

Environmental Plans, Principles and Governance for Northern Ireland

Public Discussion Document

Stakeholder Response Template



10 December 2020

Sustainability at the heart of a living, working, active landscape valued by everyone



Department of
**Agriculture, Environment
and Rural Affairs**

www.daera-ni.gov.uk



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How to Respond

This template replicates the questions posed in the online survey on the Environmental Plans, Principles and Governance for Northern Ireland Public Discussion Document found at:

<https://www.daera-ni.gov.uk/consultations/environmental-principles-and-governance>.

The full text of the consultation can be found on the Department's website by following the link above or by contacting us to request a hard copy. It is recommended that you should read the full consultation document before completing your response, whether you choose to use this template or the Citizen Space Hub.

If you wish to use this template for your response, please reply by e-mail or hard copy respectively to:

environment.bill@daera-ni.gov.uk

or

Environment Bill Team

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Early responses are encouraged but all responses should arrive no later than **5pm on Friday 26 February 2021**. Before you submit your responses please read

the “Freedom of Information Act 2000 - Confidentiality of Consultation Responses” section below, which gives guidance on the legal position.

Freedom of Information Act 2000 – Confidentiality of Consultations

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can refuse to disclose information only in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority (the Department in this case). This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances.

The Lord Chancellor’s Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department’s functions and it would not otherwise be provided;

- the Department should not agree to hold information received from third parties 'in confidence' which is not confidential in nature;
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of responses, please contact the Information Commissioner's Office:

Tel: (028) 9027 8757

Email: ni@ico.org.uk

Website: <https://ico.org.uk/>

ABOUT YOU

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Please note that the text boxes used throughout this template will expand to accommodate your response – there is no character limit.

ENVIRONMENTAL PRINCIPLES

Q1: Should Northern Ireland continue to be guided by these environmental principles in the long term?

Yes

No

If so, would you agree with the mechanism for a policy statement of Environmental Principles as outlined above?

Yes

No

Additional comments

Northern Ireland needs effective environmental governance to fulfil the requirements of the UK-EU Trade and Cooperation Agreement and meet domestic and international obligations and priorities. Environmental governance in Northern Ireland has historically been weak and we are 10-15 years behind the rest of the UK. With the climate and biodiversity crises, this needs to change moving forwards. We remain the only part of the UK and Ireland that does not have an independent Environmental Protection Agency and this is not a track record to be proud of as we consider governance structures that are fit for purpose, future proofed and capable of building back better. We welcome the commitment of Political Parties in New Decade, New Approach to establishing an Independent Environmental Protection Agency and look forward to this structure being implemented quickly to strengthen environmental governance in line with the good practice we see elsewhere in the UK.

Environmental principles are important as they provide the foundation that informs legal and policy frameworks for environmental protection and sustainable development including the Green Growth Strategy. They are also necessary in ensuring compliance with the Trade & Cooperation Agreement as this includes reciprocal commitments relating to **non-regression**. Both parties have agreed **not to reduce** the level of environmental or climate protection or **fail to enforce** the laws contained within the agreement.

The principles as outlined in this consultation will provide consistency with the EU regulatory framework however, it is important to realise that this mirrors the status quo and it has not delivered the required environmental outcomes to date. We would strongly suggest that the environmental principles adopted are future proofed and fit

for purpose to underpin sustainable development and facilitate the pathway to net zero for greenhouse gas emissions and reversing the loss of biodiversity.

The Trade and Cooperation agreement gives both Parties the freedom to set their own climate and environmental policies in the most appropriate way to achieve 'world leading domestic aims'. It states that domestic supervisory bodies of the UK & EU will cooperate to ensure effective enforcement of their respective environmental and climate laws. NI is therefore free to develop bespoke principles to underpin environmental protection and sustainable development thereby accelerating progress by stimulating a positive direction of travel subsequently reducing costs to the public purse. The principles could include requirements to:

- Achieve net zero emissions by 2050
- Protect, restore, enhance and create natural capital assets.
- Deliver net biodiversity gain/Net environment gain
- Promote habitat extent, condition and connectivity
- Provide public goods for public money
- Enable access to environmental information

Of primary importance is the development and agreement of an overarching goal that sets out a long-term vision for the environment as a frame of reference. For example, "To be the first generation to leave the environment in a better state than we found it." This overarching principle needs to have the endorsement of the NI Assembly and provide the long-term ambition against which policy suggestions and options are tested.

ENVIRONMENTAL IMPROVEMENT PLANS

Q2: How do you feel alignment of the Environment and Green Growth Strategies can be best achieved?

Northern Ireland needs an effective Environmental Improvement Plan (EIP) that translates strategic intent, goals and objectives into a plan that can be actioned and implemented. To be effective, the EIP should include legally binding long-term targets that are aspirational and engaging with clearly linked and well defined interim targets. Some goals may need multiple targets to deal with different aspects where the issues are complex.

Statutory targets also need to be integrated within the Programme for Government as outcome indicators. DEFRA and the Natural Capital Committee have published potential targets and these should be considered during the development process.

The targets then need clear measures and monitoring protocols. The monitoring, reporting and assessment requirements need to be properly resourced with

accountabilities and responsibilities defined. Agreement needs to be obtained on where monitoring is required and when modelling is sufficient. A clear baseline consolidated by an adequate cycle for assessment (e.g. 5 yearly) with a regular environmental census would enable progress to be evaluated in an accountable transparent way.

A systems approach will be needed to avoid policy decisions on one environmental issue having an adverse impact on another e.g. the quest for net zero resulting in perverse outcomes for biodiversity.

An overarching natural capital account with associated risk register and maintenance strategy would help provide the focus to underpin the necessary change process, ensuring that natural assets are properly protected and enhanced. An agreed methodology will be required to establish the baseline and determine net biodiversity and net environment gain and how to deal with any trade offs. This needs to be underpinned by verification and governance arrangements to test proposals for net gain to ensure they are valid.

To ensure effective alignment of the Environment and Green Growth Strategies, all the actions covered above should be incorporated into the Environmental Improvement Plan and integrated as material considerations within decision making processes related to the Green Growth Strategy which needs to deliver **green recovery** and ensure any growth is **truly sustainable**.

Of fundamental importance is creating an understanding of the environmental capacity to accommodate different levels of growth and development at different locations and ensuring that planned development and growth remains within environmental capacity limits. All new developments and infrastructure should be required to contribute to the delivery of net environmental gain and net zero carbon. Understanding the impact of proposed development on the environment, including cumulative and indirect impacts is critical and ensuring environmental and strategic assessments are appropriate for the type and scale of development programmes.

To effectively align the Environment and Green Growth Strategies, environmental issues will need to be afforded an increased priority within the local spatial planning policy and decision frameworks e.g. protection of nature assets, requirement for net gain. This is important as the impacts of inappropriate development will be long term and difficult to reverse if assessments are not adequate or conditions not effectively enforced. Concepts such as a natural capital based approaches and climate resilient nature recovery strategies/networks should be an integral part of the planning framework to halt and reverse the biodiversity decline similar to those being introduced in England as a statutory requirement for local authorities. Biodiversity and climate assets need to be given a greater degree of protection.

The health and wellbeing benefits of nature should also be maximised within spatial planning frameworks by providing nature-rich greenspace, in and accessible to, new developments including commercial zones. This is particularly important given NI's current and historic levels of mental health conditions.

The Green Growth Strategy is an important topic requiring proper consideration beyond the scope of this consultation and well thought out protection,

enforcement and enhancement mechanisms based on better regulation principles. This needs to be based on proactive green recovery strategies capable of delivering on the UK commitments (domestic and international) and supporting opportunities for sustainable development where they add value to the NI economy within environmental limits.

ENVIRONMENTAL GOVERNANCE IN NORTHERN IRELAND

Q3: Should the OEP be implemented in Northern Ireland?

Yes

No

If no, how would you envisage we maintain existing systems of environmental governance?

Additional comments

Due to the delay in the Environment Bill at Westminster, the OEP is the only option available in Northern Ireland before the next election to avoid a lengthy governance gap. There is insufficient time to develop a bespoke NI policy with alternative governance mechanisms, undertake the required consultation and finalise legislation prior to the elections in 2022.

The OEP's oversight will need to cover the functional areas within domestic legislation and international law including the Trade & Cooperation Agreement, which encompasses the agreed 20 laws on the environment and fisheries. Climate also falls within the scope of the agreement, however, it is assumed that this remit will remain with the Climate Change Committee and a close working relationship will exist between the two bodies.

The OEP can only carry out its function if a high quality Environmental Improvement Plan is in place as progress is benchmarked against this baseline. The development process needs to be completed as a matter of urgency prior to the body officially commencing its role within Northern Ireland. It is assumed that the EIP will be subject to public consultation and that the OEP will have the opportunity to feed in to the development process.

Please note- If you have indicated that you do believe there should be an alternative governance body for Northern Ireland then your answers to the remaining questions will be read on that basis.

INTERACTIONS WITH OTHER OVERSIGHT BODIES

Q4: Are there other public bodies with whom the OEP should establish particular arrangements and why?

Yes

No

If yes, please elaborate

Arrangements will be required with a range of executive, advisory, legal and academic institutions including the NI Ombudsman and PSNI. If the body is located in England, one of the concerns that needs to be addressed is the potential reluctance of some sections of the NI community to report issues to an office based in England. This could be resolved through an arrangement with the NI Ombudsman to receive complaints on behalf of the Office for Environmental Protection, check that all appeals mechanisms have been exhausted within NI and subsequently pass on to the OEP.

There will also need to be cooperation arrangements to deal with cross jurisdictional environmental issues where these occur. As such, the OEP will need to establish arrangements with the Irish Government and North South Ministerial Council. Many environmental issues including air, water, biodiversity & carbon are cross border in nature as Ireland is one biogeographic unit. The environment is not subject to the Agreement's main dispute resolution mechanisms but subject to a bespoke Panel of Experts procedure, yet to be determined for cross border issues.

ESTABLISHING THE OEP IN NORTHERN IRELAND

Q5: Do you have any comments on interim arrangements for Northern Ireland?

The interim arrangements for NI provide a mechanism to lodge complaints with the OEP through the Interim Environmental Governance Secretariat (IEGS), however complaints will not be processed until the body becomes fully operational. The only recourse during this period in practice is a Judicial Review based on domestic legislation that is more limited in terms of scope, remit, remedies and sanctions.

There will also be a time differential between the date of Royal Assent, the vesting date for the OEP in England and approval from the NI Assembly. Clarity on the proposed arrangements during this period is required and it would be beneficial if the OEP could operate in shadow form during the intervening period enabling the body to provide oversight ahead of their founding legislation similar to the Committee on Climate Change and the Office for Budget Responsibility. It is important that preparatory arrangements for NI are developed in tandem with the rest of the UK.

During the interim period, it is essential that the groundwork to facilitate effective implementation of the Office for Environmental Protection's oversight functions is put in place. This necessitates the development of Northern Ireland's Environmental Improvement Plan and agreed baseline programmes for monitoring and evaluation. Without this framework the OEP cannot carry out its functions.

If suggesting an alternative to the OEP how would you address the longer development and implementation period that would result in a lengthier governance gap?

The OEP is the only realistic option for Northern Ireland in the short and medium term.

APPOINTMENTS, REMUNERATION AND FUNDING

Q6: Are you satisfied with the arrangement for Northern Ireland representation on the Board of the OEP?

Yes

No

If you have indicated that you believe there should be an alternative governance body, how do you think it should be structured?

Additional comments

Representation on the Board of the OEP must be suitable for NI's constitutional context and the caliber of the person will be a key determinant of success. Given the legislative, trade and cross jurisdictional issues specific to NI, it is suggested that the regional board member will require an increased time allocation in relation to other board members; also due to the separate reporting that will be required for the regional EIP.

The formation of a sub-committee within the Board dealing with Northern Ireland matters should be considered and the formation of an expert NI panel at the outset would add significant value and provide the capacity to assist with cross border issues as required. It is assumed that there will be close links between the OEP and the Committee for Climate Change as many of the issues are complex and interlinked.

Consistent with public appointments at this level, endorsement of the First and Deputy First Minister will be required.

APPOINTMENTS, REMUNERATION AND FUNDING

Q7: How do you think the OEP or an alternative should be funded in Northern Ireland?

Funding will be central to the effective functioning of the OEP in NI & it would be encouraging to see a provision from Treasury that would facilitate the extension of its function and remit to NI. However, if this is not feasible NI should pay its share on a percentage of population basis, although in reality with the issues to be addressed additional time allocation to NI will be inevitable.

The OEP will be obliged by statute to state annually to Parliament, whether it has been sufficiently resourced or not, to carry out its function which is unusual and important for the establishment of a new body with an oversight function for environmental domestic and international legislation.

If an alternative, how would you justify the additional costs that would be involved in establishing a bespoke Northern Ireland approach?

Additional comments

PRACTICAL ARRANGEMENTS AND EXTENT

Q8: Should there be a permanent office in Northern Ireland?

Yes

No

How should it be staffed?

Following discussions with the OEP and assurances provided in relation to the potential working arrangements for NI issues, we would be content that the NI staff allocations is based at the OEP Office in England with regular prolonged visits to NI. This will enable the organisational culture to be developed and consistency of approach ensured across the UK during the formative stages of the OEP. It is however important that the OEP is seen to respect devolution and is familiar with the institutional and legal systems in NI as well as the external operating environment and cross-jurisdictional structures. A review clause should be included within any agreement.

Given its role, to communicate independence the office should be distinct from public bodies. However, as previously stated an arrangement with the NI Ombudsman would facilitate the processing of complaints via a local NI address.

The office should be staffed with professionals in the areas of environmental law, regulation and enforcement with independent expert opinion to call on as required.

PRACTICAL ARRANGEMENTS AND EXTENT

Q9: What other practical arrangements should be addressed in advance of setting up the OEP or an alternative in Northern Ireland?

Protocols for dispute resolution on cross-jurisdictional issues need to be developed and agreed. The OEP will have an oversight and an advisory function. Its role and remit with regard to advising on cross border environmental issues which impact on NI's ability to achieve legislative compliance needs to be fully defined and agreed.

An engagement and awareness programme for public bodies, the judiciary, stakeholders and the general public would be essential due to the lack of engagement during the formative phase of the arrangements.

A computerised case management system will be required, however this facility will be common to the rest of the UK.

FUNCTIONS OF THE OEP

Q10: Are you satisfied that the OEP or an alternative should carry out the described functions in Northern Ireland?

Yes

No

Additional comments

There were many critical functions and responsibilities performed by the European Commission which have been lost on leaving the EU. It is important that the mechanisms developed to replace this oversight role are effective and that environmental governance in NI (and across the UK) is fit for purpose. There are a number of specific areas of concern in this regard.

1. **Independence:** The role of the OEP should be as unfettered and free from government influence to mirror the previous EU-regime. The role of the OEP should be not be constrained by Government or Ministers. It should have the ability to act independently similar to EU structures for the benefit of current and future generations. The track record of environmental governance in NI is poor and it is important that such powers do not result in undue influence and adversely impact on the ability of the OEP to effectively carry out its role and maintain independence, transparency and accountability.
2. **Access to justice:** The EU had the ability to carry out substantive legality reviews and it is important that this is replicated within the functionality of the OEP. Sole reliance on judicial review for decisions on environmental law does not provide an effective method of ensuring good governance at a strategic level.
3. **Enforcement:** The OEP needs to have the scope to act where it is most needed & to take a strategic role in terms of oversight and enforcement of environmental law. Enforcement mechanisms in NI are not fully effective and as such this will be an important function if the body is to play its role in effecting change.
4. **Remedies & sanctions:** It is important that the body retains sufficient power to bring about change. Better regulation approaches with improvement notices provides the opportunity to rectify issues however, tangible substantive sanctions are required where non-compliance continues.

Our hope is that the OEP will bring advancement of good environmental governance enhancing the quality of life for NI's citizens. One of the best ways of improving the effectiveness of governance is to encourage participatory governance by deepening

democracy and access to information and this should be a priority for the OEP. Good governance relies on smart governance that takes a longer term, holistic view of environmental needs and priorities (domestic and international obligations) and promoting the welfare of the citizens.

TRANSBOUNDARY ISSUES

Q11: What bodies should the OEP or an alternative be working with on transboundary issues?

The Environmental Protection Agency Ireland will be the key body for transboundary issues in addition to the DAFM and NPWS. Environmental protection & enforcement is primarily administered and enforced by the EPA, The Minister for Communications, Climate Action and the Environment and the Minister for Housing, Planning and Local Government.

If an alternative, what arrangements should that body have for working with the OEP?

Other comments