the Northern Ireland Authority for Energy Regulation in a discussion paper in 2003 of the need for improved accountability mechanisms of government departments in the context of energy efficiency: “*The role of the Northern Ireland Audit Office should be expanded to require Departments to explicitly report on their energy efficiency performance and to demonstrate that they are purchasing their energy services economically.*”<sup>68</sup> 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 is not especially transparent, and there are no developed mechanisms for 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. It reflects a recommendation of the Westminster Environmental Audit Committee which, in 2001, called for the creation of a distinct environmental unit within the National Audit Office,<sup>69</sup> noting that the Audit Office lacked sufficient expertise to carry out effective environmental audits and had failed to take on board sufficiently the implications of the sustainable development agenda. This model in many ways would mirror the Canadian Commissioner of the Environment and Sustainable Development, established in 1996 as a specialised unit within the Office of the Auditor General. The Commissioner monitors the implementation of the sustainable development strategies by 25 federal departments, produces an annual report to Parliament, undertakes special investigations, and monitors the handling by government departments of environmental petitions made to them by members of the public.<sup>70</sup> 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. Government should also consider the possibility of strengthening public influence and connection with such bodies by instituting a petition system, under the auspices of the Audit body, along the lines of the Canadian model.

## 9. Independent Environmental Advisory Bodies

9.1 This section considers a number of issues relating to the provision of policy advice on the environment to the Northern Ireland administration. As a policy issue, the environment is one that can be especially complex for decision-makers, often involving considerable scientific and technical uncertainties and contested public values. Governments in most countries have established various mechanisms to provide authoritative advice to assist in policy development on the environment. As with issues of accountability in Section 8, this is an issue which can largely be considered independently from questions concerning the future structure of Environment and Heritage Service.

### ROLE OF ENVIRONMENT AGENCIES AS SOURCES OF INDEPENDENT POLICY ADVICE

9.2 The view that government departments make policy and agencies merely deliver is now recognised as being far too simplistic a picture. It is clear from the experience in other parts of the United Kingdom that environment agencies can be a valuable source of information and advice to government, and their role as an independent source of influence on the development of policy is increasingly recognised. No doubt Environment and Heritage Service currently provides policy advice within the Department of the Environment, but, as an Executive Agency which is a constituent part of the Department, it is less easy to characterize it as an independent and detached source of advice. Certainly where the structure of a non-department public body is adopted the role of such a body in providing independent policy advice to government can more readily and more transparently be defined, either in the legislation establishing the body or in statutory guidance.

### DEPARTMENTAL ADVISORY COMMITTEES

9.3 As noted in Paragraph 3.1, the Department of the Environment has a number of statutory and non-statutory advisory committees providing independent advice in certain areas. Environment ministries in most jurisdictions make use of various forms of advisory committee, some highly scientific and others with a broader input, but generally with a clearly defined remit. It is not the purpose of this report to evaluate the role and effectiveness of the current DoE advisory bodies, nor to suggest whether they should be restructured. Some may criticize

them as not being perceived to be sufficiently independent and too close to the government machinery. The Department must decide to what extent such bodies should develop a more independent voice, and this will be reflected in decisions on matters such as the provision of independent secretariat and research support.

### CROSS-DEPARTMENTAL ENVIRONMENTAL ADVISORY BODIES

9.4 The need for the Department of the Environment to have sources of advice from specialised advisory committees is likely to continue. One of the developments in Europe over the past 20 years has been the establishment of official advisory bodies which can take a much broader and longer-term look at environmental issues, often across departmental boundaries, reporting to government as a whole. 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. One of their key roles is to provide an independent, authoritative and in-depth analysis of key environmental challenges. The second type of body, which includes many of the more recent sustainable development commissions in other European countries, is more in the way of a stakeholder body with its members tending to represent particular sectors of society with an interest in the environment. A variation of this latter model is a body such as the UK Sustainable Development Commission composed of individuals with expertise, but with a role to promote sustainability and to seek consensus in the wider world. Expert and stakeholder type bodies are not mutually exclusive in that they often perform complementary functions. Given the complexity of many environmental issues 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 recognise that the existence of such a body does not replace the need for more specialised departmental advisory bodies. Equally, 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 a sufficiently resourced secretariat support to ensure depth and authority in its reports.

## ADVISORY BODIES

Figure 6 provides a snap-shot of the main environmental and/or sustainable development councils currently operating in Europe. This section

looks in more detail at two such expert bodies, and then considers how the approach might be further developed in Northern Ireland.

Country	Name of Body	Type of Body
<b>Austria</b>	Clean Air Commission of the Academy of Sciences (1962)	Expert body originally concerned with research but increasingly now with policy issues
	Council for Sustainable Development (1991)	Stakeholder body; secretariat provided by Ministry for Environment
<b>Belgium</b>	Walloon Environmental Council for Sustainable Development (1985)	Stakeholder body
	Environment and Nature Council of Flanders (1991)	Stakeholder body
	Federal Council for Sustainable Development (1993)	Stakeholder body; own secretariat; reports to President
<b>Finland</b>	Council for natural Resources (1977)	Expert body
	National Commission on Sustainable Development (1993)	Stakeholder body; secretariat provided by Environment Ministry; chaired by Prime Minister
<b>France</b>	Commission on Sustainable Development (1995)	Stakeholder body; secretariat provided by Ministry for Environment
<b>Germany</b>	Council of Environmental Advisers (1971)	Expert body reporting to Government as a whole
	Advisory Council on Global Change (1992)	Expert body
	Council for Sustainable Development (2001)	Stakeholder body; independent secretariat; reports to Chancellor
<b>Greece</b>	Council for Physical Planning and Sustainable Development (2001)	Stakeholder body
<b>Ireland</b>	National Sustainable Development Partnership (1998)	Stakeholder body
<b>Netherlands</b>	Council for the Housing, Spatial Planning and the Environment (1997)	Expert body
<b>Portugal</b>	National Council on Environment and Sustainable Development (1998)	Expert body
<b>Spain</b>	Environmental Advisory Council (1994)	Originally an expert body but changed to stakeholder in 1997
<b>Sweden</b>	Environmental Advisory Council	Expert body
	National Committee on Agenda 21 and Habitat (2000)	Stakeholder body
<b>United Kingdom</b>	Royal Commission on Environmental Pollution (1970)	Expert body; own secretariat; budget from Dept of Environment, Food and Rural Affairs (DEFRA); reports to Queen and Parliament
	Sustainable Development Commission (1998)	Expert/stakeholder body with promotional role; secretariat provided by DEFRA

**Figure 6. Main environmental and sustainable development advisory bodies in Europe**

*adapted from Macrory and Niestroy (2004) 'Emerging Transnational Policy Networks' in Vig and Faure (eds) Green Giants MIT Press, Mass*

## ROYAL COMMISSION ON ENVIRONMENTAL POLLUTION

### Structure

9.5 The Royal Commission on Environmental Pollution was created in 1970 as part of series of UK institutional reforms in response to the Stockholm international conference. It now remains the only standing Royal Commission in the UK, and this status is important in that it is clearly seen as much more than a departmental advisory committee. Its reports are formally addressed to the Queen and this has allowed it to address, from an environmental perspective, issues such as transport or energy that cut across departmental responsibilities. The Commission has extremely broad terms of reference that have remained unchanged since its formation: *‘to advise on matters, both national and international, concerning pollution of the environment; on the adequacy of research in this field, and the future possibilities of danger to the environment.’* The term ‘pollution’ has never inhibited the Commission from taking a broad interpretation of its remit and, although a few years ago there were suggestions from the Government that its title might be changed to reflect more accurately its stance (such as Royal Commission on the Environment), the Commission resisted any change on the grounds that it already had a well established brand image.

9.6 The RCEP is by definition an advisory body with no executive functions. The Commission is sometimes described as a scientific body, and to date it has always been chaired by a distinguished scientist. However, its membership has been drawn from a wide range of disciplines (including economics, law, social science, and moral philosophy) and has included individuals with particular knowledge or experience such as in agriculture or utility industries. Unlike stakeholder bodies, members are appointed for their individual expertise rather than as representative of any particular group. In that sense it can be described as a body of experts rather than an expert body, and one whose legitimacy largely depends on the quality of its

reports and analysis and on its choice of subject matter to study. Observers have consistently said that a key quality of members, in addition to expertise and experience, is an openness of mind and a willingness to learn. Following the implementation of Nolan rules, membership of the Commission is now advertised, and candidates formally interviewed with recommendations eventually put to the Prime Minister. Again following Nolan, membership is normally for three years with the possibility of one further period of extension. Members of the Commission are expected to attend a monthly meeting lasting between 1.5 and 2 days, and are paid travel expenses and a small daily rate for attendance, though not for reading and preparation time. Members are supported by a small, permanent secretariat of around 11 members.

9.7 A Framework Document laying out the basic formal relationships between the RCEP and the government was published in February 2001 and sets out that the primary aim of the RCEP *“is to contribute to policy development in the longer term by providing an authoritative factual basis for policy-making and debate, and setting new policy agendas and priorities. In reaching its conclusions, the Commission seeks to take account of the wider implications for society for any measures proposed. This involves consideration of the economic, social and ethical aspects of issues as well as the scientific and technological aspects.”* The Foreword to the document expressly establishes that the RCEP *“is independent of the Government of the Day.”* The RCEP now publishes an annual corporate plan defining its strategic direction and priorities over a three year period, including financial management and information necessary for budget allocation. The costs of the Commission in 2001/2 were just over £1m, including staff costs, rental of premises, consultancy reports and members’ fees.

### *Relationship with Devolved Administrations*

- 9.8 The RCEP is essentially a UK- wide body but, with the development of devolved administrations that are responsible for environmental policy within their respective competences, new relationships are being developed. Under the Scotland Act 1998 the Royal Commission is specified as a Cross Border Public Authority, and Scottish Ministers have the right to refer matters to the RCEP for suggested study, but unlike UK Ministers there is no requirement on the RCEP to inquire into such matters. No such formal status has been established in relation to Northern Ireland and Wales, though it has been agreed that the RCEP will consider requests for areas to study on the same basis as Scotland. RCEP reports will be now presented to the Scottish Parliament, the National Assembly of Wales and the Northern Ireland Assembly (when sitting) at the same time as they are presented to the UK Parliament. Ministers in the devolved administrations are consulted on potential candidates for membership of the Commission.
- 9.9 With the advent of devolution the RCEP has paid more regular visits to the devolved administrations than was previously the practice, and recent reports (such as the 2002 study on Environmental Planning which singled out the Northern Ireland Regional Development Strategy as a sensible approach to the type of spatial planning being advocated by the Commission) have contained more extensive analysis of regional differences in policy and practice where relevant. Nevertheless, none of the reports to date has focussed on environmental issues specific to a UK region and, given current resources, it is unlikely that the Commission could, or indeed is best suited, to take on much more in the way of discrete studies for the devolved administrations.

### *Choice of Studies*

- 9.10 The main output of the RCEP has been detailed studies published as Command Papers which normally take around 18 months to two years to complete. Twenty four reports have been published to date, including subjects such as transport, energy, soil, GMOs, and agriculture and pollution. According to the original Royal Warrant, the Commission may either itself determine the subject areas it wishes to investigate or must inquire into matters referred to it by Secretaries of State or Ministers. In practice, the choice has in almost all cases been left to the Commission. In 1993 for the first time the Commission published a list of five criteria which would guide it in choosing a suitable topic for inquiry: a) issues that require detailed and rigorous analysis before satisfactory policies can be adopted, b) topics that raised wide issues both intellectually in the sense of spanning several disciplines and organisationally in the sense of not falling within the terms of reference of any single body, c) topics that are likely to involve general issues of principle, d) topics that did not normally duplicate other studies already in progress or planned in the near future and e) topics where there would be a reasonable prospect of producing worthwhile conclusions within two years and within the resources available to the Commission.
- 9.11 In practice, the Commission consults informally with DEFRA on possible subjects for study, and against its own criteria for choice of study the Commission develops a short list of potential topics with the expected focus of each, which is published and subject to wide consultation. In 2003, for example, the Commission published a short list of four potential candidates to follow their current study on marine fisheries : environmental effects of food production, tourism and the environment, the urban environment, and waste recycling and recovery policy.

9.12 Both the choice and timing of a study are critically important for the continuing impact of the Commission's work though, particularly with regard to timing, predictions are not always easy. Certainly many observers felt that the publication of the 1992 Water report, for example, came too late after significant legislative and policy changes had been set in place following the privatisation of water in England and Wales. In recent years the Commission has been more aware of the significance of the European dimension to policy making; for example, following the publication of its recent report on Chemicals in Products (where European legislation dominates many areas), the Commission made special presentations to both the European Commission and Members of the European Parliament at what turned out to be a critical stage in the development of thinking on the direction of European policy. In this context, the Commission has been an active member of the network of European Environmental Advisory Councils, a loose organisation of equivalent official but independent policy advisory bodies across Europe, and one of its Members was recently chair of the EEAC's Steering Board for two years.

### *Value of RCEP Reports*

9.13 There is no formal requirement (as there is for reports of Westminster Select Committees) for government to respond to RCEP reports. In practice, with the exception of the first Transport report published in 1994, government has always published a formal response, normally with DEFRA taking the lead in coordinating responses, though with a report such as Environmental Planning the task of coordination fell to the Office of the Deputy Prime Minister as the department with lead responsibility for planning. The Commission now carries out formal evaluations of the impact and success of its reports, generally commissioning an independent consultant to carry out the initial study. Nevertheless, this is not a straightforward task, and simply judging by the number of recommendations accepted in the first response by government is misleading. Recommendations in some reports have been accepted almost immediately (the record is

three days in the case of the 1983 Lead in the Environment Report), but others, such as Integrated Pollution Control recommended in the 1974 Fifth Report, took almost 16 years before they were reflected in legislation.

9.14 A more sophisticated approach recognises the extent to which RCEP reports have changed the framework for debate and policy analysis both within and outside government. Despite the very different subject matters chosen for inquiry, and its changing membership, the permanent nature of the Commission has given it significant institutional 'memory' and allowed it to develop certain core principles (such as transparency, public participation, precaution) that consistently find their way into different reports. In terms of policy influence, it is equally important to appreciate that, according to the subject matter and the prevailing policy and political climate, different reports may well have different functions, even if at the time of the inquiry this is not a conscious decision by the Commission. Five key functions can be identified,<sup>71</sup> some of which will be more apparent in some studies than others:

- resolving disputes between government and interest groups through its independent and dispassionate analysis (e.g. the Lead in the Environment report),
- acting as a knowledge broker between original researchers and policy makers (e.g. the Soil report),
- being a policy 'entrepreneur' where the Commission itself develops original approaches, or tackles a novel subject not subjected to previous policy analysis (e.g. the Report on Genetically Modified Organisms),
- making radical ideas more respectable (e.g. the first report on Transport and the Environment) and
- having an 'enlightenment function' where the Commission is able to change the framework of debate and advocate different ways of examining issues (e.g. the Energy report).

## GERMAN COUNCIL OF ENVIRONMENTAL ADVISORS

- 9.15 The German Council of Environment Advisors was established in 1971 and currently consists of seven independent members appointed by the Federal Government but with the Environment Ministry making formal proposals. The Council is supported by a secretariat (currently ten), together with scientific researchers, and has a generous budget which includes providing members with research and secretarial support, and substantially higher fees than those paid to members of the Royal Commission on Environmental Pollution.
- 9.16 As with the Royal Commission on Environmental Pollution, the German Council is not an advisory body to the Environment Ministry but reports to the government as a whole, allowing it an unconstrained analysis of environmental issues. There are regular consultations with the Environment Ministry but the Council has established contacts with other ministries, and before submitting its reports is obliged to consult with other ministries which might be affected by its proposals. The choice of subject matter for study is determined by the Council, though it has not yet developed the public consultation procedures on possible topics that the Royal Commission has in recent years. The main constraint is that in 1992 the government established another broad ranging independent advisory committee, the German Advisory Council on Global Change, whose tasks include analysing and reporting on global environmental and development problems, assessing national and international research in the field of global change, and developing and recommending strategic responses for policy makers and the public. The Global Change Council is partly financed by the Ministry of Research and Technology, and one consequence of the establishment of this new body is that the Council of Environmental Advisors now tends to focus more on national and EC environmental matters. There are some concerns whether the analysis of environmental issues can be so readily divided along international, European and national lines.
- 9.17 In contrast to the Royal Commission on Environment Pollution, which is mainly concerned with the production of a report on a single topic every 18 months or so, the Council of Environmental Advisors has tended to produce a general report on the environment every two years that examines a broad range of environmental issues. These have been supplemented by special reports on issues such as energy and the environment, agriculture, waste, and forestry which have often been primarily directed at ministries other than the Environment Ministry.
- 9.18 Extracts from recent reports indicate clearly the independent perspective taken by the Council. In *Environment 2002*,<sup>72</sup> discussing the German Government's approach to the Aarhus Convention, the Council notes: "*The obligations embodied in the Aarhus Convention to allow public participation in plans, programmes, and policies are formulated in weak language. The Council advocates that the current German policy, pursued at home and at the EU level, of interpreting and implementing these provisions such that participation is avoided to the greatest possible extent be abandoned.*" The Report also discusses the German draft Sustainable Development Strategy and, while welcoming many aspects of it, warns "*The eight priority areas of action in the draft are largely a reflection of current Government policy. Whereas the strategy formulates concrete and detailed objectives and measures for problems already dealt with in this legislative period, it is very vague as regards long-term planning. This runs counter to the basic function of sustainable development, namely to provide society's actors with a means of orientating themselves for more than one legislative period.*"
- 9.19 Unlike the Royal Commission on Environmental Pollution, the Council has not yet begun a systematic evaluation of the effectiveness and impact of its published reports. Certainly some reports, such as the 1990 special report on waste, had a major influence on pushing national waste policy towards waste avoidance and producer responsibility. A number of its reports in the 1970's clearly had significant impact. The report on contaminated sites, for example, paved the way for new federal soil pollution legislation, while its report on environmental standards led to the establishment of a new inter-agency commission which followed the direction the Council proposed. As with the Royal

Commission, there are other reports that do not so much break new ground as assist policy makers by providing an authoritative and sound factual understanding of the issue at hand. In its recent reports, the Council has given greater emphasis to the European dimension of environmental policy, but has tended to date to be rather reactive, being concerned mainly with the EU impact on national law and policy. A challenge facing the Council, as with many other national councils, is the extent to which it should try to directly influence the development of European policy-making and how to do this in a timely fashion.

## OPTIONS FOR NORTHERN IRELAND

9.20 The experience in Europe shows that there are considerable gains to be made from the existence of an independent advisory environmental body that can provide a longer-term and in-depth examination of environmental issues that do not necessarily fall within existing departmental boundaries. An expert rather than a stakeholder body has particular attractions, provided it adopts a multi-disciplinary approach and operates with an open mind. As discussed in paragraph 9.4, this would not replace the need for specialised departmental advisory bodies and it would need to have the freedom to choose its own areas for study and be sufficiently resourced.

9.21 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.* This would require departments to be 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, while not replacing the RCEP, would reflect the fact that a UK wide body such as RCEP is unlikely to have the time and resources to examine in depth environmental issues relating to Northern Ireland. However, it 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 against 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 Northern Ireland and the Republic of Ireland, possibly 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 affect the whole of the island would be a valuable input to policy thinking for both governments. Transport patterns, water management and waste management might be good examples. Environmental issues are already identified in the Good Friday Agreement as a suitable area for co-operation, and there already exist examples of cross-border co-operation 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 two governments.

**TRANSPARENCY and TRUST: RESHAPING ENVIRONMENTAL  
GOVERNANCE IN NORTHERN IRELAND  
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

## APPENDIX

## TABLE OF KEY LAWS CONCERNING THE ENVIRONMENT IN NORTHERN IRELAND

## NOTES

- This is an indicative list of key Northern Ireland laws concerning the environment with a focus on laws involving some consent or regulatory type powers. It does not claim to be comprehensive.
- The third column identifies the government department or body identified in the legislation as having the main responsibility for its implementation. In the case of the Department of the Environment (NI), Environment and Heritage Service, as one its core Executive Agencies, will in practice exercise the powers.
- The last column indicates whether the legislation contains on regulatory powers in the sense of a licensing or permit type control.

SUBJECT	LEGISLATION	RESPONSIBLE GOVERNMENT DEPT OR BODY	CONSENT TYPE REGULATORY POWERS?
<b>Chemicals and hazardous substances</b>			
Major accident hazards	Regs 1993/275	Department of Environment (DoE)	Yes
Restrictions on hazardous substances	Waste & Contaminated Land Order 1997/2778	DoE	
Hazardous substances consent	Regs 1991/1220 as amended	DoE	Yes
Hazard Information/packaging	Regs 2002/301	Health & Safety Executive	
Plant protection products	Regs 1995/371	DoE	Yes
Biocidal products	Regs 2001/402	DoE	Yes
GMO contained use	Regs 2001/295	DoE& Health & Safety Executive	Yes
GMOs marketing, use etc	Regs 2003/167 as amended 2003/206	DoE	Yes
Notification of new chemicals	Order 1994 and Regs 1994/6	Dept of Enterprise Trade and Investment	
Ozone depleting substances	Regs 2003/97	DoE	
Marketing & Use of Dangerous Substances	Regs 2003/105, 2003/106; 2003/165;2003/548	DoE	Yes
Control of substances	Regs 2003/34	DoE	
<b>Water supply</b>			
Designation of zones	Regs 2002/331	Dept for Regional Development	
Monitoring & Investigation	" "	Dept for Regional Development	
Authorization of departure of no danger to human health	" "	DoE	Yes
Authorization of groundwater treatment by DRD	" "	DoE	Yes
Abstraction controls – power to make Regulations	Water Order 1999/662	DoE	Yes

## APPENDIX

SUBJECT	LEGISLATION	RESPONSIBLE GOVERNMENT DEPT OR BODY	CONSENT TYPE REGULATORY POWERS?
<b>Water Pollution</b>			
Discharge consents	Water Order 1999/662	DoE	Yes
Prevention notices	" "	DoE	
Dangerous substances	Rags 1998/401	DoE	Yes
Groundwater	Regs 1998/401	DoE	Yes
Bathing waters	Regs 1997/488	DoE	
Anti-pollution works	Regs 2003/7	DoE	Yes
Surface water (fish)	Regs 1997/488	DoE	
Surface water (shellfish)	Regs 1997/489	DoE	
Urban wastewater treatment	Regs 1995/12 as amended 2003/278	DoE	Yes
Water Framework Directive	Regs 2003/544	DoE	Yes
<b>Fisheries</b>			
Fish culture licences	Fisheries Act 1966 as amended 1997/1466	Dept of Agriculture & Rural Development	Yes
Environmental assessment of fish farms	Regs 1999/415	Dept of Agriculture & Rural Development	Yes
Grants for fisheries and aquaculture structures	Regs 2002	Dept of Culture Arts & Leisure Dept of Agriculture and Rural Development	
Management of fisheries in Foyle & Carlingford	Foyle Fisheries 1952 as amended	Foyle Carlingford and Irish Lights Commission/Loughs Agency	
Byelaws for fisheries	Fisheries Act 1966 and Fishery Byelaws (NI) 2003	Fisheries Conservancy Board with approval of Dept of Arts, Culture, and Leisure	
Sea fisheries protection	Fisheries Act 1966	Dept of Agriculture and Rural Development	
<b>Drainage and Flood Prevention</b>			
General powers	Drainage Order 1973	Dept of Agriculture and Rural Development	
Environmental Assessment (drainage)	Regs 2001/394	Dept of Agriculture and Rural; Development	Yes
<b>Navigation</b>			
Harbours	Harbours Act 1970	Harbour Commissioners	
Water recreational/navigation works	Water Order 1999	Dept for Regional Development	
Environmental assessment for harbours	Regs 2003/136	Dept of Agriculture & Rural Development (fishery harbours) Dept of Regional Development (others)	Yes

SUBJECT	LEGISLATION	RESPONSIBLE GOVERNMENT DEPT OR BODY	CONSENT TYPE REGULATORY POWERS?
<b>Agriculture</b>			
Fertilizer & feedstuffs approval	Agriculture Act 1970	Dept of Agriculture & Rural; Development	Yes
Seeds approval	Regs 2002/2812	Dept of Agriculture and Rural Development	Yes
Nitrate protection zones	Regs 2003/259	Dept of Agriculture & Rural Development with DoE	
Sludge use in agriculture	Regs 1990/245	DoE	
Sludge and Slurry works	Regs 2003/319	DoE	
Environmental areas	Order 1987	Dept of Agriculture and Rural Development	
Approval of rendering plant	Order 2002/209	Dept of Agriculture and Rural Development	Yes
Environmental assessment (uncultivated land)	Regs 2001/435	Dept of Agriculture & Rural Development	Yes
<b>Waste</b>			
Waste management licences	Order 1997/2778 as amended 2002, Regs 2003/493	DoE	Yes
Landfill standards	Regs 2003/496	DoE	Yes
Duty of care	Regs 2002/271	DoE	
Waste incineration	Regs 2003/390		Yes
Packaging and Registration of producers	Order 1998/16 and Regs 1999 as amended 2002	DoE	Yes
Batteries and accumulators	Regs 1995 as amended 2002	DoE	Yes
Special wastes	Regs 1989/289	DoE	Yes
Registration of carriers	Regs 1999/362	DoE	Yes
Transfrontier waste shipments	Regs 1989/115	DoE	Yes
PCB disposal Registration	Regs 2000/232	DoE	Yes
Marine disposal	Food & Environmental Protection Act 1985	DoE	Yes
Litter offences	Order 1994/1896	District councils and police	
Litter – promotion	" "	Dept for Regional Development	
Animal by-products	Order 2002/209	Dept of Agriculture and Rural Development	Yes
<b>Industrial Pollution Control</b>			
Pollution Prevention & Control	Order 2002/3153 and Regs 2003/46	Chief Inspector nominated by DoE	Yes
Integrated pollution control for processes subject to central control	Order 1997/18	Chief Inspector nominated by DoE	Yes
Process subject to local control	" "	District Councils	Yes
Contaminated land	Order 1997/2778	Special sites DoE; other sites District Councils	Yes
Large combustion plants	Regs 2003/210	DoE	Yes
Incinerators	Regs 2003/390	DoE	Yes

## APPENDIX

SUBJECT	LEGISLATION	RESPONSIBLE GOVERNMENT DEPT OR BODY	CONSENT TYPE REGULATORY POWERS?
<b>Air Quality</b>			
Air quality strategy	Regs 2002/3153	DoE	
Assessment of air quality limit values	Regs 2002/357	DoE	
Air quality review	Regs 2002/2153	District councils	
Air quality standards	Regs 1990 as amended 2003/342 etc	DoE plus other designated departments	
Ozone	Regs 2003/240	DoE	
Emissions from motor vehicles	Order 1995/2994 and Construction & use Regs 1999/454 as amended	DoE	
Smoke control areas	Order 1981	District Councils; DoE may order councils to establish	
<b>Nature Conservation</b>			
Species protection	Order 1985/2 as amended	DoE	
Areas of Special Scientific Interest	Order 1985/1 as amended; Environment Order 2002/3153	DoE	Yes
Habitats of European Importance	Regs 1995/380	DoE with competent authorities	Yes
Tree Preservation Orders	Order 1991/11 as amended 2003/431 and Regs 2003/444	DoE	Yes
Environmental sensitive areas	Regs 2001/269 and 2001/270	Dept of Agriculture & Rural Development	
National and local authority nature reserves	Nature Conservation & Amenity Lands Order 1985/170	DoE	
Marine nature reserves	NCAL 1985	DoE	
Areas of Outstanding Natural Beauty	NCLA 1985	DoE	
National Parks	NCLA 1985	DoE	
Wildlife refuges	Wildlife Order 1985/171	DoE	
Trade in endangered species	UK 1997 Regs	DEFRA (UK) co-ordinates	
Prohibition of fur farms	Order 2002/3051	Dept of Agriculture & Rural Development	
Hunting controls	Game Preservation Orders	DoE	

SUBJECT	LEGISLATION	RESPONSIBLE GOVERNMENT DEPT OR BODY	CONSENT TYPE REGULATORY POWERS?
<b>Planning</b>			
Strategic planning : Regional Development Strategy	Order 1999/660	Dept of Regional Development	
Development control: grant of planning permission	Order 1991/1220	DoE	Yes
Environmental assessment	Regs 1999/73	DoE	Yes
Listed Buildings consents	Order 1991/1220 as amended 2003	DoE with advice from Historic Buildings Council and District Councils	Yes
Historical monuments consents	Order 1995/1625	DoE with advice of Historic Monuments Council	Yes
Roads	Order 1993/3160	DoE	Yes
EIA Roads	Regs 1999/89	DoE	Yes
<b>Noise and statutory nuisances</b>			
Airport noise	Airports Order 1994/426	DoE	
Consents for construction sites and Codes of Practice	Pollution Control and Local Government Order 1978/1049; Regs 2002/303	District Councils	Yes
Noise nuisance	“ “	District Councils	
Noise nuisance	Noise Act 1996	District Councils	
Statutory nuisances	Public Health Acts	District Councils	
<b>Energy</b>			
Consents for electricity generating stations and overhead lines	Order 1992/231 as amended Order 2003/419	Dept of Enterprise Trade and Investment	Yes
Energy efficiency in industry and voluntary sector	Order 1999/659	Dept of Enterprise Trade and Investment	
Energy efficiency in residential accommodation and public bodies	Order 1999/659	DoE	
Regulations to protect public health	Order 1992/1	DoE	
Electricity from renewables	Order 2003	NI Authority for Energy Regulation	Yes

## REFERENCES

- <sup>1</sup> The Review of Public Administration in Northern Ireland (2003) *Discussion Document*
- <sup>2</sup> The Review of Public Administration has recently produced a comprehensive set of organisational charts of public sector bodies operating in Northern Ireland. In contrast to Figure 1, the core information is structured on vertical lines under each Department, though the report also includes analysis based on various policy themes relating to service to the citizen and the public organisations involved.
- <sup>3</sup> Balfour J (1984) *A New Look at the Northern Ireland Countryside* HMSO, Belfast. See also Milton K (1990) *Our Countryside Our Concern* Report for Northern Ireland Environment Link
- <sup>4</sup> EHS Annual Report and Agency Accounts 2002/2003. Figures are rounded.
- <sup>5</sup> Dept of the Environment (NI) (2003) Corporate Plan 2003–06, Business Plan 2003–04
- <sup>6</sup> Northern Ireland Audit Office (1998) *Control of River Pollution in Northern Ireland* HC 693 Session 1997/8
- <sup>7</sup> Public Accounts Committee (2001) 3rd Report *Control of River Pollution in Northern Ireland*
- <sup>8</sup> Northern Ireland Audit Office (2003) *Areas of Special Scientific Interest* NIA 103/02 HC499
- <sup>9</sup> Department of Regional Development (2003) *Reform of Water and Sewerage Services in Northern Ireland Public Consultation Report* and see *Ministerial Press Release* 7 Oct 2003
- <sup>10</sup> PAC Report supra, para 42
- <sup>11</sup> Friends of the Earth, (2003) *Northern Ireland Newsletter* Issue 7 August 2003
- <sup>12</sup> Northern Ireland Environment Link (2003) *Worth the Paper* NIEL, Belfast
- <sup>13</sup> Case C-387/97 ECR I-369
- <sup>14</sup> see, for example, *Commission v Belgium* [1970] ECR 237, *Commission v Italy* [1984] ECR 2361
- <sup>15</sup> *Commission v Germany* [1995] ECR I-2189
- <sup>16</sup> Hatton (2003) The Implementation of EC Environmental Law *Journal of Environmental Law* Vol 15 No 3 273–288
- <sup>17</sup> *Commission v Belgium* [1990] ECR I-2821
- <sup>18</sup> Kramer (2003) *EC Environmental Law* Fifth Edition p 390 Sweet and Maxwell, London
- <sup>19</sup> *Commission v Spain* C-278/01 25 November 2003
- <sup>20</sup> Correspondence, European Commission to Friends of the Earth, February 2003. The ‘Reasoned Opinion’ stage of European infringement proceedings is the last stage before a country is taken before the European Court of Justice and implies that the Member State must implement in accordance with the Commission’s view to avoid action before the Court.
- <sup>21</sup> Sir Robin Ibbs (1988) *Improving Management in Government*
- <sup>22</sup> Cabinet Office (1998) *Next Steps Report*
- <sup>23</sup> HM Treasury and the Prime Minister’s Office of Public Services Reform (2002) *Better Government Services – Executive Agencies in the 21st Century* Cabinet Office, London
- <sup>24</sup> Key recommendations for Departments to strengthen department–agency relationships include:
  - (i) Departments should carry out a high-level review to ensure that delivery mechanisms were appropriate to contemporary requirements,
  - (ii) Department should consider outcome mechanisms as well as policy,
  - (iii) Departments should maintain simple and clear frameworks at strategic levels with agencies,
  - (iv) Departments should improve the integration and agency and departmental business planning, and that agency targets should be kept down and focus on areas relating to departmental objectives,
  - (v) In place of five yearly reviews of individual agencies and non-departmental public bodies, there should be a rolling programme of “end to end” reviews to examine the delivery of particular policy objectives or Public Service Agreement Targets,
  - (vi) To provide greater management flexibility, agencies should be given three-year funding agreements to support three year business plans.

- <sup>25</sup> National Audit Office (2003) *Improving Service Delivery :The Role of Executive Agencies* HC525 Session 2002-2003
- <sup>26</sup> Including :
- i) Agencies need to be more proactive to ensure that targets are sufficiently strengthened in the light of changing public expectations and opportunities offered by new technologies and partnerships,
  - (ii) Agencies need to have more comprehensive and up-to-date systems in place to assess their customer needs and preferences,
  - (iii) Agencies need to give more attention to consistent measurement and reporting of performance over time,
  - (iv) Agencies need to target their actions on improving service delivery on key drivers which have the most potential for sustained improvements which are likely to have real value for users and
  - (v) Agencies need more sophisticated approaches to measuring their costs and productivity, including benchmarking their processes and costs with other organisations.
- <sup>27</sup> Review Body in Local Government in Northern Ireland (1970) Cmd. 546 HMSO, Belfast
- <sup>28</sup> Better Regulation Task Force (2003) *Independent Regulators*, BRTE, London
- <sup>29</sup> The taskforce defined an independent regulator as “*A body which has been established by Act of Parliament but which operates at arm’s length from Government and which has one or more of the following powers : inspection; referral; advice to a third party; licensing; accreditation; or enforcement.*” para 2.1, *ibid*
- <sup>30</sup> The benefits noted included: more consistency of decision-making, long term decisions rather than short-term decisions, more transparency, better accountability, more trust between the regulated and the regulator and freedom from political interference.
- <sup>31</sup> DEFRA (2003) *Rural Delivery Review Report* by Lord Haskins October 2003
- <sup>32</sup> “*It is important to me that the Integrated Agency should have a strong and authoritative voice commanding respect both within and outside Government. It is equally important that the advice I receive from the Integrated Agency is not only independent but is seen to be independent.*” Written Statement, House of Commons, Environment Secretary of State 24/2/04
- <sup>33</sup> National Audit Office (2003) *supra*, p10
- <sup>34</sup> Review of Public Administration, *supra*, para 5.2
- <sup>35</sup> Environment Agency (2003) *Corporate Plan 2003-06*. Figures have been rounded
- <sup>36</sup> Environment Agency (1998) *Enforcement and Prosecution Policy*
- <sup>37</sup> Environment Agency (2003) *Spotlight of Business Performance*
- <sup>38</sup> House of Commons Select Committee on Environment, Transport and Regional Affairs (2000) *The Environment Agency* 6th Report Session 1999-2000, HC 34
- <sup>39</sup> Hansard 24 November 2000 col 554
- <sup>40</sup> DEFRA (2001) *Environment Agency Financial Management and Performance Review Stage 1*, DEFRA London
- <sup>41</sup> DEFRA (2002) *Environment Agency Financial Management and Performance Review Stage 2 Report*, DEFRA, London
- <sup>42</sup> Environment Agency (2002) *Making It Happen Corporate Strategy 2002-07*.
- <sup>43</sup> Royal Commission on Environmental Pollution (2002) *Environmental Planning* 23rd Report Cm 5459 HMSO, London
- <sup>44</sup> Environment Agency and Local Government Association (1999) *Working Better Together in England*. An equivalent agreement was signed in 2001 between the Environment Agency Wales and the Welsh Local Government Association.
- <sup>45</sup> ENDS Report 323 pp15-16
- <sup>46</sup> ENDS Report 322 p 16 “*Beckett announces Whitehall rethink on waste*”
- <sup>47</sup> English Nature (2003) *Annual Report* . Figures have been rounded.
- <sup>48</sup> DEFRA (2002) *Working with the Grain: a Biodiversity Strategy for England*
- <sup>49</sup> According to its 2003 Annual Report, *supra*, in 2002 it responded to 125 Government consultation documents and 18 Parliamentary Select Committees.

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- <sup>51</sup> DEFRA (2003) *Rural Delivery Review Report* by Lord Haskins October 2003
- <sup>52</sup> Guardian November 12 2003
- <sup>53</sup> *ibid*
- <sup>54</sup> See Burke (2003) *The Nature of the Game* Guardian November 12 2003
- <sup>54a</sup> 2001–2002 (figures rounded) *SEPA Annual Report 2001-2002*
- <sup>55</sup> Scottish Executive (2002) *Financial Management and Performance Review: Scottish Environment Protection Agency*
- <sup>56</sup> Environment Protection Agency (2002) *Annual Reports and Accounts*. Figures have been rounded.
- <sup>57</sup> Pearce (1994) *Chemicals, Conflicts and the Irish Protection Agency* Cork Environmental Alliance News Spring 1994. See also McCarthy and Yearly (1995) *The Irish Environmental Protection Agency: The Early Years Environmental Politics* Vol 4 No 4 pp 258–264
- <sup>58</sup> see for example, IBEC (1997) *Striking the Balance: An Environmental Policy for Economic Growth*
- <sup>59</sup> see, for example, Friends of Irish Environment (2002) Report on the decision of the EPA to grant a landfill licence at Kilbarry in October 2001
- <sup>60</sup> EPA (2001) *Report on IPC Licensing and Control* 2001
- <sup>61</sup> Irish Times (2003) *Watchdog in need of sharper teeth* 23 October 2003
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- <sup>64</sup> The EEA held a first meeting of European environment agencies in November 2003
- <sup>65</sup> Review of Public Administration in Northern Ireland (2003) *supra*, para 4.1
- <sup>66</sup> Review of Public Administration (2002) *Briefing Paper : Accountability* Independent report by Watt, Richards and Skelcher
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- <sup>68</sup> NI Authority for Energy Regulation (2003) Discussion Paper on DETI Energy Policy
- <sup>69</sup> House of Commons Environment Audit Committee (2001) First Report : *Environmental Audit* Session 200–2001
- <sup>70</sup> Under the 1995 amendments to the Canadian Auditor General Act, members of the public may, via the Auditor General, ask Federal Departments questions about environmental standards and sustainable development issues. Departments must respond within 120 days.
- <sup>71</sup> adapted from Owens and Rayner (1999) *When Knowledge Matters : The Role and Influence of the Royal Commission on Environmental Pollution* Journal of Environmental Policy and Planning 1 7–24
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