



Northern Ireland
Assembly

Research and Information Service Review of Bill Costs

Paper 05/16

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NIAR 685-15

Public Finance and Scrutiny Unit

Fisheries Bill – Assessing the Costs

On 7 December 2015 the Fisheries Bill (the Bill) was introduced in the Assembly. This Review of Bill Costs provides a framework to facilitate Assembly financial scrutiny of the Bill. It should be read in conjunction with RaISe Bill Paper NIAR 538-15 (7 January 2016) and NIAR 176-15 (12 January 2016), which address policy issues in respect of the Department of Culture Arts and Leisure (DCAL) and the Department of Agriculture and Rural Development (DARD) respectively.

Introduction

On 7 December 2015 the Fisheries Bill (the Bill) was introduced in the Assembly by the Minister of Agriculture and Rural Development. The introduced Bill addresses fishing activity related to **both** sea and inland fisheries, which respectively are the responsibility of the Department of Agriculture and Rural Development (DARD) and the Department of Culture, Arts and Leisure (DCAL).

Since its introduction, the DARD Minister progressed only Clause 6 of the Bill to consideration stage, with the consent of the Committee for Agriculture and Rural Development's (CARD). This agreement rested on the fact that the Clause was identified by the DARD as the most time critical sea fisheries issue given the potential risk of European Union (EU) infraction fines incurring to Northern Ireland (NI) *via* the United Kingdom (UK) (as the Member State), due to a failure to transpose EU obligations under European law, necessitating amendment of section 30 of the Fisheries Act 1981 in how it applies to NI.

However, the inland fisheries provisions included in the Bill as introduced – i.e. Clauses 10-13 – continued and formed part of the Bill that is progressing to consideration stage. These provisions concern DCAL responsibilities.

To inform Assembly financial scrutiny – in particular both the Committee for Agriculture and Rural Development's (CARD) and the Committee for Culture, Arts and Leisure's (CCAL) - of the Bill progressing to consideration stage, this Review of Bill Costs examines the DARD and the DCAL assessment of the Bill's financial impact. It includes key potential costs arising from enacting and implementing the Bill (progressing to consideration stage) and those potential costs for non-implementation. This Review specifically addresses paragraphs 28 to 30 of the departmental Explanatory and Financial Memorandum (EFM)¹ that accompanied the Bill as introduced, as well as the Draft Regulatory Impact Assessment (RIA)² undertaken by the DARD, as agreed with the DCAL.

The Review seeks to provide a framework to orientate the Assembly's financial scrutiny of Clauses 6 and 10-13, as follows:

- Section 1 reviews the stated clauses, relying on the Bill progressing to consideration stage (the current Bill), paragraphs 28 to 30 within the EFM and the RIA; and,
- Section 2 provides concluding remarks, highlighting key observations about those clauses' financial implications.

Throughout scrutiny points are provided.

All references to “the Bill” in sections 1 and 2 refer to the Bill progressing to consideration stage.

¹ DARD (2015) Fisheries Bill Explanatory and Financial Memorandum

² DARD (2015) Draft Regulatory Impact Assessment: Policy Proposals for a Fisheries Bill

Note that this Review supplements information provided in RalSe Bill Papers and NIAR 176-15 (12 January 2016) and NIAR 538-15 (7 January 2016), wherein policy issues are addressed in respect of DARD and DCAL respectively.

1. Key Costs

The following section initially sets out the legislative intent of the Bill as introduced. It goes on to provide information on the costs identified by the departments within the EFM that accompanied the introduced Bill.

1.1 Legislative Intent

As stated in the Draft RIA, the Bill's primary objective is to:

...allow the DARD to directly meet its European Union (EU) obligations, provide adequate protection of marine environments, modernise enforcement powers and allow effective and proportionate enforcement powers of sea-fisheries regulation and aquaculture licensing.³

Additionally:

The Department of Culture, Arts and Leisure (DCAL) is proposing to take powers to modernise its enforcement activity and to re-align the inland fisheries aspects of the 1966 Act with its obligations under EU Directives.⁴

1.2 EFM – Financial Implications

The following sub-section initially provides information on the financial implications of the introduced Bill, as detailed within the EFM. It goes on to provide specific financial information on the individual Bill Clauses that are progressing to consideration stage.

1.2.1 EFM Guidelines

At paragraph 28 regarding the financial effects of the introduced Bill, the EFM states that:

Policy and legislation development costs are approximately £160,000 per annum in staff costs.⁵

It goes on to state that the DARD:

³ DARD (2015) Draft Regulatory Impact Assessment: Policy Proposals for a Fisheries Bill

⁴ DARD (2015) Draft Regulatory Impact Assessment: Policy Proposals for a Fisheries Bill

⁵ DARD (2015) Fisheries Bill Explanatory and Financial Memorandum

... has the budgetary cover for the policy and legislation development up to March 2016. The Department of Culture, Arts and Leisure is providing input to policy development within existing resources.⁶

The Public Finance Scrutiny Unit (PFSU) within RaISe sought clarification around this cost and DARD advised that this:

...is the cost of a Bill Team / annum and the Bill Team is due to be stood down once the Bill has completed passage in the Assembly.⁷

The DARD further clarified that:

If the Bill has not completed Assembly stages by then [end of March] it will be for next mandate/minister to call as to whether to bring it forward and therefore to resource it from within resources available at that time.⁸

It appears from the information provided by the DARD that the costs included within the EFM relate to the development of the Bill as introduced. But it appears from currently available information that any other costs e.g. implementation, recurrent or operating costs, have not been reflected in the estimated costs arising from the Bill as introduced.

In this context, it is noteworthy that the Assembly's Standing Orders (SO), specifically SO 41 concerning requirements when introducing Executive bills, requires the EFM accompanying departmental Bills to detail the Bill's costs implications as appropriate. SO 41 states:

Under Standing Order 41 - "Public Bills on introduction shall be accompanied, inter alia, by an Explanatory and Financial Memorandum detailing as appropriate:

- a) the nature of the issue the Bill is intended to address*
- b) the consultative process undertaken*
- c) the main options considered;*
- d) the options selected and why;*
- e) the cost implications of the proposal/s".⁹*

Issues for consideration:

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

⁶ DARD (2015) Fisheries Bill Explanatory and Financial Memorandum

⁷ Email to PFSU from DARD 27 November 2015.

⁸ Email to PFSU from DARD 27 November 2015.

⁹ NI Assembly Standing Order 41

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

1.2.2 Costing Terms used in the EFM

As noted above, the EFM does not detail costs for the Bill as introduced. Instead, at paragraph 30, the EFM states:

...that there were no direct nor substantial financial implications from the policy proposals, and [] any costs were outweighed by the benefits.

Arguably it is unhelpful to use the term 'no substantial financial implications' in the context of departmental bill costing estimates. It is a relative concept that does not provide any quantification.

Whether a cost is substantial to a department is likely to depend upon the size and nature of that department's budget. For example, a £1 million (m) resource cost to the DCAL is more significant to it than it would be to the Department of Health Social Services and Public Safety.

In addition, for a department with a relatively small capital budget - such as the Department of Finance and Personnel (DFP) - a £500,000 capital cost is more significant than to a department with a large capital budget (such as the Department for Regional Development).

It therefore may be more helpful for the DARD and the DCAL to quantify a figure in the EFM. This would allow Members to consider the figure within the given context and to draw their own conclusions about its significance.

Issues for consideration:

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

1.3 Bill Clauses progressing to consideration stage

Members should note at the outset that, in general terms, there is likely to be an 'opportunity cost' that would be involved with the development and implementation of the Bill, if enacted. In simple terms, in the context of the Bill, the 'opportunity cost' would be the value of work foregone when staff would be diverted from their regular roles.

The following sub-section reviews key potential costs assigned to Clauses 6 and 10-13 of the Bill by the – DARD and the DCAL. It relies on information provided in

paragraphs 28 to 30 within the EFM and the RIA, looking at cost drivers and underlying assumptions.

Presented thematically, the Review addresses costs relating to:

- Enforcement;
- Licensing; and,
- Protection of fish stocks and the environment.

1.2.1 Enforcement

Two types of costs relating to enforcement could be incurred in relation to Clause 6. The first concerns potential EU infraction fines that could be imposed **if the Bill is not enacted** and implemented. The second relates to the DARD's review of existing licences, and could arise **if the Bill is enacted**.

EU Infraction Fines

Clause 6 relates to the enforcement of obligations under EU law. It removes the:

...need to make separate Statutory Rules (SR) every time a new European Union (EU) obligation is introduced.¹⁰

The RIA further notes that enactment and implementation of the Bill, specifically Clause 6, would:

...avoid the risk of infraction if SRs [are] not brought in on time.¹¹

The PFSU sought clarification from the DARD about the likely costs to be incurred if infraction fines were imposed by the European Court of Justice (ECJ) due to a failure to transpose and implement EU obligations in NI by amending section 30 of the Fisheries Act 1981 as it applies to NI. This consequently results in NI's non-compliance with relevant EU law. The DARD stated:

A substantial penalty liability could be accrued if there is any substantive delay in complying after the matter is referred to the ECJ. As an example the Commission once referred Italy to the ECJ for its failure to include rules on animal testing into its domestic legislation and asked the ECJ to impose penalty payments of €150,787 per day. A lump sum, instead of or in addition to, an addition to a daily penalty may also be imposed. The level of fine depends on the perceived seriousness of the infringement and the Member States ability to pay (and under internal UK arrangements with the devolved administrations, the NI Executive would be liable for any penalty).¹²

¹⁰ DARD (2015) Draft Regulatory Impact Assessment: Policy Proposals for a Fisheries Bill

¹¹ DARD (2015) Draft Regulatory Impact Assessment: Policy Proposals for a Fisheries Bill

¹² Email to PFSU from DARD 15 December 2015

The NI Executive would incur the cost for payment of those fines, if any imposed, from its Budget.¹³

Issues for consideration:

4. Given the potential for infraction fines outlined above, is that potential greater or lesser in relation to the DARD or the DCAL non-compliance with EU obligations?
5. In light of the above reply, did that reply factor into decisions made by the DARD and the DCAL about the Bill; and if so specify how?

DARD's Review of Existing Licenses

The RIA also notes that there may be costs relating to enforcement that may arise if the Bill is enacted and implemented. Those costs concern the “*DARD reviewing existing licenses*”.¹⁴

However, the RIA further states that these would be “*off set over time.*”¹⁵ But no additional information was provided in respect of the magnitude of the costs involved with the review or the payback period.

In addition, the RIA notes there would be

*Some additional costs in reviewing and revoking [SRs and redundant legislation], but this is short term and minor and would be offset by savings in not having to draft future SRs.*¹⁶

But again the RIA does not provide any information on the extent of those costs. It therefore is unclear as to how the costs to implement this Clause would be offset by savings in the drafting of future SRs, when the budget for the two activities is unlikely to take place during the same year.

Issues for consideration:

The Assembly may wish to request that the DARD provide:

6. An estimate for the costs involved in reviewing existing licenses.
7. Information about how the DARD gained the appropriate level of assurance that the costs and savings involved with the review of licenses would be offset over time, when no apparent information is available in respect of costs.
8. If calculations were carried out; the DARD's calculations on how the costs would be “offset over time” and the length of time it envisages that this would take.

¹³ (2012) Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee Page 35 Para B4.26

¹⁴ DARD (2015) Draft Regulatory Impact Assessment: Policy Proposals for a Fisheries Bill

¹⁵ DARD (2015) Draft Regulatory Impact Assessment: Policy Proposals for a Fisheries Bill

¹⁶ DARD (2015) Draft Regulatory Impact Assessment: Policy Proposals for a Fisheries Bill

9. If the payback period is over one year, the Assembly may wish to ask where the financing for the upfront costs would be accessed.
10. An estimate for the costs involved in reviewing and revoking SRs (Statutory Rules) and redundant legislation.
11. Information about how the DARD gained the appropriate level of assurance that the costs involved with reviewing and revoking SRs and redundant legislation would be offset by savings in the drafting of future SR, when no apparent information is available in respect of costs.
12. If calculations were carried out, the DARD's calculations on the number of SRs and pieces of legislation that would be necessary for its staff to review and potentially revoke, as compared to the annual number of SRs that would be required to be introduced due to EU obligations.
13. If the staff time diverted from drafting new SRs on an annual basis does not match the amount of time necessary to carry out the review of SRs and legislation, how does the DARD intend to finance the review?

1.2.2 Licensing

Clause 10 relates to the introduction, variation, revocation and amendment of fishing licenses. It concerns:¹⁷

- Clause 10: Removal of requirement for certificate from Justice of the Peace for fish dealer's license.

The removal of the requirement for a certificate from the Justice of the Peace before the granting of a fish dealer's license is unlikely to incur additional costs.

1.2.3 Protection of Fish Stocks and the Environment

A number of clauses within the Bill progressing to consideration stage relate to the protection of fish stocks and the environment. The relevant Clauses are:

- Clause 11: Restriction on removal of material from bed of lake;
- Clause 12: Dams in rivers: fish passes etc.; and,
- Clause 13: Gratings in water courses.

The following sub-section provides information on these Clauses and key costs related to them that merit consideration.

Clause 11

Clause 11 concerns the restriction on the removal of material from beds of lakes. The RIA addresses this Clause, stating there would be:

¹⁷ DARD (2015) Draft Regulatory Impact Assessment: Policy Proposals for a Fisheries Bill

...some small costs for DCAL in reviewing applications and for those wishing to sand dredge in lakes.¹⁸

From the information provided, it appears that the above does not account for whether a survey of the area would be necessary to assess suitability for dredging or any potential enforcement costs.

Issues for consideration:

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

From information provided by the DARD in respect of Clause 12:

Information on dams in watercourses is not fully known as of yet []. This is an area of focus for both DCAL and the NIEA going forward. The NIEA has carried out surveys on some rivers for e.g. survey on the Six Mile Water and recorded 400 possible barriers to fish in that system alone.¹⁹

It appears that it would be necessary to conduct an audit of all rivers in NI to assess the scale of this potential issue.

Issues for consideration:

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

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

Clause 12

Additionally, Clause 12 allows:

...where the Department is unable to establish who owns the dam ...[.] ..the Department [can] cause the dam to be removed.²⁰

This appears to suggest that in instances where it would not be possible for the DCAL to identify the landowner, the public purse would be responsible for dam removal costs. As identified above, the DCAL is unaware of the number of barriers to fish in the river network across NI. It is therefore unlikely that the DCAL would be aware of the number of dams sited on land where the landowner is not readily identifiable.

¹⁸DARD (2015) Draft Regulatory Impact Assessment: Policy Proposals for a Fisheries Bill

¹⁹ DARD (2015) Fisheries Bill – possible issues/questions

²⁰Fisheries Bill available online at: <http://www.niassembly.gov.uk/assembly-business/legislation/primary-legislation-current-bills/fisheries-bill/>

Issue for consideration:

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

Clause 13

The RIA states that any additional costs in respect of Clause 13 to change the dimensions of gratings for new mill dams are likely to be “negligible”. This appears to be reasonable since the legislation would not be implemented retrospectively.

2 Conclusion

The EFM estimates that the costs associated with implementing the Bill would be in the region of £160,000 for policy and legislation development. It goes on to state that the RIA concluded that there were:

No direct nor substantial financial implications from the policy proposals and that any costs were outweighed by the benefits²¹

Neither the RIA nor the EFM quantify the above financial implications. This raises a host of questions, as highlighted in Section 1 of this Review.

The RIA does identify a number of clauses – Clauses 6, 11 and 12 -that would incur costs, including:

- review of existing fisheries licenses;
- introduction of a new system of permissions to allow removal of material from lake beds;
- audit of rivers to assess the number of blockages to fish passage; and,
- removal of blockages to fish passage where owners cannot be located.

But the cost information provided lacks detail. The Assembly may wish to seek clarification from the DARD and the DCAL about those Clauses, as indicated in Section 1.

However, if Clause 6 of the Bill progressing to consideration stage is not enacted, there is the potential risk of EU infringement fines that could be imposed by the ECJ on the UK (as Member State), due to a failure to transpose and implement EU obligations in NI by amending section 30 of the Fisheries Act 1981 as it applies to NI. This consequently results in NI’s non-compliance with relevant EU law. As stated in Section 1.2.1, the NI Executive would incur the cost for payment of those fines, if any were imposed.²²

²¹ DARD (2015) Draft Regulatory Impact Assessment: Policy Proposals for a Fisheries Bill

²² (2012) Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee Page 35 Para B4.26

Information provided by the departments does not estimate how much these fines, if any, would be; nor does it explain how the potential for such fines has motivated decisions relating to the Bill progressing to consideration stage.

Additional information from the departments would enable better assessment of the likelihood and extent of costs that are anticipated to incur of the current Bill is enacted and implemented. This would allow the Assembly to assure itself that the DARD and the DCAL robustly considered the financial impact of the Bill.