

**ENVIRONMENTAL GOVERNANCE IN  
NORTHERN IRELAND**

**IDENTIFYING THE DRIVERS FOR CHANGE AND  
CONSIDERING SOLUTIONS**

Ray Purdy and Peter Hjerp

## **FOREWORD**

We were commissioned in late 2015 to undertake a review of environmental governance issues in Northern Ireland, by a coalition of Northern Irish non-governmental organisations (NGOs). We are extremely grateful to this coalition for supporting this project and providing advice throughout the research period. Any omissions or mistakes contained in this report are the responsibility of the authors alone.

The terms of reference set by the NGO coalition were very broad. They were simply to examine the adequacies of existing environmental governance in Northern Ireland and if problems were found to suggest options and new approaches for the delivery of a better environment (and better environmental governance).

It should be noted that all of the specific areas of focus of this review, such as the decisions as to whom we would consult, the case studies chosen when examining the problems that were raised, and the recommendations and solution options, were all decided by the authors alone, rather than the NGO coalition who had commissioned the work. Needless to say the analysis and conclusions contained in this report are completely independent from those organisations which have commissioned this study and do not necessarily reflect their views.

In some respects it was an advantage in undertaking this project that we were outsiders to Northern Ireland looking in at systems of environmental governance and regulation. But we also paid great emphasis on the importance of local knowledge and opinions in Northern Ireland in identifying potential problems and solutions. However, because the project took place over only a twelve week period we were not in a position to conduct the sort of extensive local consultation that previous governance reviews in Northern Ireland had done.

In late 2015 we met (or had a conference call with) with thirty-five individuals in the following sectors in Northern Ireland: Members of the Legislative Assembly of Northern Ireland, central government (civil service and departmental boards), local government, business (including the farming and minerals industries), legal practice, academia, NGOs and other individuals.

Northern Ireland's size, political ties and geographical position also provided a unique opportunity to compare it with, and learn from experiences elsewhere. This report, therefore, draws on experiences from England, Wales, Scotland, Ireland, and sometimes further afield where appropriate. During the twelve weeks that this review ran we communicated with a further eleven other experts in these jurisdictions.

We are extremely grateful to all of the consultees that met (or spoke) with us for generously giving us their time, experience and opinions. It was decided at the outset that the identity of all consultees would remain anonymous, to allow for more candid discussion of the issues. We have tried our hardest to accurately reflect the messages of the consultees within this report, but nevertheless the final analysis in this report is entirely our own.

We hope that elements of this report might contribute to further debates in Northern Ireland on issues surrounding governance in this subject area. Hopefully these might lead to future changes which might have not just direct benefits to environmental governance, but also indirect benefits to social development and the economy in Northern Ireland.

Ray Purdy and Peter Hjerp

January 2016

The biographies of the authors of this report are contained in Annex 1.

# **ENVIRONMENTAL GOVERNANCE IN NORTHERN IRELAND IDENTIFYING THE DRIVERS FOR CHANGE AND CONSIDERING SOLUTIONS**

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## LIST OF ABBREVIATIONS

<b>ALCS</b>	Aggregate Levy Credit Scheme
<b>CAP</b>	Common Agricultural Policy
<b>CJI</b>	Criminal Justice Inspection
<b>COPFS</b>	Crown Office and Procurator Fiscal Service (Scotland)
<b>DAERA</b>	Department of Agriculture, Environment and Rural Affairs
<b>DARD</b>	Department of Agriculture and Rural Development
<b>DOE</b>	Department of the Environment
<b>EA</b>	Environment Agency (England)
<b>EIA</b>	Environmental Impact Assessment
<b>EPI</b>	Environmental Policy Integration
<b>EU</b>	European Union
<b>EY</b>	Ernst & Young
<b>FDI</b>	Foreign Direct Investment
<b>GPS</b>	Global Positioning System
<b>GVA</b>	Gross Value Added
<b>HMRC</b>	Her Majesty's Revenue and Customs
<b>IEPA</b>	Independent Environmental Protection Agency
<b>LDP</b>	Local Development Plan
<b>MOU</b>	Memorandum of Understanding
<b>NRW</b>	Natural Resources Wales
<b>NIAO</b>	Northern Ireland Audit Office
<b>NIEA</b>	Northern Ireland Environment Agency
<b>NSW</b>	New South Wales
<b>NGO</b>	Non Governmental Organisation
<b>PAC</b>	Public Accounts Committee
<b>PPS</b>	Public Prosecution Service
<b>PSNI</b>	Police Service Northern Ireland
<b>QPA</b>	Quarry Products Association
<b>SEA</b>	Strategic Environmental Assessment
<b>SEPA</b>	Scottish Environmental Protection Agency
<b>SPA</b>	Special Protection Area
<b>SPPS</b>	Strategic Planning Policy Statement
<b>SSSI</b>	Sites of Special Scientific Interest
<b>UK</b>	United Kingdom

## **EXECUTIVE SUMMARY**

### **BACKGROUND TO THE REPORT**

This Report looks at the adequacies of existing environmental governance arrangements in Northern Ireland and seeks to develop and strengthen ways in which Northern Ireland deals with environmental governance. It was commissioned at the end of 2015 by a coalition of Northern Irish non-governmental organisations, but the analysis and recommendations reflect the independent judgement of the authors.

There were a number of important drivers for commissioning this review. Firstly, the upcoming departmental restructuring, whereby the Department of the Environment (DOE) will largely merge with the Department of Agriculture and Rural Development (DARD) to form a new Department of Agriculture, Environment and Rural Affairs (DAERA) provides a good opportunity to review environmental governance in Northern Ireland. Secondly, it is hoped that this research might provide input into Government policy on the environment in the next Programme for Government (2016–2021). Finally, there is an on-going process of budget cuts across Government and environmental functions have already been greatly diminished. Because further cuts might have to take place in lieu of the planned reduction in the corporation tax allowance in 2018, this research seeks to show the impact that any further cuts might have on the economy and protection of the environment and human health.

After this review was commissioned the Environment Minister circulated a new discussion document, ‘Environmental Governance in Northern Ireland’ which called for views on potential options for an independent environmental protection agency. Although our report focuses more widely on improving environmental governance in Northern Ireland, it is intended that it will contribute to this debate.

### **THE ENVIRONMENT AT RISK**

Northern Ireland’s environment, with its distinctive natural and cultural features, is one of its most precious assets. However, in common with many other aspects of life in a post-conflict society, environmental protection has inevitably been less of a focus than more urgent priorities. The Executive has also focused much of its attention on growth and is widely perceived to view the environment as a barrier to a more productive economy, prosperity and jobs. There has been very little recognition of the environment as an asset to the Northern Irish people generally. The period of conflict looks to have led to a certain ambivalence to land and territory, because of the contested control and ownership of it, and this ambivalence seems to have extended to caring for the environment.

There are significant issues relating to compliance with environmental and planning rules. There is a culture whereby it is acceptable to ‘cut corners’ and ‘bend the rules.’ Although often minor, such rule breaking has a considerable cumulative environmental impact. On a different scale, serious organised environmental crime is prevalent, with illegal fuel laundering, quarrying and waste disposal. The latter is a problem of enormous proportions with hundreds of illegal sites; some individually containing more waste than the municipal waste collected annually by local authorities in Northern Ireland combined.

Confidence in the Government’s ability to protect and maintain the environment in Northern Ireland is considered to be low, due to a number of factors. Firstly, there is perceived to be political interference in regulatory decision-making. Secondly, there are a significant number of ongoing legal infraction cases being brought by the European Commission against Northern Ireland, in respect of breaches of European Union (EU) environmental laws, and from debates

in the Assembly it is clear that there could be much more non-compliance than the Commission is so far acting upon. Thirdly, current systems of environmental regulation in Northern Ireland have clearly fallen behind those in neighbouring countries, and there are real concerns that the ongoing process of budget cuts could make things worse.

Environmental rules are in place to protect the environment and the health of the citizens. If these are not followed then risk of harm increases. Current policies are having a detrimental impact on the Northern Ireland environment e.g. a high number of natural habitats (46 out of 49), and watercourses (72%), are now considered to be in an unfavourable condition. Whilst the environment can be viewed as an asset that can be leveraged, it cannot continually be leveraged to the point that it is entirely degraded.

A well managed environment is vital for the shared future of the people of Northern Ireland and that of their children. Having a clean and beautiful environment plays an important part in how people view where they live. A greater focus on protecting a common interest for all (not a tribal interest), would be a good way to build confidence in government and demonstrate stability.

## **THE ECONOMY AT RISK**

Protecting the environment is not a one way cost. There has been very little recognition in Northern Ireland of many of the very serious economic impacts that current systems of environmental regulation and governance are having; seven of which are described below.

Current approaches to environmental regulation threaten the competitiveness of Northern Ireland in attracting foreign direct investment (FDI). Surveys have shown that the overriding priority for FDI investors is the stability and transparency of a country's political, legal and regulatory environment. The Northern Ireland Economic Strategy makes no mention of upholding the rule of law and having a good regulatory environment. We believe that environmental rule breaking is having a negative effect on FDI in Northern Ireland. Investors were (over time) showing greater interest (and confidence) in undertaking FDI projects in Scotland and Wales than in Northern Ireland (based on numbers of FDI projects).

We calculated that the clean-up costs for all the known illegal waste sites in Northern Ireland could be as high as £440 million (based on waste sites discovered to date). The Executive has also had to spend vast sums on clearing up waste from illegal fuel laundering. As of January 2016, there does not seem to be an effective mechanism to make the polluter pay for remediation work, so it seems likely that the Executive, and therefore the tax payer will be required to pick up the bulk of the tab.

Criminals make huge financial gains from non-compliance with environmental laws, because they evade paying taxes. The cost to the Northern Ireland economy in lost taxes could be as much as £80 million annually for illegal fuel laundering, £2 million annually for illegal quarrying, and we estimate (to date) that it could be between £100 and £150 million for illegal waste disposal.

There are six ongoing infraction cases being brought by the European Commission against Northern Ireland in respect of breaches of EU environmental legislation. Many of these breaches have been long term problems and there have been a lot of warnings historically, increasing the likelihood of a case being heard by the European Court in the near future. One court case alone brought against Northern Ireland could potentially result in a fine in the region of £50 million to £100 million.

Environmental crime is a substantial threat to legitimate businesses, who expend time and resources on complying with rules and charging a fair price for their services, only to be uncut by illegal operators. This has a negative impact on the economy and employment. In just the waste sector, research has revealed that £150,000 – £200,000 of legitimate revenue can be lost for each illegal waste site, and that losses in revenue to legitimate waste companies are as much as £224 million annually in the UK.

Issues surrounding compliance with environmental legislation are adversely affecting Northern Irish infrastructure projects. For example, the huge illegal landfill site near Derry/Londonderry will potentially cause extra costs and delays to the A6 road upgrade, and businesses that want to locate to Belfast might be refused connection to the waste water treatment plant at Knock in the future, because its systems have repeatedly spilled and cannot take any more capacity.

The Government hopes to increase visitor numbers and employment from tourism, and generate annual revenues from tourism of £1 billion. However, there is a real risk that if environmental governance is not improved then this could affect Northern Ireland's tourist aspirations, as no tourist wants to see unhealthy rivers, poorly looked after nature sites, illegal waste sites, or sewage in city watercourses.

It is difficult to get to a total figure on how much non-compliance with environmental laws is costing Northern Ireland. However, we can make some estimates as to how much Northern Ireland is losing, or failing to gain annually, from some specific examples. We found the combined annual cost of lost tax from illegal quarrying and illegal fuel laundering to be approximately £82 million. To put this figure into perspective, there are currently 1500 junior doctors in Northern Ireland, and £82 million would employ a further 2281 junior doctors on an ongoing basis. We estimated the total lost taxes due to illegal waste disposal to be up to £150 million. As the annual operating costs of the NIEA are £47 million, if this tax was not lost then this might provide them with 50% more funding (on top of their standard operating costs) over six years. Additionally, the total clean up costs for illegal waste disposal were estimated to be up to £440 million, and unless environmental crimes like this are dealt with in the future they will continue to have a detrimental impact on future budgets across the whole of the Executive.

## **PROBLEMS AND SOLUTIONS**

In light of the above, we examined how Northern Ireland might achieve better environmental (and economic) outcomes, and the opportunities to make changes to achieve this. We followed a different approach to earlier Northern Ireland governance reviews by cataloguing all of the individual issues that were considered by local stakeholders to be having a negative impact and to then recommend solutions.

**Environmental Regulation.** A key problem in respect of environmental regulation was that there is non-compliance with EU environmental legislation. Going forward, Northern Ireland needs to fulfill its promises to apply and enforce environmental laws. To provide support in overseeing the implementation and correct application of all environmental laws an independent special advisor should be appointed to the new DAERA Minister, and an Environment Commissioner should be appointed.

We also thought that improvements were clearly necessary in relation to environmental sanctions. Northern Ireland has a problem with inconsistency in sentencing and environmental crimes often receive low penalties. The sanctions toolkit available to punish offenders has also fallen way behind those in neighbouring countries. We considered that the Department of Justice (DOJ) should as quickly as possible introduce a new environmental sanctions regime

into legislation, containing a range of new administrative and civil sanctions. The DOJ also should introduce new sentencing guidelines for all environmental offences, alongside legislation requiring courts to follow these guidelines. We also thought that the DOJ should either establish a specialised Environmental Tribunal for Northern Ireland, or ensure that the judiciary undertake further professional development in this area.

Major problems exist in Northern Ireland because there is no specialist environmental law expertise based within the environmental department, or the Public Prosecution Service (PPS). We considered that having specialists in environmental law was desirable in the PPS, and that an internal legal department (containing environmental law experts) should be placed directly into DAERA.

There are issues regarding how environmental enforcement is undertaken in respect of discretion, consistency and rigour. Criminal Justice Inspection (CJI) have made numerous recommendations in this regard that should be implemented. Adopting a strategy on environmental enforcement (to improve consistency), an oversight system (to reduce discretion) and better training (to increase rigour) would improve things. The Northern Ireland Environment Agency (NIEA) (or any successor) should also seek greater assistance in training and investigations from other agencies such as the Police Service of Northern Ireland and Her Majesty's Revenue and Customs.

The NIEA was thought to have a poor relationship with those that they regulated. The Executive needs to examine ways it might bring about a culture change in how the NIEA (or any successor) is perceived to conduct environmental regulation, so that it is increasingly seen as a good, fair and trusted regulator going forward. For example, there could be a code of practice as to how staff interact and conduct themselves. The NIEA (or any successor) also needs to develop closer links with those that they regulate, placing greater emphasis on communication, education and working together. Surveys should be undertaken to reveal businesses' key concerns relating to compliance and regulation, which might inform policies as to how they might best engage with and help business.

There appeared to be an issue about the robustness of environmental oversight in Northern Ireland (particularly following the formation of DAERA). We thought that the Northern Ireland Assembly should create an Environmental Audit Committee with statutory responsibility for auditing the environmental performance of the Executive. We also thought the capacities of existing institutions, like the Northern Ireland Audit Office (NIAO), Ombudsman, and CJI should be strengthened.

A final issue was that there seemed to be insufficient focus on achieving compliance within regulated groups before rule breaking occurs. We suggested a number of approaches to regulating certain industries, through adopting new technologies and requiring checks in advance of use of equipment.

**Spatial Planning.** A significant problem in relation to spatial planning is the absence of a strategic approach. Many of the issues in respect of this might be rectified through the much improved Strategic Planning Policy Statement for Northern Ireland and if the Land Strategy for Northern Ireland was taken forward. We think that it would be beneficial to have an entity in place that ensures better communication and co-operation in spatial planning (i.e. a central/local working group). It would also be beneficial for a body, such as the Local Government Association, to convene regular meetings on planning issues, where best practice can be shared between the Councils and relevant departments. There should also be better use of electronic resources for sharing best practice, and we recommend a Gateway containing example documents (e.g. environmental assessments) be developed.



A further problem in relation to spatial planning is that Northern Ireland risks being uncompetitive both domestically, and in terms of attracting FDI, because it takes far too long for business to get planning and environmental consents. A common perception is that the move of planning from Government to Councils will solve many of the planning delays, but a bottleneck will still be caused in getting comments from the NIEA. We consider that adequate resources have to be provided to the NIEA (or any successor) for them to play their statutory part in the planning system.

**Politics and Civil Service.** A key problem seemed to be political interference in regulatory decision making. Due process should be better protected and a criminal offence introduced, stating that there should not be external interference with any regulatory decisions. Connected to the above was political will towards environmental issues. We thought that political parties should source and undertake formal training and development of their policy staff and officers to increase awareness of the economic implications of environmental governance, and improve their capacity to engage in political debate on the environment. In addition, training should be provided by the Assembly to incoming MLAs, to help increase familiarity and expertise on a range of environmental issues, particularly for MLAs sitting on the Agriculture Environment and Rural Affairs Committee.

Whilst Northern Ireland has many different environmental strategies, these are dispersed and sometimes conflicting, and we did not think that there was a coherent strategic framework on the environment. There should be an overarching strategy on the protection of the environment in one single document, which should contain strategic priorities of the Executive and outcomes to be aimed at, and be written in a style that is easily understandable.

Connected to this was the fact there is no long term strategic vision in Northern Ireland. We thought that the Executive might introduce legislation committing to the well-being of future generations, and should consider adopting a model of long term environmental objectives, supported by relevant indicators and monitoring, agreed by all political parties and followed regardless of who is in power over the years.

A significant problem with environmental governance is that there is a lack of integration, communication, and co-operation on environmental issues within Government. A review of institutional arrangements and integration within DAERA should be undertaken by the Executive. This should encompass examining: who does what and why, and where integration between sectors and other departments applies and needs to be strengthened.

There is a concern that the formation of DAERA might result in agriculture being prioritised over the environment. The membership of the new DAERA Board (assuming it has one) should play a key role in determining departmental functions, policy direction and budgets, so we suggest that a fixed number of Board members are from an environmental background. We also suggest a Government commitment to examine this issue and the impact of the merger in three years time.

**Social and Economic.** Environmental governance, in terms of economic and social successes looks to have been a failure in Northern Ireland. The NIAO should be asked to publish a report looking at the economic impacts of environmental regulation, and value for money of the totality of public expenditure on the environment. The Northern Ireland Public Accounts Committee should also be asked to produce a report on the long-term opportunities of looking at the economy and environment in Northern Ireland in a more joined-up way. Finally, we thought that Government should commission an independent study examining the impact that environmental degradation is having on the lives of local people and future generations. Part of the remit for this report should be whether having a better managed environment might

improve social wellbeing and the lives of the people of Northern Ireland, build confidence in government, and contribute to greater stability within the peace process.

## **OPTIONS FOR KEY GOVERNANCE REFORM**

As well as identifying specific problems in Northern Ireland our review also examined what major environmental governance reforms should be adopted in Northern Ireland going forward. There was widespread recognition amongst stakeholders that current systems of environmental governance were not working, and maintaining the status quo (i.e. making no changes) would not be an option that would achieve what was needed. There was also a huge appetite for change across all stakeholder sectors, which indicated that the development of new governance options would be welcomed. We arrived at three options for environmental governance reform in Northern Ireland (listed below as A, B and C).

**OPTION A – Implementation of this reports recommendations following the departmental changes in 2016.** Option (A) recognises that further change and significant improvements can be possible alongside the forthcoming departmental restructuring in Northern Ireland. The restructuring and reform would be based mainly on our bespoke solution options to the problems we examined above. We recognise that some of these reforms can be done quickly, whilst others may take longer. Whilst most of the solution options might be implemented in isolation, only proceeding with a small number of these solution options will not solve the overall problems being seen in Northern Ireland. For Option A to work the solution options we give should be viewed as far as possible as a package by the Executive.

**OPTION B – Option A plus transfer of all NIEA functions to a new independent environmental protection agency.** In Option B the restructuring solutions from Option A are still implemented, but at the same time responsibility for environmental regulation would be transferred from the NIEA to a new independent environmental protection agency (IEPA). Having an IEPA received very strong support five years ago, during a previous consultation exercise. Nearly all consultees to this review also thought that the option of having an IEPA would work best in Northern Ireland going forward.

There are benefits to Northern Ireland in having an IEPA. The environment is a special area of public law and it needs to be protected from inappropriate political interference. The separation of regulation from policy making would reduce potential interference in environmental governance. This would create a greater sense of public trust in the system. Business also wants to see a cultural change in environmental regulation, and feels that an IEPA could result in better relationships, improved communication and a greater focus on providing education to ensure compliance. It is, therefore, hoped that the ability to engage more strategically and systematically would lead to stronger and fairer (more consistent and transparent) enforcement. It would allow for the streamlining and integration of functions. A higher degree of independence should allow greater flexibility in making the necessary changes to speed-up decisions and actions. Finally, the merger of the DOE and DARD means that there is no visible environmental guardian in Northern Ireland. An IEPA would provide this guardianship. It could become an identifiable champion for the protection and improvement of the Northern Ireland environment, as opposed to just another limb of a Government Department.

This report did not examine the actual costs of setting up an IEPA, as we assume this will be examined in the Departmental Review that is currently taking place. However, we want to make five important points concerning finances. Firstly, whilst the initial costs of creating and resourcing an IEPA may be considerable for the Executive and business, this is less risky option than Option A in both the short and long term, and there will be significant benefits to both the environment and economy. Secondly, there is a very strong economic case that an

IEPA should be adequately resourced. Clearly an environmental agency can function on low budgets (although as demonstrated in Northern Ireland, ineffectively in multiple areas), but cutting regulatory expenditure is a false economy. Research has illustrated that governments can lose far more money than they save. Studies have shown that in some cases each £1 spent on environmental regulation could yield between £4.40 and £31 in benefits. Any freeze in cuts, or increase in expenditure, has the economic potential quickly to pay for itself many times over through increased tax income, reduced clean-up costs, and thriving legitimate sectors. Thirdly, because of the long-term potential impact on the environment, human health, and the economy an IEPA would need to reconcile strategic priorities and long term planning with certainty over funding. Because of this there should be a commitment from central government to maintain funding, and this could be linked to the gross domestic product deflator. Fourthly any money that the IEPA receives from civil and administrative penalties (once a new sanctions regime is implemented), should be seen as extra money – rather than replacement of the annual operating budget. Finally, the Northern Irish farming community have historically been most vocal in their opposition to the creation of an IEPA. One farming union said that this was because they thought an IEPA would adopt a more aggressive regulatory style (undertaking more enforcement actions), so that it could profit from fines. To ensure that these concerns are taken on board we would make three suggestions. Firstly, the IEPA should be made to design a regime whereby good environmental behavior is encouraged through competitive permit charging and a flexible inspection regime. Secondly, there should be a commitment that the IEPA should not profit at all from bringing criminal actions. Thirdly, we stated above that the IEPA might directly receive any money obtained from civil and administrative penalties. To avoid accusations of heavy handed enforcement we believe that there should be a commitment that money from these penalties should be spent in their entirety on educational projects that can either help business improve compliance with environmental laws; go towards environmental clean-up; or be used to help business develop schemes or green projects that had economic and environmental benefits.

**OPTION C – Option A, plus transfer all NIEA functions to a new independent protection agency that has a greater regional focus.** Our final reform option is to do everything in Option B (i.e. restructuring and a new IEPA), but to reduce the national footprint and increase the regional footprint in environmental regulation. We thought it would be a good fit for Northern Ireland to have an IEPA with a regional focus. We would recommend having approximately six Agency offices spread across Northern Ireland (matching regional structures). The model of having some sub-regional agencies already seems to work well in Northern Ireland. Bodies such as the Housing Executive and Transport Northern Ireland are sub-regionally located. DARD also has twelve regional offices managing agricultural regulation.

There are a number of advantages to the above approach. Firstly, the connections between planning, environment and transport are extremely weak at the moment following the recent restructuring, and links between these would be strengthened if there was an IEPA operating at a regional level. Secondly, a regional IEPA would be far more aware of the locality it was in, and in touch with local issues (e.g. comments on planning applications). Thirdly, a regional IEPA would be more visible and accessible locally. People seem to be more connected to issues in their own locality, so this might encourage more reporting of crime and greater engagement in environmental issues at a local level. A final point is that regional reports could be created, which might enable regional regulatory comparisons to be made, so what is working and what isn't, and what an area needs can be given more consideration. Regional reporting might also encourage innovation and competition between regional agency bodies (and the development of best practice at regional level). It could also result in better public data, and provide more transparency and public accountability about what was happening in that area, so that local people could judge performance compared to other regions in Northern Ireland, or measure improvements.

# 1. CONTEXT

Northern Ireland has outstanding natural beauty and a remarkable diverse and unique landscape. It has many miles of beautiful coastline, huge stretches of idyllic green countryside and panoramic views, and truly beautiful loughs. It also has a rich cultural and archaeological heritage, with spectacular attractions like Giant's Causeway, which is an internationally recognised icon and Northern Ireland's only World Heritage Site.

## 1.1 Why this Report is Timely

The timing of this review presents a good window of opportunity for examining environmental governance due to four reasons:

As part of the Stormont House Agreement it was decided that the number of Northern Ireland Departments should be reduced from twelve to nine with the result that many of the functions of the DOE (including the NIEA) will largely merge with the Department of Agriculture Rural Development (DARD) to form a new Department of Agriculture, Environment and Rural Affairs (DAERA). The planned merger of the two departments means that some thought has to go into planning appropriate structures and how potentially competing functions and policies can be brought together, and as such, restructuring presents a perfect opportunity to look at improvements of governance structures and environmental integration, with the view to implementing improvement suggestions at an early stage in DAERA's life.

The next Programme for Government mandate will decide Government policy from 2016 to 2021. The content of this will be agreed twenty-one days after the election (May 2016) and the findings of this review might help steer political leadership on the environment in Northern Ireland.

There is an on-going process of budget cuts, resulting in significant jobs being lost at the DOE and Northern Ireland Environment Agency (NIEA). These cuts could affect the capacity of the remaining staff to undertake their functions adequately and to protect the environment and human health. Because further cuts might have to take place to environmental functions, particularly in lieu of the planned reduction in the corporation tax allowance in 2018, this review might feed into plans about what level of cuts might, or might not, be appropriate.

In late 2015 the Minister for the Environment circulated a new discussion document, 'Environmental Governance in Northern Ireland' which called for views on potential options for an independent environmental protection agency.<sup>1</sup> Again it is hoped that this review might feed directly into this process of looking at governance reform.

## 1.2 Successes

In common with many other aspects of life in a post-conflict country, environmental protection has inevitably been less of a focus in Northern Ireland compared to more urgent priorities. However, in the aftermath of the troubles, Northern Ireland has had some considerable achievements in environmental terms.

One success is how a relatively small department, the Department of the Environment (DOE), has succeeded in managing so many European Union (EU) legal requirements compared to other, much larger departments of the environment elsewhere in the United Kingdom (UK) and EU.

The above has not always been easy. For example, there was a massive concerted effort to clear a longstanding backlog and implement huge numbers of European environmental laws in a short period of time during the last decade, to ensure greater protection of human health and the environment in Northern Ireland. However, these significant efforts, by some of the excellent staff at the DOE, have brought many notable benefits to Northern Ireland, such as bathing water quality improvements.

Historically, it has been questionable whether Northern Ireland has been achieving sustainable land-use management. However, land-use planning has been taking steps in the right direction by the forthcoming changes in planning responsibilities (moving from Government to Councils), and the greater focus on environmental sustainability in the recent Strategic Planning Policy Statement for Northern Ireland (SPPS).<sup>2</sup>

Northern Ireland was also the second country in the UK, after Wales, to introduce a charge for plastic bags. This also resulted in the innovative Challenge Fund which has given much needed funding to support the tireless legions of grass roots organisations and schools who are passionate about improving their own environment.

### **1.3 The Environment at Risk**

Although there have undoubtedly been successes in environmental protection these are unfortunately not representative of the overall situation in Northern Ireland. One of the key messages which we picked up whilst writing this report was that confidence in the administration/Executive to protect and maintain the environment in Northern Ireland is very low.

A further, and more important, key message from consultees was that the environment is an asset which is now considered to be at great risk in Northern Ireland.

One of the key reasons the environment is seen to be at risk is because whilst EU environmental legislation has increasingly being correctly implemented (i.e. there are strong laws in place to protect the environment and human health), it is not always being followed in practice.

This review found that there were six ongoing legal infraction cases being brought by the European Commission against Northern Ireland in respect to breaches of EU environmental laws. The Northern Ireland Assembly have also expressed concerns about a further four EU environmental laws being in non-compliance. Several other consultees to this report also suggested a sizeable number of additional environmental laws that they believed were not being complied with.

The risk to Northern Ireland's environment from non-compliance with EU legislation (intended to protect the environment and human health) is obvious. To give just three examples:

- There are hundreds of illegal waste sites in Northern Ireland containing legacies of millions of tonnes of waste (some of which might potentially leach into watercourses and drinking water in the future). More than a million tonnes of waste is estimated to be buried at one site alone, just outside Derry/Londonderry. To put that into perspective, the waste contained in that site adds up to more than the entire amount of municipal waste collected annually in Northern Ireland by all of its District Councils combined (before waste is even recycled or composted).<sup>3</sup> There does not appear to be an adequate and visibly resourced national remediation plan.<sup>4</sup>

- When there is heavy rain, water invariably spills out of the sewer network into the Knock river and the Connswater, damaging the water quality of the Belfast lough. The Belfast waste water treatment works spilled out one million cubic metres of sewage from overflow spilling in just one year.<sup>5</sup>
- Forty-six out of forty-nine of Northern Ireland's natural habitats are deemed to be in unfavourable condition.<sup>6</sup> Northern Ireland now has more species in unfavourable conditions as classified in the Habitats Directive compared with 2007. It is concerning that 94% of natural habitats in Northern Ireland are in such poor condition, with some at risk. Some of the reefs and species in the Loughs and rivers have also been seriously endangered.<sup>7</sup>

Some of the problems facing Northern Ireland are not unique. For example, other parts of the UK are struggling with how to effectively regulate pollution from agriculture and manage air pollution in cities. There is clearly non-compliance with environmental laws elsewhere in the world, but generally, most other developed countries do seem to be further ahead than is the case in Northern Ireland, both in terms of environmental governance, and also ensuring that environmental rules are complied with.

Not all the environmental problems in Northern Ireland are a result of not following rules. Other questions can be raised about sustainable land-use management its carbon footprint, again in relation to some of its key industries like agriculture. Whilst the environment in Northern Ireland can be viewed as an asset that can be leveraged, it cannot continually be leveraged to a point that it is entirely degraded.

#### **1.4 Historical Reviews of Governance**

Saying that the environment is at risk in Northern Ireland is not an understatement. Too often in the past, Northern Ireland has been perceived as falling far behind in contemporary developments in environmental governance. There are long-standing (and ever present) concerns about the failings and weaknesses of the existing environmental governance framework in Northern Ireland, and how environmental legislation is regulated and enforced.

Without wishing to go into too many details on historical warnings about failings and suggestions for reform, we should briefly mention some of the key ones:

- In 1990 the House of Commons Environment Select Committee raised concerns about the Northern Ireland environment and encourage reforms.<sup>8</sup>
- In 2004 the UK Environmental Law Association stated that Northern Ireland was playing catch up with other neighbouring countries, and that reform was urgently needed because it had a uniquely serious problem of weak environmental regulation and enforcement.<sup>9</sup>
- Macrory produced a report giving options for reforming environmental governance in Northern Ireland in 2004.<sup>10</sup>
- The Rooker Review resulted in a report by Bell, Burke and Turner in 2007, where a large number of recommendations were made because the current environmental governance arrangements were found to not be “capable either of resolving the environmental legacies of the past, or of responding to present and emerging environmental pressures.”<sup>11</sup>
- Many of the failures in environmental governance have been very well documented over the years by academics such as Turner and Brennan.<sup>12</sup>
- The Mills Report in 2013 highlighted the damage that criminal activity surrounding illegal waste disposal was having to the environment and economy.<sup>13</sup>

- Criminal Justice Inspection and the Northern Ireland Audit Office have produced numerous critical reports over the years of the state of environmental governance in Northern Ireland.<sup>14</sup>
- Perhaps the most damning indictment of the current governance systems have come from the Government itself. The former Environment Minister, Alex Attwood, described the structures of the Northern Ireland Environment Agency in 2013 as not being fit for purpose.<sup>15</sup> The current Environment Minister, Mark Durkan, said recently that the present environmental governance models were in need of radical review and needed to be replaced quickly.<sup>16</sup>

A more detailed timeline summary of some of the key environmental governance events in Northern Ireland over the last twenty-five years is given in Annex 2 to this report.

Although from the above it is clear that there has been a lot of recommendations given as to how environmental governance and regulation might be better managed or reformed (particularly in the decade before), these have very surprisingly not led to that many substantive or effective changes in practice (except maybe in relation to waste crime following the Mills Report).

An important barrier to effective regulation in Northern Ireland has been how to change custom and practice. Connected to the above, and probably the biggest barrier to reform, is whether there is the political will to change custom and practice. Most consultees to this report considered change had not occurred because of the political protection of the Northern Ireland economy.

There was an obvious undercurrent of frustration amongst all consultees to this review that there had been ‘missed opportunities’ in protecting the environment from further risk of degradation. Numerous consultees bemoaned the fact that politicians’ were not seeing the environment as a public good, or recognising its link as an economic driver.

### **1.5 Current Appetite for Change**

The consultations undertaken as part of this study showed there was currently a huge appetite for change. There was a clear sense that there had been a shift since the previous reviews and many more people did now want to do things differently. Even all of the industry groups we spoke to were of the opinion that more progressive approaches were required as current systems of environmental regulation were failing.

### **1.6 Focus of this Report**

In deciding on the structure and approach of this report we thought that there were two lessons learnt from the earlier governance reviews.

Firstly, even though it was clearly not the intention, earlier governance reviews seem to become externally subsumed with the issue of an independent environment agency. The politics of the time meant that not only did an independent environment agency not come to fruition but many of the other excellent recommendations that were made in parallel were also largely ignored.

Secondly, we believe that there is a risk of meaningful reforms not taking place if people do not recognise the seriousness of the problem. We thought that the earlier governance reviews were first-rate, but that they were in some respects very solutions driven (as they considered the problems to be obvious). Whilst these earlier reviews did highlight issues that existed, we

felt that a greater connection between the specific individual problems occurring in Northern Ireland and the solutions might have been beneficial.

In this review we, therefore, decided to illustrate our findings with more stories from Northern Ireland about what was actually taking place, and what key stakeholders in Northern Ireland considered to be the most pressing problems. It is hoped that this might make the connection between problems, solutions and opportunities more obvious and lead to greater success in demonstrating why the potential needs for reform could be so important, and why a new narrative should be constructed.

Bearing in mind our opinions on the earlier reviews (and whilst in no way being critical of the current Ministerial consultation) we, therefore, do not share the view that an independent environment agency should be the main area of focus in our review when considering environmental governance in Northern Ireland. There appears to be an accumulation of things taking place in Northern Ireland that have led to the environment being at risk, so we consider it to be a tremendous oversimplification to think that an independent environmental agency might resolve all the current challenges, and should be the only solution.

It is our personal view that forming an independent environment agency without pinpointing what all the problems are would probably mean that any reforms might not operationally have much impact (and could potentially make things worse). To be very clear, this is not to say that we are against the idea of having an independent environmental protection agency – instead, we prefer the approach of examining the wider ramifications and identifying problem areas first, before then looking at what wider governance changes might be required.

We also consider that the above approach has the potential advantage of enabling some improvements to be implemented more quickly. Major governance changes can take a long time (and Northern Ireland unfortunately has a reputation for being slow to implement environmental reforms). We consider that it would be good to have some solutions to problems (that maybe weren't so politically sensitive, or requiring legislation) ready to implement quickly when DAERA comes into existence.

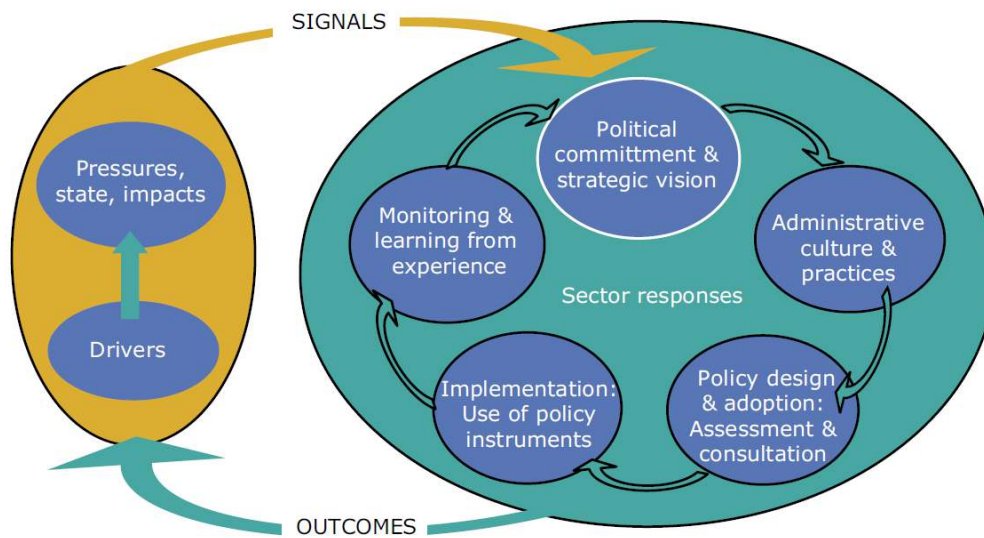
## **1.7 Report Structure and Good Environmental Governance**

The approach taken in this report is to provide relevant environmental governance solutions to identified problems. These problem specific solutions are based on best practice in environmental governance, which are intended to be practical for the circumstances in Northern Ireland. We made a conscious decision not to exhaust the reader with academic models of good environmental governance, and instead we have integrated these into the specific solutions in a practical manner. Even so, it is necessary to highlight, albeit briefly, the necessity of a holistic approach towards environmental governance and how this is relevant in bringing the findings of our report together within the broader framework of good environmental governance.

The European Environment Agency have developed an evaluation framework for Environmental Policy Integration (EPI) which takes into account impacts on the environment, and ultimately policy outcomes - as shown in Figure 1.<sup>17</sup> We consider that the well-recognised stages of EPI work well for Northern Ireland. EPI, as a concept, is intended to integrate the environment into other sectoral policies but in the case of Northern Ireland, where the environmental policy sector is not that well developed, we will adapt this approach for good environmental governance in general.



Figure 1. Framework for evaluating EPI



We find the above evaluation model useful as it provides a cycle of environmental policy making and also links this to impacts and responses. This framework of EPI has been adapted in the structure of this report and is presented in Figure 2.

Figure 2. Environmental Policy Integration and how it is reflected in our report structure

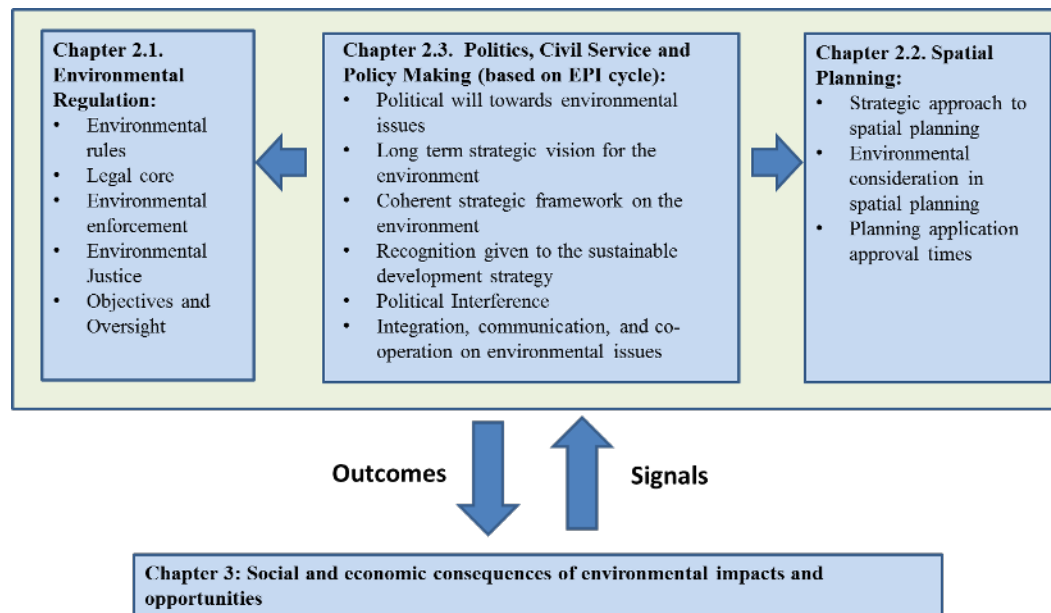


Figure 2 shows how the structure of chapter broadly follows the EPI policy cycle (shown in Figure 1), which has an impact on environmental regulation (chapter 2.1) and spatial planning (chapter 2.2). The issues raised in chapter two will have both environmental impacts and

opportunities, which in turn will have social and economic consequences, as described in chapter three.

### **1.8 Purpose of Chapter Two**

Chapter two of this Report will outline what seemed to the consultees and us to be the main problem areas in Northern Ireland environmental governance. We consider that you build walls brick by brick. Hence we decided to look at each individual problem separately, to see if there are individual solutions for some of the problems that are taking place.

After the consultation exercise we decided early on that the most profitable contribution we could make was to examine what problems exist in three areas:

- Environmental governance and regulation
- Spatial planning (because this can often be very closely inter-linked with environmental governance and regulation)
- Politics, Civil Service and policy making (because we also need to examine some of the policy making procedures, institutional arrangements and cultural/political values behind these problems).

By highlighting what the consultees think is wrong under current systems of governance, we should be clear that this is not intended to be a negative exercise, our intention is certainly not to criticise, or point fingers at the Government and other stakeholders. We are simply trying to catalogue what the perceived problems are, so that solutions might then be developed which could potentially tackle these.

For some of the identified problems we will attempt to propose firm recommendations, whereas for others we could suggest where further examination and debate might be required. In some instances we will make suggestions based on practice in neighbouring countries (Scotland, England, Wales, Ireland), and countries further afield - although recognising which bespoke approaches might fit in Northern Ireland.

Whilst some of the suggestions we might make might be implemented on their own, we should emphasise again that not one mechanism alone will solve the overall problem and they should be viewed as far as possible as a package.

### **1.9 Purpose of Chapter Three**

The environment has been somewhat sidelined in Northern Ireland in recent times – we consider it fair to conclude that the focus of the administration seems to have been on the economy at all costs. From the outside the Executive has sometimes been seen to view its primary role as servicing the businesses sectors, and that the environment is an economic barrier to this. This thinking can probably be supported by the fact that there has been some progressive development in environmental policy areas where key Northern Industries are not really affected.

Whilst there are potentially short term gains to be made by this approach there is a long term risk of both environmental and economic damage. Chapter three of this report, therefore, focuses in detail on the economic and social impacts of bad environmental governance. It seeks to demonstrate the link between the environment and economy, and that instead of looking at them separately - economic, environmental and social aims should be seen as a package.

The aim of this chapter is to potentially change the view that protecting the environment is a one way cost, and to demonstrate that it has a much wider economic significance. Environmental crime is often anti-economy, so this review will pull together existing evidence that demonstrates some of the black and white economic costs of poor environment governance.

It will attempt to show that if the Northern Ireland Executive can get to a model of environmental governance that is robust, promotes compliance with rules and also has business support, there will be significant benefits to its economy. There might also be some additional economic opportunities, that fit well for Northern Ireland, that might arise from more joined up thinking in terms of the environment and the economy and these are also discussed in chapter three.

#### **1.10 Purpose of Chapter Four**

After considering all the issues in Chapters two and three we will finally look at connecting all these problems into a more comprehensive body of recommendations for major governance reforms. We strongly want to put across the opinions of the groups we spoke to and bring all the strands together to see how environmental governance might be modernised and better arranged.

We are not from Northern Ireland and consider it inappropriate to give definitive recommendations. Instead we will simply give a number of options going forward that might improve things. It is then up to Northern Ireland which direction they chose to go in.

## 2. PROBLEMS AND SOLUTION OPTIONS

### 2.1 ENVIRONMENTAL REGULATION

#### 2.1.1. Environmental Rules

**Problem 1: There is serious non-compliance with EU environmental legislation**

In advance of this review we knew that Northern Ireland had historically had issues with implementing EU legislation in a timely manner, but this was less of a problem now.

Many consultees to this review were of the opinion that there were now serious problems in the correct application of EU environment laws in Northern Ireland.

The DOE confirmed to us that there are a number of ongoing infraction cases being brought by the European Commission in respect of breaches of EU environmental legislation, including: Water Framework Directive, Waste Framework Directive, Habitats Directive, Strategic Environmental Assessment Directive, Environmental Impact Assessment Directive and Urban Waste Water Treatment Directive.

In addition to the above body of legislation, in recent years there have also been concerns raised in the Northern Ireland Assembly about Northern Ireland being in breach of the Nitrates Directive,<sup>18</sup> Safe Storage of Metallic Mercury Wastes Directive,<sup>19</sup> Wild Birds Directive,<sup>20</sup> and Marine Strategy Directive.<sup>21</sup> Several consultees also expressed concerns that Northern Ireland was not in compliance with several of the air pollution directives and the Public Participation Directive.

It seemed that there could be somewhere in the region of ten EU environmental laws where there were seriously problematic application in practice. Some of the issues in respect of breaches in Northern Ireland were also extremely concerning in terms of protection of the environment and human health. For example:

- Environmental Impact Assessments (EIAs) appear to be routinely done after developments have commenced, or are not done at all, and even in respect of high-risk commercial operations.<sup>22</sup>
- There are hundreds of illegal waste sites containing legacies of millions of tonnes of waste, without any form of national remediation plan, or overarching commitment to clean-up.<sup>23</sup>
- Under the EU Water Framework Directive, all European waters have to achieve ‘good ecological and chemical status’ by 2015. However, only 28% of Northern Ireland’s rivers and lakes met the Directive targets of good ecological status.<sup>24</sup> The water standard of the Belfast Harbour has been classified as bad.<sup>25</sup> The legislation in Northern Ireland appears to be in breach of Article 9 of the above Directive in respect of providing adequate incentives for domestic users to use water resources efficiently.<sup>26</sup>
- When there is heavy rain, water can spill out of the sewer network into the Knock river and the Connswater, having a negative impact on the Belfast lough, which is a Special Protection Area (SPA). The Belfast waste water treatment works spilled out one million cubic metres of sewage from overflow spilling in one year.<sup>27</sup>
- The 2013, Article 17 reporting data, under the Habitats Directive, indicates that forty-six out of forty-nine of Northern Ireland’s natural habitats are deemed to be in

unfavourable condition.<sup>28</sup> Northern Ireland now has more species in unfavourable conditions than it did in 2007. There has also been the ongoing commercial exploitation of wild Atlantic salmon and killing of salmon, caught by rod and line, which is seen as untenable and potentially in contravention of the Habitats Directive.<sup>29</sup> The restoration of Strangford Lough, and the protection of the reef and species such as the horse mussel has been an ongoing problem. The large-scale dredging in Lough Neagh could also potentially be having negative impacts on habitats there.

There is a strong case for believing that there have been numerous failures in environmental compliance with EU legislation across the board in Northern Ireland. Consultees were of the opinion that Government attention and money had in recent times gone into tackling waste crime, but this has meant that compliance with other environmental laws, such as those governing birds and habitats have been neglected. Non-compliance with the Habitats Directive has been the subject of a complaint to the European Commission and £1 million cost to the taxpayer for undertaking remediation.

Consultees also considered that some illegal activities, which were clearly in breach of EU nature Directives, had been allowed to continue in Northern Ireland because of economic pressures.

### **Solution Option 1**

Northern Ireland (like all other parts of the UK, and other Member States) is under a strict legal obligation to ensure that EU legislation is applied in practice. Whilst we recognise that it is not easy ensuring compliance with all EU environmental laws in practice – and this can be shown by other EU countries struggling in respect to some laws - there appear to be some areas in Northern Ireland where there has neither been the investment, nor will of the administration, in practice to comply with some rules.

If the key problem in Northern Ireland is lack of investment in things like staff, or infrastructure, to ensure they are compliant with the rules then the simple answer is that more money is required from the Executive for departments responsible for environmental laws to fulfil their legal obligations.

If the problem is the will of the Executive to ensure that EU environmental rules are complied with, then attitudes have to change, because it is vitally important on a number of levels that EU rules are not ignored and are followed. As well as the huge financial risks of EU sanctions, Chapter three to this review also demonstrates some of the hugely detrimental social and economic consequences of a culture of rule-breaking. To oversee that there is compliance in practice we recommend two further routes.

Firstly, Northern Ireland appears to have a lot of commissioners (e.g. police, older people, children, human rights, appointments). The role of these seems to be to oversee or safeguard certain interests or functions. It was noticeable that Northern Ireland does not have a commissioner for the environment. An Environment Commissioner could be appointed to oversee the implementation and correct application of all EU environmental laws, and to oversee sustainable development in Northern Ireland.

An expert independent special advisor should also be appointed by the new Minister of DAERA in support of overseeing the implementation and correct application of all EU environmental laws.

## 2.1.2 Legal Core

### **Problem 2: There is no permanent in-house legal expertise**

A key problem raised by consultees to this report was the lack of any permanent in-house environmental law expertise within the DOE (including the NIEA). This issue is not unique to this Government department - Northern Ireland has a system of not having legal expertise directly within Government departments; instead it has a central Government hub (Departmental Solicitors Office) which provides external legal services on demand.

This practice is notably very much out of step with what takes place in the Environment Agency (EA) in England, Natural Resources Wales (NRW) and in the Scottish Environmental Protection Agency (SEPA). Consultees considered that the central hub concept did not work well in practice, and overall was a major short-coming with respect to environmental governance in Northern Ireland. There are a number of important points about the lack of in-house environmental expertise that can be made in this regard.

Firstly, consultees were of the opinion that the Northern Ireland Government did not want lawyers to specialise in particular areas (although in some instances Departmental Solicitors can be seconded to Departments). It is clear that if Departmental lawyers have a huge number of advisory functions (e.g. including conveyancing, employment, government contracts), whilst this offers a degree of flexibility in the provision of advice, they will not have as much knowledge and experience as someone specialising in one particular area.

There are clearly underlying reasons why most city law firms have specialist legal departments and specialist lawyers. There is also a reason why the EA, SEPA and Department of the Environment (Westminster) tend to recruit a lot of specialist environmental lawyers from private practice. Environmental law can be a complex area. We consider that it is much better to have specialists (who are up-to-date and well read in their area of expertise) who are easily accessible, rather than an external group based elsewhere providing day-to-day legal advice.

Secondly, the lack of a legal core in the DOE provides an ineffective base in terms of understanding and dictating the whole environmental compliance regime in Northern Ireland. A major problem in our assessment was that a law dynamic was not sufficiently embedded into the culture of the DOE. In 2015, Criminal Justice Inspection Northern Ireland (CJI) concluded that Government staff involved in environmental regulation often held the view that the business of enforcement was seen as a secondary function.<sup>30</sup> This was also the opinion of many of our consultees.

The CJI concluded that there needed to be “a stronger emphasis on upholding the law and remov[ing] any ambiguity as to the management of breaches of the law”.<sup>31</sup> They recommended that the underlying principle of full compliance and respect for the law needed to be clearly stated and emphasised more, because the current system accommodated to much discretion, that there was an acceptance of non-compliance with environmental laws, and that there was a risk of a culture of contravention of environmental laws.<sup>32</sup>

It is noticeable that anything remotely connected with law or enforcement seems to be overshadowed in the NIEA by science in current environmental governance structures. For example, the NIEA currently has 719 FTE staff,<sup>33</sup> with no lawyers. The high-level management structure of the NIEA contains 39 individuals,<sup>34</sup> of whom over half (21) are scientific officers (of some form).<sup>35</sup> Many of the other senior posts were for administrative

type functions like financial officers (6), and there was noticeably only one investigation officer.

It is our assessment that the absence of an embedded legal core in the DOE is seriously impeding the overall effectiveness of its function, and this is impacting on how strategy and operational policy for regulation and enforcement in this area is framed.

Thirdly, we consider it a major issue that Northern Ireland has very limited input into drafting its own environmental legislation. In the previous decade the DOE won the argument that they needed lawyers embedded into the department (and recruited five specialist environmental lawyers), because there was such a massive backlog in transposing European environmental legislation. Reverting back to not having specialist environmental lawyers, has more negative consequences than positive benefits in our opinion.

Northern Ireland currently seems to safely follow every Westminster interpretation of EU environment directives. This has three advantages:

- There is less chance of them transposing legislation late and having infringement actions taken by the European Commission.
- They are consistent with what is happening in the rest of the UK.
- They do not have to put the effort, or financial resources, into having Northern Ireland Government lawyers do the job.

There are, however, in our opinion clear detrimental issues with the above transposition approach:

- If the rest of the UK is running late with implementation then that means Northern Ireland will also run late.
- Northern Ireland might also be consistent with any errors in the UK legislation.
- If Northern Ireland bases its legislation on another country's drafting, the actual legal thinking and understanding of the legislation risks not being passed on internally and informing actual practice (which seems to be a key problem in Northern Ireland)
- If Northern Ireland only copies and pastes Westminster drafted legislation then they might have not properly thought through the special implications that the legislation might directly have in Northern Ireland, or the impact it might have on Northern Irish stakeholders.
- Ensuring the legislation is more tailor-made for Northern Ireland could make it easier to implement it in practice.

Fourthly, enforcement cases are referred by the environmental regulator to an external body, the Public Prosecution Service (PPS). It would make more sense to us if there were specialist environmental lawyers analysing individual cases before they were referred, as this might enable the strength of the case to be determined beforehand, rather than the resources of the PPS to be stretched having to filter out good and bad cases at their end.

Finally, there are concerns in respect to legal grounding, in the process of investigation and evidence collection. For example, the CJI found that there was a problem with regulatory staff understanding the requirements of laws such as the Regulation of Investigatory Powers Act: "Significant numbers of staff referred to a lack of ability to progress investigations using the RIPA," and "Inspectors considered that overall there remained a lack of awareness and understanding of the principles of use".<sup>36</sup> If there were lawyers embedded into the environmental department, then these might be more accessible to investigation staff in terms of bespoke advice and training.

## **Solution Option 2**

It is clear to us that the current governance structure would clearly benefit from having specialist environmental lawyers embedded into the system. We would suggest that DAERA had an internal legal department. We also consider that the NIEA, or any successor, should also have an internal legal group.

One of the most significant challenges to achieving this desired outcome is finance. Government departments have been facing the immediate pressures of in-year cuts, as well as a longer term contraction of budgets. However, it is clear to us that the problem is so obvious and pressing, that this necessitates the need for having in-house lawyers.

**Problem 3. There is no specialist environmental law experience in the public prosecution service**

In Northern Ireland, all crime is prosecuted by the PPS. This is different to England, where enforcement and prosecution are normally undertaken by the Environment Agency, but similar to Scotland who have the Crown Office and Procurator Fiscal Service (COPFS).

Consultees were very clear that they thought that the PPS lacked environmental law expertise in relation to the enforcement of environmental offences. There was a strong belief that this resulted in failed cases and inconsistent legal representation in court. Consultees commented that they thought that environmental cases were allocated on a rotation basis, and often given to junior lawyers with limited environmental experience, so there was a situation where there were often huge quality disparities, as commercial companies which were being prosecuted could afford to employ a more experienced and specialist environmental lawyer. This inequality in legal representation was perceived to be particularly evident in waste cases, as waste law was seen to be quite technical and requiring expert knowledge.

Whilst we do not have comparative statistics, the lack of specialist environmental expertise within the PPS might explain why the number of failed prosecutions for environmental crimes seems quite high in Northern Ireland. As Table 1 below shows, between 2008-2013 a quarter of all environmental cases brought failed.

Table 1: The number of criminal investigations opened and referred to the PPS by the Environmental Crime Unit (of the Northern Ireland Environment Agency)

Year	Number of cases opened	Cases referred to PPS	Failed Cases	% of Failed Referred Cases
2008	133	56	13	23%
2009	119	55	19	35%
2010	40	26	9	35%
2011	63	47	8	17%
2012	70	47	12	26%
2013	56	19	3	16%
<b>Total / Average</b>	481	250	64	25.6%

Source: Criminal Justice Inspection Northern Ireland<sup>37</sup>

**Solution Option 3**



We strongly recommend having specialist environmental law prosecutors in the PPS. The same problems that Northern Ireland are experiencing also frustrated SEPA in Scotland for over a decade, but were eventually recognised by the Advocate General who was persuaded in 2011 to appoint lawyers in COPFS that specialised in environmental law. They now have three specialists in wildlife and environmental crime that are spread across Scotland, but work together to share knowledge and experience of cases.<sup>38</sup>

There also looks to be too wide a separation between enforcement and prosecution in Northern Ireland, compounded by the fact that there isn't a specialist environmental law team in Government. In Scotland COPFS and SEPA have introduced an agreed protocol on concluding investigations and prosecutions" to ensure effective liaison.<sup>39</sup> It is also recommended that a similar protocol is developed with Northern Ireland (based on the Scottish model).

### 2.1.3 Environmental Enforcement

**Problem 4: There is too much attention given to enforcement and less attention focused on achieving compliance in the regulated groups themselves before the rule breaking occurs**

Some consultees thought that the Government tended to focus too much of its attention on environmental enforcement, rather than prevention (i.e. before rule breaking takes place). This approach was considered to have flaws.

Firstly, investigations and enforcement action in court take time and can expend considerable resources. Further limitations to this approach have been the cuts in numbers of enforcement staff. Some consultees did not think that there were the necessary resources in Government to detect environmental criminality, and even where they did detect offences and take enforcement action, then the penalties given by the courts were seen as weak and not being a sufficient deterrent in Northern Ireland.

The second flaw is the problem, that has the potential to damage the environment, or human health, has already happened. Consultees thought that greater efforts needed to be made earlier to work with key regulated groups that had direct involvement in the activities which might lead to rule breaking.

#### **Solution Option 4**

##### The Waste Industry

The Government has already recognised that those involved in illegal landfill operations have to get the waste from somewhere, so they should try and get compliance in the waste industry. As some illegally dumped waste has allegedly come from local authorities in Northern Ireland in the past, the NIEA told us they had recently sought to ensure that local authorities have a full cognisance of a duty of care. This includes ensuring that contracts between local authorities and waste companies contain sufficient safeguards.

With regard to the waste industry, two further issues in respect to industry regulation at source seem obvious.

Firstly, there appears historically to have been poor intelligence sharing between the Government and local authorities. If an operator has been prosecuted, or is under investigation in one part of Northern Ireland, this has not always been communicated to other local authorities who have also been using their services (or might procure their services in the future). We suggest that closer links be created between the Government and waste departments in local authorities so the relevant authorities have up-to-date intelligence about who they are contracting, to ensure they are environmentally responsible companies without a history of serious environmental offending. This network of cooperation might be done through a common database, or some something simple, like a regular email update to key points of contact in each local authority.

Secondly, the Government does not appear to have an adequate handle on where waste is going. We would, therefore, make five suggestions.

Those waste have to comply with regulatory processes such as completing waste transfer notes. This is still a paper based system in Northern Ireland, which undoubtedly makes the investigatory role of the Government harder. If most parcel delivery companies in 2016 can carry hand-held electronic linked devices this begs the question why can't waste transfer operators? We would, therefore, suggest that the Government impose a legal electronic duty of care based system on operators. Electronic duty of care (eDoc+) systems for waste have already been successfully developed in England.<sup>40</sup> In England they have been free to use and trials have found that they have saved the companies using them time, effort and money in fulfilling their duty of care requirements for the waste.<sup>41</sup>

A second suggestion would be putting a legal duty on any haulage company involved in the waste industry to use a global positioning system (GPS) device on vehicles, and to keep GPS records for a certain number of years. This will enable companies to show that they run their businesses in a smart and legitimate way. It would also enable the Government to potentially view vehicle activity either live or historically, so they can track waste movement. The legislation could be amended to make it an offence to operate a waste transfer business without a GPS device, or without GPS records, so if a vehicle which is carrying waste is stopped and does not have the necessary licences and GPS documentation, it is clear that operation would be illegal. Member States of the EU already have these requirements in respect to the inspection and enforcement of certain fisheries vessels under Community legislation.<sup>42</sup>

A third suggestion would be to ensure that skip hire companies have a global system of mobile communication (GSM) or GPS devices on all skips, and that records of date from these are kept for a certain number of years. This would enable the Government to be able to get records of where skips have been, even if they have gone outside cities into some of the most remote regions of Northern Ireland. Such devices are increasingly used in waste management,<sup>43</sup> and the price of these devices has decreased massively in recent years, meaning that there could be solutions that match the budgets of government, or waste operators.

A fourth suggestion would be creating tagging readers at the entrance of all licenced waste stations in Northern Ireland. This would require waste haulage companies and skips to have a small inexpensive tag (radio frequency identification device (or similar)) placed on them – and when they entered a waste disposal site this would automatically log any tagged incoming or outgoing vehicles or equipment, alerting both the waste haulage company and a Government computer if necessary. Therefore, if the Government can see that a waste

company is not paying an appropriate number of visits to authorised landfill sites that might alert them to a problem with that company.

Our final suggestion in connection with the waste industry is having policies and/or legislation that apply to the producer of waste. The above suggestions will be less effective if the duty of care is lacking in the waste industry and there is a lack of compliance with the above solutions. Therefore, one suggestion is to require the waste producer to ensure that the waste company produces licence documentation, information about where the waste is going to go, and a certificate showing they have an authorised GPS system to record movements. There might even be consideration of an offence if the waste producer does not adequately undertake these checks.

### The Minerals Extraction Industry

With regard to closer regulation of the minerals extraction (quarrying) industry, to prevent illegal operators, two steps could be taken.

Firstly, the Executive can focus on the disused quarries. This might be done by placing a duty on the owner of the land to put up adequate security fencing around it to stop it being illegally quarried, or to place them under a duty to do regular checks to ensure unlicensed operations aren't taking place (and to report anything untoward to the Government).

Consultees raised the issue that there was a lack of clarity about quarries having open-ended planning consent and licences for their activities. To resolve this problem there might be clearer planning policy guidance and licencing which puts time limits on quarrying activities. In cases where there is no re-application to continue quarrying, a sympathetic restoration should always be required under the licence conditions.

There might also be an Executive fund established whereby some disused quarries are restored after a certain period of time (e.g. if the quarry owner has gone out of business). This ought to ensure that they aren't illegally quarried or filled with waste, that they improve the amenity for local residents, and reduce the likelihood of people drowning in them. This would also be an opportunity to get biodiversity gain out of sympathetic restoration.

A second thing that can be targeted is the equipment. Much of the major plant equipment required for quarrying (such as mobile rock breakers or rock crushers) is extremely expensive, so they are normally hired by those operating illegally. We have two suggestions in respect to equipment.

Firstly, hire companies could be legally compelled to do background checks before hiring equipment. This might be either to a telephone desk within the Government, or through some electronic means, to ensure that the company asking to hire the equipment had the necessary permits and permissions. An offence could be created of hiring without a proper check.

Secondly, hire companies could be required to put GPS devices on the mobile plant that they are hiring. They could then check the actual location of the mobile plant electronically and see if it is in the agreed location (which we assume is given for insurance purposes). If it is not, they should be compelled to report this to the Government. This would have the advantage for the hire company of knowing where the plant was in case of theft, and also it might reduce their insurance premiums (as it reduces risk).

### Support for Such Measures

The above suggestions will incur some costs, but they should also allow good business to flourish and bad business to be prevented. Consequently there is a strong argument for incorporating some of these suggestions as legal requirements, or conditions in licences. The third chapter, on social and economic implications of poor environmental regulation, demonstrates further how much businesses can be negatively affected by illegal activities in their sector – so it is hoped that industry would support such moves. Consultees from industry groups in Northern Ireland were supportive of some of the above ideas.

What will also be required to make the use of technological based systems work in Northern Ireland is the establishment of mutual systems, programmes and cooperation with the Republic of Ireland. This is something that should be discussed further at the North/South Ministerial Council.

**Problem 5: The Government does not focus enough on the provision of information and advice to those they regulate.**

A repeated observation by consultees was that the Government needed to focus less on enforcement and more on the other aspects of environmental regulation, such as education and advice, as this would have a positive impact on compliance. Consultees considered that the Government was not currently set up to be able to effectively visit sites and to tell those who were regulated what they were doing right, and what they were doing wrong, and to give them advice to enable them to achieve better environmental outcomes.

We believe that there are three characteristics of Northern Ireland that emphasise the importance of regulatory advice.

Firstly, Northern Ireland has dispersed industries, which can be very difficult to regulate. Many of the companies that are being regulated are individual family businesses, scattered across the country, and there has not been the consolidation in some of the key industries that there has been in the UK (e.g. the mergers in the waste sector to form bigger companies that have taken place in England). Having more companies to regulate increases the regulatory burden on the Government. Smaller companies may be less likely to have developed rigorous procedures on following environmental laws than larger companies.<sup>44</sup>

Secondly, there is large number of small farms in Northern Ireland, which have often been family run over generations, and which are not so commercially orientated as many others in England. Consultees commented that it is a challenge for the Executive to see what was going on in all of them, because there are so many. Whilst many industrial companies which might cause environmental damage are regulated closely, through environmental licencing, many farms are not (e.g. except pig and poultry farms). Instead, regulation is primarily achieved through cross-compliance, connected to EU agricultural subsidy schemes. Because only a very limited number of farms are checked under cross-compliance this inevitably risks leaving significant regulatory gaps.

Thirdly, consultees suggested to us that whilst many Northern Ireland companies played by the rules, there was a significant number that did not. Non-compliance in this context was seen by consultees as being relatively minor and was often labelled to us as ‘stepping out of line a little bit,’ ‘cutting corners,’ ‘bending the rules,’ or a culture of ‘it’s only going to harm a little bit.’

The above factors help to illustrate some of the problematic aspects of regulation thus far in Northern Ireland. Accounting for the circumstances in Northern Ireland, it would be better

and more effective for the regulator to have open communication channels and for increased provision of advice and greater co-operation with those that they are regulating. Consultees thought that the Government appeared to have an attitude that providing advice and support to regulated groups compromised their role as an enforcement body.

The Government were also perceived to have neglected focusing on early communication and advice, which had led to a bad relationship with certain sectors (e.g. farming). Consequently many consultees considered that there was no reliable channel for regulated groups to get advice. This was considered to result in poor outcomes and was seen as a major weakness in Northern Ireland environmental regulation.

### **Solution Option 5**

We consider that there would be benefits in having a model in Northern Ireland which incorporates both ‘push’ and ‘pull’ to bring people into compliance. We think the correct message of the NIEA (and any successor) should probably be that we will work with you to get it right, but if you keep getting it wrong we will be a tough regulator.

Our review found that generally business would strongly favour the Executive providing advice to them, that was not too heavy-handed, and offering a greater level of support than actual scrutiny. We do not think an increased focus on inspection and enforcement is the only answer to the problems surrounding environmental regulation in Northern Ireland. To achieve better environmental outcomes we believe a new approach has to be adopted which gives greater emphasis to communication, education and working together. There are two critical points as to how this might be achieved in Northern Ireland.

The first critical question is how you persuade someone that is regulated to engage. Our experience was that all the industry bodies we spoke to as part of this review seemed receptive to new approaches giving greater emphasis to communication, education and working together.

Some industry associations already promote education and training events in relation to environmental compliance to its members, which involve both the Government and NGOs. There seemed to have been less Government collaboration with farmers, in respect to environmental regulation, because of a long-standing antagonistic relationship between the two groups.

Going forward the Executive has got to show greater leadership in persuading regulated groups like farmers to engage, and work with them and could for example:

- Explain the benefits of compliance in the context of economic issues. For example, the Government might demonstrate to farmers that the bottom line is not only that they might get more money (from not being penalised under their Common Agricultural Policy (CAP) subsidies) but also to highlight the opportunities that exist within CAP to make farming more efficient and environmentally friendly.
- Farmers should be convinced that it is in their longer term interest to ensure that land is in good environmental condition. There needs to be a change in approach with a greater understanding and appreciation of the environmental impacts of land management practices on soil and water, as well as outputs.
- A greater level of engagement should also give farmers the opportunity to educate the regulators about their own industry, so the regulator can understand how farmers operate and why problems sometimes occur.

An approach that should work well in facilitating the above is to survey key regulated groups in Northern Ireland. These surveys can register what the key issues are with these groups, which can inform the Government in adopting strategies regarding how to best engage with them and help them.

The above approach was undertaken in Wales with surveys of farmers.<sup>45</sup> An interesting result (with relevance to Northern Ireland) was that the responses of the farmers formed a catalogue of low level impacts on the environment – but taken together had significant cumulative environmental impacts. Before the surveys, Government did not know the extent of the cumulative low level impacts in the Welsh farming industry. The surveys helped establish an evidence base to show to the farmers which would allow them to kick-start a more collaborative process of cooperation. Maybe a similar approach might be adopted in the future via the Northern Ireland Farm Business Survey, or through a more focused consultancy study.

A second critical questions is: what body actually engages with the regulated groups?

There have historically been issues with regulated groups neither forming good relationships with the environmental regulators, nor trusting them. If the regulatory body in Northern Ireland can change their perceived culture and form better relationships going forward then they should do so. SEPA do this effectively in Scotland, and have proved that a regulator can provide both advice and adopt an enforcement function.<sup>46</sup>

We suspect that having some other body, which is divorced from being seen to have an enforcement role, to undertake the educational side, might be more attractive in Northern Ireland. DARD already has an advisory service for farmers and this might be utilised effectively after the formation of DAERA. Alternatively, having catchment offices, or officers, that are divorced from regulation and anything to do with agricultural subsidies is perhaps the optimum model.

Feedback indicated that some consultees thought that Northern Ireland offered very little support to farmers on nitrates, compared to England and Scotland. One consultee group (from industry) said that they had undertaken a trial on advising farms about nitrate pollution, and farmers had bought into the process and improvements were being seen. When they sought financial support from the Government to roll this out nationally they did not manage to get funding. Whilst we do not know the full circumstances of this case, this type of collaboration and support for advisory approaches would seem sensible going forward – particularly when seen against the backdrop of potential clean-up costs and a possible infraction case by the European Commission for non-conformity with the Water Framework Directive.

We believe that there is now much greater opportunity for the Government to work with business now than there has been for fifteen years. This should be seized upon.

**Problem 6: The NIEA has a poor relationship with some of the groups they regulate**

A common criticism of consultees was the poor relationship that the NIEA had with the groups that they regulated. Obviously, the NIEA does have some very good and pragmatic officers, who form excellent relationships with those they are regulating, but there were a lot of general criticisms over the style and impact of regulation undertaken by them.

Some of the observations of consultees (which came fairly uniformly across the spectrum of consultees) include:

- The NIEA have an enforcement approach with a big E. They sometimes adopt fishing tactics and can be somewhat heavy handed in their inspections.
- The NIEA are known to arrive unnecessarily at legitimate businesses with warrants.
- Industry is frustrated that the licencing and enforcement people don't work together. There have been lots of clients who have been told by the licencing team on visits that all is fine with their operations, and that they are in compliance, and then the environmental crime team turn up shortly afterwards and takes strong enforcement action.
- Whilst ignorance of the law is no defence, some farmers (who had been doing things a certain way for a long period of time) are annoyed that they had not been told in advance by Government that the law had changed and they were now being penalised for something they did not know was wrong.
- One local company came forward voluntarily, and were willing to put things right once they realised they were in non-compliance. The NIEA were contacted and asked for help to put things right. The company were prosecuted and received tough sanctions. This attitude made them and others reluctant to give information to the regulator in the future.
- The NIEA are inflexible on inspection visits. One farmer asked for an alternative day for an inspection because of a family funeral and was told no, the inspector would come onto the land whether he was there or not. The inspectors have 'no give', and are too 'heavy handed.'
- Some NIEA inspectors insist on only talking to people under caution which creates stress.
- The regulator did not make the distinction between an authorised operator and an illegal one. There was a case where an official called at a legitimate quarry operator in the morning, and was then going on to an unauthorised site to regulate a mobile crushing plant. The officer, when informed that this second site was unauthorised and illegal, informed the legitimate operators that planning was not his area of responsibility.
- An issue is when the NIEA see something which is not polluting, but if not dealt with has the capacity to cause a polluting incident in the future, but decide to enforce even after it is rectified. Enforcement is seen as hard and the financial penalty disproportionate to the incident in question. Enforcement is often seen as a matter of bureaucratic interpretation.
- Companies have approached the Government to ask if they needed any permissions, or to undertake environmental assessments at a location and been told no. Such companies believe it is up to the Government at the end of the day to advise them on compliance if approached, and are unhappy when problems surface later and it transpires they might be operating contrary to the law.
- Industry hates inconsistent regulation. There are clients who have the attitude that 'such and such is breaking the law, why am I getting prosecuted - the NIEA know about them and they are worse than me?'
- The NIEA has an all or nothing approach. There are no warning letters. Clients often just receive a summons from the court. They should be working with them to help them reach compliance.

We should make clear that we have seen no hard evidence that can verify the comments above. However, they came from a wide-ranging group of consultees (not just regulatees who might bear a grudge), and the pattern led us to believe that there are cultural issues and operational methods in the NIEA which are disliked, or cause frustration. These perceived

issues are affecting the credibility of the regulator and their influence on good vs. bad practice. At the same time we recognise that NIEA inspectors are doing a valuable job in difficult circumstances, and can get a hard time from those that they inspect and regulate, and can be subject to verbal and even physical abuse when doing their job. Some regulatees confirmed that this is the case.

### **Solution Option 6**

We consider that the management within the NIEA must look to change cultures, as it will be very important that they are perceived to be a good and fair regulator going forward. Our intention is to offer suggestions that will improve the relationship between regulators and regulatees and make life easier for all parties.

Some of the criticisms above seem to have been made because the NIEA are unclear about their role. It looks like some inspectors see their primary role as policing, rather than supporting the system. The NIEA obviously need to be tough on some offenders, but it is also obvious that the additional skills required in the Agency are soft skills. Problem 5 above deals with how there might be greater focus on education and the provision of information to those regulated. Better training of inspectors might also address some of the negative observations outlined above.

The observations above came from many different sectors in Northern Ireland. However, the farming industry is the one that is most considered to have had the biggest and most long-standing uneasy relationship with the NIEA. This is probably because unlike other industries the regulator is dealing with land that the farmers both live and work on, and there are not the same connections with other industries.

In recognition of the above the Northern Ireland Government recently worked with the farming unions to develop a memorandum of understanding (MOU) on the interactions between farmers and regulators.<sup>47</sup> The MOU had guidelines which applied to the conduct of both inspectors and farmers, outlining what their rights were and what they could and couldn't do in specific situations. This went some way to rebuilding relationships and trust, but it was not formally adopted at Ministerial level. This appears to have been because of a section concerning low severity pollution incidents that were in conflict with cross-compliance legislation.

It is recommended that this MOU is resurrected at the earliest possible opportunity and it should focus solely on advice, conduct, rights, and working together. We consider that the section relating to low level offences might be dealt with separately. A focussed MOU has the capacity to build bridges and lay down a marker about acceptable behaviour. This (or a code of practice), should eventually be expanded to cover all aspects of the NIEA's work and be applicability to every regulated group in Northern Ireland.

Some of the issues raised above seem to be because of the sanctions regime in place, and can be solved through having a better sanctions regime (which we will come to later). Regulators should be able to tackle some environmental offences in various ways without going to court. In England and Scotland, the EA and SEPA, have a range of powers to impose civil (or non-criminal) sanctions. In relation to the observations above, one option is for some Northern Irish offenders to be able to commit to put things right, knowing that failure to do so will mean prosecution in court. This commitment must be accepted by the regulator to have legal effect. This kind of promise is known as an undertaking. Alternatively, the regulator should



be able to serve notices demanding that an operator take steps to curb pollution. If the notice is not followed then the regulator will then prosecute.

Training on consistency in enforcement would also help resolve some of the issues above. It is difficult to recommend what this might look like, but on a basic level there might be an inspection manual and score card. All score cards should be checked periodically by a line manager to see whether the enforcement action taken was appropriate in the circumstances.

We also consider that the regulator should endeavour to get more feedback from those they are regulating. We think that one person in the Executive should be nominated as the key point of contact with each industry (e.g. farmers / agri-foods, industrial, quarrying, waste). Each point of contact should endeavour to understand that business, form relationships with them, and catalogue any complaints about conduct or enforcement outcomes.

We also think it would be useful for the Chief Executive of the NIEA to visit some of the key unions in Northern Ireland and vice versa. An encouraging sign is that for the first time a Chief Executive attended an Ulster Farmers Union meeting, relatively recently. Again this has the benefits of creating dialogue and the feedback received at such meetings can also be filtered down to the staff in the NIEA.

#### **Problem 7: There have been a catalogue of failures in enforcement**

Earlier reviews by Chris Mills,<sup>48</sup> the CJI<sup>49</sup> and numerous academics<sup>50</sup> have reported on some of the key failings in environmental enforcement in Northern Ireland, so we will not dwell on this too much. However, the consultees to this review also had a number of observations, which fell in three categories, which add to the conclusions of earlier reviews.

Firstly, numerous consultees were of the opinion that prosecutions were normally focused on low-level environmental crime, not high level environmental crimes:

- Prosecutions are normally small scale, where they know there will be normally guilty pleas. Whereas, anything complicated, requiring detailed evidence happens very slowly or does not happen at all.
- There is a tendency to ignore larger illegal operators and focus on the smaller ones.
- The NIEA tend to go for the low-hanging fruit – the legitimate operator who has operated for twenty years without an incident then makes one mistake.
- Many of the regulators seem to be scientists, not law enforcers. Law enforcers might have a better level of scrutiny and discretion.
- The regulators should not be ignoring the major stuff and should be giving out cautions or a warning for the minor offences.

Secondly, consultees considered that the regulator was either poor at recognising major problems, or to a certain extent has tolerated illegal behaviour:

- It appears that some people in Northern Ireland have deliberately turned a blind eye to illegal behaviour.
- There appears to often be a tolerance of illegal behaviour within the NIEA over a long time before prosecution. One company operated without a waste management licence, with the NIEAs knowledge, for a decade until it was prosecuted. Although they received a major fine and proceeds of crime order by the courts they were afterwards then granted a licence by the NIEA.

- Mobuoy Road was an utter failure of enforcement. It was a well adapted site, but there were lots of tell-tale clues. The investigators had about fifty visits to Mobuoy before they understood that something was wrong.
- Some of the sites that have been visited by investigators were operating way outside their permissions. Take Mobuoy: the Assembly often refer to it as a legitimate operation hiding dodgy operations, but it was not – the companies there clearly did not have the permissions to do what they were doing.

Finally, consultees thought that the economy was sometimes prioritised over environmental enforcement:

- There has been less of a willingness to pursue people who don't comply with nature laws. This is because of economic pressure.
- There has been a tendency to support business rather than punish them for being in breach. Dredging in Lough Neagh is an example of this. The Government wouldn't have done anything to try and stop this without public pressure.
- The Executive has admitted in the Assembly that some sites have not had permissions and extraction has been taking place in Sites of Special Scientific Interest (SSSI) and Special Protection Areas (SPAs). It is surprising that the Government did not notice that unlawful extraction was taking place.

**Solution Option 7**

Our first recommendation is for the Executive to ensure that most of the recommendations of the CJI are implemented.<sup>51</sup> It appears that a large number of the recommendations they have given over time have been ignored.<sup>52</sup>

A key suggestion of the CJI, which we believe should be taken forward as a priority, is that a formalised oversight system ought to be established, whereby a competent manager (or oversight committee), within Government, scrutinises investigative and enforcement files at regular intervals. We agree that until there is a significant improvement, there should be more oversight and control over environmental investigations. This internal review should enable the Government to work out why, and when, the NIEA and any successor is taking enforcement action in practice. This will hopefully then allow them to identify problems and to structure training and guidance as to when the Government thinks enforcement action should be taken, and also what environmental outcomes should be achieved in certain circumstances.

Our second suggestion would be to have an up-to-date enforcement policy, which definitely reflects the new sanctions regime that is planned to come into force in Northern Ireland. The CJI criticised the current enforcement policy and reported that this was already planned to be subject to further revision. We would recommend that the NIEA (or any successor) look closely at the new Enforcement and Sanctions Statement in England,<sup>53</sup> and the new Guidance on the use of enforcement action in Scotland,<sup>54</sup> when revising this document. We thought both these documents were outstanding (in different ways). A broader document in Scotland, the Scottish Regulators' Strategic Code of Practice,<sup>55</sup> might also be useful for the Northern Ireland Government to examine.

A third suggestion would be to introduce training for staff involved in investigations and enforcement. There appears to be inherent problems relating to custom and practice and these will not be solved by new policy documents alone. We would, for example, recommend that a video is produced showing the economic and social and environmental implications of poor

enforcement decisions, and that input into training be given by external bodies such as the police and CJI. Custom and practice in respect to how environmental regulation is undertaken needs to be changed urgently.

A fourth suggestion would be to have a greater number of senior managers that have investigatory experience. It was mentioned earlier that the high level management structure of the NIEA contained many scientific officers (21 out of 39 people),<sup>56</sup> and only one investigatory officer. Scientific officers are important, but so too is having experts in enforcement and investigation. There looks to be a need for a greater balance between scientific staff and investigatory staff at senior management level. We also consider that there should be more recruitment of investigators in the future from police forces, who have greater expertise in case management and evidence collection.

A fifth suggestion would be to have a database which would help regulators to see best practice and make decisions based on these. The NIEA already have an intelligence database known as LUGIS, which was a surprise as many consultees thought there was a lack of a joined-up approach to enforcement work. The CJI have already made good recommendations about how the LUGIS database should be better utilised in the future.

What we think would also be beneficial is a common portal containing relevant and useful environmental information in one place. We also think it would be good for local authorities to have some access to this portal, and for it to contain databases of EIAs, Strategic Environmental Assessments (SEAs) and Appropriate Assessments (required by the Habitats Directive). The Government could then work with the local authorities and provide input into best practice advice, and give examples for others using the database to see and follow (including common indicators etc).

A final suggestion is that there has to be a re-evaluation of how the Government demonstrate their successes to the public. One of the key messages which we picked up whilst writing this report was that confidence in the Government's ability to protect and maintain the environment in Northern Ireland was low. At the current time the Government place press releases on the DOE website about prosecutions, and a small minority are picked up and reported in newspapers. However, most of the population of Northern Ireland will not look at the Government website regularly.

We have not got all the answers on how to communicate successes to the public. The Environment Agency in England used to have well publicised league tables showing the cumulative amount and number of fines - and "naming and shaming" the worst polluters. This had the advantage that some companies would make concerted efforts to not be included in the league table in following years, to avoid bad publicity. It was also seen as a bit draconian and having a negative impact on the regulated-regulatee relationship.

Because there is currently low confidence in the Government's ability to protect the environment, there has to be some thought about the visibility of successes in their work, so people know that environmental crime does get taken seriously and there are legal consequences.

**Problem 8: The NIEA did not seek enough assistance from other agencies.**

A large number of consultees thought that the NIEA was too insular, that they did not have adequate liaison links with other government agencies, and that they should seek more assistance from other external bodies to help them fight environmental crime.

## Solution Option 8

### Links with the Police

We think that the NIEA (and any successor) would benefit from having closer links with the Police Service of Northern Ireland (PSNI) Service for a number of reasons.

Firstly, the NIEA are obviously dealing in some circumstances with organised crime in Northern Ireland and in some situations greater support from the police could be necessary. The PSNI should, therefore, be asked to provide greater on-the-ground support when needed, particularly in respect of major enforcement operations.

Secondly, the NIEA appear to have limited complex evidential experience. They are not investigators in the police sense and their experience in respect to evidence gathering and the evidential chain was often criticised by consultees. Some consultees mentioned that this inexperience had sometimes resulted in issues such as tests being mixed up, and even cases being thrown out of court. The CJI report in 2015 also criticised the NIEA's enforcement methods and rigour.<sup>57</sup> We would, therefore, suggest that the PSNI provide investigatory support for larger cases, and provide assistance with training NIEA (or any successor) staff in evidence gathering and storage.

A further recommendation would be to ask for some PSNI officers to join the NIEA (or any successor) on secondment for a period, or for the NIEA to look at recruiting investigatory staff that have police backgrounds in the future.

### Links with HMRC

We also think that the NIEA (or any successor) should establish closer linkages with Her Majesty's Revenue and Customs (HMRC). Chapter three of this review, focusing on social and economic issues, demonstrates how much environmental crime is costing the economy in tax evasion, and the analysis below in this chapter illustrates that the low penalties handed out by the courts are not having the required deterrent effect. We think there is a clear imperative for greater collaboration.

At the current time any waste material which is deposited at a site which is not subject to a permit under environmental law is not liable for tax in Northern Ireland. The position is different in Scotland, where the law was changed, so that landfill tax may be charged by HMRC to anyone found to be running an illegal waste disposal activity, such as an unlicensed landfill site.<sup>58</sup> This is in addition to SEPA's remit to tackle waste crime using environmental legislation. This means that offenders in Scotland may face both a criminal sanction (including fine) and additionally be required to pay the calculated tax they owe on that site. The Scottish powers are seen as a greater financial deterrent to illegal operators, and a similar change in the law would have clear benefits to Northern Ireland – as would greater collaboration between NIEA and HMRC.

### Links with Government and regulators in other countries

Before the troubles there was a thriving civil servant exchange programme between Westminster and Belfast. Civil servants would move between the two cities to further their careers, which resulted in a useful exchange of knowledge and methods between the two Governments. Whilst this has not stopped completely, it is noticeable that it has reduced over

the years – meaning that the knowledge exchanges have been diminished. Whilst it would be preferable to encourage this to flourish through civil service exchanges again this might be difficult with the cuts in the civil service we are seeing. Therefore, we would recommend that there are annual, or biannual, environmental summits in Northern Ireland where civil servants and staff in government departments and environment agencies from neighbouring countries are invited to talk about best practice in their countries on certain subjects. Getting more external advice on environmental regulation would greatly benefit Northern Ireland in our opinion.

#### Links with groups in Northern Ireland

We also think that the Northern Ireland Executive could utilise more of the environmental talent that it has in its own country to make suggestions on best practice. Northern Ireland has some obviously talented people in private legal practice, the NGO sector, and business that could provide some good input about what is going right and wrong, and where things might change for the better. They just have to be invited in from the outside to contribute to debates. And where they do contribute to debates they should be listened to.

#### The NIEA Board

Linked to all of the above is the composition of the NIEA Board. Unlike the EA in England and SEPA in Scotland the NIEA Board is currently made up of agency insiders. We think this is too insular and that they might benefit from greater external input.

It might be useful to set up a board structure whereby there are outside specialist members who attend the Board bi-annually, that come from bodies such as the PSNI, CJI, private legal practice, NGOs and academia. If it is difficult to formalise this within a board structure then perhaps an external advisory body to the NIEA can be established.

### **2.1.4 Environmental Justice**

Almost all consultees to this report remarked that they considered that the sanctions framework in place was ineffective. Because there is a lot of overlap between the solutions to the problems these are dealt with separately at the end of the environmental justice section.

**Problem 9: The penalties imposed by the Northern Ireland Judiciary for environmental crimes do not provide an adequate deterrent.**

Consultees considered that the judiciary were imposing disproportionately low penalties in environmental cases, and that this was diminishing the strength of the regulators, as the sanctions given did not fit the crime and have the required deterrent effect. A number of observations were made in this regard:

The sanctions handed down by the Northern Irish courts were widely considered to not match the profits that could be made by committing the offence. At one end of the scale one respondent gave the example of an illegal waste operator who was estimated to have made £4 million profit, but was only fined £500,000 in court. A further respondent mentioned someone operating an illegal waste site that got a fine of £118,000, who paid the whole amount of the fine the very same day. The consultee thought that this fine was probably just ‘operating costs’ to the person who had been convicted. At the other end of the scale, small businesses were considered also to weigh up the chances of being caught against the likelihood of receiving a small fine.

There was a perception amongst some consultees that the judiciary failed to adequately consider the impact of low sentences on other legitimate businesses in the area. Those in the business community thought that the fines imposed did not truly reflect the fact that legitimate operators had to pay for permits, pay for staff to go to health and safety classes, or for companies to restore sites afterwards. Because the Northern Ireland economy is smaller than the rest of the UK it was thought that if the impact on legitimate businesses was not sufficiently taken into account, and rule breaking was not adequately punished, this would have more of a profound effect locally on legitimate businesses.

There were explanations given as to why sanctions might be perceived to be low in Northern Ireland.

First, there are no specialist environmental courts in Northern Ireland, so some consultees could relate to the fact that the judges hearing environmental cases might often have had to dealt with more emotive criminal cases (e.g. violent crime), which have had an impact on their perception of the seriousness of environmental offences. Secondly, there was a perception that industry was operating at a different economic scale. Companies tended to be smaller with less capital investment and profit margins were smaller – so it was only natural that fines might sometimes be lower.

Although Northern Ireland industry might be smaller than comparative organisations in the UK, it is clear that there is a still a serious organised crime problem in the environmental sector. A number of consultees, therefore, questioned why so few people had been sent to prison for environmental offences in Northern Ireland, even though some environmental crime (e.g. illegal fuel laundering, operating illegal waste sites) was being undertaken by major criminal operations.

**Problem 10: There is no consistency in the sentences imposed by the Northern Ireland judiciary.**

Consultees thought that there was no consistency in the sentences imposed by the Northern Ireland judiciary. These were often described as ‘unpredictable’, and ‘variable’ depending sometimes on proximity, as there was a recognition amongst local lawyers that some local courts had well-established reputations for being ‘soft,’ whilst others were considered ‘hard.’

Lawyers informed us that sometimes they would advise clients they might expect to be fined approximately £1,000, based on experience with other cases, where in actual fact they ended up receiving a fine of £10,000. The same applied vice versa. This was found to cause great annoyance in the business community because:

- Business never knew where they financially stood if something did go wrong.
- Northern Ireland was a relatively small country and fines were thought to have more of a profound effect locally; some businesses were resentful that rival companies got much lower fines for similar or worse breaches of the law.

**Problem 11: The judiciary do not distinguish clearly enough between ‘good’ and ‘bad’ business when laying down sanctions**

A number of consultees were frustrated that the Northern Ireland courts (when issuing sanctions) did not seem to be able to distinguish clearly enough between ‘good’ and ‘bad’ business. Good business was considered to be companies who had operated within the law for a long period of time and then a mistake led them to break the law. Bad business was considered to be companies who were operating without licenses and deliberately breaking the law, or whom had a long history of being prosecuted.

Whilst there was a recognition that ‘good business’ should receive sanctions for breaking the law, there was frustration in the business sector that ‘good business’ often received similar sentences to ‘bad business’, and were similarly tainted by the stigma of a criminal prosecution.

### **Problem 12: The use of proceeds of crime powers**

Many of the most serious environmental crime in Northern Ireland is brought to court under the powers contained in the Proceeds of Crime Act 2002. It appeared this approach was often used because there was a frustration with the low penalties levied under prosecutions brought under environmental legislation. Although it is in part understandable why Proceeds of Crime legislation has been utilised so much, there were three common criticisms by consultees of this approach.

- Firstly, there was very little emphasis in this approach on remedying the environmental damage (which had significant economic implications). This meant that whilst a successful prosecution was often achieved, it also meant that illegal landfills were not cleaned up afterwards (and the expense in doing so would probably have to be borne by the taxpayer).
- Secondly, there was a suspicion amongst some consultees that the NIEA followed this approach because they received a proportion of any fine levied (22.5%). Several consultees felt very strongly that the NIEA should not be able to profit directly from bringing criminal actions. Some even commented that the figures given in court by the NIEA in terms of estimations of waste tonnages and lost tax etc. were calculated in a manner that was neither scientific nor transparent.
- Thirdly, some consultees expressed concerns that the proceeds of crime route seemed to be taken against both legitimate and illegitimate operators. Consultees expressed the view that this process was not designed with legitimate businesses (who slipped up and occasionally broke the law) in mind, and was originally intended for dealing with drug dealers and criminal lifestyles. There was a strong feeling that whilst there were some serious organised criminal gangs in Northern Ireland whom this route might apply to in terms of environmental offences, this was too blunt a tool to be used widely. Some consultees commented that it caused much resentment when it was used against the legitimate business community. One lawyer gave an example where it was felt it was used disproportionately to the crime, in a case where a client had hid a very small bit of scrap metal on the site.

### **Problem 13: The judiciary appeared reluctant to engage in environmental law questions in their judgments.**

Some consultees considered that the judiciary in Northern Ireland seemed notably reluctant to engage in responding to environmental law questions, instead just focusing on other parts in their judgments. One example given was in a case which revolved primarily around EIA and the requirements of the EU Directive on this, where the judge decided not to get into the



issues about this and focused his decision on domestic arguments involving neighbour notification not taking place.<sup>59</sup>

In another case involving EIA the judgment again seemed to ignore this issue in favour of other domestic points, and focused on traffic impacts.<sup>60</sup> This was a major source of frustration for some consultees who felt that in England and Scotland the judiciary normally dealt in detail with every legal issue in their judgments.

#### **Problem 14: The sanctions toolkit is too weak**

Northern Ireland is well-behind the rest of the UK in its ability to have an effective programme of environmental sanctions. Penalties for breaches of environmental legislation in Northern Ireland are currently nearly always applied through the criminal justice system. This has resulted in a large number of issues.

- The differentiation between minor and major breaches is not there in Northern Ireland and this is having a disproportionate effect in terms of sanctions available and the resulting criminal stigma on some regulated groups. Some regulated groups in Northern Ireland felt resentful when action was taken for very minor breaches, and this affected relationships with the regulator in practice.
- The emphasis is often on punishing the offender, not on remediation and restoration.
- There is often little discretion where someone mistakenly breaks the law, or it's a first time low level offence.
- Not many Northern Ireland businesses voluntarily report problems with compliance because they know the sanctions can be so draconian.
- The lack of a range of penalties available to the regulator has also led to criminal procedures having to be initiated which were costly to bring for the regulator at a time of shrinking budgets.
- Lesser offences often seem to go unpunished in Northern Ireland which might perpetuate the problem of people seeing the environmental regulatory system as being weak.
- A very large numbers of environmental enforcement actions are brought via the Proceeds of Crime route. In some ways this is understandable, because of the options available to the regulators. However, we consider this method to be sometimes mistaken, as proceeds of crime is not design for some businesses and is not an adequate mechanism for remediation of the environmental damage.

#### **Solution Options 9-14**

The sanctions toolkit in Northern Ireland has fallen behind the rest of the UK. The regulator should only be focusing on the criminal law where this is needed. Environmental crime has to be classified in a different way. It is clear that a stronger framework is needed in Northern Ireland to hamper bad behaviour. We have a number of suggestions below which might improve things.

#### New Sentencing Guidelines

Problem 3 (The Northern Ireland judiciary did not impose high enough sentences for environmental crimes), Problem 4 (There is no consistency in the judges sentences) and Problem 5 (The judiciary do not distinguish clearly enough between 'good' and 'bad')



business when laying down sanctions) can be dealt with in part by having good sentencing guidelines, which have statutory backing.

Northern Ireland currently has sentencing guidelines for some environmental crimes. However, these guidelines only cover five separate offences in the Magistrates Courts' and the sanctions levels seem to be some way behind England.<sup>61</sup> In 2014, new sentencing guidelines were published in England by the Sentencing Council,<sup>62</sup> which apply to the sentencing of various environmental offences in the English Magistrate and Crown Courts. The aim of these new guidelines is to ensure fines have a real economic impact and provide a stronger deterrent from re-offending.

The English courts must now consider making a compensation order (for injury or loss or damage resulting from the offence; confiscation; the offence category (culpability and harm) and the tables showing the category ranges when setting a fine. The range of fines has been vastly increased to reflect an offender's ability to pay. The court will review the sentence as a whole to ensure that: any economic benefit that was derived from the offence (for example avoided costs) has been removed and it is proportionate to the means of the offender so as to have a real economic impact.

In the first case discussing the new sentencing guidelines, the Court of Appeal in England said: "to bring the message home to the directors and shareholders of organisations which have offended negligently more than once before, a substantial increase in the level of fines, sufficient to have a material impact on the finances of the company as a whole, will ordinarily be appropriate. This may therefore result in fines measured in millions of pounds. This may well result in a fine equal to a substantial percentage, up to 100% of the company's pre-tax net profit for the year in question."<sup>63</sup>

It is recommended that Northern Ireland introduces new sentencing guidelines, and that these be modelled on the ones in England. Having new guidelines would be to everyone's benefit in Northern Ireland – these would guide the judiciary in reaching adequate and consistent judgments, they would provide an incentive to business to take their obligations seriously, they would help business know what their exposure would be if something goes wrong, and they would potentially offer a greater deterrent threat if people were tempted to break the law.

A major issue with having sentencing guidelines is ensuring that the judiciary follow them in practice. The nature of the Magistrates' courts is that cases in Northern Ireland are unreported, so it is difficult to accurately judge how widely they are followed. Consultees were of the opinion that the guidelines in existence were hardly ever used by the Northern Ireland judiciary. A similar problem used to exist in England so they passed legislation ensuring that every court had to follow any sentencing guideline which was relevant to the offenders case and when exercising any other function relating to the sentencing of offenders.<sup>64</sup> It is recommended that a similar provision is introduced into Northern Ireland legislation.

### Sentencing Database

Problem 3 (The Northern Ireland judiciary did not impose high enough sentences for environmental crimes), Problem 4 (There is no consistency in the judges sentences) and Problem 5 (The judiciary do not distinguish clearly enough between 'good' and 'bad' business when laying down sanctions) might also be dealt with in part by having a sentencing database. A sentencing database for the judiciary will promote increased consistency and

predictability in sentencing and improve accessibility and transparency of sentencing decisions.<sup>65</sup>

There are no detailed sentencing databases in the other parts of the UK, containing decisions and penalties from all courts. However, in New South Wales (NSW), Australia, the Land and Environment Court and Judicial Commission of NSW have established an online environmental crime sentencing database.<sup>66</sup>

The NSW database contains case law, legislation, principles of sentencing, sentencing statistics and other information. Most importantly, the judges can select objective characteristics relevant to a case and this information is collated to demonstrate what types of monetary penalties have been imposed on offenders in the past, in similar circumstances to their case.

We do not know how much the NSW database cost to set-up and maintain. However, it is encouraging that an individual State in Australia could afford to do this. However, NSW has an environmental court, rather than individual magistrates courts – which enables the administration of this to be easier.

We believe that a sentencing database is a good idea but we are not fully convinced that there will be money available for its introduction, and whether it would attract the support of the judiciary. Instead of recommending a database at this point we think it would be important for the Government to talk to the judiciary in Northern Ireland in the first instance to see if they would welcome such a tool.

#### Having an Environmental Tribunal in Northern Ireland

Problem 4 (There is no consistency in the judges sentences) and Problem 7 (The judiciary appear uncomfortable dealing with environmental cases) might in part be dealt with by having a specialist environmental court or tribunal in Northern Ireland.

In 2003, Macrory recommended that a new environmental tribunal be established in England and Wales as a single body to handle regulatory appeals under most environmental legislation.<sup>67</sup> He considered that the need for a specialised jurisdiction was reflected in the distinctive characteristics of contemporary environmental law, and it was possible to identify a core environmental jurisdiction that could fall within a new Environmental Tribunal system. The Royal Commission on Environmental Pollution had also earlier recommended that a specialist environmental tribunal system be set up to consolidate and rationalise the range of environmental appeal mechanisms.<sup>68</sup>

The introduction of civil sanctions in Great Britain under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 resulted in the First-tier Tribunal (Environment)(General Regulatory Chamber) being established in 2010, so that it could hear appeals against the imposition of civil sanctions as required by section 54 of the above act.

Northern Ireland would also clearly benefit from also having an environmental tribunal, which could deal with some of the caseload under environmental legislation. Macrory estimated that the establishment costs of a tribunal in England and Wales would be under £2 million. Interestingly, Northern Ireland already has a planning tribunal and water tribunal operating independently,<sup>69</sup> so much of the concept and structure is already there in practice and could be easily built upon with a potentially smaller establishment cost.

#### Judicial Education and Training

Problem 3 (The Northern Ireland judiciary did not impose high enough sentences for environmental crimes), Problem 5 (The judiciary do not distinguish clearly enough between ‘good’ and ‘bad’ business when laying down sanctions) and Problem 7 (The Judiciary appear uncomfortable dealing with environmental cases) might in part be dealt with by increasing judicial training in Northern Ireland.

Large numbers of consultees wanted to see reforms that would bring changes in judicial culture in respect to how they dealt with environmental cases. A further way of doing this is to increase judicial education and training in this sector. This has been attempted in Northern Ireland before. The former Minister for the Environment, Alex Attwood, held a symposium on environmental enforcement, which included an academic at Queens University Belfast, Sharon Turner, holding training sessions for the judiciary.

However, we believe that further efforts should be made by the Government to engage with the Judicial Studies Board, which is the body responsible for judicial training in Northern Ireland. It would be considered sensible for: (i) The environmental NGOs in Northern Ireland to be invited along to any judicial training events to highlight the issues surrounding environmental degradation; and (ii) the Government to present some of the social and economic consequences of low sentencing to them.

#### New Sanctions Toolkit

Problem 5 (The judiciary do not distinguish clearly enough between ‘good’ and ‘bad’ business when laying down sanctions), Problem 6 (The use of Proceeds of Crime powers) and Problem 8 (The sanctions toolkit is too weak) might in part be dealt with by having a better sanctions toolkit.

The NIEA have continually pushed for legislation enabling them to expand their sanctions toolkits. They have been so frustrated with the state of affairs that they explored having a MOU with farmers about reporting and penalties for low-level environmental offences, to try and fix tensions between the regulator and the farming sector.<sup>70</sup>

The above would have only been a temporary fix. Clearly, Northern Ireland has to design a strategy which works in Northern Ireland and results in better compliance. Scotland has taken this on board. England is also expanding the applicability of better sanctions (e.g. enforcement undertakings) from some discrete sectors like packaging, into new environmental regimes, because of successes in voluntary reporting.

Legislation is required in Northern Ireland which will resolve this issue once and for all. It is proposed to introduce in Northern Ireland a range of administrative sanctions in a new Better Regulation law to help ensure that environmental penalties are more consistent, flexible and proportionate. This would be very welcomed and should be in-force as soon as practicably possible.

There were concerns amongst some consultees that a Better Regulation law on sanctions might not happen, or be considerably watered down. We would, therefore, recommend that Government considers urgently convening a summit with key industries in Northern Ireland to explain the benefits to all sides of having a wider range of sanctions toolkit. We think that if this is done properly then industry in Northern Ireland will give their full support (as a system that rewards people for coming forward and is outcome focussed will have clear benefits).

#### Sanctions Guidance

Problem 6 (The use of Proceeds of Crime powers) might in part be dealt with by having better sanctions guidance in place.

Northern Ireland has been constrained by having a weak environmental sanctions toolkit. There has also been much criticism of the choice of sanctions approaches and the impact these have had on outcomes. Profit recovery might be seen as only being there because there is something in it for the NIEA, not as a principle process for society in its own right or having societal benefits (such as ensuring proper remediation).

The NIEA would clearly benefit from having transparent and clear guidance that enables them to consider through to prosecution (and recommendations for court) how they should make enforcement decisions, and what type of sanction routes and tools are appropriate in different situations. For example, the EA in England have a guidance document that enables them to give more consideration to outcome-focussed enforcement, so they can think about whether they need tools to: stop the offending; remediate; bring under regulatory control; or to punish and deter.<sup>71</sup>

### 2.1.5 Objectives and Oversight

#### **Problem 15: The strategic objectives of the NIEA should be stronger and embedded in legislation**

The current strategic objective of the NIEA states that its purpose is to create prosperity and well-being through effective environment and heritage management and regulation. The Agency's four key objectives are:

- To deliver effective compliance with and implementation of legislation and international obligations.
- Improve understanding and appreciation of our environment.
- Support a sustainable economy.
- To deliver reformed and effective planning.<sup>72</sup>

These strategic objectives do not appear to be embedded into statute. A number of consultees thought that the strategic objectives of the NIEA would benefit from being formalised in legislation. Some considered that they should also be revised so that they included a closer link to improving peoples' health and well-being.

#### **Solution Option 15**

It would seem beneficial for the strategic objectives of the NIEA to be enshrined in legislation. SEPA's purpose is set out in legislation in the Regulatory Reform (Scotland) Act 2014, and is to ensure that Scotland's environment is protected and improved, including ensuring that natural resources are managed in a sustainable way.<sup>73</sup> In carrying out its functions for that purpose, SEPA must, except to the extent that it would be inconsistent with its purpose, "contribute to improving the health and wellbeing of people in Scotland and to achieving sustainable economic growth."<sup>74</sup>

The suggestion that there should be a link to improving peoples' health and wellbeing, as is the case in Scotland, is also a positive suggestion and one we would endorse (and could potentially link quite well in terms of moving forward with the peace process). We especially

consider it important to be embodied in legislation, if there are plans to turn the NIEA into an executive non-departmental public body.

### **Problem 16: The robustness of environment oversight in Northern Ireland**

Numerous consultees thought that there was a problem with oversight of the environment (and Government policies on this) in Northern Ireland. Many thought that this position might get worse following the Stormont reforms if the Northern Ireland Assembly's Committee for the Environment was merged with the Committee for Agriculture and Rural Development (following the merger of the two Government departments).

The Environment Committee currently has an important role in overseeing governance, policy development, regulation, and scrutiny of the implementation and application of environmental legislation. There were concerns from consultees that environmental oversight might be further diluted if this merger went ahead. This was mainly because the agricultural committee were seen to have a strong relationship with key agricultural stakeholders and their role was perceived as protecting these stakeholders from undue regulatory burdens.

### **Solution Option 16**

#### Creating a New Environmental Audit Committee

There is a danger that environmental oversight could be diminished if the two existing Assembly Committees were merged. An obvious recommendation would be to keep both of these committees in operation after the departmental merger, to reflect the competing goals and visions of each.

If the two committees are merged we would strongly suggest that an environmental (and sustainable development) audit committee be established in the Northern Ireland Assembly. The above works well in England – which has a Commons Environmental Audit Select Committee, in addition to having a separate Commons Select Committee on the Environment, Food and Rural Affairs. The Environmental Audit Committees role is to consider to what extent the policies and programmes of government departments and non-departmental public bodies contribute to environmental protection and sustainable development and to audit their performance against Government targets (and to report their findings to the House). Having such a Committee in Northern Ireland should result in better environmental integration and ensure that departments are carrying out their functions within environmental limits.

#### Developing Oversight in the Northern Ireland Audit Office, Ombudsman, and Criminal Justice Inspection

We were impressed with some of the oversight of the environment outside of the Northern Ireland Assembly, and believe that the strength of this could potentially be further developed.

Firstly, several of the consultees thought that the Northern Ireland Audit Office (NIAO), which seeks to hold public bodies to account for the way they use public money, played a hugely significant and effective role in environmental governance in Northern Ireland. We consider that the environmental audit function of the NIAO might, therefore, be strengthened further (especially if the suggestion of a separate Environmental Audit Committee in the Assembly is not taken up). We consider that having a strengthened, dedicated, environmental

team in the NIAO would ensure more regular oversight, with potentially better environmental and economic outcomes in a more transparent fashion.

Secondly, a small dedicated specialist environmental team might also be set up within the Northern Ireland Ombudsman (which investigates complaints made by people who believe that public bodies in Northern Ireland have not acted properly or fairly towards them). We were informed by one consultee that a significant number of complaints already received by this organisation were related to planning or the environment. Having a specialist environmental team embedded in this organisation could provide greater oversight of how the Government operates, and make important recommendations for improvement.

Thirdly, we also believe a small dedicated specialist environmental team might also be set up within the CJI (which already is charged with examining the effectiveness of the NIEA, amongst many other aspects of the criminal justice system). Having a specialist environmental team embedded in this organisation might also provide more regular oversight as to how the NIEA operates, and make recommendations for improvement on a more regular basis.

## 2.2 SPATIAL PLANNING

### **Problem 17: Lack of a strategic approach to spatial planning**

Many of the consultees felt that absence of a strategic/integrated approach to spatial planning was having considerable impacts on the environment. Local area plans had not been kept up to date and were subsequently not well connected to strategic planning on issues such as infrastructure and renewable energy. This problem has been compounded by the lack of coordination and enforcement with respect to housing development, with one consultee estimating that around 50,000 houses have been built unplanned in Northern Ireland.

Consultees commented that transport, environment, education and social development departments all had different plans and strategies. Many of these were conflicting. This created difficulties for local government in addressing local planning.

### **Solution Option 17**

Overall, consultees were in favour of handing over planning responsibilities to Councils. The fact that Councils could provide a local input into strategies and have a greater involvement in policy making in this area was welcomed.

The restructuring and reform of the planning system and the recent, and much improved, Strategic Planning Policy Statement for Northern Ireland (SPPS)<sup>75</sup> are capable of improving the strategic approach to planning. The SPPS transfers responsibility for the preparation of Local Development Plans (LDPs) from the Government to Councils, and establishes a planned planning system which gives primacy to the plan in the determination of planning applications, unless other material considerations indicate otherwise.

Councils are now responsible for setting out policies in their LDPs that support a diverse range of renewable energy developments. The aim of the SPPS in relation to renewable energy is to facilitate the siting of renewable energy generating facilities in appropriate locations, in order to achieve Northern Ireland's renewable energy targets. The SPPS also requires that development in the countryside must not blur the distinction between a settlement and the surrounding countryside, or result in urban sprawl.

A principal recommendation of the review by the Land Matter Task Force,<sup>76</sup> is the planning, development and implementation of a Land Strategy for Northern Ireland by 2016. The vision of the strategy is for land and landscapes being managed for the benefit of people's well-being and prosperity, respecting the views of communities, groups and individuals, striving for environmental excellence, and making best use of the environment's multi-functionality. The strategy would sit above sectoral policies and aim to provide a framework to manage conflicting policy priorities and balance competing demands on land. It tries to address landowners' attitudes towards land, by providing an overarching framework to ensure that local and regional policy and decision-making around land contributes to fulfilling the strategic needs of Northern Ireland.

Having a Land Strategy (as described above) in combination with the Regional Development Strategy 2035<sup>77</sup> (which sets a strategic framework and guidance for land use), should deliver more strategic and consistent decision-making in Councils, in relation to their Plan Strategies

(which sets Councils' objectives in relation to the development and use of land in their districts).

It would be beneficial to have an entity in place that ensures co-operation, horizontally and vertically, and oversees the strategic approach to land use planning. We would recommend having something similar to the central/local working group on operational waste issues (which was introduced to ensure better communication and working relationships between Government, Councils and waste management groups).

A further option would be to ensure that regular meetings, where best practice can be shared on planning issues, between the Councils and relevant departments. This should be organised by the Local Government Association.

### **Problem 18: Lack of environmental consideration in spatial planning**

A number of consultees felt that environmental considerations were not properly being addressed in spatial planning.

Firstly, EIAs and SEAs were considered to be of poor quality.

Secondly, the NIEA were not providing sufficient input on EIA applications, in terms of screening (the process of determining whether an EIA is required or not) and scoping (what should be included in the EIA).

Thirdly, numerous consultees mentioned that where EIAs should have been required, they were often done post development, or not at all. Sometimes there were also incorrect decisions as to whether an EIA was required.

Finally, there was some confusion about how to get access to copies of past EIAs and SEAs.

### **Solution Option 18**

The SPPS for Northern Ireland,<sup>78</sup> from September 2015, sets much improved requirements for environmental integration into LDPs. It sets statutory obligations for considering ecosystem services in the development of LDPs. The SPPS recognises that the SEA/sustainability appraisal of the LDP will assist in the process of considering ecosystem services. This implies an advanced understanding of SEAs, in which the purpose of the SEA is not just to identify negative environmental impacts, but also to identify positive ones.

A good example of how to integrate ecosystem services into LDPs can be found in Bremen. In this case better coordination between the Landscape Plan and the Land Use Plan resulted in the combined consideration of ecosystem services, improved spatial planning and likely socio-economic benefits. The simultaneous preparation of both these plans enabled the integration of urban development and preservation of biodiversity as a basis for communal planning.<sup>79</sup>

In Scotland, the SEA Gateway, part of the Scottish Executive, co-ordinates responses to SEA screening and scoping submissions, in liaison with the consultation authorities. The aim of this is to reduce administrative burdens and introduce improved quality control. This provides a focal point for advisory, co-ordinating and management information functions. It also



allows for greater monitoring of arrangements for screening, scoping and public consultation, and all SEAs are compiled in a publicly available database<sup>80</sup>.

We recommend that Northern Ireland introduces its own EIA and SEA Gateway. This would make it easier for Councils to conduct SEAs, as they can build on the work of, for example, other Northern Ireland Councils, and would not have to reinvent the wheel each and every time they conduct SEAs. This would also provide a higher level of quality control, a platform that makes co-operation between Councils and departments easier, as well as reducing administrative burden for Councils. This Gateway should also cover quality control for EIAs and Appropriate Assessment (according to the Habitats Directive).

We would also suggest having EIA and SEA training for staff in the NIEA and Councils regarding the process of undertaking them and advice on where these are appropriate.

**Problem 19: Delays in planning applications**

Some of the consultees raised concerns about the high rate of planning applications being approved. The 2015/16 First Quarterly Bulletin of the Northern Ireland Planning Statistics (the first statistical document since the transfer of planning powers to Councils) showed that 94% of planning applications were approved.<sup>81</sup>

A further issue of concern was the time that it took to process planning applications and the back-log of applications. Consultees thought that there was a lack of urgency in dealing with planning applications and a lack of communication in what was happening and timings.

The 2015/16 First Quarterly Bulletin, shows that the number of planning applications decided in Northern Ireland was the lowest in ten years, and a decrease of more than a quarter compared to the same period in 2014.<sup>82</sup> This drop is the sharpest quarterly decline in decisions issued. The number of applications received was down by only five per cent over the same period.

The Northern Ireland planning portal recommends that applications ought to be processed in eight weeks.<sup>83</sup> The current processing times for local development applications of nineteen weeks, in the first quarter of 2015, is a six week increase compared to the first quarter of 2014.<sup>84</sup> The average processing times in Northern Ireland and in Scotland during the first quarter of 2015 are shown in table 2. This table shows that the processing of local development applications and major development applications took on average nine weeks longer to process in Northern Ireland than Scotland. For local development plans it took double the amount of time in Northern Ireland, than it did in Scotland.

Table 2. Processing times to decide local development applications and major development applications<sup>85</sup>

	Northern Ireland	Scotland
Local development applications (in weeks)	19.0	9.6
Major development applications (in weeks)	37.6	28.3

**Solution Option 19**

Concerns over the high rate of planning applications being approved appear to be somewhat unfounded. In the same quarter the 94% approval rate in Northern Ireland was replicated in Scotland,<sup>86</sup> and only 6% higher than that in England.<sup>87</sup>

In terms of delays, much of the decrease in planning applications, and the sharp increase in processing times is probably a result of teething problems in the Councils, whilst they are adjusting to their new planning role. There also appears to be an issue concerning the quality of many applications, which is not the fault of the planning system.

A key blockage mentioned by the consultees was the timings of statutory input into some applications by the NIEA. It is important that adequate resources are provided to the NIEA for them to play their statutory part in the planning system. If they are under resourced and this is resulting in them taking an unacceptable amount of time to respond, this could have knock on effects for industry and attracting foreign direct investment.

It was mentioned by one consultee that planners in Northern Ireland were traditionally civil servants, before they become planners, and have not necessarily been employed as professional planners. As part of the restructuring, case officers have been relocated from Government (although new people have also been employed by some Councils). Because some Council staff might have only experience of working on some specific types of development (e.g. residential applications) there will be a need for new staff training and guidance, so these staff can work on applications involving different types of development (e.g. waste plants or well drilling).

The above could be done by sharing expertise internally but also through training by external planning experts. This information could then be shared between the Councils and relevant departments in biannual meetings.

This approach could be complemented by something similar to the earlier mentioned SEA Gateway in Scotland. An easily accessible database of information and pool of experts that can provide advice in planning matters, would provide help to, and better coordination within Councils (and relevant departments).

## 2.3 POLITICS, CIVIL SERVICE AND POLICY-MAKING

### **Problem 20: Political will towards environmental issues**

Overall the consultees felt that there had been a lack of political understanding and will to address the environment as a relevant issue. It was not seen as an important and integral part of policy-making. Consultees considered that political decision-makers did not fully understand the social and economic benefits that the environment could bring, and the environment was seen as more of a ‘luxury issue,’ compared to health, roads, and infrastructure. Overall, it was seen as an economic barrier rather than an opportunity, and politicians were seen as not wanting to address issues that were perceived to have a negative impact on the economy.

### **Solution Option 20**

As mentioned earlier in this report, there have been numerous earlier reports providing recommendations on improved environmental governance in Northern Ireland. These have not been acted upon to any great extent. However, we encountered optimism among consultees that the environment is moving higher up the political agenda.

According to consultees the reaction of the main political parties to the Wellbeing report<sup>88</sup> has been positive. This report combines wellbeing, the environment and the peace process and shows the important inter-relationships between these. It is hoped that the recommendations of this might be adopted in the new Programme of Government 2016. The reception of the wellbeing report could indicate that their might be a platform on which also to develop better environmental understanding and political will in this field.

Environmental education and training can also improve cooperation and communication. This was also recommended in the 2007 review of environmental governance,<sup>89</sup> where it was suggested that political parties in Northern Ireland should source and undertake formal training and development of their policy staff and officers to improve their capacity to engage in political debate on the environment. We would also endorse this recommendation.

### **Problem 21: Lack of a long term strategic vision for the environment**

A legacy of the troubles is a perception of a power-sharing culture where little focus is given to anything beyond the next period of government. This is seen to be at the expense of greater thinking about long-term challenges such as climate change, health, the environment, and how these link in to the quality of life of future generations.

### **Solution Option 21**

Short term economic decisions made in Northern Ireland now, will impact on future generations, so it is vital to have something in place which recognises the advantages of a more long-term strategic approach. Two suggestions in this regard can be made.

Firstly, the Welsh Government introduced the Well-being of Future Generations (Wales) Act in 2015 to improve the social, economic, environmental and cultural well-being of Wales. This legally requires the public bodies listed in the Act to act in a manner which seeks to ensure that the needs of the present are met, without compromising the ability of future generations to meet their own needs. This visionary legislation would work well in Northern Ireland and could also link into issues surrounding the future of the peace process.

A second suggestion is that Northern Ireland follows the Swedish model of long term environmental objectives. In Sweden, sixteen objectives are settled upon by the Government and all political parties and they agree that these should be followed (across all government agencies), whoever is in power over the years, to ensure they are followed long-term.<sup>90</sup> The environmental objectives that are agreed send a long-term signal to all actors in society, as to what the Government wants to achieve under environment policies and how this interlocks with other policy areas. There are also generational goals and milestone targets that define the direction of the changes in society that are needed within a generation, in order to achieve the environmental quality objectives. This approach would have the advantage in Northern Ireland that no individual parties would be seen to be more pro-environment than others (and any resulting impact on businesses), as these long-term plans are decided by collective responsibility.

#### **Problem 22: No coherent strategic framework on the environment**

Consultees were critical of the lack of strategic decision making in Northern Ireland, and particularly pointed to the fact that a key factor behind this was the lack of an overarching environmental strategy.

Many links on the DOE website did not work whilst we were undertaking this review, but it appears that there are in practice many strategies relating to different environmental sectors. For example, there is a biodiversity strategy,<sup>91</sup> sustainable development strategy,<sup>92</sup> waste strategy,<sup>93</sup> and water strategy.<sup>94</sup>

However, we have some sympathy for the suggestion that there is not a coherent strategic framework in place. A much repeated more general criticism of the DOE was that it was too siloed. This appears to have also impacted on strategic direction. One consultee remarked that the water, waste, and nature people were all doing their own thing in isolation and there was very little focus on an integrated organized plan or overall strategy.

There were two common observations from consultees regarding the above. Firstly, having dispersed strategies meant that there were conflicting policies internally in the DOE. Secondly, not having a strong overall strategy meant that this was a barrier to effective integration with other external departments within Government. This appeared to potentially result in lots strategies across Government (or with strong links to Government) which were seen by some consultees as being ‘anti-environment’.

#### **Solution Option 22**

We consider that Northern Ireland would benefit from having an overarching strategy for the protection of the environment. This should be written by DAERA in consultation with other government departments, with input from external experts. Ideally, it will form one single

document which will contain strategic priorities and outcomes to be aimed at it, and be written in a style that is easily understandable.

We also consider that all strategies affecting the environment should be published in the same place on one easily accessible government webpage. It does not help integration to have these dispersed across Government and they should be visible in one place. The same should also apply to all environmental targets.

### **Problem 23: Lack of recognition given to the sustainable development strategy**

The sustainable development strategy<sup>95</sup> (and implementation plan)<sup>96</sup> does not seem to be either well-recognised, nor visible. Only one of all the consultees interviewed was aware of the existence of the most recent sustainable development strategy. It seems that if key stakeholders are unaware of its existence, it is probably having little to no impact in practice.

At the time of writing, the link to the sustainable development strategy on the Government website does not work. It was a common problem in this review that either documents that were referred to could not be found, or links on Government websites did not work. Examples include: The Biodiversity Strategy (2015) and Northern Ireland Climate Change Adaptation Programme (2014).

The sustainable development strategy also appears to be in need of updating. For example, it contains no reference to ecosystem services.

### **Solution Option 23**

The Executive needs to ensure greater recognition of its sustainable development strategy and make sure that there is a (working) link to this on its website.

We consider that Northern Ireland requires a new overarching sustainable development strategy to provide a coherent approach towards environmentally sustainable objectives. The restructuring, with sustainable development moving from the Office of the First Minister and the Deputy Minister to DAERA, would be an ideal opportunity for DAERA to take this forward. This would show a common front within the new merged department, and more widely across the Executive.

We suggest, therefore, the development of a new sustainable development strategy led by DAERA in consultation with other government departments, local authorities and the public. Ideally, it will form one single document which will contain strategic priorities and desired outcomes, and be written in a style that is easily understandable.

### **Problem 24: Political interference**

Political interference was mentioned by a number of consultees. One consultee was of the opinion that this was more linked to planning issues. This was echoed by another consultee who felt that political interference was made easier as decision making did not normally have to be bound by a plan.

One of the consultees estimated from personal experience that there was political interference in about 10 to 20% of all cases. Another consultee, also from a personal experience, knew of cases where local councillors had called a Minister and asked that enforcement action to be stopped. Overall, there was an agreement among the consultees that there is too much potential for political interference in the current system.

#### **Solution Option 24**

The CJI have in the past recommended that clear procedures must be in place to ensure independence of regulatory function, so that enforcement staff are not subject to political and other internal/external pressures.<sup>97</sup> Consultees said that there was now a protocol in place by which political interference approaches were noted, but this had little impact in practice.

The above suggests that a non-departmental public body (i.e. independent environment agency) would go some way to ensuring that political interference does not occur.

We consider that due process should be protected and a criminal offence introduced, stating that there should not be external interference with any regulatory decision.

#### **Problem 25: Lack of integration, communication, and co-operation on environmental issues**

A number of consultees mentioned that communication within the DOE, and communication between the DOE and other government departments was poor. Some staff had their own networks based on professional links, but these were not organised or based on a strategic vision.

#### **Solution Option 25**

Before DAERA comes formally into existence the Government needs to undertake a review of institutional arrangements and integration. This should encompass examining: who does what and why, and where integration between sectors applies and needs to be strengthened.

Many of the environmental policy instruments, such as SEA and Regulatory Impact Assessments, are such that they require a level of communication and consultation to deliver best policy outcomes. We recommend that these opportunities are considered during the restructuring, for example by creating databases for specific policy instruments through which information is easily shared within and across departments.

#### **Problem 26: The environment might become less of a priority following the merger between the DOE and DARD.**

As part of the Stormont House Agreement it was decided that the number of Northern Ireland Departments should be reduced from twelve to nine with the result that the functions of the DOE and DARD will largely transfer to the new DAERA. The Government are making it clear that this is not a takeover by agriculture – they are forming a new department, not

squeezing the environment into the other. But the reality about what will happen in practice is unknown, and there are widespread concerns about environmental issues becoming less of a priority. Below is a summary of the concerns and benefits expressed by the consultees.

### Concerns

- Environment being lost in a big agricultural department.
- A reduced focus on urban and industrial issues.
- The potential balance and make-up of the new DAERA Board (i.e. it will be agricultural dominated).
- The balance and make-up of the new Assembly Committee.

### Benefits

- A key area where Northern Ireland is seen as particularly weak is the environmental regulation of agricultural activities. The merger could help supply more joined up thinking in terms of policy development, regulation, and advice to those being regulated.
- By joining together they will become a politically stronger department with a new vision
- Progress has been made with DARD and DOE senior staff already working together in advance of the merger to look for shared agendas and opportunities.
- The move of sustainable development from the Office of the First Minister and the Office of the Deputy Minister to DAERA might inject leadership within the department in this area.
- In terms of compatibility DARD and DOE are both driven by the need to implement EU Directives, so it's possible that similar mindsets can be harnessed.

### **Solution Option 26**

One of the problem solving measures is for all parties involved in the merger to understand what the potential concerns and benefits might be. The above list will hopefully in itself prepare both departments, and other departments/local authorities, to be aware of potential pitfalls and opportunities and work towards avoiding the former and building on the latter.

Both the DOE and DARD have Departmental Boards. These are made up of both executive board members and independent board members. There does not appear to have been any announcement yet on the membership that the new DAERA Board will have. The membership of the new board should play a key role in determining what function, policy direction and budget the environmental side will have. Therefore, one recommendation would be to have a fixed number of board members that are from an environmental background. As close to 50% as possible would be our suggestion.

DOE and DARD also have separate Assembly Committees, which will be merged into one under DAERA. Similarly, as with the new board, we recommend that the representation DAERA assembly committee is equally divided between the two departments.

Finally we would suggest a commitment by Government to review the performance of DAERA in three years time whether the environment (or agriculture) has become less of a priority following the merger. Criteria could include distribution of staff in working groups, equal representation, loss/increase in budget, and success in meeting targets, levels of compliance with legal obligations, among others.

### 3. THE SOCIAL AND ECONOMIC CONSEQUENCES

*“Environmental crime can affect a nation’s economy, security and even its existence”<sup>98</sup>*

Interpol

*“Environmental actions are good for the environment, but they're also good for growth, jobs, health and general wellbeing”<sup>99</sup>*

European Commissioner Vella

*"While inspectors accept that enforcement is costly, doing the same or even less is not a viable option for the DOE, as ineffective enforcement will impose enormous liabilities in the form of clean up operations, EU sanctions and risks to public health"<sup>100</sup>*

Criminal Justice Inspection Northern Ireland

#### 3.1 Background

As long ago as 1990 the House of Commons Select Committee on the Environment tried to emphasize the economic benefits of environmental protection improvements to Northern Ireland<sup>101</sup> (and other governance reviews have also focused on this), but this does not seem to have resonated. For example, The 2012 Northern Ireland Economic Strategy only made a passing mention to sustainable development (even though it had sustainable growth in its title).<sup>102</sup> Additionally, whilst the Economic Strategy mentions the challenge of balancing the needs of the economy with the environment, there is very little meat in terms of what this means, and the environment seems to be mainly considered in terms of issues such as transport impacts.

Most consultees to this review were of the opinion that environmental governance, in terms of economic and social successes, has been a complete failure in Northern Ireland. Existing environmental governance structures and policies were increasingly having significant economic impacts that could no longer be ignored. Four observations were consistently made to us by consultees:

- The current approach to environmental policy and regulation is costing the Government money.
- Protecting the environment is not a one way cost – and has a much wider economic and social significance and benefits.
- Current environmental approaches threaten the competitiveness and finances of Northern Ireland business. In a competitive global market place Northern Ireland risks being left behind whilst other countries were moving ahead and becoming more attractive to foreign direct investment (FDI).
- There should be a new imperative by Government to tackle economic, social and environmental challenges in a holistic way.

This third chapter of our review considers connection between good environmental governance, social development and the economy, and gives some black and white examples (with costs) of where these go hand-in-hand.

#### 3.2 Foreign Direct Investment



A key economic strategy of the Northern Ireland Government is to follow other countries such as Singapore and the Republic of Ireland in developing their economies on the basis of a low corporation tax strategy and a pro-business regulatory environment.<sup>103</sup> This has been because “a lower rate of corporation tax would not only increase the volume of FDI, but also allow us to better compete for higher value added investments that were previously beyond our grasp.”<sup>104</sup>

In 2015 it was agreed to reduce Northern Ireland’s corporation tax rate to 12.5% (the same as the Republic of Ireland) in 2018, and this was heralded by business and political leaders in the province as “a new economic era” that would create thousands of jobs.<sup>105</sup> FDI in Northern Ireland, is therefore, a good place to start to examine the link between good environmental governance and the economy.

According to research by Ernst and Young (EY) the UK has won 7,111 FDI projects in the last ten years.<sup>106</sup> A breakdown of the projects won outside of England are contained in Table 3 below. Significantly, only 250 of these 7,111 FDI projects went to Northern Ireland. Or in percentage terms only 3.5% of all FDI in the UK has gone to Northern Ireland in the last decade. It’s worth making the point that all these UK regions were operating on a level playing field under the same corporation tax rate.

Table 3: Number of projects secured by areas of the UK and NI over the past ten years

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Grand Total
<b>Scotland</b>	33	62	69	53	51	69	51	76	82	80	626
<b>N Ireland</b>	18	17	26	19	25	33	17	29	36	40	250
<b>Wales</b>	13	16	22	35	20	19	9	31	24	42	231

Source: EY’s Global Investment Monitor 2015<sup>107</sup>

Although, Northern Ireland’s share of the UK FDI market is very small, in many respects it is performing very creditably – as it has more than doubled its annual number of FDI projects in ten years. Additionally, Northern Ireland also secured more FDI jobs than both Scotland and Wales in 2014.<sup>108</sup> So one interpretation is that as an FDI location Northern Ireland is holding its own in an increasingly competitive domestic and global market.

However, if you examine the performance of Scotland, Northern Ireland and Wales in the percentage of total number FDI projects in the UK over time, the figures make interesting reading. As Table 4 shows, all countries have done better at attracting FDI. Scotland became the biggest FDI region in the UK outside of London (in four of the last five years). Whereas, most recently, in 2014, Northern Ireland got the lowest amount of FDI in the UK (3.5%), compared to Scotland’s 8.8% and Wales 4.7%.

Table 4: Increase in Percentage of total FDI projects in UK and NI

	% of total FDI projects in UK and NI 2005	% of total FDI project in UK and NI in 2014	% change
<b>Scotland</b>	5.9%	8.8%	49% increase
<b>Northern Ireland</b>	3.2%	3.5%	9% increase
<b>Wales</b>	2.3%	4.7%	104% increase

Source: Based on Data from EY’s Global Investment Monitor 2015<sup>109</sup>

More significantly, in the last decade, both Scotland and Wales have had significant increases in the overall percentage of projects – up 49% and 104% respectively. In 2005, Northern Ireland had 3.2% of the total number of FDI projects and whilst this had risen to 3.5% in 2015, this was only a 9% increase. In other words, foreign investors appear to have been showing more interest over time in undertaking projects in Scotland and Wales, rather than in Northern

Ireland.

When specifically asked where they found the most attractive place to invest in the UK, Northern Ireland again ranked low,<sup>110</sup> as can be seen in Table 5.

Table 5: Regions of the UK regarded by existing and potential investors as the most attractive to establish operations

Region	2014 Attractiveness
London	45%
Other England	39%
Can't say	8%
Scotland	6%
Northern Ireland	2%
Wales	1%

Source: EY's Global Investment Monitor 2015<sup>111</sup>

Clearly the legacy of the troubles in Northern Ireland might have acted as a disincentive to FDI (as might the perceived instability of power sharing in politics). Additionally, Northern Ireland is also not the easiest place to get to, and moving products there can be difficult and incur greater costs than in some other European countries. However, consultations with lawyers who handle FDI in Northern Ireland, and some members of the business community, revealed four observations on environmental governance that were relevant to FDI, and the attractiveness of investment in Northern Ireland in this regard.

#### Northern Ireland is not a rules based economy and regulation is weak

Consultees pointed out that there had to be confidence that Northern Ireland was a rules based economy if it wanted to attract investors. As the Organisation for Economic Cooperation and Development have commented, "illegal activities flourish when appropriate governance and regulation is lacking."<sup>112</sup> Successive environment ministers in Northern Ireland have publically commented that environmental governance systems are not fit for purpose.<sup>113</sup> And many publically available reports from the CJI and NIAO have concluded that the default position is not where it should be, that the regulatory system is poor, and this has had an impact on rule breaking.

Rule breaking to some degree also seems to have been tolerated for economic purposes, but there has been little government recognition of the FDI implications of not keeping to the rules. Comments we heard in this regard included:

- Why would you want to invest in a country when you know that some people are taking shortcuts?
- It is obvious that the big players in the UK waste industry are not operating in Northern Ireland. This is because of the illegal economy.
- Business can't remain competitive in an economy where there are short-cuts in the market. If you create a market open to criminality and cutting corners people will not come.
- Its shocking what goes on in Northern Ireland compared to other countries. It is not normal. Every country has environmental crime – but it seems that it is tolerated in Northern Ireland.
- Good industry wants good regulatory standards. It hates inconsistent application. It loathes the idea that a black market influences their ability to operate.

- In terms of the environment there is the wrong message from the top down. This is a bad track to be on. It's a bad track economically. You need to promote Northern Ireland as a place where the rule of law applies. That is really important going forward. You need to show that it is a well run, modern progressive country. It would be unjust of politicians not to do that and to visit the status quo on their communities.

It is noticeable that there is nothing in the Government's Economic Strategy about upholding the rule of law and having a good regulatory environment. The report only notes that one of the key routes to growing successful businesses is "improving the regulatory environment to ensure that it is efficient and pro-business."<sup>114</sup> This is not the same thing.

FDI Investors' location criteria have evolved over the years. The prolonged global economic crisis has adversely affected investors appetites for risk. Today, as Table 6 demonstrates, the overriding priority for companies weighing up where to invest, is the potential location's rule of law. This is considered vital in respect to ensuring the security of their investments. 46% of respondents in the latest EY Global Investment Survey said that the stability and transparency of a market's political, legal and regulatory environment is their main concern when deciding on where to invest in Europe.<sup>115</sup>

Table 6: Factors that companies take into account when deciding on a location to establish operations

Key Location Factor	2015	2014	2012	2011
Stability and transparency of political, legal and regulatory environment	1	1	2	3
The country or region's domestic market	2	2	1	8
Potential productivity increase for their company	4	3	5	4
Labour costs	5	4	3	7
Transports and logistics infrastructure	3	5	4	1
Labour skill level	6	6	6	6
Stability of social climate	-	7	7	5
Corporate taxation	-	8	8	9
Telecommunications infrastructure	-	9	10	2
Flexibility of labour legislation	-	10	9	10

Source: EY's Global Investment Monitor 2015<sup>116</sup>

Interestingly, although having lower corporation taxes seems to be the key economic strategy in Northern Ireland, corporation tax reductions came in at only eighth place in investors FDI priorities in 2014 (and as the above table shows, has never been higher than this). The estimated cost to Northern Ireland of the reduction in the corporation tax rate is approximately £240 million (although figures vary).<sup>117</sup> Whilst corporation tax reduction could result in new FDI eclipsing this figure, it seems economically sensible to also focus attention onto increasing stability in the legal and regulatory environment.

The current approach to environmental is very likely to have some negative effect on FDI in Northern Ireland. Better environmental governance would be a good way of displaying that not respecting the rule of law is something from the past and that the government of Northern Ireland is prepared to obey and enforce the rules.

The performance of the environment can be very visible and is something everyone can see progress in, or deterioration of. If industry does not visibly obey the environmental rules in place, what kind of confidence might an FDI have that industry in Northern Ireland adheres to other rules? Better environmental governance would be a good way of displaying to FDI's of Northern Ireland's intention of upholding the rule of law.

### It takes too long to get consents and permissions

Consultees to this review considered that the timescales that the regulators worked to, in respect of environmental consents and planning permissions, did not match commercial realities. We heard many times that business wanted (and expected) a decent decision in a decent timeframe. There were frustrations that there was no urgency in the DOE and NIEA when FDI projects were proposed. Lawyers were having to advise FDI clients that it would probably take two years to get planning permission (or a lot more time if it was a novel application which the government had no experience of dealing with) and environmental licenses would probably take two to six months in addition after that.

One consultee informed us that one planning application they worked on took six years. It took so long that revised information had to be submitted because the information being considered was so out of date. Another raised the proposed John Lewis development and the fact that this had probably been under consideration for a decade. Many of the problems were thought to have been the result of having no up-to-date development plans, or policies set in stone about what sort of investment they wanted in those areas (i.e. out of town shopping).

When giving FDI clients updates on planning cases, lawyers sometimes had to tell them that they did not know what was going on, or how long things were going to take. Lawyers reported that this deterred FDI – clients were put off and decided to go elsewhere (often the Republic of Ireland). This was having a detrimental knock-on effect on the rest of the economy – FDI projects failing had wider impacts on the property industry (estate agents, builders, plumbers, property rental prices), employment to local people, and tax to the exchequer – as well as more indirect impacts such as encouraging other companies to locate there.

The new planning reforms which are meant in part to address the above concerns, have had teething problems at local government level, although there was plenty of optimism from consultees that they would be able to turn things around. There was far less optimism that the NIEA would be able to respond to applications in a timely manner going forward, particularly after the budget cuts that had been imposed on them. We were repeatedly told by consultees that in terms of issuing permits, and responding to statutory required inputs into planning applications, the NIEA were not commercially minded and were too under resourced.

There was also a common perception that regulatory delays sometimes encouraged local legitimate business and individuals to break the rules, because they were frustrated with the timings - and so there was a culture of cutting corners and starting without planning permission and permits, and seeking retrospective permission or permits later. One consultee summed it up best by saying there was an attitude in Northern Ireland that it was much easier to ask for forgiveness later than wait for permission.

### The arbitrary nature of decision making

There was a strong perception in Northern Ireland that some key decisions seem to be made arbitrarily, by Government discretion, rather than following a national plan or strategy. We were informed that in 2015 the Government had refused an application for a waste to energy plant, banned the production of genetically modified organisms, and outlawed fracking. This report is not going to go into the merits of these decisions, instead it is only seeking to make the point that many people perceived these decisions to be populous rather than justified.

A number of points were made in this regard:

- The Government is showing leadership, but without a strategy. Because there is no strategy there is no consistency in decision making.
- Why would business invest if outcomes are that unknown or changeable?
- Does the Government think that the property industry prefer certainty, or a speculative approach?

Whilst many planning issues will now be dealt with by local government, who are now having by law to prepare local developments plans (so decisions will be based on polices), this still does not preclude larger planning applications (which are more likely to be FDI) being called in and decided nationally.

#### Lack of value given to the environment and well being

A country has to have attractive reasons to attract inward investment. Some of these factors are given in Table 6 above. However, consultees also pointed out to us that FDI also sometimes goes to where there are other qualities; other significant attractions in being based elsewhere. One thing that is not always considered by Governments, that appears to have been growing in importance in terms of FDI, is the environment and well being. Countries which can offer a high quality environment and well-being (for staff), could be at an advantage if these can be offered in addition to commercial attractiveness. Consultees considered that these two issued were not currently given much political capital in Northern Ireland.

### **3.3 Costs of Clean-Up**

Table 7: Summary of Potential Costs of Clean-Up following Environmental Crimes in Northern Ireland

<b>Problem</b>	<b>Estimated Cost to Northern Ireland</b>
Illegal Fuel Laundering	£989,000 (over five years)
Waste	£440 million (based on our estimate of current waste sites discovered)
Quarrying	N/A

#### Illegal Waste Sites

Waste crime takes many different forms: at one end, a company or farmer saving a few pounds by fly-tipping or burying rubble in a local field; at the other, illegal waste sites processing thousands of tonnes of waste. What links them together is that they all cost the taxpayer money to clean-up.

The Mills Report in 2012 reported that the DOE had calculated that they had prosecuted 454 offenders for the dumping of illegal waste since 2003.<sup>118</sup> Very little of this waste appears to have been removed or remediated. The report found that assuming that a risk assessment required the removal of waste from 100 of these sites, with an average volume of 10,000 m3 and a removal cost of £215/m3 (based on the repatriation of waste to the Republic of Ireland project) it would cost the Northern Ireland taxpayer £250 million.<sup>119</sup>

The above figure does not seem to include the cost of removing the illegally dumped waste at the largest known site in Mobuoy Road. Mills estimated that when there was thought to be 516,000 tonnes of illegally buried waste at this site this would cost up to tens of millions of pounds to clean-up.<sup>120</sup> The estimated amount of illegal waste at this site has since been officially revised up to over one million tonnes<sup>121</sup> (although it has also been reported in the Assembly and by the NIEA Stakeholders Group to be one and a half million tonnes in November 2015).<sup>122</sup>

Whilst the tonnage of illegal waste has risen at the Mobuoy Road site, there is confusion as to the final clean-up bill. The media have reported that it could be £100 million.<sup>123</sup> The Government and Northern Ireland Stakeholders Group have currently estimated clean up costs at this site alone to be between £50 million and £140 million.<sup>124</sup>

As well as Mobuoy, the NIEA currently has a further 89 enforcement cases at various stages in the investigative/legal process, involving, approximately 561,644 tonnes of waste.<sup>125</sup> To put a crude figure on the clean up costs for these sites, this could easily be a further £50 million.

The overall financial clean-up costs for Northern Ireland are also not entirely clear because some waste will be moved to the Republic of Ireland under the waste repatriation programme, which was started in 2010. The Northern Ireland authorities will still have to meet 20% of the cost of excavation and examination of the waste and remediation of the land (the remaining 80% will be met by the Republic of Ireland).<sup>126</sup> However, in 2014 only 76,000 tonnes of waste had been repatriated so far.<sup>127</sup> Whilst the repatriation programme could go forward, contribute significant amounts towards costs of clean-up this only solves part of the problem. It is going to be difficult to connect the source of waste with some waste sites, as for example, in the Mobuoy site, they shredded the waste to hide clues of its origin.

Mills estimated the cost of dealing with this historic legacy of waste sites could run into hundreds of millions of pounds.<sup>128</sup> We concur with this assessment. We estimate that if you add the £250 million Mills estimated for clean-up costs in known historical sites in Northern Ireland (2003-2012), to the £140million (potential) clean-up costs of Mobuoy, with the £50 million (other current cases), if all the clean-up costs are undertaken at these sites then this could potentially cost the taxpayer £440 million.

A key element missing from the current sanctions to prevent waste crime is a mechanism to make the polluter pay despite the fact that this is a key principle stated in the DOE's Enforcement Policy. Mills thought that the lack of any effective sanction to make the polluter pay meant that the State was likely to have to carry the cost burden of remediation or removal work.<sup>129</sup> So instead of fighting crime the NIEA was having to spend some of its budget on clean-ups.

Mills found that a total of £600,000 has already been spent on removing waste from the Mobuoy site.<sup>130</sup> In July 2014, that figure had only reached £800,000.<sup>131</sup> This appears to be a drop in the ocean in terms of cleaning-up the whole site. There was concern amongst several consultees to this review that Northern Ireland did not have the money to clean up the illegal waste sites. Several thought that there could be excuses made by Government as to why they did not have to clean up (e.g. containment was a better option as it was too dangerous to remove), to hide the fact that they could not afford removal.

A recent Scottish report found in their modelling of waste crime that 85.6% of waste illegally disposed of would probably require removal.<sup>132</sup> Mills also concluded that any failure to deal with the legacy of the illegal waste sites could risk infringement under the EU Waste Framework

Directive.<sup>133</sup> We agree that there are case precedents that if proper clean-up operations are not undertaken then this could result in heavy fines from Europe until rectified.<sup>134</sup>

The social and economic costs of environmental crime also include the costs of enforcement (e.g. investigations, prosecutions). The NIEA have been frank about recognising that there has been a problem with waste regulation and have put money into tackling the problem. In 2013, the Government allocated £1.5million to the NIEA to upgrade its waste regulation and enforcement activities.<sup>135</sup> There are currently 88 enforcement cases in the NIEA Environmental Crime Unit at various stages in the investigative/legal process.<sup>136</sup> We cannot put a financial figure on how much this enforcement action might cost, but again it could be expensive and should not be forgotten.

### Illegal Fuel Laundering

The production and smuggling of illegal petrol and diesel in Northern Ireland is an ongoing problem. In terms of its environmental impact, a toxic sludge is produced in the laundering process to make no-duty paid fuel harder to detect when used on the road. The Government have dealt with 345 incidents of laundered waste being dumped since June 2012.<sup>137</sup>

The cost of clean-up for these incidents topped £960,321.<sup>138</sup> This figure did not include the clean-up costs of toxic material produced at fuel plants, which had to be removed following raids. A further £28,791 was spent dealing with problems caused to the water system by fuel smuggling.<sup>139</sup> In 2013, the environment Minister Alex Attwood reported that the illegal fuel laundering clean-up bill for his department was “very difficult to sustain, given the budget of DOE.”<sup>140</sup>

### Illegal Quarrying

Quarrying is an important industry to the Northern Ireland economy, but it can create a threat to its environment. Restoration is a fundamental process in repairing the environmental and biodiversity impacts of quarries. Former quarries are restored, so that they have added community value by returning the land into a usable state for agriculture, forestry or parklands. Statutory control of restoration works is usually only available under the planning conditions applied at the time of the grant of consent. Where such conditions apply the operator is usually required to submit, for approval by the planning authority, a scheme of restoration, aftercare and making the site safe. This scheme then becomes legally enforceable.

For quarries that do not have planning permission, that are operated illegally, there is no requirement that restoration takes place – and it is very unlikely that it will be done. This means that unlicensed quarries either have to be restored using taxpayers money, or left as they are (with detrimental impacts to biodiversity, the environment, amenity and tourism).

### Loughs

Following the threat of infraction proceedings for non-compliance with environmental laws at Strangford Lough the Government had to pay for a remediation restoration plan (including detailed mapping of the Modiolus reefs) to be undertaken. This cost approximately £1 million,<sup>141</sup> which came from DARD and DOE budgets - taxpayers money which would have been initially intended for other purposes

## **3.4 Lost Taxes**

Environmental crime is not a victimless crime. Criminals can make huge financial gains because they avoid paying taxes and the profits they make come largely at the expense of the taxpayer.

Table 8: Estimated Cost of Lost Taxes Because of Northern Ireland Environmental Crime

<b>Problem</b>	<b>Estimated Cost to Northern Ireland Economy in Lost Taxes</b>
Illegal Fuel Laundering	£400 million (over five years)
Illegal waste disposal	£100 million to £150 million (difficult to ascertain timeframe, based on waste discovered)
Illegal quarrying	£2 million (annually)

#### Illegal Fuel Laundering

Illegal fuel laundering can be very profitable. One plant discovered in Crossmaglen was found to be capable of producing more than eight million litres of laundered fuel annually.<sup>142</sup> Some individual plants are capable of costing the Exchequer as much as £2 million a year in evaded taxes. In 2014, HMRC estimated that the market share for illicit diesel in Northern Ireland was 12-13%, equating to a tax gap of £80 million in 2011-2012.<sup>143</sup>

The loss to the Treasury in the last five years alone from illegal fuel laundering in Northern Ireland could therefore be in the region of £400 million. The House of Lords have commented that it had been going on for decades.<sup>144</sup>

#### Illegal Waste Sites

Laws promoting recycling and a resource economy have raised the cost of legitimate waste disposal. Whilst this is a public good, it has enabled criminals to profit. An illegal waste site avoids paying landfill tax, corporation tax and employment related taxes. In total, illegal waste sites are a massive source of revenue loss for HMRC.

In Northern Ireland, The Mills Report calculated that on the Mobuoy Road site alone the estimated amount of illegal waste of 516,000 tonnes would have resulted in some £35 million in evaded tax revenue in Northern Ireland.<sup>145</sup> As mentioned above the estimated amount of illegal waste at this site is now between one million<sup>146</sup> and one and a half million tonnes.<sup>147</sup> The media has estimated that one million tonnes of waste at this site alone could have resulted in £75 million in lost revenue.<sup>148</sup>

It is difficult to evaluate the exact landfill tax that has been lost – as we do not know the precise tonnage of waste dumped, and not all the waste that has been buried would have been subject to landfill tax. A crude estimation, if closer to one and a half million tonnes has been buried at Mobuoy Road, is that the lost tax revenue could be over £100 million.

If you add on a further 561,000 tonnes of waste that has been discovered at the other 89 NIEA enforcement cases at various stages in the investigative/legal process,<sup>149</sup> then this could



potential add another £35million to the total figure of tax evaded (again a crude estimate, but until the waste is taken out we do not know the level of tax applicable).

Therefore, the total estimated cost of evading revenues to HM Treasury from illegal landfills could potentially be a figure between £100 million and £150 million. This figure does not count the potential for more waste to be discovered at the Mobuoy site (which it was said in the Assembly is expected to rise further), or other sites which have not yet been discovered.

### Illegal Quarrying

An average Northern Irish quarry produces 300,000 tonnes annually as a gate price of £7 a tonne.<sup>150</sup> This raises just over £1million in tax revenue every year from an average quarry (£406,000 in VAT and £600,000 in aggregates levy).<sup>151</sup>

The Quarry Products Association (QPA) estimate that about four illegal operators surface in Northern Ireland each year, undercutting the legitimate businesses by having a gate price of £3.33 for every tonne of illegal aggregate.<sup>152</sup> It is extremely difficult to arrive at precise figures, but if each year four illegal quarries only operated for six months each, before the authorities stopped them,(based on an estimate from the QPA), then this would result in approximate tax losses to the exchequer of just over £2 million per annum.

### Tax Rebates

We were puzzled to learn that the DOE has been accused of giving millions of pounds in tax rebates, through the Aggregate Levy Credit scheme (ALCS), to extraction companies which could have been operating without all necessary planning and environmental consents.

The ALCS was administered in Northern Ireland by the DOE on behalf of HMRC. To qualify for the schemes firms had to apply to the DOE for a certificate which was then used to obtain the tax relief. The site operator was required to satisfy the Department that all mandatory authorisations to achieve legal compliance were in place in order to qualify for tax relief. Those participating in the ALCS would be entitled to an 80% rebate on the levy, in exchange for signing a legal agreement, committing to carry out agreed environmental improvements at quarrying sites, on an incremental basis.<sup>153</sup>

Campsie Sand and Gravel, a key operator involved in the quarry that was filled with illegal waste site at Mobuoy Road, benefitted from tax relief on minerals extraction under the ALCS scheme.<sup>154</sup> They appear to have been given an ALCS certificate as the operation was considered to comply with previous planning permissions.<sup>155</sup>

However, the permissions in place at Mobuoy Road appear to significantly pre-date the activities at the site and at the time of granting the ALCS certificate three retrospective planning applications appear to have been under consideration by the Government planning service (e.g. to regularise additional extractions at this site which had already taken place).<sup>156</sup> Additionally, during the time the ALCS was operating, three further retrospective planning applications to regularise unauthorised extractions appear to have been submitted,<sup>157</sup> and subsequently two further retrospective planning applications were submitted.<sup>158</sup>

To receive the tax relief the operator at Mobuoy Road would also have had to undertake environmental improvements at the site, which was at the time becoming the largest illegal landfill in Europe. The extent of the tax relief received by this site remains unknown. However, using the figures from the QPA above, that an average Northern Irish quarry produces 300,000 tonnes per year, a crude estimate would be that this site could have received over £1 million pounds.

Operators involved in the unauthorized extraction of sand (by dredging) from Lough Neagh (a Ramsar protected site and the country's largest freshwater lake) also appear to have received millions of pounds in tax rebates through the ALCS, even though they had no planning permission for their activities.<sup>159</sup> It also appears that no permissions existed for the extractions taking place from Lough Neagh,<sup>160</sup> suggesting that unauthorised extraction operations should not have qualified for ALCS certificates.<sup>161</sup>

On 14 March 2014, the Environment Minister informed the Northern Ireland Assembly that "under the ALCS criteria, unauthorised sites did not receive an ALCS certificate, and therefore were ineligible for a rebate from HMRC on the levy payable."<sup>162</sup> However, in a follow-up question, the Minister confirmed that "...certificates were granted under the ALCS for eight sites connected with extraction of sand from Lough Neagh Special Protection Area."<sup>163</sup>

The NIAO has launched an investigation into the unauthorised extraction of sand from Lough Neagh.<sup>164</sup> It is understood that part of this investigation will consider the rebates under the ALCS. Early calculations suggest that the full value of the aggregate rebate at the Lough will be between £9.6 million and £16.3 million over the six year period it ran.<sup>165</sup> The report is expected to be published early in 2016.

### **3.5 Threat of Fines from the European Commission**

The European Commission has powers to apply significant financial sanctions to the UK where, following infringement proceedings for a breach of EU law, the Court of Justice has found the UK to be in breach of its obligations. Such financial sanctions may consist of both a daily penalty to induce the remedy of the breach (of up to circa €237,864 per day, a figure which is then multiplied by the duration of the breach) and a lump sum (based on an assessment of the effects of the breach for which the minimum for the UK is currently €9,982,000).<sup>166</sup>

The Northern Ireland Government would be required to pay either all, or a percentage of any UK fine, if the infringement related to a devolved matter.

For a considerable period now, European Commission infringement action against EU member states involving non-implementation of EU environmental legislation has constituted the largest segment of infringement litigation overall. Action particularly seems to have been taken where human health and the environment has been threatened.

Italy, for example, received a very steep fine of €40 million for failing to tackle the dumping of illegal waste. The court also said it would impose further penalties of €42.8 million for every six months Italy failed to clean up their legacy of hundreds of waste dumps<sup>167</sup>. The European Commission is also in the process of taking Spain to the EU Court of Justice over its failure to restore sixty-one illegal landfill sites, and is expected to issue a significant fine. Although these landfill sites were no longer in operation, the Commission considered that they still posed a threat to human health and the environment, and needed quick restoration.<sup>168</sup> These cases should be a marker for what Northern Ireland might expect in the future over its illegal waste dumping legacy.

The UK has not yet been fined for a breach of an environmental law. However, in Northern Ireland, DARD, has had an accumulated total of fines of over £100 million imposed on it already by the European Court in respect to failings in farm mapping over a number of years.<sup>169</sup>

It was mentioned in Chapter 2 that there are six ongoing infraction cases being brought by the European Commission in respect to breaches of environmental legislation. We also discussed the fact that there have also been concerns in the Assembly about Northern Ireland being in breach of a further four environmental laws. Several consultees also expressed concerns that Northern Ireland was not in compliance with several of the air pollution directives.

The Committee for the Environment, in the Northern Ireland Assembly, are provided with a quarterly infraction schedule update and an analysis from the DOE at meetings. Infraction does seem to have an impact on this Committee and the Assembly generally. The following quotes from Assembly debates illustrate this:

- “We are not crying wolf any more, because we have seen through the single farm payments that, when Europe starts imposing fines, it means business. We have only to look at what happened under the single farm payment regime to see what happens when Europe really gets its teeth into taking action.”<sup>170</sup>
- “As is so often the case when we discuss these issues, we end up referring to possible infractions from Europe. It is regrettable that we often need that threat to motivate us.”<sup>171</sup>
- “Infraction proceedings could be quite expensive. It would really be shovelling money into a black hole when it would be better invested in the infrastructure here as opposed to giving it to Europe.” “Once you are getting into the fining stage, it can be eye-watering because you are fined per day. It can be thousands of euro per day. It is not where you want to be.”<sup>172</sup>
- “Money we could have spent on roads, schools and social housing is [potentially] being bundled up to be sent back to Europe.”<sup>173</sup>

It appears that in some cases there are simply not the resources in Government to implement and apply environmental laws, until the risk of infraction makes the “business case stack up.”<sup>174</sup> It appears that the Government might also sometimes be willing to take the risk of infraction, and when the Commission does start infraction proceedings they then seek to rectify the problem.

There is also an expectation that providing they are making progress then the Commission would not rush to the European Court to seek fines.”<sup>175</sup> The progress does not even to be quick in some circumstances – the Government in one infraction case estimated that they would probably take a further ten years to implement the plan for the Water Framework Directive, but if they made “modest progress early on then that would be sufficient to show the Commission they are serious about it.”<sup>176</sup>

The above is a very risky approach. There are numerous cases where the Commission has continued with infraction proceedings even after steps have been taken to address the problem by the Member State.

It does appear that at times Northern Ireland has fallen under the Commission’s radar at EU level, and where questions have been asked Northern Ireland has often over time successfully pleaded a post conflict argument, and that they should be treated as a special case.

Although the Northern Ireland Government have not been fined they were required by the EU about fifteen years ago to massively change their legislative structure and transpose massive numbers of environmental legislation.

A large number of consultees were of the opinion that whilst threats from the EU had historically concentrated government thinking and action, there had been an increasing relaxation in applying the legislation that was transposed. In 2015, the former chair of the UK

Sustainable Development Commission, Jonathon Porritt, argued that Northern Ireland should no longer use its troubled past as an excuse for failings over the environment. He commented that: "it has no excuse not to be as progressive, proactive and intelligent now about environment policy and wealth-creating through the environment as any other part of the UK. The kind of easy days, if you like, where there was an excuse not to do it are gone."<sup>177</sup>

It would be surprising, given the scale of some of the breaches of environmental laws in Northern Ireland, if it is not taken to the European court and fined in the next few years (if it continues along the same track). Many of the breaches of legislation have been on-going for a long time and there have been a lot of warnings – it is only a matter of time before the Commission sends a message, that it will not tolerate non-compliance. Even if Northern Ireland is only taken to court once this could still potentially result in a fine somewhere in the region of £50 to £100 million. This would have significant economic impacts within Government.

### **3.6 Costs To Compliant Businesses From Illegal Operators**

Effective regulation is essential to making the market work. Having a regulator that takes effective enforcement action against serious offenders is good for businesses and good for the economy. One consultee from the business sector put it simply – “better environmental governance means a better economy.”

#### Direct Impacts

In order to run legitimately, waste and quarry operators are required to hold the appropriate permits for activities to ensure safety and environmental protection (e.g. releases do not exceed safe limits). These are issued by the NIEA, which raises charges to recover the costs of issuing and regulating environmental permits and their impact on the environment. Non-compliance with permits by illegal operators reduces the operational costs of sites, giving them an unfair advantage over compliant operations.

Illegal operations also benefit financially from tax evasion and ignoring remediation. They can, therefore, undercut legitimate businesses that expend time and resources on complying with rules and charging a fair price for their services. This can take work away from legitimate, permitted operators, who lose income, and can even force redundancies.

Northern Ireland differs from other parts of the UK in that many of its businesses in the waste and quarrying sector are small and family run – meaning they are likely to feel the impact of illegal operators to a greater extent.<sup>178</sup>

Perversely, non-compliant sites are also likely disproportionately to consume regulatory resources (e.g. because of investigation and enforcement outlays), raising permitting costs for all legitimate operators.<sup>179</sup> It also potentially leaves them facing the stigma that all companies involved in their profession are acting illegally.

Environmental crime remains a substantial threat to the legitimate sector. Legitimate business is often ready and willing to support action against environmental crime - it is in the sector's economic interests to do so. For example, we were informed that legitimate businesses in Northern Ireland are often the ones who inform the regulator that illegal activities are taking place. But the one area they cannot influence is how the regulator reacts in terms of inspections and subsequent enforcement. Our consultations revealed there was some frustration within legitimate businesses in respect to the Government not taking enforcement action seriously enough.

Competition from illegal and non-compliant operators can also lead to some legitimate operators to look to cut costs. They may choose not to take on new staff, or take on new capital costs, limiting innovation; or, in more extreme cases, they may elect to reduce their own level of compliance in order to compete.<sup>180</sup> We were told by some consultees (in the legal profession) that there was frustration amongst clients that when they made a small mistake they were subject to enforcement action, but the major criminals operating rarely seemed to be taken to court and dealt with effectively. There was also a perceived injustice of legal and illegal operators not being distinguished appropriately by the courts.

In March 2014, the Environment Services Association Education Trust estimated that waste crime costs the UK economy £567.9 million per year.<sup>181</sup> The financial impact in respect to unfair competition alone can be difficult to quantify, but a financial analysis of illegal waste sites in England by the EA showed that £150,000 – £200,000 of legitimate revenue is lost for each illegal waste site in operation.<sup>182</sup> AMEC have estimated that the losses in revenue to legitimate waste companies could be £224m annually in the UK.<sup>183</sup>

As the NIEA prosecuted 454 offenders in Northern Ireland in 2003-2012, and is currently taking enforcement action against 89 sites, then this could add up to be a substantial loss in legitimate revenue within Northern Ireland.

If all businesses were complying with the law in Northern Ireland, this might deliver additional turnover and profits, associated with handling more waste, or selling more quarry products or diesel. This is also likely to improve these businesses' perception of their economic environment,<sup>184</sup> helping them to make positive investment decisions to implement more sophisticated infrastructure and potentially employ new staff.

### Indirect Impacts

Illegal operations can also impact on activities further down in the supply chain (e.g. other suppliers). Landlords of premises are also particularly vulnerable to the negative impacts of environmental crime offences. A typical scenario might involve the establishment of a waste operation on part of a landlord's industrial estate. The operation, allegedly for small scale waste treatment, might grow beyond the bounds of its original environmental permit, becoming unsightly and eventually driving away other tenants of the estate. As a result, the estate's value drops and the landlord is faced with unlettable properties for which business rates and other taxes continue to be payable.<sup>185</sup>

Whilst the regulators may serve various notices on the tenant for the breaches of permit committed, the landlord has no direct control over this, making forfeiture of the tenant's lease the only real option. Forfeiting the lease, in turn, opens the landlord to the risk of being liable for the costly disposal of large amounts of waste left in situ by the departing tenant. Further, if the tenant becomes insolvent as a result of being forced to cease its activity (as it often the case), the landlord might have no financial recourse against the tenant for the damage caused.<sup>186</sup>

### **3.7 Impact on Other Infrastructure Projects**

Poor environmental governance, and non-application of European environmental legislation, could seriously jeopardise both internal investment and FDI. Additionally, if Government only responds when a serious problem arises, it is also likely to have a disproportionate affect on planning and annual budgets – potentially costing more money to do things quickly and all in one go rather than subject to a plan over many years.

### Waste-Water Treatment Plants

It is well established that Northern Ireland is on thin-ice concerning the potential for infraction proceedings from Europe arising from a lack of investment in waste water treatment plants.<sup>187</sup> However, this neglect in not fully complying with waste water treatment laws from Europe has also had serious economic consequences.<sup>188</sup> For example, the Belfast waste water treatment works has repeatedly spilled because the design capacity was being exceeded. The problem with this is that if treatment works like Belfast are operating at, or close to capacity, new businesses cannot be connected to the plant.

As the Northern Ireland Assembly has recognised, this would “result in businesses that want to locate in Belfast being refused because its systems cannot take any more capacity”.<sup>189</sup> So non-compliance with environmental laws, in terms of investments in strategic infrastructure, also presents serious challenges to FDI and economic growth.

#### Illegal Waste Sites and Road Projects

The illegal waste dump at Mobuoy Road has also created significant problems for the planned construction of the new A6 dual carriageway between Derry/Londonderry and Belfast (which is planned to skirt that land). The landfill site poses a major headache for the A6 road upgrade (co-funded by the EU), as the existence of the landfill was unknown when its public inquiry was carried out.<sup>190</sup>

There is now an issue as to whether the land at Mobuoy Road has to be effectively remediated before these road works can take place. If it does, and this seems a likely scenario based on previous European Court case precedents, then this could cause massive delays, require the project to be subject to another inquiry, or even result in the project being scrapped altogether.

If the Government does not wait for remediation to be complete, then this road scheme requires that these lands must have flood compensatory areas (floodplains), which is likely to significantly increase the costs to the public purse – mainly because of the added requirement to address the threat of contamination from leachate (on a monumental scale). There is also a risk of infraction proceedings from the European Commission.

Either way, the above demonstrates that poor environmental regulation can also have additional wider and far-reaching implications for the economy.

#### Infrastructure Projects and Planning Non-Compliance

Many consultees to this report highlighted the serious economic consequences of having large unplanned development in Northern Ireland. There was a frustration that large numbers of people were just building where they wanted to, and that planning permission was often granted retrospectively. This raises three issues.

Firstly, if you have a scattered population, with houses everywhere, then there could be a lack of land allocated in plans for future building or industrial development, which could bring economic benefits.

Secondly, there was a feeling that this sterilises Government resources, in that it impacts on the infrastructure and services that might be needed (e.g. road maintenance, where to place doctors surgeries or schools, and electricity/gas/water connections) and this could have economic consequences for the taxpayer.

Finally, this was also having impacts on the renewables industry, as illegal house building was having an influence on where wind farms could be built – because planning rules require them to be a certain distance from residential buildings. There was a perception amongst consultees that Scotland, Wales and the Republic of Ireland had a more strategic approach to mapping areas where they could site wind farms, and because of this could over time attract a lot more investment in wind energy.

### 3.8 Threat To Tourism

#### Tourism Impact in Northern Ireland

Northern Ireland has many miles of stunning coastline, glacial valleys and mountains, huge stretches of idyllic green countryside and panoramic views, and beautiful loughs. It also has a rich cultural and archaeological heritage, with ancient castles and internationally recognised attractions like Giants Causeway.

As the House of Commons Select Committee on the Environment pointed out in 1990: “The quality of its environment is one of Northern Ireland’s greatest assets; and the Province’s future success depends in large measure on maintaining this.”<sup>191</sup>

Northern Ireland was in the first half of the twentieth century a significant tourist destination for visitors from the rest of the UK, but the years of conflict in Northern Ireland has restricted the willingness of tourists to visit over the past thirty years. However, there is optimism about this changing and tourism is now seen as a significant economic driver for Northern Ireland.

Tourism generates wealth, jobs, exports, civic pride and innovation in Northern Ireland. It is currently worth £723 million annually to the economy and sustains 43,000 jobs.<sup>192</sup> The Draft Tourism Strategy for Northern Ireland to 2020 sets out growth targets to increase visitor numbers to 4.5 million, the employment supported by tourism to 50,000 jobs, and the revenue generated by tourism to £1 billion for the Northern Ireland economy.<sup>193</sup> Tourism is hoped to become one of the main growth areas of the economy in the near future.

Table 9: UK Tourism Comparisons

	Amount that UK Gross Value Added (GVA) can be attributed to tourism.	Number of annual visits by overseas tourists (a visit is a stay of at least one night)
Scotland	4.6%	2.4 million
Wales	4.8%	0.9 million
Northern Ireland	1.1%.	0.9 million

Source: Office for National Statistics (2014)<sup>194</sup>

As can be seen from Table 9 above, it should be possible for Northern Ireland to aim for a higher GVA, to match those of its neighbouring countries in the UK (which are both over four times higher). Encouragingly, a recent Northern Ireland census indicated a 3% increase in employee jobs in tourism related industries between 2011 and 2013.<sup>195</sup> However, what the above table does not show that whilst the number of overnight visitors to England, Wales and Scotland increased slightly in 2013 from the preceding year, a small decrease of overnight visitors to Northern Ireland occurred.<sup>196</sup>

Many consultees to this report commented that they considered there had been very little political recognition in Northern Ireland that the environment is an asset to tourism. It is reasonable to say that there is a real risk that if environmental governance is not improved then this could have a detrimental impact on Northern Ireland's external 'green image', and potentially affect tourist revenues going forward.

#### Impact of a visibly poor environment

Non-compliance with environmental laws is likely to result in environmental damage through increased emissions to air and ground, resulting in harm to the surrounding land, air and water. It is worth re-emphasising that forty-six out of forty-nine of Northern Ireland's protected natural habitats are currently deemed unfavourable.<sup>197</sup> Only 28% of Northern Ireland's rivers and lakes meet the water framework directive targets of good ecological status.<sup>198</sup> No tourist wants to see unhealthy rivers, poorly looked after nature sites, illegal waste sites, or sewage in the Belfast harbour.

Some of the environmental problems in Northern Ireland can be attributed to agricultural pollution. Some consultees were of the opinion that the agriculture sector had not been regulated well enough because the agriculture and food industry brings in something in the region of £5bn to Northern Ireland's economy.<sup>199</sup> Whilst agriculture is an important economic sector in Northern Ireland, the same should be said about tourism – raising policy conflicts between the two.

One specific example of a sector, within the tourist sector, that could be economically affected by rivers and lakes being in poor quality, is the angling industry. Northern Ireland is undoubtedly a major hub for angling.<sup>200</sup> It is one of the finest angling destinations in Europe (with famous coarse, game and sea fishing). In 2005 it was estimated that the aggregate gross expenditure contribution of Northern Ireland resident anglers alone was £39.3 million.<sup>201</sup> In 2011 it was found to contribute about £43.5 million to the local economy.<sup>202</sup> A recent study across the border in the Republic of Ireland found that angling was worth €0.75 billion to their economy and supported 10,000 jobs.<sup>203</sup>

It is also worth noting that the UK Government believes that tackling agricultural pollution and getting 75% of rivers, lakes and wetlands healthy would benefit the economy by £8.5 billion through increased tourism, recreation, improved flood resilience and quality of life.<sup>204</sup> Again this shows that a link can be made between the economy and a good environment.

#### Access to the environment

There is no public 'right to roam' in Northern Ireland (unlike Scotland) and there are no National Parks (unlike the rest of the UK). Public access to land in Northern Ireland is largely restricted to lands in public or charitable ownership, and both membership of, and volunteering for, organisations that provide access to their properties are popular. It was also claimed by a number of consultees that rights of way were being extinguished in Northern Ireland at a very high rate. These factors could all be having an impact on the economy.

There are fifteen national parks in the UK. An analysis of turnover, employment and county-level productivity data in 2012 gives an estimate that England's National Parks alone generated £4.1 to 6.3 billion of Gross Value Added (GVA).<sup>205</sup> This expenditure is estimated to directly support some 48,000 FTE jobs<sup>206</sup>. In 2012 the gross expenditure of the National Park Authorities amounted to £74 million.<sup>207</sup>



The Ulster Federation of Rambling Clubs (UFRC) claimed in 2014 that Scotland attracts 1.5 million visitors intending to walk in the countryside, the comparative figure for the Republic of Ireland was 366,000, and for Northern Ireland it was only a mere 2,700.<sup>208</sup>

The Ramblers Association have also released figures showing the impact walkers can have on the economy. They claim that:

- Walkers in the English countryside spend around £6.14 billion a year, generating income in excess of £2 billion and supporting up to 245,000 full time jobs.
- People in Scotland took over 384 million recreation trips to the outdoors, spending £2.8 billion, and almost 80% had come to walk.
- Walking tourism in rural and coastal Wales contributes over £550 million to the economy.<sup>209</sup>
- The cost of opening up land for walking can be cost effective e.g. The South West Coast Path in England generates £307 million a year for the economy of the region, but costs only £500,000 a year to maintain.<sup>210</sup>

The National Park debate in Northern Ireland has obviously been extremely contentious and seems to go full circle every few years, without being taken successfully forward. The subject of roaming and rights of way has received less political attention. Attitudes to land in Northern Ireland still seem to be deeply entrenched in the region's history, and unlike some of its neighbouring countries, such as Scotland, the idea of public interest in land does not seem to have really emerged in Northern Ireland yet. The economic benefits that might derive from tourism seem to have been outweighed by the fears of rural communities that this could interfere with private land ownership, rural life and farm practices.

There also appears to be concerns amongst some Northern Irish landowners that they will leave themselves open to legal action if they allow hikers to cross their land – if something goes wrong.<sup>211</sup> The latter point could be rectified by legislation (e.g. in the Republic of Ireland legislation safeguards for the landowner, in that the duty of care to a recreational user is simply not to injure such people or damage their property; in England and Wales, landowners' liability is limited to that of not intentionally putting anyone at risk). However, the view of what to do on private land as a private decision will not so easily be changed in Northern Ireland.

Interestingly whilst there have obviously been political links made in Northern Ireland between national parks and economic benefits, there has been less link made to environmental governance. In terms of this report's aims it is arguable whether as things stand this would make any difference to the environment and environmental governance, as Northern Ireland already has protective legislation in place. What it does not have is adequate monitoring and enforcement of this. However, a key advantage in terms of national parks might be that there would be more visibility of environmental degradation and where improvements might be needed.

We consider it would be arrogant to suggest that Northern Ireland should have national parks – that is not within the remit of this report. We are merely making the point that there could be economic benefits in going down this route. As an issue there has to be the overwhelming demand of the people of Northern Ireland for this – particularly at local level. Other countries, such as Spain, have in the past seen strong local opposition to national parks, but over time local communities' attitudes changed and they demanded it (when they saw the opportunities for marketing their regions, tourist income and protecting their local environment).<sup>212</sup> It is difficult to assess whether the same might one day happen in Northern Ireland.

### **3.9 Threat Of Internal Legal Action – Compulsion To Act, Costs, And Compensation**

The UK has ratified the Aarhus Convention, which grants the public rights regarding access to information, public participation and access to justice, in governmental decision-making processes on matters concerning the local, national and transboundary environment. It focuses on interactions between the public and public authorities.

The Northern Ireland experience of the Aarhus Convention has been marked by a stark contrast between the evident desire of the courts to secure compliance and at best an indifference on the part of the dominant parties in the Executive towards the Convention.<sup>213</sup> Under Aarhus if a government is perceived to not be meeting the obligations of a law then public interest groups can access the justice system and compel them to act in a court.

There have been judicial review cases in England and Wales challenging Defra, the EA, and Environment Agency Wales over their failure to protect some of England's most precious rivers, lakes and coastal areas from agricultural pollution, untreated sewage and damage from hydro-schemes.<sup>214</sup> The focus of most of these court cases has been breaches of the Water Framework Directive and Habitats Directive.

The High Court in England ordered the Government, in late 2015, to re-evaluate the use of mandatory Water Protection Zones, alongside voluntary steps by farmers, as they had so far failed to protect vulnerable places from farm pollution. They ordered the Government to take proper measures as soon as possible<sup>215</sup>. Northern Ireland is particularly vulnerable to a similar case because it is clearly in breach of the same Directive, for the same reason as in England and Wales.

In 2015, Friends of the Earth Northern Ireland initiated legal action against the Department of Environment over sand dredging in Lough Neagh.<sup>216</sup> This judicial review will examine whether companies are illegally 'extracting sand, contrary to environmental legislation, and why the Government failed to issue a stop notice.

Our point here is that the financial cost of going to court can be very high. It can also take away time and resources from government legal staff, create poor media headlines, highlight the fact that the Government is not acting (which could have secondary impacts on people in terms of their own environmental compliance), and compel Government to act in a very quick time-scale.

Poor regulation can also result in result in compensation pay-outs from the Government. In 2012, the Northern Ireland Ombudsman made the Government pay compensation to residents for failing to enforce planning regulations at the Cavanacaw gold mine.<sup>217</sup> In 2008 and 2009 the minerals company operating the mine allowed hundreds of thousands of tonnes of rock to be removed by trucks along a narrow road network without the necessary planning consent. Despite public objections it took over a year for an enforcement notice to be taken.

### **3.10 Low Fines From Convictions**

Environmental fines are imposed and collected by the courts and remitted to central government funds (apart from proceeds of crime actions, where the NIEA receive a quarter of the fees). If fines are extremely low then this means less money goes to central government funds. Whilst we are not advocating fining people with the intention to make more money for government, it is worth emphasising that fine levels are constantly criticized in Northern Ireland as being too low. If there were higher fines levied at repeat offenders and hardcore criminal offenders then this might act as a greater deterrent, and, if not, at least result in more money going to the exchequer that could be spent on public services.

### **3.11 Loss to Farmers and the Environment**

#### Loss of Subsidy Payments to Farmers

European agricultural subsidies under the CAP are very important to the Northern Ireland economy. The EU budget allocation for Northern Ireland from 2014 to 2020 for direct payments is €2.3 billion.<sup>218</sup> Approximately 38,000 farms are registered for the single farm payment scheme.<sup>219</sup> There are many farms whose livelihoods are reliant on the subsidies, and some farms who would make no profit without them.

Applicants for EU subsidies are required to meet the requirements of cross-compliance. Farmers can be in breach of their subsidies if they are inspected and problems found. A large number of the breaches in Northern Ireland relate to nitrate pollution, but also cover things such as non compliance with good agricultural and environmental conditions.<sup>220</sup> Breaches can have serious consequences and consultees to this report informed us that farmers often feel that the financial penalty to their claims can be disproportionate to the polluting incidents.

Only about 1% of farms in Northern Ireland are inspected each year for cross compliance (although this number is supplemented by whistle-blower inspections).<sup>221</sup> We do not have any figures about how many farms are annually subject to penalties in Northern Ireland other than penalties having been issued in 782 cases in the last five years, following whistleblowing.<sup>222</sup> As well as having a detrimental impact to individual farmers, penalties can also have a wider impact on the Northern Ireland economy. In the Republic of Ireland, for example, farm inspection fines were €4.7million in 2012.<sup>223</sup>

If environmental regulation in Northern Ireland encompassed much better educational programmes, and there were better regulator-regulatee relationships, then maybe there might be fewer penalties for breaches of direct payments to those in the farming community and better environmental outcomes.

#### Loss of Pillar 2 Funding

The most recent reform of the CAP retained the two-pillar structure, in which rural development continues to be regarded as the 'second pillar of the CAP. Northern Ireland now has the lowest EU allocation for rural development in Europe, even though it would seem tailor-made to benefit from it. Northern Ireland had a chance to transfer 15% of pillar 1 funding to pillar 2 funding, between 2014 and 2019, but it decided not to transfer any money at all between the two elements of CAP.<sup>224</sup>

For Northern Ireland to have a 0% transfer is out of step with other parts of the UK. In contrast, Wales has a transfer a rate of 15%; England, 12%; and Scotland, 9.5%.<sup>225</sup> This totals around €2.3 billion of additional investment for rural development and environmental protection.<sup>226</sup>

The Northern Ireland Assembly estimated that even if they had transferred 7% to Pillar 2 (which is still low compared to its UK neighbours) this would have benefited Northern Ireland by €137.5 million.<sup>227</sup> Not only would this money have had a positive impact on farmers and those living in the rural community, it would have also seen significant investment in the environment and climate.

It is not for us to question why this financial transfer was not done,<sup>228</sup> but it seems a lost opportunity for the economy and environmental protection.

### **3.12 Cost-Benefit Economic Analysis of Better Environmental Regulation**

Environmental crime tends to be regarded first and foremost as an environmental issue, when increasingly its motivations and impacts are economic. The above analysis demonstrates that environmental crime should be increasingly of concern within Northern Ireland, because although it's a small country with a small population, the potential costs to the economy are very large.

It is difficult to get to a total figure on how much non-compliance with environmental laws is costing Northern Ireland. It is hard to calculate the financial impact this is having on factors such as FDI and tourism. However, we can make some estimates as to how much Northern Ireland is losing, or failing to gain annually, from some specific examples. Using our figures above, if you add up the (approximate) combined annual cost of lost tax from both illegal quarrying and illegal fuel laundering this is £82 million.<sup>229</sup> To put this figure into perspective, there are currently 1500 junior doctors in Northern Ireland,<sup>230</sup> and £82 million would employ a further 2281 junior doctors (at grade 3 salary of £35,952)<sup>231</sup> on an ongoing basis.

The total lost taxes due to illegal waste disposal are estimated to be up to £150 million (using our calculations in chapter 3.4). As the annual operating costs of the NIEA in 2013-14 were only £47 million,<sup>232</sup> if this tax was not lost then this might provide them with 50% more funding (on top of their standard operating costs) for six years. Additionally, the total clean up costs for illegal waste disposal were estimated to be up to £440 million (using our calculations in chapter 3.3), and unless crimes like this are dealt with in the future they will continue to have a detrimental impact on future budgets across the whole of the Executive.

A fundamental cultural change is required, whereby environmental crime needs to be seen as anti-economy in Northern Ireland. The economy at any price approach to environmental governance can no longer continue to apply, as this is clearly costing Northern Ireland money (and placing it at risk of very substantial financial losses in the future).

The current approach to environmental regulation in Northern Ireland will cost more money in the long term. If the Northern Ireland Government can get the regulation and enforcement of environmental laws right, and get business support for this, then there should be significant economic benefits for Northern Ireland. Going back to basics, Northern Ireland needs to fulfil its promises to apply European environmental laws, and to have good environmental governance structures in places which ensure that as many people as possible keep to environmental rules.

Undoubtedly, the financial resources available to tackle environmental crime are coming under increasing pressure in Northern Ireland. However, as the above analysis shows, if the environment and economy is not seen as a package then it is likely that Northern Ireland will suffer further pain. Clearly an environmental agency can function on low budgets (although as demonstrated in Northern Ireland, ineffectively in multiple areas), but cutting regulatory expenditure is a false economy.

Research has illustrated that governments can be shown to be losing far more money than it would cost to have a well-resourced environment agency. A 2014 report by the Environmental Services Association Education Trust demonstrated, that at the margin, each pound spent on (waste) enforcement was likely to yield £4.40, and perhaps as much as £5.60 in benefits.<sup>233</sup> Of this £3.20 would be received directly by government in taxes, with the rest benefitting legitimate businesses and wider society.<sup>234</sup> They concluded that this was “truly a win-win investment that the government can ill afford to disregard”.<sup>235</sup>

A report commissioned for SEPA, in 2014, also found that the return per pound spent on environmental enforcement and monitoring (for three waste focussed case studies) was

calculated to have benefit-cost ratios of 16:1 and 31:1 (significantly higher than the Eumonia ratio of 4.4:1).<sup>236</sup>

Although the two examples above relate solely to waste crime, an extremely important message of this review is that there is a very strong economic case to give environmental governance greater political backing and to potentially justify increase expenditure on regulation. Any freeze in cuts, or increase in expenditure, has the economic potential to quickly pay for itself many times over (e.g. through increased tax income, reduced clean-up costs and thriving legitimate sectors).

### **3.13 Threats to Health, Environment, and Social Development**

#### The Purpose of Environmental Laws

Environmental laws are in place to protect the environment and health of the citizens of Northern Ireland and if they are not followed then it can only be assumed that this would potentially be to the detriment of the environment and harmful to human health.

#### Health Threats

A key driver towards better environmental governance across the world has been public health scares and citizens' interest resulting in changes. There have clearly been no headline grabbing public health issues in Northern Ireland to date, although some public health issues are starting to emerge in Northern Ireland.

There are concerns about the large numbers of illegal waste sites which are being found, which might contain hazardous materials, such as chemicals, asbestos, lead and medical waste. What is worrying in terms of human health is their proximity to drinking water supplies, clean water boreholes and farmland. Research has found that 41% of these illegal dumps in the UK are less than fifty metres from water supplies,<sup>237</sup> which is why they need to be tightly regulated.

In Northern Ireland the River Faughn is at risk of serious pollution from leachate from the illegal waste dump at Mobuoy Road. This river supplies two-thirds of the drinking water for Derry/Londonderry. Whilst there does not seem to be any public health issues to date, there are on-going investigations looking at the pollutants, pathways, and immediate risks.

In early 2015 the Belfast Telegraph reported that criminals involved in illegal fuel plants in South Armagh were pumping toxic waste linked to cancers straight into the water system, which was mainly ending up in the Irish Republic.<sup>238</sup> A water sample taken from directly behind the plant showed it was 400 times over the maximum chemical content of waste set by the EU.<sup>239</sup> Ross Hussey, MLA, said that: "if this waste gets into our water system it will poison people and destroy our environment" and "it poses a significant risk to the environment and to both human and animal health through potential contamination of our water supplies and local rivers."<sup>240</sup>

Whilst pollutants from air pollution and water pollution can have direct impacts on health, environmental crime more generally can also have indirect impacts on health and well-being. For example, a report by IPSOS MORI, into public perceptions of beauty, shows the natural environment plays an important part in how people view the places they live.<sup>241</sup>

A very large body of evidence now exists linking the natural environment to clinical measures of individual's physical and mental health.<sup>242</sup> Some of these have made linkages to a better environment having a more productive, healthy and effective workforce, and have given

estimates of the financial savings that are, or could be, achieved within health budgets as a result of access to green space.<sup>243</sup>

### Environmental Threats

The environment is vitally important for the shared future of the people of Northern Ireland and that of its children. However, there appear to be problems in Northern Ireland in terms of recognising the value of ecosystems. There has been very little connection made between the environment as an asset to people generally. Because of the conflict there appears to have been a certain ambivalence to land and territory, because of the contested control and ownership of it, and this ambivalence might also have extended to the condition of the environment.

Habitats and wildlife appear to have been thought of as a luxury add on item that should always give way to other economic interests. Some economic operations have had unsustainable impacts on some important species, even in special areas of conservation.

There appears to be an issue with people thinking that just because an activity had been undertaken over a long period of time that this gives them a right to do it in perpetuity. As well as this approach ignoring the common good, a significant flaw is that technology has changed enormously over the years. Things like quarrying were once small scale operations and now operate on a much bigger scale with large industrial machinery.

Ecosystems provide the natural capital which underpins our economy. They produce value for people – such as forests, water, land, minerals and oceans. These benefit us in many ways, providing us with food, clean air, wildlife, energy, wood, recreation and protection from hazards, such as climate change impacts. The Natural Capital Committee says if these are undermined (through harm to the surrounding land, air and water) then this could affect the health of our economy.<sup>244</sup>

Terrestrial, wetland and marine biodiversity deliver benefits which are believed to be worth £3 billion annually in the UK.<sup>245</sup> Ecosystems interact with the economy in three main ways: they contribute to economic value, their natural capital can depreciate through economic activity, and response measures to restore ecosystems can have wider economic effects.

Poor environmental regulation can also affect amenity and create an environmental nuisance. This can include plant noise, odour, fires on sites, and anti-social vehicle movements.

### Social Development Threats

We found it interesting that the wellbeing report in Northern Ireland attempted to link together wellbeing, the environment and the peace process.<sup>246</sup> On a basic level we also thought that having a shared clean, healthy environment which had spaces where people could be brought together post conflict was a good idea. A greater focus on protecting a common interest for all (not a tribal interest) through sustainable development and good governance could in theory be seen as a driver which might enable society in Northern Ireland to move to the next stage of the peace process.

Obviously, the link between the potential for future conflicts and the degradation of the environment is indirect. However, we consider that one of the best ways of insuring against future conflicts is good governance. A better managed environment might be a good way to find stability for the future and build confidence in government.

## **3.14 Carving Niches that Suit Northern Ireland**

## Opportunities

As we talked about economic threats, we felt that we should link in briefly to potential economic opportunities to Northern Ireland as well.

Other countries are looking at developing their economies to be smart, low carbon and resource efficient. The transition to this is inevitable – it is only a question of timing and the course that will take them there.<sup>247</sup> Many of the consultees we spoke to had very vocal frustrations that current policies were not forward looking enough, and were not transforming Northern Ireland towards a sustainable long-term future.

Several consultees commented that Northern Ireland at the current time was focused on short-term gain, without joined-up thinking about how this posed a long term risk of environmental and economic damage. There was seen to be a big gulf between the status quo conservatism that exists, and the progressive thinking, quality of vision and ambition that was desired.

There was also a strong feeling amongst consultees that Northern Ireland needed to create a system where they could transform things again, and to do this they required more intelligent policy corroboration, an increased focus on big thinking and better outcomes, and niche bespoke approaches. It was thought that these might enable Northern Ireland to compete better in the global economy and create indigenous job growth.

There were two areas in particular where consultees commented there were obvious economic opportunities going forward, which matched wider sustainable development and environmental issues. These were ‘greener farming’ and ‘renewables’.

## Opportunities for Farming

Many consultees thought that if Northern Ireland wanted to have an agricultural economy then a greater emphasis was required at looking at farming, the environment and the economy in a more joined-up way.

At the current time Northern Ireland has a landscape that is intensively farmed which results in more pollution. The UK Government has recognized that “agricultural pollution leads to farmers losing valuable resources they need to sustain their livelihoods. For example, soil degradation costs UK farmers an estimated £1.2 billion per year in lost productivity, flood damage, reduced water quality and other costs.”<sup>248</sup>

Other costs of agricultural pollution in the UK are estimated to be between £758 million to £1.3 billion a year and are borne by the water industry, the tax payer, angling groups, conservation groups, the shellfish industry and tourism.<sup>249</sup>

It was noticeable that the ‘Going for Growth’ report that was published by the Agri-Food Strategy Board in 2013 had eighteen Government representatives,<sup>250</sup> but none of these came from the DOE.

The key conclusion of the ‘Going for Growth’ report was that Northern Ireland should move towards greater intensification, and grow turnover 60% by 2020. However, intensive agricultural practices are obviously going to create further environmental impacts in respect of soil degradation, over application of fertilizer and diffuse pollution from nitrates (as Northern Ireland is a total nitrates vulnerable zone), and the disposal of animal waste. Many of the consultees we spoke to (covering a wide range of sectors) considered this strategy to not be an entirely realistic model in the medium or long term.

The fundamental issues in Northern Ireland in terms of agriculture seem to be: firstly how to solve the environmental issues raised by farming so that there will still be economic benefits, and secondly how to provide support to change current approaches to achieve sustainable farming. Focussing on solutions such as buffer strips in terms of nitrate pollutions is a good idea, but it will not entirely transform the overall problem.

The forthcoming merger between the agricultural and environmental departments could result in a whole new level of collaboration on sustainable farming going forward. We think it would be beneficial for the environmental and agricultural civil servants within DAERA to work together to carefully consider where they think Northern Ireland's place in the European agricultural market should be going forward.

The consultees to this report offered three suggestions moving forward.

Firstly, there should be more of a move to organic farming. An earlier Government organic farming incentive scheme (2007-2013) did not achieve great take-up, but a new scheme under the Rural Development Programme (2014-2020) includes a budget of £2.5 million for organic support payments up to 2020.<sup>251</sup> Natural grass fed systems are extremely compatible with the Northern Ireland landscape and climate. However, according to the Government the amount of organically managed land in Northern Ireland is only 1% of Northern Ireland's total agricultural land.<sup>252</sup> This is much lower than other parts of the UK and is one of the lowest percentages of all European countries. This is though the UK and EU market in organic produce has grown significantly over the years.

Consultees considered that there had not been a widespread recognition in Northern Ireland about the profits to be made by organic farming. Whilst several consultees pointed out that Northern Ireland was less prosperous than other parts of the UK and demand for organic would be less, this does not preclude a higher number of organic farms aimed mainly at the export market.

Secondly, many consultees thought that there had not been a successful strategy on branding. Some mentioned the success of the origin green (sustainability) branding in the Republic of Ireland as a benchmark that Northern Ireland should be following. There was a feeling that Northern Ireland should be selling some of its produce as premium brands – from the purest grass, purest water and have verifiable environmental commitments. Connected to the above is the branding of Aberdeen Angus or Welsh Lamb.

Consultees also thought that traceability of food, organic status and better branding of quality would help. It was widely considered that if better branding combined with a better environment meant more money for the farmers, because their produce was seen as more valuable, than this should be economically attractive. Northern Ireland produces fantastic food – it should blow its trumpet more.

Thirdly, a number of consultees also thought that there should have been more consideration of connecting tourism and food production. Other countries seemed to be developing markets in farm holidays (eco-tourism), farm restaurants (showcasing produce), and farm shops.<sup>253</sup> Whilst this might not be suitable to all farms there were thought to be opportunities there and this could fit in well with Northern Ireland having its year of food in 2016.

To make the above work there need to be financial support schemes. There have been organic financial schemes before, but clearly they have had limited impact. Therefore, there also have to be economic arguments made with confidence by Government to the farming industry



about trying new approaches. We do not underestimate how difficult this could be. Farmers are often seen to be a change-adverse and an aging population in Northern Ireland.

We do not have all the answers as to how to change the perceived blockages in Northern Ireland farming policies and how to get people to see the environment as an opportunity, except that as time moves on it will probably have to change to compete in the global economy as well as to adapt farming to the changes caused by climate change.

### Renewables

The long-term cost of failing to address climate change is recognized by businesses and governments around the world. The UK aims to reduce its greenhouse gas emissions by 80% (based on a 1990 baseline) by 2050. The UK Energy Research Centre reports the results of its modeling and primarily predicts the need for greatly increased energy efficiency and conservation in all sectors, and decarbonisation of the UK electricity system by 2030 by at least 80 per cent.<sup>254</sup> It found that meeting the carbon emission reduction target requires a wholesale transformation of the energy system.

Many countries are decarbonizing their economies. In 2015 renewable energy surpassed coal in supplying the UK's electricity for a whole quarter. Government statistics recorded that 25% of electricity supply was generated by wind, solar and bioenergy.<sup>255</sup> The green economy already delivers a £5 billion trade surplus to the UK and provides around 940,000 jobs.<sup>256</sup> Whilst this is impressive, recent research has estimated that by 2030 Britain could be producing 85% of all its power by renewable energy,<sup>257</sup> and providing better energy security and job creation.

This opens up challenges to Northern Ireland, to achieve more efficient energy use and develop new technologies and skills for meeting targets at home as well as export markets. Many of the consultees to this report remarked how the renewable energy opportunities were enormous in Northern Ireland and would be a perfect economic fit. Consultees considered that Northern Ireland had one of the best energy resources in wind, had brilliant engineers, and had high domestic energy costs compared to other parts of the UK.

The Executive have had targets for renewables in their programme for Government (12% by 2012 and 20% by 2015)<sup>258</sup>, but there was still a sense that opportunities were being missed. There was a frustration that there was not a robust renewables industrial strategy to address its potential (both internally and for exports). One consultee also remarked that renewables would be a perfect opportunity for Northern Ireland to sell its green and ethical credentials when trying to attract FDI.

The UK has launched a number of Catapult centres, which are a network of world-leading centres designed to transform the UK's capability for innovation in specific areas and help drive future economic growth. They are a series of physical centres where the very best of the UK's businesses, scientists and engineers work side by side on late-stage research and development - transforming high potential ideas into new products and services. Each of the ten Catapult centres specialise in a different area of technology.

It is noticeable that of these ten centres there is an Energy Systems Catapult<sup>259</sup> and Offshore Renewable Energy Catapult<sup>260</sup>. The former is based in Birmingham and the latter (which employs over 120 people) has offices in Glasgow and Blyth. It seems a real shame that none of the ten centres are based in Northern Ireland, particularly an Offshore Energy one. It is hoped that Northern Ireland might have a louder voice in the future when the decision where to base catapults is being discussed.

**Problem 27: Environmental governance, in terms of economic and social successes has been a complete Failure**

Most consultees to this review were of the opinion that environmental governance, in terms of economic and social successes, has been a complete failure in Northern Ireland. The analysis in the chapter confirms that current environmental approaches threaten the Northern Ireland economy and also create issues for social development.

**Solution Option 27**

There should be a formal commitment by Government to tackle economic, social well-being and environmental challenges in a holistic way.

The NIAO should publish a report looking at the economic impacts of environmental regulation in Northern Ireland, and value for money of the totality of public expenditure on the environment.

The Northern Ireland Public Accounts Committee should produce a report on the long-term opportunities of looking at the economy and environment in Northern Ireland in a more joined-up way, with a focus on the farming and renewables sectors.

The Government should commission an independent study examining the effectiveness of environmental regulation in Northern Ireland, in the context of looking at the totality of public expenditure on the environment, and the impact that environmental degradation is having on the lives of local people and future generations. Part of the remit for this report should be whether having a commitment to having a better managed and financial resourced environment could improve the lives of the people of Northern Ireland, build confidence in government, and contribute to greater stability within the peace process for the future.

## 4. CONNECTING THE SOLUTION OPTIONS AND EXAMINING WIDER GOVERNANCE QUESTIONS

Six important conclusions were reached in the earlier chapters of this review that are highlighted below.

- The environment is an asset which is now considered to be at great risk in Northern Ireland.
- Confidence in the Government to protect and maintain the environment in Northern Ireland is very low.
- There are long-standing problems with environmental rule breaking in Northern Ireland and there are legitimate questions about whether the current systems of environmental regulation and regulatory structures are effective enough to protect the environment and human-health.
- There is an embedded political attitude that the environment is a barrier to a more productive economy, prosperity and jobs in Northern Ireland, and those must always come first.
- Very little connection has been made between environmental crime and poor environmental regulation and the economy.
- At the current time systems of environmental regulation were seen as failing by most consultees to this report, and there was a huge appetite for change across all sectors in Northern Ireland, which indicate that new progressive approaches would be welcomed.

The above conclusions have meant that maintaining the status quo alone - without any changes - will not be an option we will consider. Having a status quo option was also discarded because many of the current institutional (environmental) structures will not continue after May 2016.

We have arrived at three options for environmental governance reform in Northern Ireland. These are listed below as Options A, B and C.

### OPTION A – IMPLEMENTATION OF THIS REPORTS RECOMMENDATIONS FOLLOWING THE DEPARTMENTAL CHANGES IN 2016

This option recognises that significant improvements can be possible, as part of the forthcoming departmental restructuring. Option A requires implementing the solutions that are necessary to address the problems which have been identified in this report. Whilst some of the suggestions we make below might be implemented in isolation, we should emphasise again that not one mechanism alone will solve the overall problem and they have to be viewed as far as possible as a package.

<b>RECOMMENDATIONS FOR OPTION A</b>		
<b>Environmental Regulation</b>		
Environmental Rules	1	Political leadership on the environment: The Government in NI has to ensure that EU environmental laws are complied with.

	2	Environment Commissioner: A new Environment Commissioner, should be appointed in NI to safeguard the environment and human health, and to provide support in overseeing the implementation and correct application of all EU environmental laws.
	3	Independent Special Advisor. An independent special advisor to the new NI Minister of DAERA, should be appointed in support of overseeing the implementation and correct application of all EU environmental laws.
Legal Core	4	Legal Department: An internal legal department should be formed directly into DAERA (or within the NIEA if it becomes a non-departmental public body).
	5	Greater legal input into high-level management: Two senior lawyers should be part of the high level management structure of the NIEA (one dealing with legal services generally, the other with responsibility for enforcement actions).
	6	Specialist environmental prosecutors in the PPS: Two legal posts for specialists in environmental and wildlife law should be created within the PPS to handle these sorts of crimes.
Environmental Enforcement	6	Electronic based waste transfer systems: The current NI based paper based system for waste transfers should be abolished and a legal duty of care should be imposed on the waste industry to use electronic based systems.
	7	Mandatory tracking of waste vehicles and skips: The Government of NI should require the use of tracking technologies such as GSM/GPS (and the storage of data relating to this) on any vehicles that are licensed to carry waste, and also potentially on skips. A feasibility study should be undertaken to examine options, pricings and potential financial support to industry.
	8	Technology logs of vehicles using licensed waste sites: The Government of NI should require the use of RFID devices on any vehicles that are licensed to carry waste, and also potentially on skips, and to place electronic tag readers at the entrance of all licensed waste sites to log vehicle movements. A feasibility study should be undertaken to examine options, pricings and potential financial support to industry.
	9	Duty of care on waste owners: A new duty of care should be placed on all NI commercial companies to require them to check whether the waste transfer company they use has the necessary permits, and can supply proof about where waste is going to go, and proof it has got there.
	10	Duty of care of owners of land with disused quarries: A new legal requirement shall be introduced requiring owners of land with disused quarries on them to periodically check them to ensure that unlicensed operations are not taking place.

	11	Restoration of disused quarries: The Government of NI should examine introducing a law whereby certain disused quarries are compelled to be restored after a certain period of time. The Government might consider establishing a fund to assist with this.
	12	Regulating quarry equipment: A legal requirement should be introduced whereby NI companies that hire major plant equipment to the quarrying industry should be compelled to do background checks with Government before hiring some equipment, to ensure that the hirer has the necessary permits.
	13	Regulating quarry equipment: The Government of NI should appoint a member of staff who has responsibility for undertaking permit checks in cooperation with plant hire equipment companies.
	14	Mandatory tracking of large quarry equipment: The Government of NI should require the use of GPS tracking technologies on any major plant equipment used for quarrying (and the storage of data relating to this), so there are records kept of where these are operating. A feasibility study should be undertaken to examine options, pricings and potential financial support to industry.
	15	Mutual electronic systems with Republic of Ireland: The use of electronic based systems for waste transfer, and more generally the use of technologies such as GPS and RFID tags in regulating the waste and minerals industries should be discussed further at the North/South Ministerial Council, so mutual systems are operational in both Northern Ireland and the Republic of Ireland.
	16	Greater focus on the provision of information and advice to those they regulate: The Government of NI should implement a strategy to develop closer links with those that they regulate, which give greater emphasis to communication, education and working together.
	17	Surveys of regulated groups: The Government of NI should commission surveys of regulated groups in Northern Ireland, to reveal what the key issues concerning environmental compliance and regulation are to business, which might inform government policies in how they might best engage with them and help them.
	18	Catchment bodies providing advice to farmers: The Government of NI should look to establish a dedicated catchment body (divorced from regulation and anything to do with agricultural subsidies) to provide better advice and support to farmers.
	19	Culture change in regulation: The Government of NI should develop a strategy which examines ways it might bring about a culture change in how it is perceived to conduct environmental regulation, so that it is increasingly seen as a good, fair and trusted regulator going forward.
	20	Regulatory code of conduct: The Government of NI should publish a code of practice concerning how environmental regulatory staff

		interact and conduct themselves with those that they are regulating.
21		Memorandum of Understanding (MOU) between Farmers and the regulator: A MOU should be implemented at Ministerial level which lays down guidelines on the rights, and conduct, of both farmers and regulatory staff during inspections (and what is acceptable and unacceptable behaviour in certain scenarios).
22		Point of Contact with Government: The Government of NI should nominate a member of staff to be the key point of contact for each of the major industries (e.g. waste, quarrying, industrial, farming), to act as a link with businesses in that sector, and catalogue any issues with conduct or enforcement outcomes.
23		Regular contact with unions: Senior members of the NIEA should annually visit the offices of relevant unions to discuss and receive feedback regarding environmental regulation.
24		Strategy on consistency in enforcement: The Government of NI should develop and publish a strategy that seeks to improve the consistency of environmental enforcement in Northern Ireland.
25		Recommendations of the CJI: The Government of NI must ensure that the recommendations of the CJI are implemented.
26		Oversight system for enforcement outcomes: A formalised oversight system should be established by the Government of NI, whereby a competent manager (or oversight committee) scrutinises environmental investigative and enforcement files at regular intervals.
27		Environmental enforcement guidance: The Government of NI should introduce new environmental enforcement guidance, based on best practice in England and Scotland, and which will reflect the new Northern Ireland sanctions regime (when it comes into force).
28		Staff training on environmental investigations: The Government of NI needs to change custom and practice as to how environmental investigations are undertaken and to introduce new formal training regimes for staff. Bodies such as the PSNI and CJI should be asked to provide input into this training.
29		Increase in the number of senior investigators in the NIEA high-level management team: More senior staff from an enforcement/investigatory background should be within the high level management structure of the NIEA.
30		Secondment of police officers: To improve evidential and investigatory rigour in the NIEA the Government of NI should explore the possibility of seconding officers from the PSNI.
31		Prioritising those with police backgrounds in recruitment rounds for investigatory roles: There should be an internal policy within the NIEA whereby they look to prioritise current or former police

		officers (with expertise in evidence collection) in recruitment rounds for new environmental crime investigators.
	32	Best practice database: The Government of NI should develop a database that both regulators and councils could use where they could see best practice and make decisions and provide advice based on these. This database should preferably initially focus on environmental impact assessments, strategic environmental assessments and habitat assessments.
	33	Communicating successes: Government should look at rebuilding confidence in environmental regulation by devising a strategy as to how it might best demonstrate their successes to the public.
	34	Closer links with the police: The NIEA should establish closer linkages with the PSNI, and the capacity for the police service to assist them in environmental enforcement operations, or to lead specific investigations should be strengthened.
	35	Closer links with HMRC: The NIEA should establish closer linkages with HMRC, and the capacity for HMRC to assist them in environmental enforcement operations, or to lead specific investigations should be strengthened.
	36	Law that applies tax to illegal landfills: The law in NI should be changed so that any waste material which is deposited illegally at a site is still liable for HMRC to charge tax.
	37	Civil service exchanges: The Government should look to encourage the exchange of civil servants between Belfast and the rest of Britain, so that there is a thriving exchange of knowledge and best practice methods in environmental policy and regulation.
	38	Environmental summits: The Government of NI should commit to having an annual, or biannual, environmental regulation summit in Belfast where staff in neighbouring governments and agencies are invited to come and talk about best practice in their countries on certain subjects and ideas can be exchanged.
Environmental Justice	39	Sentencing guidelines: The Government of NI should introduce new sentencing guidelines that apply to the sentencing of all environmental offences in Magistrate and Crown Courts in Northern Ireland.
	40	Statutory basis for sentencing guidelines. To ensure that the environmental sentencing guidelines are followed, the Government of NI must introduce legislation requiring every court to follow any sentencing guideline which was relevant to the offenders case and when exercising any other function relating to the sentencing of offenders.
	41	Sentencing database. The Government of NI should examine the feasibility of, and support for, creating an environmental sentencing database in Northern Ireland.

	42	Environmental Tribunal: Government should establish a specialised Environmental Tribunal for Northern Ireland.
	43	Professional development of the judiciary: All tiers of the judiciary should take further professional development concerning judicial education in the social, economic and environmental impacts of environmental crime in Northern Ireland.
	44	New sanctions toolkit: The Government of NI should as quickly as possible introduce a new environmental sanctions regime into legislation, containing a range of new administrative and civil sanctions.
	45	Enforcement guidance on appropriate sanctions: Once the new sanctions regime (above) is in place Government should publish new enforcement guidance which will enable the regulator to consider through to prosecution how they should make outcome focused enforcement decisions, and what type of sanction routes and tools are appropriate in different situations.
Objectives and Oversight	46	Statutory basis for the objectives of an independent EPA: The strategic objectives of the regulator would benefit from being formalised in legislation, if it was decided that this should become a non-departmental public body.
	47	Strategic objectives of an independent EPA: The strategic objectives of the regulator should provide a closer link to protecting and enhancing the environment, and improving people's health and well-being, than under the current strategic objectives of the NIEA.
	48	Assembly Environmental Audit Committee: The Northern Ireland Assembly should create an Environmental Audit Committee with statutory responsibility for auditing the environmental performance of Government in NI. It should be adequately resourced to discharge an audit function effectively.
	49	Capacity of the NIAO: The capacity of the NIAO to investigate the effectiveness and efficiency of departments and public bodies in the discharge of their environmental functions should be strengthened (and if possible a specialist environmental team embedded in this organisation).
	50	Capacity of the NI Ombudsman: The capacity of the Ombudsman to investigate environmental and planning complaints concerning public bodies should be strengthened (and if possible a specialist environmental team embedded in this organisation).
	51	Capacity of the CJI: The capacity of the CJI to investigate the effectiveness and efficiency of the environmental regulator should be strengthened (and if possible a specialist environmental team embedded in this organisation).
<b>Spatial Planning</b>		



	52	Strategic approach to planning: The Land Strategy for Northern Ireland be taken forward.
	53	Planning and shared best practice: Regular meetings on planning issues should take place where best practice can be shared between the Councils and relevant departments, organised by the Local Government Association.
	54	Strategic co-operation in planning: It would be beneficial to have an entity in place that ensures co-operation, horizontally and vertically, and oversees the strategic approach to land use planning. We would recommend having something similar to the central/local working group on operational waste issues (which was introduced to ensure better communication and working relationships between the DOE, Councils and waste management groups).
	55	Establishment of an EIA and SEA Gateway: Northern Ireland introduces its own EIA and SEA Gateway.
	56	EIA and SEA Training: There should be EIA and SEA training for staff in the NIEA and Councils regarding the process of undertaking them and advice on where these are appropriate.
	57	Resources for NIEA statutory role: Adequate resources be provided to the NIEA for them to play their statutory part in the planning system.
	58	Planning guidance and training: New staff training and guidance be introduced so staff can work on applications involving different types of development.
<b>Politics, Civil Service and Policy Making</b>		
	59	Political will and training: Political parties in Northern Ireland should source and undertake formal training and development of their policy staff and officers to improve their capacity to engage in political debate on the environment.
	60	Strategic vision and Welsh model: Introduce legislation on the well-being of future generations.
	61	Strategic vision and Swedish model: To adopt a model of long term environmental objectives, agreed by all political parties and followed regardless of who is in power over the years.
	62	Overarching environment strategy: Having an overarching strategy on the protection of the environment in one single document. This should contain details about the strategic priorities of the Government and the outcomes that are hoped to be achieved, and be written in a style that is easily understandable.
	63	Access to environmental strategies: All strategies affecting the

		environment should be published in the same place on one easily accessible government webpage.
	64	Updated Sustainable Development Strategy: Developing a new overarching sustainable development strategy to provide a coherent approach towards environmentally sustainable objectives.
	65	Political interference: Due process should be protected and a criminal offence introduced, stating that there should not be external interference with any regulatory decisions.
	66	Review of arrangements: A review by DAERA of institutional arrangements and integration in the new department should be undertaken. This should encompass examining: who does what and why, and where integration between sectors applies and needs to be strengthened.
	67	Environmental Policy instruments and restructuring: The creation of databases for specific environmental policy instruments through which information is easily shared within and across departments.
	68	Merger and Board: The DAERA Board to have a fixed number of Board members that are from an environmental background. As close to 50% would be our suggestion.
	69	Merger and review: We would suggest a commitment by Government in three years' time to examine whether the environment (or agriculture) has become less of a priority following the merger and forming of DAERA. Criteria could include distribution of staff in working groups, equal representation, loss/increase in budget, among others.
<b>Social And Economic Consequences</b>		
	70	Policy commitment: There should be a formal commitment by Government to tackle economic, social well-being and environmental challenges in a holistic way.
	71	NIAO economic review: The NIAO should be asked to publish a report looking at the economic impacts of environmental regulation in Northern Ireland, and value for money of the totality of public expenditure on the environment.
	72	Northern Ireland Public Accounts Committee (PAC) review: PAC should be asked produce a report on the long-term opportunities of looking at the economy and environment in Northern Ireland in a more joined-up way, with a focus on the farming and renewables sectors.
	73	Independent report on the impact of environmental degradation on the lives of local people and future generations: The Government should commission an independent study examining the effectiveness of environmental regulation in Northern Ireland, in the

	<p>context of looking at the totality of public expenditure on the environment, and the impact that environmental degradation is having on the lives of local people and future generations. Part of the remit for this report should be whether having a commitment to having a better managed and financial resourced environment could improve the lives of the people of Northern Ireland, build confidence in government, and contribute to greater stability within the peace process for the future.</p>
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## **OPTION B – OPTION A, PLUS TRANSFERRING ALL NIEA FUNCTIONS TO A NEW INDEPENDENT ENVIRONMENTAL PROTECTION AGENCY**

Option B is that a large number of the recommendations from Option A are implemented, but at the same responsibility for environmental regulation in Northern Ireland should also be transferred to a new independent Environmental Protection Agency (IEPA).

We recognise that the creation of an IEPA may have short-term impacts on both Government and business. However, we think that the long term risks to the environment, and impacts to the sustainability of Northern Ireland and its economy mean that this is an important option to consider.

A huge majority of groups to the Government’s consultation in 2011 signalled their support for having an IEPA. An IEPA has not floated well politically in the past, but judging by the extent of some of the issues we have uncovered, the ethos and need for it is still there. Consultees to this review, from many different backgrounds and sectors, thought that having a non-departmental public body (IEPA) would work best in Northern Ireland.

We have identified five important drivers as to why an IEPA would be beneficial:

- The environment is a special area of public law and it needs to be protected from interference.
- Moving environmental regulation away from the political arena would create a greater sense of public trust in the system.
- Business wants to see a cultural change in environmental regulation, and considers that an IEPA could result in better communication channels, education and working together, that will then hopefully lead to fairer, consistent and more transparent enforcement.
- The merger of the DOE and DARD might mean that there is no visible environmental guardian in Northern Ireland, and an IEPA could become the easily identifiable champion for the protection and improvement of the Northern Ireland environment, as opposed to just another limb of a Government Department.
- A higher degree of independence should allow greater flexibility in making the necessary changes to speed-up some decisions and actions.

There are a number of issues raised by the option of having an IEPA.

### Functions

We envisage an IEPA would extract the key regulatory functions of the NIEA relating to air, water, land, waste and environmental crime and bring them into a focused Agency with a clear mission to protect and enhance the environment and to tackle environmental crime.

It should have regulatory responsibility for the following functions:

- Pollution prevention and control.
- Waste management.
- The protection of species and habitats.
- Water quality management.
- Sustainable inland fisheries.

Its primary purpose would be regulation and it would not, for example, develop or interfere with strategic government policy. However, it will require some form of policy function, as Government policy has to be turned into operational policy, and it would have to have policies which manage the delivery of its targets. There should also be a recognition that if the IEPA collects good data and has most interaction with those that they regulate then they should also be allowed to try and influence some things.

### Objectives

Currently, the NIEA's four key objectives are:

- To deliver effective compliance and implementation of legislation and international obligations.
- Improve understanding and appreciation of our environment.
- Support a sustainable economy.
- To deliver reformed and effective planning.

If Option B is taken forward we would consider adding to this to include:

- Ensuring that Northern Ireland's environment is clean, protected and improved.
- Ensuring that natural resources are promoted and managed in a sustainable way.
- In carrying out its functions for that purpose, the Agency must, except to the extent that it would be inconsistent with its purpose, contribute to improving the health and wellbeing of the people in Northern Ireland.

The duties and objectives of the IEPA above should be embedded in legislation.

### Characteristics

An IEPA would ideally also have the following characteristics:

- It would be a non-departmental public body sponsored by DAERA.
- It must be financially accountable to those from whom it generates income, and full financial and audited reports must be publically available.
- It must issue an annual report on the conduct of its statutory duties.
- It must be governed by a Board, which should comprise a Chair, a Chief Executive and external members providing specific expertise in relevant areas (e.g. business, lawyers, other environment agencies).
- It must appoint a Chief Executive to be responsible to the Board for the day-to-day running of the proposed Agency.
- It must have its own internal legal division.
- The staff of the proposed Agency should be employees of the Agency and not the Northern Ireland Civil Service.
- Due process should be protected and a criminal offence introduced stating that there should not be external interference with any regulatory decisions.

## Desirable Considerations

A number of other issues should also be considered at the planning stage for an IEPA. Ideally it needs:

- Powerful clarity about institutional arrangements – who does what and why, and what roles needs to be supplemented or created.
- A clear vision of outcomes to be achieved.
- A commitment to training staff.
- Appointments that will encourage strong leadership at the outset.
- A clear plan on how integration with DAERA, other Government departments, and Local Government will be achieved.
- A clear plan about how they will communicate and work with those that they regulate, and a commitment to provide a fair and balanced service.
- A clear plan about how they will communicate their regulatory role and successes to the public.

## Funding

A number of issues can be raised with respect to funding.

Because this is a short study we cannot look at the issue of how much an IEPA will cost (start-up costs and annual operating budget). We are assuming this will be looked at in the better-resourced parallel Government consultation exercise that is taking place.<sup>261</sup>

Improved environmental outcomes will be dependent on the proper resourcing of a new IEPA. To be more effective the IEPA will probably have to have more funding than the NIEA currently receives and more staff. There has to be some recognition that it is either established with the funding it requires, or its successes will be diminished.

As Chapter 3 demonstrated there is a need to set any reform agenda in terms of social and economic success. The current approach to environmental regulation is costing the Government money - they are not collecting revenues that should be collected and are incurring lots of additional costs and liabilities. However, this position might change if there is a well-resourced IEPA fighting environmental crime. The Government, when considering setting up an IEPA might, therefore, have to steer a course between short-term expensive financial outlay if they act and give it sufficient funding, or risk long-term economic and environmental damage if they act half-heartedly and do not give it adequate funding.

A non-departmental public body also requires more long-term thinking about funding than functions that sit within central Government. The Government sets policy and a corporate plan for time. An IEPA needs to reconcile strategic priorities and long term planning with certainty over funding. Its hard to plan long term with regular budget changes, which is what is happening to Government departments.

We consider that an IEPA should be better protected from budget cuts, although we recognise that it could never be completely immune from future cuts. The future independence of a new Agency would be enhanced by a commitment from central Government to maintain funding, linked to the GDP Deflator. Such a commitment would provide greater certainty and confidence to the new Agency.

As well as funding from central Government, financing for an IEPA should also come from a permitting regime, which should be designed to ensure competitive charging with incentives to encourage good environmental behaviour.

One of the key concerns of the farming community with having an IEPA, is that this would become more aggressive in its enforcement, and would look to take more actions so that it could profit from fines. We strongly believe that there should be a commitment that an IEPA should not profit at all from bringing criminal actions.

It is likely that Northern Ireland will adopt a new sanctions regime in the future. This should result in a greater use of civil and administrative penalties. We consider that an IEPA should get any money received from such penalties directly. However, this has to be seen as extra money – rather than any form of replacement of the annual operating budget.

If an IEPA does receive the money from civil and administrative penalties we would like to see two things. Firstly, there should be protections in place to make sure that the use of this route by an Agency is not abused. Secondly, we think that there should be a commitment that these monies should be spent in their entirety on educational projects that can either really help business improve compliance with environmental laws, or help business develop schemes or green projects that have both an economic and environmental benefit. An example of the latter could be setting up agri-tourismo projects on farms. We believe that business would be receptive to such a system, and engage better with an IEPA.

### **OPTION C – OPTION A, PLUS TRANSFER ALL NIEA FUNCTIONS TO A NEW INDEPENDENT AGENCY THAT HAS A GREATER REGIONAL FOCUS**

Our final option for reform is to do everything in Option B (e.g. restructuring and having a new IEPA), but in addition you could reduce the national footprint and increase the regional footprint in environmental regulation. In Option C the new IEPA would have both a central and regional focus.

We would recommend setting up regional boundaries which match the regional structure. Potentially, we would have six Agency offices spread across Northern Ireland. All of these would have an enforcement function, although prosecution would still be left centrally to the PPS.

#### Benefits

We consider that there are a number of benefits in adopting a regional approach. Firstly, the connections between planning, environment and transport are extremely weak at the moment following the changes to Government departments, and planning moving to local government. The current NIEA is now at an arms length to these bodies. We believe that connections between these would be strengthened if there was an IEPA operating at a regional level.

A regional IEPA would especially be interlinked and work well with the planning changes, because it would be far more aware of the locality it was in, and in touch with local issues when providing comments on planning applications - which might speed up the planning process.

There is a strong argument that democracy needs to be devolved in Northern Ireland as there is still a lot of political interference, and a lot of decision-making is perceived to be caught up

in national politics. We consider that there should be more freedom in decision making with a independent regional approach.

Many people in Northern Ireland that we spoke to thought that the power sharing system provided ineffective political leadership. The community and voluntary sector in Northern Ireland has great character and strength, suggesting that a regionally focused IEPA could play a greater role in encouraging engagement in environmental issues at a smaller community level.

Northern Ireland seems to be a very community conscious society. People seem to be less connected to national issues, and are more connected to issues in their own locality. A regional IEPA would be more visible locally, more accessible on a local level, and a better way of engaging with the community.

A regional and local mix would work because the environment is not in Belfast alone. The people who an IEPA are trying to influence and monitor are also not just in Belfast.

It should also result in more regional policy ideas, and the development of good practice within the Agency offices. We consider it to be highly attractive that the different regional agencies might set each other good examples. A key role of the EPA head office would be to ensure these are policies are overseen and ideas shared.

If reports on the state of the environment were undertaken at regional level then the central Agency (and Government) might start to get focused data about what was required regionally, and different forecasts on what an area needs. Regional reports will enable regional regulatory comparisons to be made, so they will be able to see what is working and what isn't. There might be a good reason why one area has less prosecutions, for example, but regional data can provide the basis for asking questions.

Regional reports which might also encourage competition between the regional agency bodies (e.g. who has the cleaner air, cleaner water, most habitats in good condition). Again, there might be good reasons why different regions have different issues (e.g. air quality will be more of an issue in Belfast), but on a basic level it will allow regional environmental comparisons, showing deteriorations or improvements.

Regional statistical reporting could also result in better public data, and provide more transparency and public accountability about what was happening in that area, so that local people could judge performance compared to other regions in Northern Ireland, or measure improvements.

#### Practical Implementation and Costs

The model of having some sub-regional agencies already seems to work quite well in Northern Ireland. Bodies such as the Housing Executive and Transport Northern Ireland are sub-regionally located. Agricultural regulation is already quite dispersed across the country. DARD currently has twelve regional offices. The Local Government Association commented to us that Councils found it easier to work with sub-regional agencies.

At the current time some regional offices of the NIEA do exist, but most people and buildings are in Belfast. Therefore, new premises might be required in some instances and money allocated for running costs. As this is only a short study we have not had the resources to consider the costs.

## ANNEX 1 – BIOGRAPHY OF THE AUTHORS

**Ray Purdy** is a Director of Ecocentric Consulting. He holds a Law Degree and Masters Degree in Environmental Law. He has twenty-one years experience working as an environmental law researcher at three of the world's top five universities (QS University World Rankings, September 2014): Environmental Change Institute, University of Oxford (1995-1996); Centre for Environmental Policy, Imperial College (1996-2003); Centre for Law and Environment, University College London (2000-2014); and Faculty of Law, University of Oxford (2016 - ). He is currently a Senior Fellow in Environmental Law at the University of Oxford. He has conducted work for bodies including: European institutions (European Commission, European Committee of the Regions, European Space Agency), The World Bank, Intergovernmental Panel on Climate Change, International Energy Agency, and numerous regulatory bodies and government departments in countries across the world. He has had his research directly reported within United Nations Convention meetings, been the Assistant Editor of the Journal of Environmental Law (Oxford University Press), the Managing Editor of Climate Policy (Elsevier & Taylor & Francis), and been a guest editor for the Journal for European Environmental & Planning Law (Brill). He has published widely and has contributed to the United Nation's Environment Programme, Manual on Compliance with and Enforcement of Multilateral Environmental Agreements. During his career he has been a Global Review Panel Member for Europol; Member of the UK Environmental Regulatory Evidence Network; Member of Chatham House; Member of the Economic and Social Research Council Peer Review College; and Member of the United Kingdom Environmental Law Association. He is also a founding Director of the space company, Air and Space Evidence. His work has been covered by: New Scientist, Scientific American, Environmental Scientist, BBC News, Channel 5 News, BBC World Service, BBC Radio (4, 5, London), Sky News, CNN, The Independent, The Times, Financial Times, Wired, Fast Company, New Law Journal, The Daily Mail, The Evening Standard, The International Business Times, i Newspaper, Delhi Daily News, Uzbek & Rica, RT, The Week, Huffington Post, Quo, Metro, News.com.au, USA News, Gazetta.Ru, Australasian Lawyer, ENDS Reports, Toronto Telegraph, Finance Courier, The Conversation, ABC (Australia), The Sydney Morning Herald, Daily Telegraph, The Herald Sun (all Australian), Daily Star (Bangladesh), Business Spectator, Farmers Guardian, Farmers Weekly, and Vice.

**Peter Hjerp** is a Director of Ecocentric Consulting. He holds Master's degrees from both the London School of Economics and Political Science and Helsinki University of Technology. Previously he worked at the Institute for European Environmental Policy for over 15 years as a Senior Policy Analyst (and is currently an Associate). Over the years Peter has developed an expertise in environmental policy integration, environmental assessments, EU funding instruments, environmental law, climate change adaptation and ecosystem services. Peter has been in charge of many high profile projects for the European Commission on EU funding instruments, climate change adaptation and ecosystem services. Peter has produced reports about the evolution of the EU's regulatory agenda in relation to the environment and been responsible for a number of chapters in the Manual of European Environmental Policy, as well as the European Investment Bank's Handbook on EU Environmental Law, Principles and Standards. In addition he has conducted many Impact Assessments for the EU, as well as assessed the quality of Impact Assessments at both national and EU level. He has contributed to guidance documents on the application of SEA for WWF, RSPB and local authorities and is one of the authors of the forthcoming SEA Handbook.



## **ANNEX II - TIMELINE OF SOME OF THE KEY ENVIRONMENTAL GOVERNANCE EVENTS IN NORTHERN IRELAND OVER THE LAST TWENTY-FIVE YEARS.**

**1990. House of Commons Report.**<sup>262</sup> Concern about environmental governance (particularly the non-transposition and implementation of EU legislation) in Northern Ireland was first highlighted in a report by the House of Commons Environment Select Committee. This led to an effort to address the backlog but progress was too slow to avert the initiation of a raft of infraction proceedings by the EU Commission. The Select Committee on the Environment commented that “The quality of its environment is one of Northern Ireland’s greatest assets; and the provinces future success depends in large measure on maintaining this.” The Committee recommended that an independent regulatory environmental agency should be established in Northern Ireland. It did not want Northern Ireland to lose out on developments in effective, independent environment agencies that had taken place in other parts of the UK, and envisaged an agency that would develop its own character and be a focus for local pride in the environment.

**1998. Devolution and Penalty Responsibility.**<sup>263</sup> Under the Northern Ireland Act 1998, practically all responsibility for environmental protection was devolved to the Northern Ireland Assembly, subject to the proviso that it must act in accordance with international and EU law. The UK government, however, retained powers to set emissions limits and quality standards. Under direct rule, responsibility for payment of fines rested with the UK Treasury. However, under a MOU signed as part of the 1998 Agreement, liability for payment of EU penalties was transferred from the UK to Northern Ireland (where Northern Ireland alone was responsible for the failure).

**1998. Northern Ireland Audit Office (NIAO) Report on River Pollution.**<sup>264</sup> In 1994 a ‘prior options’ study carried out by government considered the model of an independent environment agency in Northern Ireland, but rejected it in favour of establishing the Environment and Heritage Service as an Executive Agency within the Department. According to the NIAO, the main reasons given were that (i) an agency model would be more effective in regulating other government agencies such as the Water Service and (ii) it would be inappropriate for an independent agency to regulate agencies falling within government departments.

**2001. Public Accounts Committee Report on River Pollution.**<sup>265</sup> The Public Accounts Committee described the anti-pollution effort for river pollution in Northern Ireland as suggesting “a worrying lack of cohesion”, and recommended that current organisational structures on this be included in a review of public administration. The Committee highlighted the need for clearly stated enforcement procedures, in respect of water pollution prevention requirements, that are applied fully and consistently.

**2003. NIAO Report on Areas of Special Scientific Interest (ASSI).**<sup>266</sup> The NIAO reported that delays in designating ASSI’s, risked non-compliance with EU Directives, and potentially irreversible, damage to sites not yet protected by designation. It found that in some circumstances the Government had failed to monitor sites adequately, leading to environmental damage and breaches of ASSI provisions. The NIAO gave Lough Neagh, as an example of the potential consequences of inadequate monitoring of designated sites and delayed, or weak, enforcement action. The NIAO also found that the absence of documented and consistently applied enforcement policies and procedures, some sixteen years after the implementation of legislation, represented poor management practice. In their view, management responsibilities and payment of financial assistance for prevention of damage to ASSIs also displayed a similar lack of cohesion.

**2004. UK Environmental Law Association (UKELA) Discussion Paper.**<sup>267</sup> UKELA published a discussion paper which sought to raise awareness of the urgent need for reform of environmental regulation in Northern Ireland. The report stated Northern Ireland has been seen as the “dirty corner of the UK”, it was playing catch up with other countries, and that reform was urgently needed because it had a uniquely serious problem of weak environmental regulation and enforcement. UKELA found that “a new sense of priority for the environment in Northern Ireland is urgently required and a new form of environmental governance must be devised.” The paper suggested a package of changes to reform regulation in Northern Ireland – the main one being that an independent regulatory agency, on the model of the EA in England, or SEPA in Scotland, but tailored to Northern Ireland’s circumstances was required to provide the best means of environmental regulation.

**2004. Macrory Review.**<sup>268</sup> Richard Macrory published an independent report commissioned by Northern Irish environmental NGOs, entitled ‘Transparency and Trust. Reshaping Environmental Governance in Northern Ireland.’ The report examined a range of options for addressing reform of the regulatory role (such as maintaining the status quo, enhanced responsibility for local authorities, and the establishment of a new independent environmental agency) as well as looking at options to meet the need for external policy advice and auditing.

**2005. House of Commons Report on Waste Management in Northern Ireland.**<sup>269</sup> The Committee was critical of Northern Ireland’s progress in implementing a number of key elements in its Waste Management Strategy and warned that it was a race against time to meet the first major target in 2010 for reduction of waste going to landfill and avoid substantial EU financial penalties.

**2005. NIAO Report on Waste Strategy.**<sup>270</sup> The NIAO found that Northern Ireland’s waste management performance ranked poorly in comparison with other countries, with one of the lowest recycling performances in Europe. Councils’ delay in producing comprehensive waste management plans had hindered the introduction of networked recycling facilities and processes essential to meeting the 2005 target to recover 25 per cent of waste. The NIAO considered that the difficulties that beset the implementation of the first stage of the Strategy should prompt a review of the responsibilities allocated to the Government and Councils, and demonstrated the need for improvements to be driven centrally. They also concluded that the Government had been slow to finalise relevant waste management enforcement procedures, and recommended having documented and effective enforcement procedures in place.

**2006. Rooker Commissions Independent Review of Environmental Governance.**<sup>271</sup> The British Minister for the Environment, Jeff Rooker appointed a panel of experts to conduct an independent review of environmental governance in Northern Ireland. The background to this was the Government’s recognition that pressures on the region’s environment were intensifying significantly and that there were widespread doubts as to whether the current arrangements for environmental governance in Northern Ireland could deliver the necessary consistency and quality of outcome.

**2007. Criminal Justice Inspection (CJI) Northern Ireland Report.**<sup>272</sup> The CJI produced a report calling on the DOE to get tougher on hard core offenders involved in environmental crime and breaches of the planning regulations. They urged the adoption of a more direct, determined approach to enforcement as part of its regulatory responsibilities. The recommendation was one of fifteen made by CJI following an inspection of how the DOE and its agencies interfaced with the criminal justice system.

**2007. Devolution Restored.** The Assembly had been in a state of suspension following the 2003 election. The St Andrews Agreement of 13 October 2006 led to the establishment of

the Transitional Assembly. The Northern Ireland (St. Andrews Agreement) Act 2006 set out a timetable to restore devolution in Northern Ireland and also set the date for the third election to the Northern Ireland Assembly. Devolution was then restored in March 2007.

**2007. Bell, Burke and Turner - Foundations for the Future Report.**<sup>273</sup> This report (which was the result of the 2006 Rooker review), addressed the focus, structure, roles and relationships between the various elements of the governance regime in Northern Ireland. The reports key conclusion was that “current arrangement of the assets for environmental governance in Northern Ireland are not capable either of resolving the environmental legacies of the past, or of responding to present and emerging environmental pressures. These include pressures on the quality and productivity of soils, water, air, loss of species, habitats, marine ecosystems, built and cultural heritage and landscape value. In addition there are the mounting risks posed by climate change. Nor can they deliver the high quality environmental outcomes necessary to underpin economic and social wellbeing and individual health. To postpone significant reform would expose Northern Ireland to serious financial and environmental risks and deny its people significant opportunities to achieve a high quality environment”. The report contained thirty-seven recommendations for reform in the following areas: policymaking on the environment; environmental regulation; terrestrial and marine planning, strengthening accountability; cross cutting elements of environmental governance; and environmental justice.

**2008. Foster Ministerial Decision.**<sup>274</sup> The Environment Minister, Arlene Foster, responded to the recommendations contained in the Bell, Burke and Turner report. The Government decided that after scrutinising the DOE’s performance that many of the problems encountered were down to direct rule and that new arrangements for accountability would be much more effective. The Minister was “satisfied that those [new] arrangements have provided the clarity and transparency that was previously lacking, and the absence of which was the subject of much criticism from Professor Burke and his colleagues.” A key decision was that the existing Environmental and Heritage Service had the necessary expertise and capability to take responsibility for environmental regulation and that it would be retained and reorganised as a DOE executive agency, and launched as the ‘Northern Ireland Environment Agency.’

**2008 Northern Ireland Environment Agency launched.**<sup>275</sup> The Northern Ireland Environment Agency, an Executive Agency within the Department of the Environment in Northern Ireland, was launched on 1 July 2008 as a result of the Foster Ministerial decision.

**2010. Public Accounts Committee Report.**<sup>276</sup> The Public Accounts Committee found that the planning applications system used by the Northern Ireland Planning Service was “not fit for purpose” and “consistently failed to meet its targets”

**2011. DOE Synopsis of Responses to 2011 Discussion Paper.**<sup>277</sup> Fifty-four responses to the DOENI discussion paper ‘Environmental Governance in Northern Ireland’ were received in total from groups including: NGOs, non-departmental public bodies, local government, business & industry, and the public. Only two respondents wanted to maintain the status quo (Option A), or the status quo plus (Option B). The former was the Ulster Farmers Union, and the latter was a Borough Council. In total 83% of respondents showed support for the creation of an independent environment agency. This included bodies such as the Ulster Angling Federation, NI Housing Executive, The Consumer Council, Larne District Council, Institute of Environmental Management and Assessment, the Panel Members of the Review of Environmental Governance, United Kingdom Environmental Law Association, Environmental and Planning Law Association of Northern Ireland, NI PAK, Royal Institute of Chartered Surveyors, and Northern Ireland Council for Voluntary Action

**2011. Public Accounts Committee Report on River Pollution.**<sup>278</sup> The Public Accounts

Committee of the Northern Ireland Assembly found that progress in tackling water pollution had been extraordinarily slow. They revealed that the DOE was still not charging for industrial consents, fewer than 50% of dischargers complied with the conditions of consent, the Water Service was still not fully regulated, and the DOE had not yet started the consultation process to implement farm pollution regulations. They concluded that they had expected to have seen more progress, with visible results of improvements actually delivered.

**2011 Proposal for Assembly Motion on Planning Enforcement.**<sup>279</sup> The MLA, Jim Wells, described the enforcement of planning policy in Northern Ireland as "a farce". Proposing an assembly motion for a review of the system, he said he felt there had been no improvement in thirty years. He claimed there was "nobody out there enforcing anything" and was concerned about people's "blatant disregard for the law" when they build without permission. He announced that 83% of retrospective planning applications are approved, a figure which he said was much higher than those who ask before building. He also said that only thirteen buildings built without planning permission had been pulled down in thirty-eight years. Environment Minister Alex Attwood said Mr Wells' "dramatic statement" that there had been no improvement in thirty years "was a signpost of unease".

**2011. CJI Follow-up Report.**<sup>280</sup> The purpose of this follow-up review was to assess the level of progress made by the DOE in relation to the twelve recommendations made by CJI in its 2007 report. The report concluded that only 3.5 recommendations were achieved, a further 5.5 were partly achieved, and the remainder were either not achieved or rejected by the DOE.

**2011. NIAO Report on Reducing Water Pollution from Agricultural Sources.**<sup>281</sup> This report expressed concern with the increasing trend in the number of breaches detected under the Nitrates Action Programme. They found that in 2009, 225 of 493 (46%) farms inspected were in breach of at least one programme measure, compared with 10% in 2007. All breaches were notified to DARD which is responsible for applying reductions to the farmers' Direct Aid payments. The total penalties applied in 2009, relating to the protection of water against nitrate pollution were £278,600 compared with £1375 in 2007.

**2012. Attwood Environmental Enforcement Summit.**<sup>282</sup> The Environment Minister, Alex Attwood convened an enforcement summit to tackle how best the protection of the environment could be enforced. The Summit brought together the key players in Northern Ireland including senior Government officials, representatives from the legal profession, the business community and environmental bodies. Sharon Turner, a leading academic contributor at the Summit said: "Today's Summit must facilitate a long hard look at the parts played by the NIEA, Planning, the PPS, the PSNI and judges in creating an enforcement system that fails to adequately punish or deter environmental and planning crime in this jurisdiction."

**2013. Mills Waste Dumping Review.**<sup>283</sup> An independent report conducted by Chris Mills, the former Head of the Welsh Environment Agency, reported on the extent of criminal activity surrounding illegal waste disposal in Northern Ireland. The review was triggered by the finding of 516,000 tonnes of waste that had been illegally deposited near Derry/Londonderry. The report found that "criminality is widespread in the waste industry in Northern Ireland with at least some involvement by organised crime." Mills roundly criticised the DOE for its policy of after-the-event regularisation of unauthorised mineral extraction (where waste was often subsequently dumped) and called for a change in enforcement policy. He found that "the ability to dig sand and gravel pits without first obtaining planning permission means a ready supply for the illegal disposal of waste". The Review found that known illegal waste sites identified over the past ten years in Northern Ireland were likely to leave the UK tax payer with an estimated £250 million clean-up cost. He concluded that waste crime was not just damaging the environment; it was damaging the economy in Northern Ireland.

**2013. Brennan Thesis.**<sup>284</sup> A Queens University Belfast PhD thesis by Ciara Brennan examined the experience of enforcing environmental law in Northern Ireland. This was highly significant because there had been little evidence on the practice of enforcement and sanctioning there before. The findings indicated that the deterrent created by efforts to enforce environmental law in this jurisdiction has been the subject of significant erosion due to a problematic approach to enforcement by the regulator and very low penalties imposed by the judiciary. She concluded that there was a need to apply an adapted deterrence model in order to more fully understand the distinctive devolved experience of enforcing environmental law, and that significant reform to current enforcement practice was required to create a meaningful deterrent to non-compliance with environmental law in Northern Ireland.

**2013. Attwood Statement.**<sup>285</sup> The Environment Minister, Alex Attwood, commented in the Assembly that he did not accept that the structures of the NIEA were “fit for purpose” and that he believed in an independent environment agency. He also argue for the need for more money and a greater joined-up strategy in the principle of heritage-led development as a key economic driver going forward.

**2015. NIAO Report on Protecting Strangford Lough.**<sup>286</sup> This report found that Government departments were too slow to react to the risks to the ecology of the Lough, and to public finances (from infraction proceedings), resulting from the deteriorating condition of the Modiolus reefs. A key problem was there had always seemed to be a conflict between fisheries and environmental interests, even though the Lough had Special Area of Conservation Status. The report found over time that management schemes, developed to safeguard conservation features been ineffective, and that there had been unfortunate delays in the implementing restoration plans, introducing non-disturbance zones, and not having adequate fishing exclusion zones.

**2015. Carnegie Report on Wellbeing.**<sup>287</sup> The Carnegie Roundtable on Measuring Wellbeing in Northern Ireland launched a set of ten recommendations to help improve wellbeing in Northern Ireland.

**2015 Durkan Statement on an Independent Environmental Protection Agency.**<sup>288</sup> The Environment Minister, Mark Durkan, commented that the proposed new department - DAERA would “create conflicts of priorities and responsibilities” and that “the present arrangements for environmental governance will become even more out of line with what is regarded as good practice in Ireland, Britain and elsewhere in Europe.” He pointed out that most respondents to the 2011 Discussion Document expressed support for the creation of some form of agency or body within the public sector, but operating separately from central government, to undertake a range of environmental roles and responsibilities. He commented that “without sufficient support from other political parties, making such changes to our environmental governance arrangements could not be pursued at the time.” The Minister thought that because other jurisdictions nearby already had an environmental protection agency, coupled with the significant changes to departmental structures being made, meant that the time was right time to revisit this debate. He commented that “I have reached the clear conclusion that our present governance models are in need of radical review and need to be replaced quickly. As a first step, I intend to open up a debate in the Assembly and Executive about an independent body so that this can be factored into restructuring plans that are under way. I will do everything that I can to deliver this quickly, but I also need other political parties to give their support and commitment to make this happen.” The Minister also expressed his support for a potential all-Ireland independent environmental agency.

**2015. CJI Report on the NIEA Environmental Crime Unit.**<sup>289</sup> This report concluded that the NIEA needed to deal more rigorously with offenders and apply a much more robust and

rigorous approach to enforcement. The main finding of the report was that the absence of a clear strategic assessment of waste crime in the NIEA could impede the overall effectiveness of the management of waste crime. While accommodating discretion, strategy and governance needs to place a stronger emphasis on upholding the law and remove any ambiguity as to the management of breaches of the law.

**2015. NIAO Enquiry into Unregulated Sand Extraction.**<sup>290</sup> The NIAO launched an investigation into the unauthorised extraction of sand from Lough Neagh. It is understood that this investigation will consider the rebates received by unauthorised sand extractors under the Aggregate Levy Credit Scheme. Early calculations suggest that the full value of the aggregate rebate at the Lough will be between £9.6 million and £16.3 million over the six year period it ran.<sup>291</sup> The report is expected to be published early in 2016.

**2015. Consultation on an Independent Environmental Protection Agency.**<sup>292</sup> The Environment Minister, Mark Durkan, circulated a new discussion paper, “Environmental Governance in Northern Ireland” to key stakeholders in Northern Ireland. This discussion paper outlines the drivers and options for the creation of an independent environmental protection agency for Northern Ireland.

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