

Enforcement in the Department of the Environment Northern Ireland

A follow-up review of inspection recommendations

November 2011

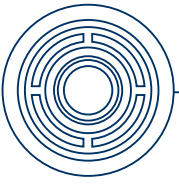




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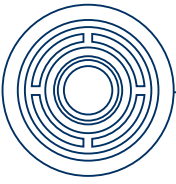




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List of abbreviations

CJI	Criminal Justice Inspection Northern Ireland
DoE	Department of the Environment
DVA	Driver and Vehicle Agency
GB	Great Britain
MoU	Memorandum of Understanding
NIEA	Northern Ireland Environment Agency
PPS	Public Prosecution Service
PS	Planning Service
PSNI	Police Service of Northern Ireland
RoI	Republic of Ireland
SLA	Service Level Agreement



Chief Inspector's Foreword

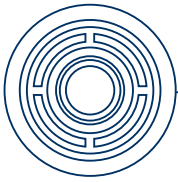
The purpose of this follow-up review was to assess the level of progress made by the Department of the Environment (DoE) and its agencies in relation to the 12 recommendations made by Criminal Justice Inspection Northern Ireland (CJI) in its inspection report published in 2007. The judgement of Inspectors is that 3.5 recommendations were achieved and that a further 5.5 were partly achieved. The remainder were either not achieved or rejected by the DoE, the executive agencies or the Planning Service (PS).

The areas of most progress have been in terms of raising the profile of enforcement in business planning, better staff training and the strengthening of relationships with other law enforcement agencies. The establishment of the Environmental Crime Unit in the Northern Ireland Environment Agency (NIEA) has been a notable success in terms of tackling serious environmental damage, and it has led the way in financial investigation and subsequent confiscation of assets proceedings. The PS has invested heavily in its enforcement capabilities and supporting IT database and management information systems since the last inspection, with the result that regional enforcement teams are operational and case backlogs have been significantly reduced. It is important however, that austerity measures are not used to undermine the good work completed to date. The Driver and Vehicle Agency (DVA) has reduced vehicle excise duty (road tax) and MOT evasion, to levels more comparable with England and Wales.

The main challenges relate to ensuring that enforcement continues to make a significant contribution to the protection of the environment and improved road safety. Enforcement is a necessary part of any regulatory regime but it can be expensive, especially in complex cases, and staff report that the end results in terms of sanctions may not deter profit motivated offenders in particular. Management information systems need to be able to capture the benefits and outcomes of enforcement which in turn should be published.

An ongoing priority, particularly in light of the public funding restrictions, is the need to better balance risks (for example, damage to the environment) with enforcement activities and outcomes. Serious crime remains a priority - but there is also a need to achieve better compliance in relation to the more common, though often lucrative medium levels of offending, some of which occurs within the regulated sectors, such as licensed waste operators and commercial transport. Weak enforcement not only damages the environment and makes the roads more dangerous, it also undermines those businesses which have to compete with the illegal or non-compliant operators.

The final challenge relates to improving existing enforcement policies and procedures, so that they are applied more consistently within agencies and create a greater level of transparency around decision-making.



This review was conducted by James Corrigan of CJI. I would like to express my thanks to all in the DoE, and to the three inspected organisations who contributed to this follow-up review.

Michael Maguire

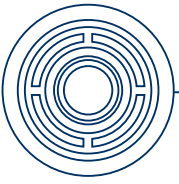
Dr Michael Maguire

Chief Inspector of Criminal Justice in Northern Ireland
November 2011

Section



Follow-Up Review



CHAPTER 1:

Introduction and background



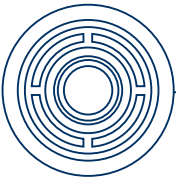
- 1.1 The remit of Criminal Justice Inspection Northern Ireland (CJI) is set out in the Justice (Northern Ireland) Act 2002¹, which gives inspection powers with regard to the core criminal justice agencies, as well as a group of other specified regulatory and enforcement bodies – this list includes the Department of the Environment (DoE). Much of the regulatory and enforcement powers of the Department are discharged through its executive agencies – the Northern Ireland Environment Agency (NIEA) and the Driver and Vehicle Agency (DVA). The de-agentisation of the Planning Service (PS) took place from 1 April 2011.
- 1.2 The first CJI inspection of enforcement in the DoE and its then executive agencies was undertaken in 2007.² The inspection took place during a period of significant change when separate reviews of public administration³ and environmental governance⁴ had proposed significant changes to the structures and delivery of services within the DoE and its agencies.
- 1.3 The main findings of the CJI inspection report were that enforcement was perceived by operational staff as peripheral to the main business of the Department/agencies. Inspectors also found that enforcement activities were often un-coordinated within and between the DoE agencies with an evident silo-based approach to working, including limited sharing of resources and expertise. Whilst some business units such as the NIEA Water Management Unit had demonstrated a more robust approach to the investigation and prosecution of offences, the seriousness of offending in some areas such as waste management and disposal, was not matched by an effective enforcement response. Enforcement staff showed a good level of job satisfaction, though the report found a need to strengthen skills and competences in line with those expected in comparable criminal justice organisations. The report concluded that an effective deterrent to offending would require a more specialised approach to environmental crime with better implementation of the ‘polluter pays’ principle.

1 An amendment (s.45 of the Justice and Security (Northern Ireland) Act 2007) further widened the scope of CJI.

2 Enforcement in the Department of the Environment, CJI, October 2007.

3 The Review of Public Administration was launched by the Northern Ireland Executive in 2002 and reported at the end of 2005 with some specific recommendations on the DoE.

4 Foundations for the Future, The Review of Environmental Governance, Final Report, May 2007.



The Department of the Environment

- 1.4 The aim of the Department is to contribute to a better and safer environment which will support a vibrant and dynamic economy, and to support the delivery of a system of strong and effective local Government. The Minister has overall political responsibility and statutory authority at all times to exercise direction and control over all the business of the Department, including enforcement functions when they are defined in statute as the responsibility of the Department. The principal adviser to the Minister is the Permanent Secretary, who is also the accounting officer. The Permanent Secretary is assisted by the Chief Executives of the two agencies and the PS, who are also accounting officers for the expenditure of their respective organisations.
- 1.5 The DoE Corporate Plan 2008-11 outlines four key themes of which better regulation and enforcement are listed. The Business Plan 2010-11 lists six targets which have a regulatory and/or enforcement element as part of the objective of supporting a *'vibrant, sustainable and dynamic economy'*. These regulatory and enforcement responsibilities can be broadly grouped into two categories – the environment and road safety.

The environment


- 1.6 The departmental vision of *'a better and safer environment'* includes improved water and air quality, nature conservation and protection of built

heritage. It also includes a planning system which supports the protection of the environment and the promotion of sustainable development.

- 1.7 At the time of the last inspection, the environmental and planning functions of the Department were delivered by two agencies – the Environment and Heritage Service and the PS. The Environment and Heritage Service was re-launched as the NIEA in July 2008.⁵ The primary aim of the NIEA is *'to protect, conserve and promote the environment and heritage in Northern Ireland'*. Better regulation and enforcement is seen as a key means to delivering on this aim. The remit of the PS forms a key component of the review of public administration.⁶ Its primary aim is *'to improve the quality of life...by planning and managing development which are sustainable and which contribute to creating a better environment'*. Better regulation and enforcement is specified as one of its four cross-cutting issues in delivering its aim and objectives.
- 1.8 The last CJI inspection identified a number of problems concerning the regulation and enforcement of the environment. The most concerning to Inspectors was the fragmented nature of enforcement, manifested through a silo approach to working which was reinforced by inadequate or outdated policies and practices. The NIEA in particular was struggling to deal with an upsurge in serious waste crime. The nature of the crimes, often profit motivated and linked to other criminal activities, meant that more effective collaborate arrangements were

⁵ The re-launch of the NIEA as a DoE executive agency was announced by the Minister of the Environment on 1 July 2008.

⁶ De-agentisation of the PS took place from 1 April 2011.



necessary with other law enforcement agencies. The continued economic expansion and housing boom at the time of the last inspection were also putting strains on the natural and built environment in areas such as the protection of listed buildings and unapproved development.

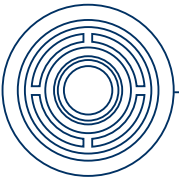
- 1.9 Inspectors found that the capacity of the PS to improve enforcement was restricted by a lack of management information on planning applications/permissions and a linked absence of specific enforcement objectives and targets. Enforcement staff also reported ambiguity and a lack of clarity around how discretion (on enforcement decisions) should be exercised.

Road safety

- 1.10 The policy role of the Department in relation to road safety is complimented by the operational responsibilities of the DVA, formed by the merger of two agencies at the time of the last inspection.⁷ Its mission statement is *'to contribute to road safety, law enforcement and a cleaner environment by promoting compliance of drivers'*. The enforcement activities of the agency can be categorised into two broad areas: driver/vehicle licensing and the regulation of commercial vehicles (i.e. lorries, buses and taxis).
- 1.11 A main problem at the time of the last inspection was the unfavourable comparisons with England and Wales – higher numbers of road deaths and serious injuries; higher rates of vehicle

tax evasion; and lower levels of compliance in relation to the road worthiness of private and commercial vehicles. As well as dealing with the challenges of merging two separate agencies and continuing to undertake vehicle excise duty work on behalf of the Department for Transport (UK), the new agency faced a number of specific enforcement challenges. These included the need to upgrade driver and vehicle databases, strengthen partnerships with other enforcement bodies such as the police, and enhance the training and development of its enforcement staff. The introduction of a more rigorous licensing regime for commercial vehicle operators was also leading to increased demands to deal more effectively with the illegal operators who were competing unfairly with the legitimate sector.

⁷ The DVA was created in April 2007 through the merger of Driver and Vehicle Licensing Northern Ireland and the Driver and Vehicle Testing Agency.



CHAPTER 2:

Implementation of recommendations



Introduction

2.1 The 2007 CJL inspection report made 12 broad based strategic recommendations which included elements of commonality across each of the executive agencies. The DoE produced an action plan in response to the recommendations which was provided to Inspectors in 2008. That action plan has formed the starting point for the assessment of progress in this follow-up review. Progress against each of the recommendations is assessed on the basis of achieved; partly achieved; and not achieved.

Implementation

Recommendation 1

2.2 The DoE should develop and publish a clear statement of intent on enforcement in relation to any breaches and/or offences of environmental, planning and road traffic law. This should be incorporated into the DoE and executive agency's corporate and business plans.

**Status: Part A: Achieved;
Part B: Partly Achieved.**

Action plan response

2.3 *The Department accepts this recommendation. The Planning Service has prepared a draft Enforcement Strategy which will be implemented this year (2008) while the NIEA has revised its enforcement policy to cover all its technical Directorates. The DVA regard compliance as a key strategic business objective and have two key performance measures incorporated within its business plan. Future departmental corporate and business plans and all agency plans will incorporate appropriate enforcement statements.*

CJL assessment

2.4 This recommendation can be split into two parts: the response of the Department in developing and publishing a clear statement of intent on enforcement; and secondly the progress made by each of the agencies in incorporating that statement into their respective corporate and business plans.

2.5 The DoE Corporate Plan 2008-11 includes a foreword by the Minister stating that 'my Department will also take a pro-active approach to building on the excellent work carried out to date by its enforcement teams, particularly in tackling



the damaging environmental consequences of cross-border illegal dumping.’ Better regulation and enforcement is one of four departmental themes in the Corporate Plan. In that respect Part A of the recommendation can be considered as achieved.

2.6 The second part needs to be assessed in relation to each agency. The NIEA Corporate and Business Plan 2009-12 has a foreword which states that ‘we will also pursue those who flagrantly break the laws protecting our natural and built environment and heritage. Our newly established central Environmental Crime Unit will focus on the most serious and persistent offenders, but each Directorate will also carry out more routine enforcement activities.’

2.7 The PS Enforcement Strategy was published in October 2009 and implemented from that time. The Corporate and Business Plans of the PS did not include any enforcement targets until the Business Plan 2010-11 was published in late 2010. It includes a strategic objective on the ‘regulation of unauthorised development’ with the target to ‘monitor and manage performance against enforcement targets: 95% of all priority cases discussed and certified within two working weeks’. Lower level operational targets were included in the Operations Directorate Business Plan 2009-10, which were used by enforcement teams.

2.8 The DVA, in the Chief Executive’s foreword to the Corporate and Business Plans 2009-12, refers specifically to its compliance and enforcement priorities. Its mission statement is ‘to contribute to road safety, law enforcement and a cleaner environment by promoting compliance of

drivers, vehicles and transport operators through testing, licensing, enforcement and education.’

2.9 The overall view of Inspectors is that the importance of enforcement has been reinforced by the Department and its agencies/the PS, but that more work is required to translate this intention into practical activities and performance measures.


Recommendation 2

2.10 A single enforcement unit should be established within the Environment Heritage Service. This unit should draw together all of the enforcement elements of the NIEA as well as those in the PS where NIEA has licensing authority. In the event of a new Environmental Protection Agency for Northern Ireland, a separate enforcement office should be established within this organisation. An integrated enforcement unit should be established within the DVA.

Status: Partly Achieved.

Action plan response

2.11 The Department accepts this recommendation. The DoE Minister announced on 27 May (2008) that within the new Environment Agency to be launched on 1 July 2008 a new environmental crime unit would be established. To help enhance enforcement activity and work on the area of Better Regulation some 40 additional staff will be recruited. Following a decision by the Executive to transfer specific planning functions to local Government, the Minister will shortly announce his proposals on planning reform including details of the proposed enforcement role to be



undertaken by District Councils. In the DVA a single enforcement unit has been established that incorporates compliance, enforcement and operator licensing.

CJI assessment

- 2.12 The purpose of recommending a more integrated approach to enforcement was founded on some of the key weaknesses highlighted in the last inspection – a silo approach to working, inadequate sharing of information and expertise, overlapping areas of responsibility and insufficient capacity, skills and competencies to tackle new and more organised forms of serious criminality.
- 2.13 The model of a single/unified enforcement office or unit was based on similar arrangements already in place in Environmental Protection Agencies in neighbouring jurisdictions. There was also a debate, at the time of the last inspection, around the merits of establishing a new Environmental Protection Agency for Northern Ireland. The Minister of the Environment decided instead to establish the NIEA as an executive agency of the DoE. That new agency included a new Environmental Crime Unit with a specialism in dealing with serious environmental crimes.
- 2.14 The issue of whether the Environmental Crime Unit could, or should draw together all of the enforcement elements of the agency, as well as linked functions in the PS was left to the agencies to determine. In effect, the scope of the Environmental Crime Unit to integrate other units was limited by its capacity to primarily focus beyond the caseload presented by waste related serious crime. Other less serious waste offences as well as offences related to natural heritage (for example, damage to areas of conservation), listed buildings, water pollution and wildlife largely remained the preserve of other enforcement sections and units.
- 2.15 The impact was varied across the different units with the Water Management Unit continuing to implement a more robust approach to the investigation and prosecution of pollution offences, which was reinforced by its cross compliance linkages to the Department of Agriculture and the sanction of reducing the amount of single farm payments. The lack of integration was negative for some other units such as Land and Resource Management – the section which deals with the licensing and regulation of waste operators. Most of its enforcement staff transferred to the new Environmental Crime Unit with the result that enforcement capacity became significantly weakened. An internal audit of the unit found that no prosecution action for non-compliance or breaches of licence conditions/authorisations was taken in the period April 2009 to March 2010. The auditors stated that this had occurred in the knowledge that there may be occasions where a prosecution for non-compliance would be the best course of action. This lack of enforcement/prosecution activity was confirmed by staff to CJI Inspectors in this follow-up review. They did, however, insist that compliance activities, but not prosecutions, continued in relation to the regulated sector (i.e. licence and permit holders) with all sites subject to visits and productive engagement with most site operators. Serious cases of non-compliance in the regulated sector and unlicensed



operators were also submitted to the Environmental Crime Unit. The Crime Unit has been limited by its resources and has operated with around 16 active serious cases - it has a Ministerial and business plan target to have at least 10 serious investigations in place at any one time.

- 2.16 At the time of the last report, Inspectors recommended that areas of overlap between the NIEA and the PS should be brought together under a proposed single enforcement unit. This has not happened. The NIEA has a licensing remit for the built environment which includes historic monuments and listed buildings. It can initiate enforcement proceedings in the case of the former, but the PS is responsible for enforcement of listed buildings – this has a statutory basis within legislation. While the separation of licensing and enforcement between the two organisations is not in itself a weakness, the reality is that confusion remains over how and when enforcement action should commence and the NIEA enforcement staff, whilst consulted by the PS, have no access to the PS database. The view expressed within both organisations is that enforcement activities in relation to listed buildings would be best done by the NIEA though some of the skills and competences of PS staff (for example, ability to conduct interviews under PACE) would need to be replicated in the Built Heritage Unit of the NIEA.
- 2.17 In the absence of a single integrated enforcement unit, the NIEA and the PS have initiated some measures to better harmonise and co-ordinate a more unified approach to enforcement. This includes some formal and informal bi-lateral meetings, as well as some groups within the Department which involve the PS, together with Built Heritage and Land and Resource Management in the NIEA.
- 2.18 One of the tasks of this group is to strengthen collaboration between the Crime Unit and other parts of the NIEA, and to develop a protocol on what cases should be referred to the Crime Unit.
- 2.19 The NIEA Crime Unit has achieved notable successes over the past few years through a much improved investigative approach to serious environmental crime. This has been enhanced through the use of new powers on the confiscation of assets from convicted persons. There is however a counter-balance in that the number of cases has been relatively small (up to 16 live cases at any one time) and the process is resource intensive. The benefits accruing to other parts of the NIEA (other than serious waste cases) have also been limited.
- 2.20 The agency is therefore faced with two options – to continue with a relatively small number of serious cases or to broaden the scope of the crime unit to investigate and prosecute other types of cases. The decision by the Chief Executive of the NIEA to take a direct reporting role in relation to the Environmental Crime Unit is a first step in addressing this issue. There is however a need for the NIEA to better evaluate the role of the Crime Unit and consider how its expertise, best practice and resources can be better applied across the agency including enhancing the enforcement capabilities in areas of weakness. Inspectors recognise that

resource constraints, which have taken the form of unfilled posts, will present a challenge in this regard, though it will also strengthen the need for a greater sharing of existing resources and expertise within the NIEA and other DoE agencies.

- 2.21 Whilst the intention of the DVA was to establish a single enforcement unit which would incorporate compliance, enforcement and operator licensing, progress has been impeded by the nature of the relationship with the Department for Transport in London. Vehicle licensing services, including enforcement, are the responsibility of the Whitehall department and are delivered by the Driver and Vehicle Licensing Agency in Swansea. The current uncertainty about the future delivery model for vehicle licensing in Northern Ireland will therefore limit any progress in implementing this recommendation. Inspectors were informed by the DoE that this position would be clarified during 2011.

Recommendation 3

- 2.22 The enforcement of the planning system should remain a central function. Any review of enforcement should be guided by the capacity and resources of central Government, District Councils or other body (for example, the Environment Protection Agency) to deliver a robust enforcement service.

**Status: Part A: Rejected;
Part B: Partly Achieved.**

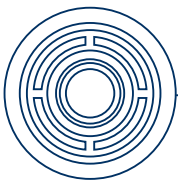
Action plan response

- 2.23 *The Executive has decided to transfer specific planning functions to the new District Councils to be established under*

the Review of Public Administration. The detail of this will be announced in due course by the Minister.

CJI assessment

- 2.24 As part of the broader governmental Review of Public Administration, it was determined that the number of District Councils would be reduced from 26 to 11. This would also entail a transfer of a range of responsibilities from central Government to the new local Councils, including planning. The review did not specify whether this would include all or part of the enforcement functions of the PS.
- 2.25 Subsequently a DoE consultation paper entitled 'Reform of the Planning System in Northern Ireland: Your chance to influence change' (July 2009), set out the Department's proposals for the reform of the planning system in Northern Ireland in the medium to longer term. It included one specific chapter on enforcement and criminalisation of development without planning permission. It also stated that '*all enforcement functions and responsibilities will transfer from the Department to District Councils when the Review of Public Administration is implemented.*'
- 2.26 A concern of Inspectors at the time of the original report was whether the District Councils, at least initially, would have the capacity and resources to deliver a robust enforcement service. A similar concern was also evident in a recent report from the Assembly's Public Accounts Committee which stated that the '*planning functions to be devolved to the new councils must be based on a sound policy foundation that provides clarity for all parties.*' (Report on the



performance of the Planning Service, Session 2009-10).

- 2.27 The second part of the recommendation has been partly achieved in that the Department has clarified its position in relation to the transfer of planning responsibilities including enforcement. There is however a lack of detail in terms of how the transfer of enforcement powers and responsibilities will be successfully delivered including how existing specialisms are retained in a more regionalised structure. Inspectors were told that no protocols for the transfer of responsibilities were in place at the time of this review. The significant improvements made in the PS enforcement over the past three years – i.e. establishment of regional enforcement teams and the elimination of case backlogs – will need to be sustained in any new governance arrangements.

Recommendation 4

- 2.28 A performance management framework is developed to ensure that enforcement operations meet strategic objectives. The framework should include policies; procedures; risk analysis; and SMART performance targets. Clear procedures must be in place to ensure the independence of the regulatory function so that enforcement staff are not subject to political and other internal/external pressures.

**Status: Part A: Partly Achieved;
Part B: Not Achieved.**

Action plan response

- 2.29 *The Department accepts this recommendation. Work is ongoing to develop a performance management framework based on SMART principles.*

CJI assessment

2.30 **Part A: Performance framework**

The necessary performance management framework is in place in that the Department and each of the agencies/ the Planning Service have multi annual corporate plans, which are augmented by annual business plans. There is also evidence of more detailed directorate and business unit plans. All of these plans in turn have accompanying targets, management information systems and performance management arrangements.

- 2.31 The situation in relation to regulation and enforcement is more complicated. At the broader strategic level, there is the Northern Ireland Better Regulation Strategy (2001), which introduced an Enforcement Concordat to serve as a blueprint for fair, practical and consistent enforcement based on existing practice. The Department refers to the employment of the terms of this Concordat in the furtherance of its enforcement duties. The Northern Ireland Executive in its Programme for Government 2008-11 had set a strategic priority ‘to protect and enhance our environment and resources’. There were also two specific Public Service Agreements which relate to the DoE and its agencies: ‘to protect our environment and reduce our carbon footprint’; and ‘to promote safer roads through the delivery of a safer roads network and achieve measurable



reductions in road deaths and serious injury'. Separately, there is the Northern Ireland Waste Management Strategy 2006-20 and a Road Safety Strategy for Northern Ireland⁸.

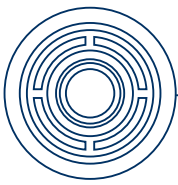
- 2.32 The establishment of a performance management framework which includes targets based on SMART principles has been more variable. In the case of the NIEA this ranges from the need 'to reduce illegal waste disposal' to the more specific 'to carry out enforcement action for 90% of high and medium severity water pollution incidents where the polluter can be identified'. In effect, the targets are reflective of the capacity and limitations of each directorate or enforcement unit.
- 2.33 The lack of an enforcement strategy and performance targets was a weakness of the PS in the last inspection. This has improved since 2009 with the publication of an Enforcement Strategy (2009) and targets. Planning Service enforcement teams have worked to internal targets since March 2009 - these were included in the Operations Directorate Business Plan 2009-10. The first Corporate and Business Plan to include a strategic objective and target on enforcement was published in late 2010. The upgrading of the PS management information systems (20/20 IT system) has allowed the development of meaningful and measurable targets.
- 2.34 The setting and measurement of targets in the DVA have traditionally been more robust with specific (ministerial) targets for vehicle excise duty evasion, MOT and compliance of goods vehicles. The former are linked to a UK wide measurement system while the latter is

more specific to Northern Ireland and includes the target to increase to 65% the compliance of goods vehicles over a two year period.

- 2.35 Inspectors are of the view that whilst progress has been good, there is scope to better align the overall performance management systems, including the setting and measurement of targets to the strategic objectives of each organisation.
- 2.36 **Part B: Independence of the regulatory function**
Inspectors recommended that the Department and its agencies must put in place clear procedures to protect the independence of the regulatory function including from any political and other internal/external pressures which might compromise the impartiality of decision-making; or create the perception of doing so.
- 2.37 A robust enforcement policy is critical in this regard as it should enshrine and help to protect the key principles of better regulation (for example, transparent, proportionate and consistent enforcement decisions).
- 2.38 While progress on developing a bespoke enforcement policy in the NIEA has progressed including a period of public consultation, no finalised document was available at the time of this review and the 2002 version was still operational. Subsequently a new NIEA enforcement policy was cleared by the Minister in November 2010 and approved by the Environment Committee in December 2010 for publication.

⁸ The Minister for the Environment announced in March 2010 that a new road safety strategy for Northern Ireland will be prepared following a period of consultation. This Strategy will set more challenging targets to reduce road deaths and serious injuries.





2.39 Both the PS and the DVA have developed their own enforcement strategies, though separate policy documents were not available at the time of this review. The strategies do however contain some elements of a policy, though this would need to be strengthened as a means of providing greater transparency to those regulated by both agencies. The development of a PS strategy on enforcement followed some critical reports by the Northern Ireland Audit Office and the Public Accounts Committee of the Northern Ireland Assembly, in which the latter stated that the *'Planning Service must continue to improve its enforcement operations... that it puts in place a formal enforcement strategy and monitors and reports performance against specific, measurable targets.'*

2.40 A second element in protecting independence is the need for a transparent mechanism or set of procedures to regulate external and ministerial inputs to enforcement decisions. Inspectors are aware of the NIEA Protocol on Third Party representation, which has been agreed by the NIEA. This deals with external representations rather than internal or ministerial interventions. No similar protocol exists in either the DVA or the PS. It is the view of Inspectors that this protocol should be adopted by the DVA and PS. The Department is well placed to take the lead on this issue.

2.41 The issue of ministerial intervention is more complex. Enforcement activities within Government departments and agencies do not benefit from the same legislative safeguards for the

investigation and prosecution of offences within the criminal justice system. This can be traced back to the Review of Criminal Justice, which recommended the establishment of an independent Public Prosecution Service (PPS), which would take the prosecution decision on all files submitted by the police. Similar safeguards, though envisaged, were not implemented in relation to the DoE and other Government departments.

2.42 The advice of the Department to Inspectors is that like all Northern Ireland Departments, the functions of the Department are at all times *'exercised subject to the direction and control of the Minister'*.⁹ The Minister is not an observer of a decision-making process within a Department to which he/she may contribute, but is instead the individual with statutory authority at all times to exercise direction and control over all the functions of the Department – and that includes its enforcement functions when they are defined in statute as functions of the Department.

2.43 Inspectors accept the constitutional position of the Minister in relation to his/her overall authority regarding decision-making within the Department. It is also accepted that enforcement staff have the status of departmental civil servants and therefore under the direction and control of the Minister. The Minister is not however immune from due process and it is important that all decisions are defensible and that staff have the protection of a transparent decision-making process that is free from undue and inappropriate interference.

⁹ Article 4(1) of the Departments (Northern Ireland) Order 1999.



2.44 Inspectors advocate an amendment to the existing recommendation so that specific procedures and guidance are developed by the Department on whether and how a Minister may participate in the decision-making processes involved. Ministerial involvement should be appropriately recorded and there should be escalation procedures in place for staff who feel they are under pressure to change decisions – however valid that decision may be. This could include escalation ultimately to the Permanent Secretary as in relation to contested decisions and possible involvement of the PPS as the final arbiter of whether to proceed with prosecutions. The PPS do not currently receive cases from the PS.

2.45 At a broader level it is important to consider the protection offered to staff in the investigation and prosecution roles within the Department and the extent to which guidance should be offered to Ministers regarding their involvement in individual cases. If this means a change to the current legislation then there should be a debate on the issue.

2.46 Part of the approach taken in neighbouring jurisdictions in England and the Republic of Ireland (RoI) has been the establishment of enforcement units/offices within more autonomous Environmental Protection Agencies and therefore a more arms-length relationship with the civil service governance model. This was ruled out as an option for Northern Ireland by the then Minister. The current Minister has re-opened the debate through the publication of an initial discussion

document which examines the options for environmental governance including an independent Environment Agency.¹⁰

Recommendation 5

2.47 A single incident and enforcement database should be developed for the DoE family.

Status: Not Achieved.

Action plan response

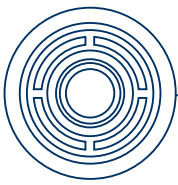
2.48 *The Department accepts this recommendation in principle. Work is ongoing to discuss the practicalities and benefits of setting up a shared database across the Planning Service, the NIEA and the DVA.*

CJI assessment

2.49 The purpose of this recommendation was to harness and share the various sources of information (for example, on offenders, prosecution files, sites visited etc.) collected by the DoE agencies as a means of developing a more targeted and risk-based approach to enforcement. Inspectors became aware, during the first inspection, of some overlap in offending patterns, which related to the enforcement work of two or more DoE agencies. Enforcement staff also raised concerns about multiple cross agency visits to some sites/operators which, whilst sometimes an inefficient use of resources could also be a health and safety risk. An example of this risk was when a non-enforcement member of DoE staff had visited a site unaware that the operator was earlier the subject of enforcement proceedings.

¹⁰ Environmental Governance in Northern Ireland, Discussion Document, DoE, 5 August 2011.





2.50 Progress on this recommendation has been slow due to a number of factors. Management and staff referred to the sensitivities of access to certain information, particularly in relation to serious crime. The Environmental Crime Unit has established its own intelligence database, which operates at confidential level meaning that there is no access for other data banks in the NIEA and DoE agencies. It can of course benefit from intelligence and information gained from other less secure databases across the NIEA and the DoE.

2.51 A second impediment was cost, which was noted particularly by the DoE Management Board in its rejection of a single enforcement database and raised again by senior management in the latter stages of this follow-up review. The budgetary constraints are likely, at the least, to delay the introduction of a proposed single site visit database in the NIEA.

2.52 A third constraint has been the need for agencies to develop and enhance their internal databases before consideration of any sharing and linking of data. The DVA has ruled out the development of a single shared inter-agency database, until it has strengthened its own internal IT systems. Similarly, the development of the 20/20 IT system, which will link to a new ePic system has taken priority in the PS. The upgrade of the PS IT and management information systems has greatly enhanced its capacity to capture all of its enforcement activities.

Recommendation 6

2.53 The Environment and Heritage Service, through the proposed new enforcement unit/office, should review the existing

administrative systems and processes for compliance and enforcement, and develop a set of procedures and processes to produce a more streamlined and efficient service. A similar review should be undertaken by the PS and the DVA as part of ongoing re-organisations.

Status: Partly Achieved.


Action plan response

2.54 *The Department accepts this recommendation. The administrative systems and processes for compliance and enforcement will be reviewed. This will in the case of the NIEA be undertaken through its new Better Regulation Programme. The DVA will also review its enforcement section to determine the way forward on this issue.*

CJI assessment

2.55 The purpose of this recommendation was the need to improve the internal processes for initiating, progressing and completing compliance and enforcement activities. It is also aligned with the need for new/updated enforcement strategies and policies. The requirement to address this issue was apparent to Inspectors at the original inspection when it was found that the considerable resources devoted to enforcement activities were not in the main realising the expected benefits in terms of prosecutions and accompanying sanctions. The longer term benefits or outcomes in terms of better environmental protection and improved road safety were not readily apparent.

2.56 While prosecutions were considered an important tool in enforcement, all of the agencies referred to the use of other



enforcement tools such as verbal and written warnings, stop notices, revocation of licenses/permits etc. which might not require a formal court prosecution. Inspectors accepted the importance of these non-court disposals but wanted to see a clearer process map for their implementation including clear guidance on their application. That level of detail was not available at the time of this review.

2.57 The issue of non-court disposals has been addressed by the DoE in a consultation document which includes a proposal to introduce graduated Fixed Penalty Notices in areas such as breaches of a PS Enforcement Notice. The Government Response to Planning Reform Consultation Paper published in March 2010 states that Fixed Penalty Notice powers in respect of a breach of an Enforcement Notice or Breach of Condition Notice will also be introduced. A similar use of Fixed Penalty Notices is under consideration for a range of environmental offences, as well as commercial vehicle offences. The likely impact of these proposals is that less time will be required to compile court prosecution cases thus freeing up resources to target the more serious criminal cases. It may also lead to a significant increase in enforcement cases as the process will be quicker and not as dependent on the resources of criminal justice agencies. As an example, it was reported to Inspectors that about 50% of the 1,700 taxis checked in a one year period were non-compliant but that just 13% received a court based sanction.

2.58 Notwithstanding the importance of non-prosecution and non-court disposals, there is a continuing need to maintain a

prosecution capacity in order to deal with more serious cases as well as providing an alternative tool when other methods are not successful. The evidence from this inspection is that the processes of identifying and progressing such cases can vary significantly within the DoE agencies. Inspectors have been told that the NIEA has started to look at this issue as part of the work of the Enforcement Liaison Group. This work needs to continue. The scope for further process improvements in the DVA has been hindered by some human resource difficulties within the enforcement teams which have contributed to under-performance. There have also been some attempts to modernise the administrative processes within the DVA including the development of a system of court notifications, but more progress is required.

Recommendation 7

2.59 Enforcement staff should receive training, work experience, job shadowing and skill enhancement to deliver the required standards. It will also require new staff to be selected and recruited to fill gaps in areas such as criminal investigations and the broader strategic management of enforcement.

Status: Achieved.

Action plan response

2.60 *The Department accepts this recommendation. Training of enforcement staff is an ongoing process to ensure they are equipped with the appropriate skills to fulfil their duties. Recruitment procedures will be kept under review to ensure staff are recruited who have demonstrated they have the competencies required.*



Recruitment is underway in the NIEA to appoint additional enforcement staff.

CJI assessment

- 2.61 Progress since the last inspection has been largely positive in that each of the agencies has invested in the training and career development of their enforcement staff. The skills levels of many staff are in line with investigators in other law enforcement agencies - this is particularly evident for those working within the Environmental Crime Unit. The recruitment of staff to fill capacity gaps in areas such as serious waste offences and non-compliances in planning law has proceeded. The feedback from enforcement staff in the PS has been positive in terms of training and career development with many staff having been trained in PACE. In addition, all enforcement staff received a training package covering the introduction of enforcement targets, changes to procedures, roles and responsibilities and the new upgraded 20/20 enforcement screens. The DVA has also recruited new staff including the appointment of temporary staff to address some immediate needs and has invested in training and career development.
- 2.62 The only criticism from Inspectors is the utilisation of some of this training - a problem which is not unique to DoE agencies. Some staff across the agencies have referred to the under-use of some specific enforcement training and would have preferred a more targeted approach. The view of management is that this investigative training has helped in the delivery of other enforcement and compliance activities such as warnings, cautions, suspensions and revocation of licences.

Recommendation 8


- 2.63 A structured framework of service level agreements (SLAs), memorandum of understandings (MoUs), protocols and bi-lateral agreements is put in place for the strengthening of partnerships within the DoE family, other Law Enforcement Agencies and with similar cross-jurisdictional organisations in Great Britain (GB) and the RoI.
Status: Achieved.

Action plan response

- 2.64 *The Department accepts this recommendation. A number of MoUs are in place with a range of relevant organisations including the PSNI, Financial Investigation Unit and draft agreements which will be formally agreed exist with Her Majesty's Revenue and Customs and the Serious Organised Crime Agency. Consideration is underway in to the need for additional MoUs.*

CJI assessment

- 2.65 Considerable progress has been made since the last inspection in developing and strengthening partnerships including achieving DoE/NIEA representation at the Northern Ireland Organised Crime Task Force – an acknowledgement that certain types of environmental crime are linked to broader organised criminal activities. In order to support collaboration on enforcement across the various regulatory regimes, the Environmental Crime Unit can tackle a broad range of serious offences, persistent offenders and those involved in criminality.
- 2.66 Whilst no formal protocol has been put in place between the NIEA and the PS,



an inter-agency MoU has been, and there was evidence of co-operation in a number of areas. A planning enforcement/Land and Resource Management/Environmental Crime Unit group meets regularly to discuss on-going operational issues and the application of the inter-service MoU. The issue of contention, as covered earlier in the report, relates to the enforcement of listed buildings – an area of enforcement which has received considerable public attention in recent years due to unauthorised damage and demolitions.

2.67 The DVA has also established linkages with the PSNI, particularly with districts, in operations such as heavy goods vehicles and taxi enforcement. There was however a view, expressed in the last inspection, that joint operations were sometimes cancelled at short notice due to competing priorities in the police. Whilst such cancellations may still occur, Inspectors were informed that in the main the level of co-operation with the PSNI was positive, especially on the ground.

2.68 Working relationships with other law enforcement agencies were described as less collaborative due to the different priorities for each agency. The DVA also has close linkages with its equivalent enforcement organisation in GB – the Vehicle and Operator Services Agency – and there was considerable sharing of experiences and approaches to enforcement. Linkages with the Road Safety Authority in the RoI have developed with about two to four joint operations per year, though considerable scope for improvement exists due to the common road safety problems on both sides of the border.

Recommendation 9

2.69 A review of the present arrangements for the provision of legal advice and prosecutorial services should be carried out to determine how best to support successful prosecutions.

Status: Achieved.

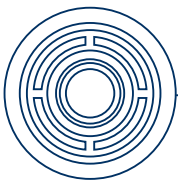
Action plan response

2.70 *The Department accepts this recommendation. A review of the present arrangements is underway. The DVA is already in the process of developing a SLA with the PPS.*

CJI assessment

2.71 There are two different models for the prosecution of cases within the DoE – the NIEA and the DVA send their cases to the PPS for a decision on prosecution and for the conduct of the case in court, while prosecutions in court for the PS are undertaken by private firms of solicitors. At the time of the last inspection, Inspectors recommended that these arrangements should be subject to review in the context of improving the overall approach to prosecution.

2.72 The relationship between the two DoE agencies and the PPS is critical to the success of the overall prosecution process – the feedback from the PPS is that file quality is generally good and that few cases require additional information before presentation in court. Indeed, the vast majority of the NIEA and the DVA cases are taken forward for prosecution. This is in part due to the quality of the investigation files, though it may also indicate a reliance on the expertise and



judgements of the DoE enforcement staff and the lack of similar expertise in the PPS.

- 2.73 There is a view among some enforcement staff in the NIEA and the DVA that the provision of more specialist prosecutors by the PPS would improve the prosecution of cases and contribute to improved outcomes (for example more convictions; strict sanctions). This is partly based on the increasing complexity and volume of European and national legislation in areas such as the environment and transport and the increasing trend towards specialism among defence firms/counsel.
- 2.74 The approach in the PS is different, due in a large part to the relatively small number of prosecutions, as most non-compliances in planning law are civil rather than criminal matters, and a recent consultation exercise has opposed any movement towards a greater criminalisation of planning offences. Management in the PS are therefore content to continue with the present arrangements. This means that solicitors from a list of three firms are selected to prosecute cases on behalf of the PS. Inspectors see the benefits in renewing this panel as it has been in place for some time, and therefore welcome the recommendation of the internal audit review of Development Control (enforcement) that a competitive tendering exercise should be carried out.¹¹

Recommendation 10

- 2.75 Environment crime/non-compliance should be pulled together into a specialist legal jurisdiction with an option to establish an environment court to handle all environment business in Northern Ireland.
Status: Rejected (outside the direct control of the Department).

Action plan response


- 2.76 *The Department notes this recommendation. Responsibility for legal jurisdiction comes under the control of the Lord Chief Justice as it is a reserved matter and is therefore outside the control of the Department.*

CJI assessment

- 2.77 This recommendation for consideration of a legal jurisdiction in which specialist prosecutors and possibly an environmental court would deal with environmental crime was made on the basis of a broader debate around the effectiveness of enforcement. A major report on the issue by Professor Macrory¹² suggested a number of improvements, including the setting up of Environmental Tribunals to deal with environmental crime to ensure that justice is timely and that enforcement action is effective.
- 2.78 There was a consistent view among enforcement staff, particularly in the NIEA and the DVA that prosecution outcomes did not necessarily reflect their inputs (for example, investigation and case preparation) or the seriousness

¹¹ Inspectors were informed by the DoE in July 2011 that a competitive tendering exercise is ongoing with the Departmental Solicitor's Office and Central Procurement Division.

¹² Regulatory Justice Making Sanctions Effective, Richard Macrory, 2006.



of the offence and that the sanctions were not deterring offenders – this was made more forceful to Inspectors in terms of profit motivated crime. The exception was the use of confiscation proceedings at the post conviction stage, where significant financial penalties have been extracted.

2.79 A review of waste related prosecutions undertaken by the NIEA in the period 2003-09 was provided to Inspectors. It shows that there were 381 convictions over the seven year period. Most convictions resulted in a fine though there were a number of absolute discharges and a total of 21 custodial sentences – 15 of the custodial sentences were suspended for various periods by the court. The total amount of fines imposed by the courts over the seven year period amounted to £1.04 million which represents an average fine of £2,728 per conviction.

2.80 The number of convictions peaked at 116 in 2006 which has shown a sharp reduction in later years with just 35 in 2009. The amount of fines imposed by the courts also peaked in 2006 at £305,530 and has fallen in each subsequent year. The largest fine imposed by the court was £160,000, though this was reduced to £89,000 on appeal. A number of appeals were successful in generally reducing the fine and/or sentence – one appeal resulted in an increased fine.

2.81 It is important to note however that the more serious offences, which are dealt with in the Crown Court, can also be subject to Confiscation Orders and any such Order is additional to any sentence imposed by the criminal court. It is now the practice of the NIEA Crime Unit to

follow-up the most serious cases with confiscation proceedings which may substantially exceed any fines due in large part to the likely profits made by illegal activity. The likelihood of confiscation proceedings, which follow conviction in the courts, has led to a more robust defence of cases according to the NIEA enforcement staff. This has on occasion also led to lengthened criminal proceedings and the involvement of senior defence counsel. The first confiscation order by the NIEA was taken in March 2009 with three more orders in March 2010. At the time of the fieldwork, ten confiscation orders were in the pipeline pending an appeal judgement.

Recommendation 11

2.82 Detailed policies and procedures should be developed by the NIEA to implement new powers in relation to recovery of investigation costs and better implementation of the ‘polluter pays’ principle.

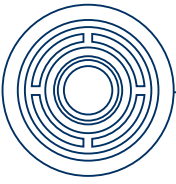
Status: Partly Achieved.

Action plan response

2.83 *The Department accepts this recommendation. Policies are already in place to ensure recovery of investigation costs on the ‘polluter pays’ principle.*

CJI assessment

2.84 There are two elements to this recommendation – the first relates to the recovery of investigation costs. The view of Inspectors is that this is rarely used other than in the NIEA Water Management Unit and that where it is applied, the costs represent only a small fraction of the actual investigation costs.



2.85 The second issue relates to better implementation of the ‘polluter pays’ principle which can include investigation costs, but is more linked to restoring the damage to the environment and having to surrender assets acquired as a result of criminal activities. The criminal justice system in Northern Ireland, in common with neighbouring jurisdictions, has not fully applied this principle. There are however new routes available including Confiscation of Assets proceedings which are beginning to impose larger financial penalties on convicted offenders.

2.86 Inspectors consider that application of the ‘polluter pays’ principle is still at an early stage and largely confined to cases taken by the Environmental Crime Unit. The benefits of imposing clean-up and reparation costs on those who damage the environment are more pertinent in an era of public spending constraints and offer significant potential to change offender behaviour. A widening of the ‘polluter pays’ principle will however require the input and support of the criminal justice system, as well as policy makers (for example, application process for confiscation proceedings). Such applications, as well as the criminal proceedings, can expect increased legal challenges from those affected – there is some evidence from the NIEA Environmental Crime Unit that more robust legal challenges are taking place in relation to criminal and civil proceedings.

Recommendation 12

2.87 Each of the agencies should establish effective mechanisms to draw upon and learn from best practice on enforcement.

Status: Partly Achieved

Action plan response

2.88 *The Department accepts this recommendation. Internal DoE and external discussions have already been held and are ongoing to share and learn from best practice.*

CJI assessment


2.89 The establishment of the Enforcement Liaison Group which brings together practitioners from across the NIEA is a first step towards achieving a better exchange of knowledge and experience within that agency. It does however require ongoing commitment and needs to be supported by practical actions such as sharing of information and resources. Too many enforcement staff continue to operate remotely within niche areas and this requires ongoing attention. An Enforcement Working Group has been established in the PS which brings together enforcement staff at principal level to share key enforcement issues and best practice. Inspectors welcome the establishment of these internal structures and would see scope to broaden membership to include relevant enforcement staff from across the DoE agencies and indeed joint meetings when appropriate.

CHAPTER 3:

Conclusions



- 3.1 The purpose of this review was to assess the level of progress made by the agencies in relation to implementing the recommendations from the original CJI inspection report. Most of the recommendations were strategic in nature, in that they covered issues common to two or more of the DoE agencies. For the purposes of implementation, a number of the recommendations were split. The overall judgement of Inspectors is that 3.5 recommendations were achieved, 5.5 were partly achieved and 1.5 not achieved. The remaining 1.5 recommendations were rejected.
- 3.2 Good progress has been made in a number of areas such as:
- increasing the profile and importance of enforcement;
 - investing in staff training and development;
 - developing a specialised crime unit for the most serious environmental offences;
 - implementation of confiscations of assets proceedings;
 - establishing regional enforcement teams in the PS including reducing the backlogs of cases; and
 - sustaining areas of best practice.
- 3.3 The challenges are small in number but large in terms of impact. The first relates to strengthening the enforcement capacity of areas such as the NIEA Land and Resource Management Unit. This will require a better targeting of existing resources as well as bespoke support from within the agency.
- 3.4 The second immediate challenge relates to sustaining the improvements already made to enforcement. Inspectors were struck in particular by the marked changes to enforcement in the PS with the establishment of regional enforcement teams and the near elimination of case backlogs. The PS will want to protect these improvements in an era of shrinking budgets.
- 3.5 The third challenge is for the DVA to strengthen its enforcement performance in relation to commercial vehicles and seek to mirror the improvements already evident in relation to vehicle licensing and MOT evasion. The fact that up to half of commercial vehicles may be non-compliant in some respect presents an ongoing road safety risk while undermining any attempts to regulate the commercial vehicle sector.



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