

**DOE Discussion Document**

**Environmental Governance in Northern Ireland**

**MAG Response**

**25 | 1 | 16**

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Ministerial Advisory Group (MAG) Response**

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**By email to:**

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## **1.00 General**

- 1.01 MAG was established in 2007 to advise the Minister for Culture, Arts and Leisure on the implementation of the Architecture and Built Environment Policy.
- 1.02 MAG welcomes the opportunity to comment on this discussion paper, noting key issues as follows.

## **MAG Response**

### **2.00 Key Issues outlined in the Discussion Document**

- 2.01 The Document is prefaced, by stating that the “Minister wants to ‘re-open’ the debate on ‘the creation of an independent environment agency for Northern Ireland.’”
- 2.02 In his foreword, Minister Mark H Durkan says, ‘I have long been an advocate of an independent environmental protection agency,’ noting that Northern Ireland is ‘out of step with the rest of the developed world.’
- 2.03 It is noted that views on the formation of an independent environment agency were last sought in August 2011, but at that time there was a lack of political support.
- 2.04 It is noted that policy, legislation and Executive functions are now under the Environment and Marine Group (EMG). Through the forthcoming departmental re-organisation, the Department of Environment’s main environmental functions (EMG) will transfer to the Department of Agriculture, Environment and Rural Affairs (DAERA). Aspects of the work of the Northern Ireland Environment Agency (NIEA) relating to the Built Heritage (Built Heritage Division – HED) will be transferred to the Department for Communities, with some other functions moving to the Department of Infrastructure.
- 2.05 A key theme of the Discussion Document is the need to work smarter with fewer resources.

2.06 Major drivers for a change of governance are highlighted as follows:

- Environmental justice – noting the importance for equality of opportunity and highlighting the right to the ‘quality of life’ benefits that a good environment can deliver; and recognising that those who have least financial strength are often environmentally disadvantaged (e.g. poor air quality)
- Economic downturn – noting that a lack of finance places greater emphasis on using resources efficiently
- Expectation as a result of evolving devolution – noting that with reduced conflict there is an expectation of the Executive to provide strong leadership in relation to an improved environment and the increased potential for sense of pride in the environment to be encouraged
- Need for collaboration with people in other jurisdictions – noting that environmental issues are not constrained by borders and accordingly require to be managed by authorities which are compatible

2.07 It is noted that an independent environment authority would give greater flexibility to make necessary changes and would speed up decision making. It is suggested that this could be a catalyst to positive behavioural change.

2.08 An Agency would have Grant in Aid funding from Government and would facilitate a move away from being adversely impacted by political changes in direction, which in turn would engender greater trust in it.

2.09 It is noted that the Agency would have the potential to recover costs from regulatory activity.

2.10 The Discussion Paper outlines four potential options for Environmental Governance, as follows:

Option A: Maintaining the Status Quo

2.11 In this scenario, the Agency would be an Executive Agency. It would be susceptible to politics playing a significant part in shaping direction. A lack of consistency and transparency may be an issue and such an organisation would be 'out of step' with other jurisdictions and their agencies.

Option B: All Current NIEA Functions to Transfer to an Independent Agency

2.12 Whilst this is seen as a relatively clearly defined transfer of functions from the existing NIEA to a new independent agency, there may be opportunities to set aside functions such as the Drinking Water Inspectorate. This approach would allow harmonisation of regulatory arrangements on an all-Ireland basis and it is suggested that it would be relatively straight-forward to achieve.

Option C: Full Reorganisation

2.13 Full reorganisation would bring together complementary functions from NIEA and other departments. This would facilitate re-alignment of Pollution Protection/Control, Waste Management, etc. This structure would be relatively complex to achieve.

Option D – A Regulation-Orientated Independent Environmental Protection Agency

2.14 This would establish an Agency focussing on key regulatory functions, relating to air, water and land. It would be funded by Government Grant Aid and the application of fees. This model would not include all existing NIEA functions, with for example natural heritage remaining with the Department.

### **3.00 Costs and Operating Structure**

- 3.01 Costs have been estimated in relation to effecting any agreement to establish an independent agency. The costs associated with the three options for change, range up to £3.2 million for the initial establishment and thereafter £1.6m to £4m per annum for recurring costs.
- 3.02 It is emphasised that the responsibilities for making and changing policy will remain Ministerial / Departmental.
- 3.03 It is highlighted that the formation of an independent agency will require primary legislation.
- 3.04 It is noted that NIEA currently have 510 staff. There would be concerns in relation to the formation of an independent agency in respect of the mechanisms for effective transfer of people and skills.

### **4.00 Review of the Remit of other Agencies**

- 4.01 The Discussion Paper outlines the remit of other agencies, including those who focus on the environment in other jurisdictions.

### **5.00 Further comments by MAG**

- 5.01 MAG is delighted that an emphasis is being placed on working smarter with less. MAG wholly endorses this ethos and encourages further consideration of how, in practical terms, this can underpin the principles of decision-making relative to environmental governance.
- 5.02 The need for an independent agency is asserted in relation to the benefits of being less impacted by politics and therefore providing increased confidence. It is also noted that it will align Northern Ireland with other jurisdictions.
- 5.03 The logic of having consistency in relation to environmental protection and regulation is understandable. If as the Document outlines, most countries in the developed world have affirmed the benefit of this, it would be helpful to provide a summary of their experiences. Currently, in reviewing the Discussion Document, MAG has not been presented with an evidence base from which to affirm the principle of establishing an independent agency and considers that it would be helpful if that information could be clearly presented.

- 5.04 If, as assumed, there is a compelling case for the formation of an independent agency, MAG would consider it helpful, based on assessment of experience of agencies in other jurisdictions, to identify lessons that can be learned. Based on those lessons learned, it would be helpful to identify clear, best-practice informed aims and objectives for an agency for Northern Ireland. Clear principles are not currently evident in the Discussion Document, undermining the ability to comment objectively on which of the options, or indeed which other scenarios would represent the most advantageous.
- 5.05 The Discussion Document is helpful in highlighting that any configuration of an independent agency will take a considerable time to implement, requiring primary legislation. It also outlines that there is relatively little cost difference between the options. This leads MAG to encourage effort to be invested to configure the most appropriate model, which will serve Northern Ireland best for the future, rather than being influenced by the ease of establishment.
- 5.06 If the principle of establishing an independent agency is agreed, the focus should be placed on the nature of that body. Whilst the remit of a wide range of agencies are outlined in the Discussion Document, there is no analysis of the relative merits of each. A strong case is made for cross-jurisdiction alignment. It was clear that there is little consistency between jurisdictions and therefore the evidence was not clear in terms of what lessons can be learned from elsewhere and therefore what the Agency for Northern Ireland should be seeking to align with.
- 5.07 MAG advocates that an analysis of best practice / lessons learned should be provided, which alongside clearly defined aims and objectives will facilitate an objective assessment of the appropriateness of the Options presented and other configurations.

## **6.00 Conclusion**

- 6.01 MAG is delighted that the discussion about the future of Environmental Governance in Northern Ireland is being encouraged. Effective governance is of great importance and in that respect there is an opportunity at this point to make well-informed decisions that will lead to the establishment of the most appropriate governance structure.
- 6.02 The Discussion Document is helpful in stimulating consideration of a range of issues. MAG advocates, however, that a more robust evidence base should be presented, along with aims and objectives which will allow a more informed debate and consideration of the appropriateness of progressing towards an independent environment agency and if so, the best configuration of that body.
- 6.03 MAG is grateful for the opportunity to participate by commenting on the document, and is keen to be kept informed in future.

**Andrew Haley**

**MAG Member, Chair of MAG Landscape Subgroup**