

Environmental Plans, Principles and Governance for Northern Ireland

Public Discussion Document

Synopsis of Responses



24 June 2021



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

www.daera-ni.gov.uk



**INVESTORS
IN PEOPLE**

Introduction

This synopsis of responses refers to the Public Discussion Document on Environmental Plans, Principles and Governance for Northern Ireland. DAERA launched this document on 10 December 2020 to encourage responses and comments from stakeholders and members of the public on arrangements for environmental oversight and accountability after the ending of the EU Exit Transition Period. Details of it were forwarded by e-mail to approximately 300 individual stakeholders. The consultation was also advertised on the Department's website and publicised on social media. A stakeholder event, organised jointly by NI Environment Link and DAERA, took place on 13 January 2021. The closing date for responses was 26 February 2021.

Scope of the discussion document

Amongst other provisions, the Environment Bill introduced to Parliament on 30 January 2020 gives the option to:

- extend the jurisdiction of an Office for Environmental Protection (OEP) to NI;
- embed environmental principles into policy decisions of NI Departments; and
- prepare and publish environmental improvement plans.

The NI Assembly agreed that consent for the UK Parliament to legislate in these devolved areas should be granted.

Office for Environmental Protection

The Environment Bill outlines the functions of the Office for Environmental Protection (OEP), a new, independent, statutory environmental body to hold government to account on environmental matters, assuming a role previously undertaken by the European Commission (EC). It will have no powers to act against private businesses or individuals – that will remain the responsibility of the Northern Ireland Environment Agency (NIEA), local councils and other regulatory bodies.

There are provisions in the Bill to allow the OEP to function in NI, subject to NI Assembly approval. The OEP's principal objective is to contribute to environmental protection and to the improvement of the natural environment. It will:

- monitor progress against the Department's Environmental Improvement Plan and report on an annual basis;
- monitor the implementation of NI environmental law and report, if appropriate;
- advise on changes to environmental law or on any other matter relating to the natural environment at the request of any NI department, and may also give unsolicited advice on changes to environmental law;
- handle complaints against relevant public authorities;
- carry out investigations against public authorities either as a result of a complaint or information obtained in any other way;
- as a last resort, take enforcement action against public authorities whose failures to comply with environmental law are deemed 'serious'.

Environmental Principles

The Bill requires the Defra Secretary of State and, subject to Assembly approval of the commencement of the relevant provisions, DAERA to publish a policy statement setting out how five environmental principles enshrined in the Treaty on the Functioning of the European Union (TFEU) should be interpreted and applied by NI and UK Ministers when making policy.

These principles are:

- **Integration:** Environmental protection must be embedded in the making of policies;
- **Rectification at source:** Environmental damage should as a priority be rectified by targeting its original cause and taking preventive action at source;
- **Prevention:** Preventive action should be taken to avert environmental damage;
- **Precautionary:** Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation; and

- **Polluter pays:** The costs of pollution control and remediation should be borne by those who cause pollution rather than the community at large.

All NI departments – and Ministers of the Crown when making policy in respect of NI – will then have a duty to have ‘due regard’ to the policy statement on environmental principles in their policy-making process.

Environmental Improvement Plans

The Bill provides for requirements to: (a) prepare; (b) review and revise; and (c) renew Environmental Improvement Plans (EIPs), which are defined as plans for significantly improving the natural environment. Annual reports on progress must also be prepared, laid and published by DAERA and the OEP. There is also a provision requiring arrangements to be made to obtain relevant data and publish (and lay) a statement relating to the types of data to be obtained for the purposes of monitoring.

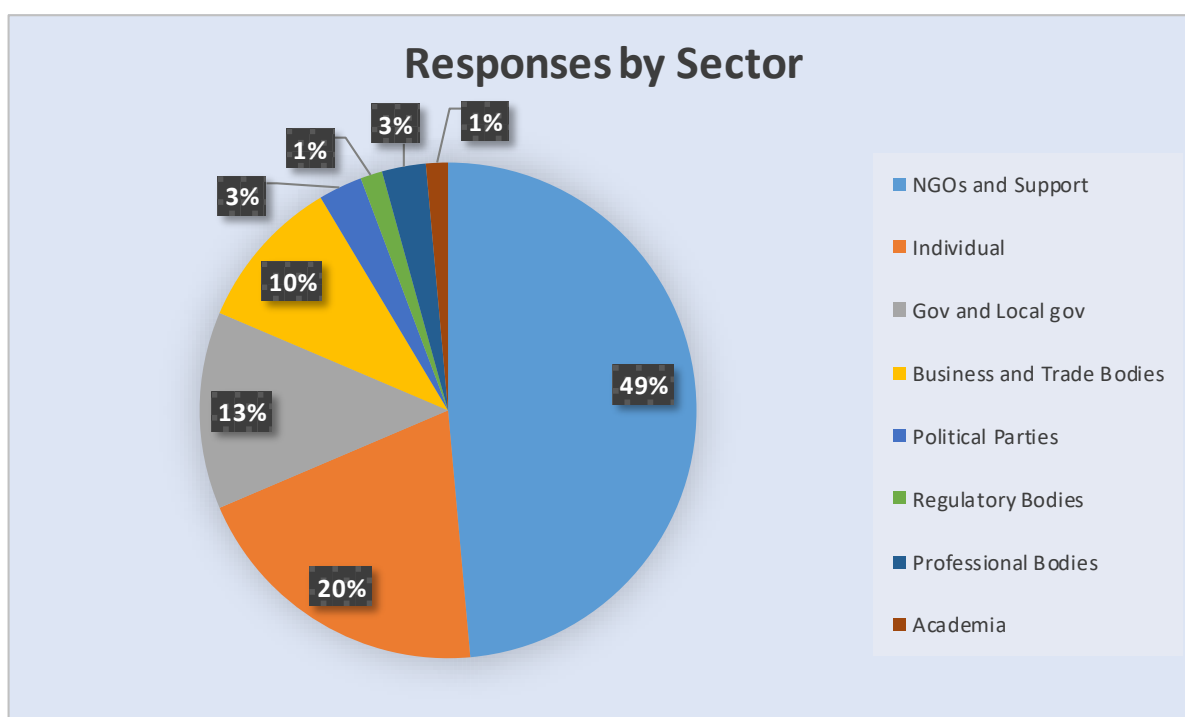
As part of the NI Executive’s overarching Green Growth Strategy and Delivery Framework, DAERA is developing an environment strategy that is intended to become NI’s first EIP.

Responses to Discussion Document

A list of the questions asked in the discussion document is attached as **Annex A**.

A total of 70 responses were received, with 38 via the citizen space online option and 32 e-mail responses.

Three of the responses were received shortly after the closing date but, due to extenuating circumstances in each case, the Department has decided to accept these responses.



The following sections provide discussion on the key issues highlighted by respondents in respect of each of the consultation questions. A list of all respondents is included in **Annex B**.

Synopsis of Responses

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

If so would you agree with the mechanism for a policy statement of Environmental Principles as in the Discussion Document?

There was no dissent that NI should be guided by these 5 environmental principles but the environmental NGO sector in particular suggested that the principles were not stringent enough both in terms of definition and extent. They felt this represented a weakening of the TFEU principles that were in place when the UK was a member of the EU.

Some respondents who were content to be guided by the principles were not content with the mechanism for a policy statement. Some responses erroneously referred to the duty being to “have regard to” rather than the correct, “have due regard to”. From a legal perspective, “have due regard to” is more onerous than “have regard to” and requires a substantial, rigorous and open-minded consideration of the duty when developing or formulating policy, decisions, or service delivery arrangements.

It was felt by several stakeholder groups that this wording should be replaced by a legal obligation to take account of the principles, with many preferring a change to “in accordance with” and that all Ministers, Departments and public bodies should have a duty to apply the principles as is currently the case under EU law.

A number of extra principles were proposed as being required. These included principles on: non-regression; transboundary harm; international cooperation and collaboration; Aarhus (allowing public access to environmental information, public participation in environmental decision-making, and access to justice in relation to environmental matters); maintaining and enhancing natural capital; and sustainable development (in line with the Sustainable Development Goals).

The non-regression principle was thought necessary by some stakeholders to ensure compliance with the Trade & Cooperation Agreement (TCA) as a reciprocal commitment. It should be noted, however, that the TCA commitment only applies in cases where regression would cause a distortion to trade. There were calls by a

respondent from the environmental sector for a clarity statement to be made in relation to the continued application of EU principles in relation to the NI Protocol.

One stakeholder group from the agri-food sector asked that a statement as to how the principles are interpreted be included to aid transparency and clarity. They also expressed concern at the use of the precautionary principle saying it can be used to stall progress, stifle development, and prevent innovation and adoption of new technologies. They highlighted that in most cases it is impossible to eliminate all risks and a balanced position based on sound scientific evidence must be taken. They believe that the proportionality principle must be included to provide this balance by ensuring that the severity of the risk and the relative importance of the environmental issue can be taken into account as part of the decision-making process. They asked that all principles be underpinned by the five principles of good regulation: proportionality; accountability; consistency; transparency and targeting.

One business stakeholder group made reference to 'fairness principles' for Government to use as a guide when developing and implementing any new legislation associated with the transition towards Net-Zero. These are intended to act as a 'fairness test' for policymakers in planning and designing regulatory policy frameworks, and prioritising investment, to take account of the varied impact the Net-Zero journey will have across businesses of different sizes, with small and medium enterprises (SMEs) potentially being particularly vulnerable to climate change and extreme weather and likely to have a lower adaptive capacity than larger enterprises. The principles are intended to take account of fairness of: ambition; accountability; delivery; opportunity; and cost.

The lack of progress on the policy statement was a concern to one environmental sector group with a wish to see a public consultation fast tracked, and a cross-departmental engagement programme completed as soon as possible after receiving Assembly consent. Several stakeholders stated that the principles should have a review process built into them to allow for amendments should circumstances demand.

One political party believed there should be a sunset clause in the Environment Bill to allow the creation of a bespoke Assembly Bill.

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

There was a feeling from several stakeholders that these strategies need to be led by the NI Executive due to their cross-cutting nature. Close consultation between the teams working on the two strategies, and also with other government departments and the non-governmental sector, was deemed necessary, alongside alignment, to ensure they are complementary with no gaps, loopholes, duplication or contradictions.

A proposal was made to consider establishing working groups on some of the more complex consultations so that stakeholders' views can be incorporated. It was suggested this could help streamline consultations and embed a belief that the Government is willing to provide stakeholders with a forum to contribute at the formative stage of consultations.

There was some disagreement between the environmental and the agri-food sectors as to the pecking order of these strategies with the former saying the environment should have primacy and the latter that the Green Growth Strategy (GGS) should be the overarching strategy. Comments highlighted concerns that a GGS will put economic growth ahead of environmental improvement whereas some stakeholders in the agri-food sector have said the economics of the GGS need to be promoted. Some commented that the two strategies produced by the same Department are being written in a way that will set up conflicts in strategy delivery.

There was a strong feeling from the environmental sector that an EIP must contain legally enforced interim and long term targets for critical components of the environment which should be established through a transparent and expert driven process, and that all other Government policy must flow from these targets. Without a statutory footing many felt these targets would be ignored. There was a suggestion by some that these targets should also be included in the Programme for Government (PfG). It was highlighted by many in the sector that the GGS must substantively tackle climate change. Others felt that EIP should reflect both the requirements of the Environment and GGS.

Two respondents from the agri-food sector said it was vital that the GGS considers all three sustainability pillars; social, environment and economic, to provide a

balanced way forward for NI. They felt that the two strategies should be on an equal footing and proposed a formal, collaborative approach involving all stakeholders, with agreed targets that will not impede the competitiveness of businesses and, as a consequence, hinder growth. These stakeholders also expressed their view that increasing the quality and productivity of the environment will produce a stronger foundation to grow our economy upon and make NI a better place to live in.

There were comments from other stakeholder groups that EIPs should support the GGS with one of the focuses being on development of the Circular Economy (CE), which could drive economic growth whilst also benefiting the environment. One individual felt that the GGS should also encourage the growth of the digital economy.

One local government group proposed adopting a matrix approach whereby green growth themes are checked against the environmental themes to ensure only policies that deliver complementary gains are prioritized, whilst those that create conflicting policies are avoided.

The concept of 'growth' was discussed by several stakeholders and it was suggested it should be for the specific purpose of increasing economic and social well-being at a citizen level and not driven by or monitored in terms of so-called 'traditional' economic growth metrics such as Gross Domestic Product. Economic growth was described by one respondent as contradicting the environmental, resource and pollution limits of the planet and exacerbating inequality in the developed world. Stakeholders from the health sector felt that a policy statement or statement of support on Health Impact Assessments should be included in both sets of strategies to help quantify how improvements to the environment can lead to improvements in physical and mental health and could help in the alignment of the strategies. The use of the United Nation's Sustainable Development Goals were referred to by several respondents, to assist in uniting environment, green growth, and health aims in NI and that they be included in the PfG.

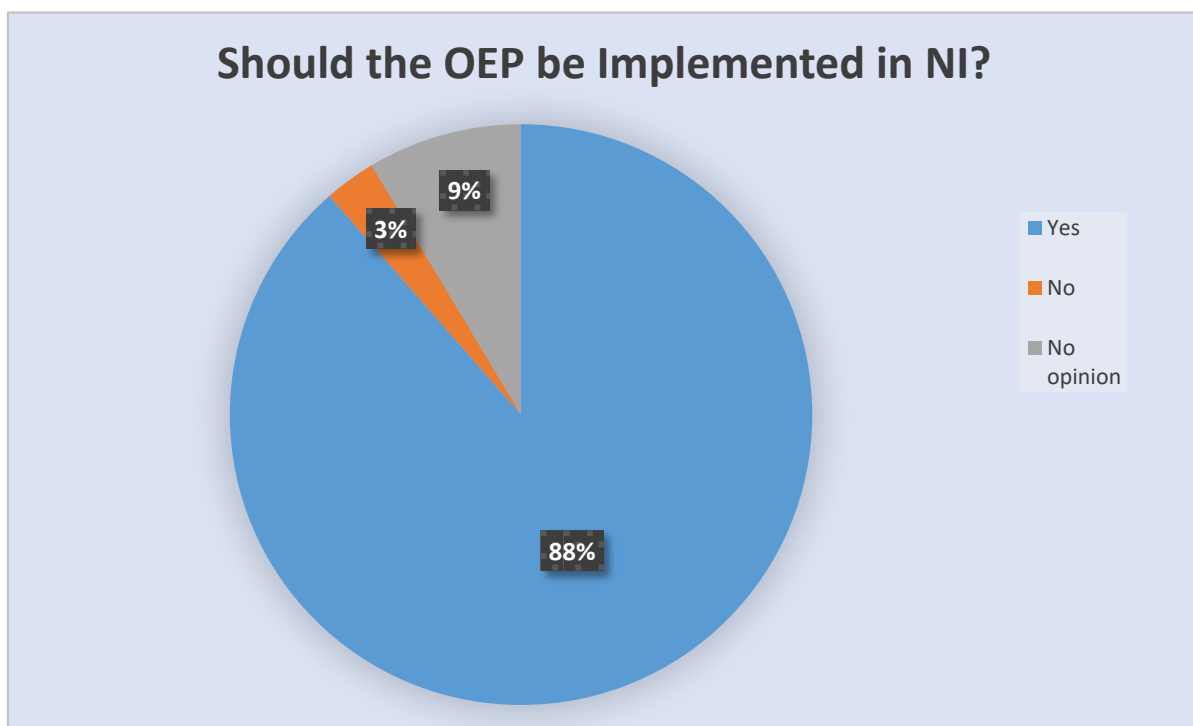
One professional body felt it is important that both strategies recognise the inter-related nature of the climate emergency and biodiversity crisis as these issues are inextricably linked and must be addressed in tandem. Nature-based solutions must play a key role in mitigating against and adapting to climate change. An environmental sector group highlighted the need for an understanding of the

environmental capacity to accommodate different levels of growth and development at different locations and ensuring that planned development and growth remains within environmental capacity limits.

Environmental Governance in Northern Ireland

Q3. Should the OEP be implemented in Northern Ireland?

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



There is strong agreement that the OEP should operate in NI to act as an environmental oversight body of Public Authorities. Some stakeholders did feel however that the OEP in this format should be a short to medium term solution with a NI standalone OEP as the long term answer. There was a feeling from a few stakeholders that environmental law and governance in NI will become weaker, with the loss of the roles of the European Commission and the Court of Justice of the European Union (CJEU) – except in regard to the NI Protocol – of particular concern.

The positives of the OEP were highlighted by a few of the respondents – e.g. it should be operational sooner than a standalone NI version; a national body was likely to be more cost effective to run; contain a wider knowledge and skills resource;

and it may also be seen to be more independent and less vulnerable to NI political divisions and interference. It was also suggested by some that a bespoke NI body would have a weaker remit and fewer powers than the proposed OEP. A suggested downside in the proposed format was that NI may have limited focus and influence on the planned OEP structure due to its population size relative to England.

The agri-food sector highlighted the need to ensure the OEP does not evolve towards enforcement against third parties or duplicating the work of existing organisations.

Many respondents referred to the need for an Independent Environmental Protection Agency (IEPA) to operate in NI as committed to in the New Decade New Agreement document. It was suggested by a few stakeholders that an IEPA could be an alternative to the OEP **or** work in parallel with it with a distinct but complementary role. This alternative IEPA would be able to review and regulate the public and private sector and individuals. An IEPA with strong connections to environmental bodies across Ireland, working to a single all-Ireland body was also suggested as a preferred option by one political party.

Some stakeholders believed the OEP will have a limited remit in relation to the public sector, will not be independent from government and have limited enforcement powers. They also highlighted that the AERA Committee has recommended the establishment of an IEPA. A perception pervades amongst some in the environmental sector that the NIEA is hamstrung in its duties by being inextricably entwined with DAERA.

It was deemed important by a local government group to have a review of the performance of the OEP in NI on a regular basis to ensure that it is operating effectively.

Interaction with Other Oversight Bodies

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

A full list of public bodies referred to is contained in **Annex C**

The most commonly referred to public bodies were: NIEA/any future independent EPA; Attorney General for NI; Committee on Climate Change/any future NI

equivalent; DAERA; Loughs Agency; NI Courts and Tribunals Service; NI Statistics and Research Agency; The Utility Regulator; Local Councils; Environmental NGOs; NI Public Service Ombudsman. These bodies appeared most commonly due to their significant involvements in environmental matters, data collection, environmental legislation and dealing with complaints from the public.

One local government group suggested the OEP should report directly to the office of the First and Deputy First Minister and the NI Assembly on its work and associated operational arrangements

It was suggested by one stakeholder group that if the OEP is based solely in England, there may be a potential reluctance from some sections of the NI community to report issues. An arrangement with the NI Ombudsman to receive complaints on behalf of the OEP was put forward as a remedy.

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

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

Some stakeholders expressed frustration at the delays to the passage of the Environment Bill through Westminster and the subsequent knock on effect on the OEP. They would like to see the time delay between Royal Assent, the vesting date for the OEP for England, and approval from the NI Assembly being kept to a minimum. The interim period could be used as an opportunity to carry out preparatory work to ensure the OEP “hits the ground running”. Likewise the time could be used to develop NI’s EIP and baseline programmes for monitoring and evaluation agreed.

There was a feeling from several stakeholders that the Interim Environmental Governance Secretariat (IEGS) was constrained in what it can achieve due to its lack of statutory powers compared with a fully-fledged OEP and an interim or shadow OEP was deemed preferable. Some concern was raised by one political party that as the IEGS has a working association with DAERA its independence is compromised. There were a few respondents that believed that the IEGS was useful in aiding the OEP to become fully functional.

One political party proposed that in the interim period, independent environmental oversight should continue to be provided by the European Commission until an IEPA was formed, citing the continuation of EU Regulations and standards linked to the Withdrawal Agreement and Protocol as its rationale.

The potential of using Judicial Reviews (JR) until an OEP is formed was not popular as they were deemed expensive and more focused on process rather than protecting the environment. Access to environmental justice, particularly in relation to challenging flawed planning decisions was highlighted.

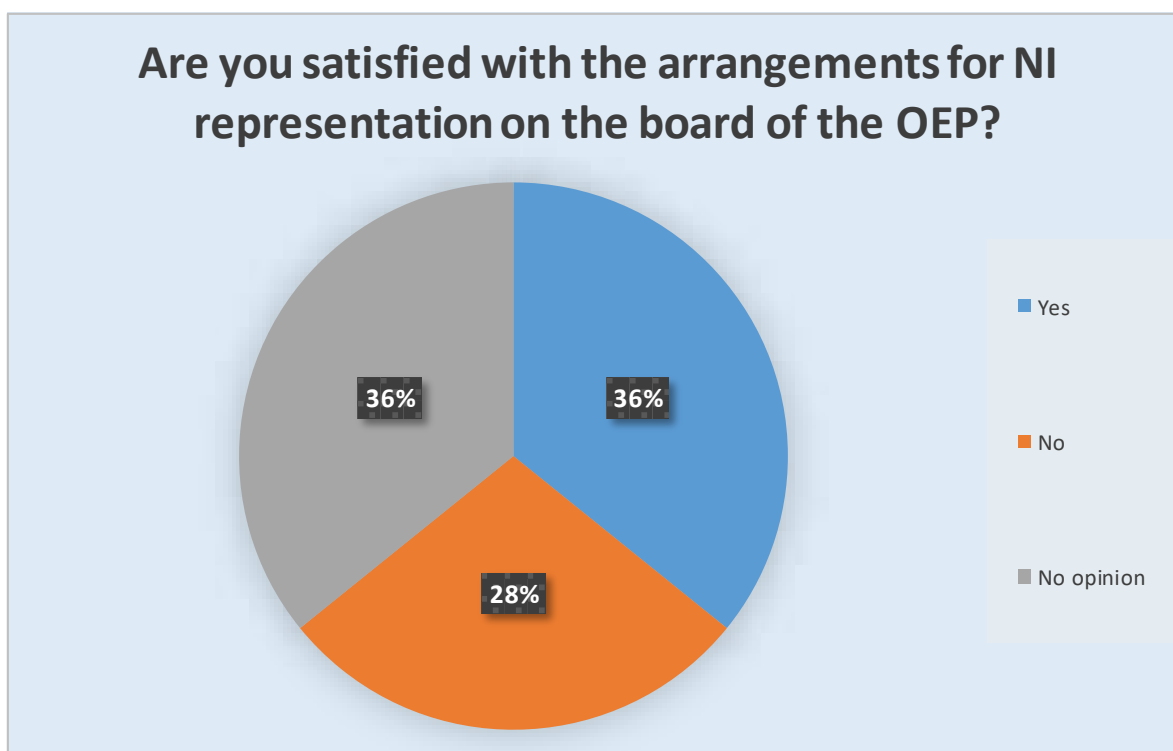
An alternative interim arrangement mentioned was the NI Executive establishing a committee, representative of all stakeholders, which would then become part of the OEP. There was also a suggestion that the OEP in the proposed format should be regarded as an interim arrangement with a NI standalone OEP or enhanced IEPA the preferred long term options.

Clarity was sought from several respondents on what will happen if there is a delay between the OEP functioning in England and in NI? One environmental sector group also queried what happens to complaints submitted to the IEGS should the OEP not function in NI? There was also a feeling, raised by some respondents, that the interim arrangements had not been adequately publicised.

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

Or

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



The majority of stakeholders who expressed an opinion felt that it was important to have a NI Member on the OEP although a similar number expressed no opinion on this matter. There were concerns that the role of the DAERA Minister in the appointment process could lead to a “political appointment”. A preferred option proposed by some stakeholders was that the approval for a candidate should be by a wider body of public representatives. This was on the grounds that the OEP will effectively be replacing most of the supra-national oversight role currently provided at the EU level and is deserving of a more independent and bespoke appointments process.

Some stakeholders felt that in the interest of open government the appointment process should be as open, robust and transparent as possible and regulated by the Commissioner for Public Appointments to ensure that the chosen candidate is truly independent and fully qualified for the role.

In relation to the skill set of the appointed candidate a knowledge of law, science, and regulation on a multi-jurisdictional scale was deemed desirable to reflect NI’s unique context. A knowledge of the NI protocol and an understanding of the relevant EU environmental legislation, established in Annex 2 was deemed important, and indeed by some, an explicit requirement for the role that should be included in an

amendment to the Environment Bill or as a minimum included in the explanatory notes.

With this large range of knowledge and skills it was proposed by several respondents that more than one place on the board would be necessary to deal with NI issues or that the NI member be given an increased time allocation in relation to other Board members. There were also proposals for a NI sub-committee on the OEP board. There were suggestions from several stakeholder groups and individuals that Board members must include a balance of individuals from a business, economic, environmental, farming and health background.

One local government group preferred the option of a self-financed regulatory oversight body for this purpose with appropriate representation from industry, agriculture, commerce, and environmental representative bodies to provide the necessary oversight and governance arrangements.

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

The general consensus on this issue was that the funding should be directly from Westminster or directly from the NI Executive.

There was not great support for OEP funding being at the discretion of the Defra SoS or payments from within the DAERA budget as many thought this would: (i) undermine the OEP's independence; and (ii) divert money from DAERA's existing budget. If funding in NI was via the DAERA budget a few respondents suggested that DAERA's funding should rise accordingly. The example of the NI Audit Office being funded directly from the NI Assembly was mentioned, given their essential role as a government oversight body. Payments from Westminster in line with the Barnett Formula were proposed, by one individual, as a proportionate means of funding for the OEP. One trade organisation suggested that money saved by the UK after leaving the EU should be re-allocated to the OEP. A local government group mentioned a self-financed regulatory oversight body (mentioned in Q6 responses).

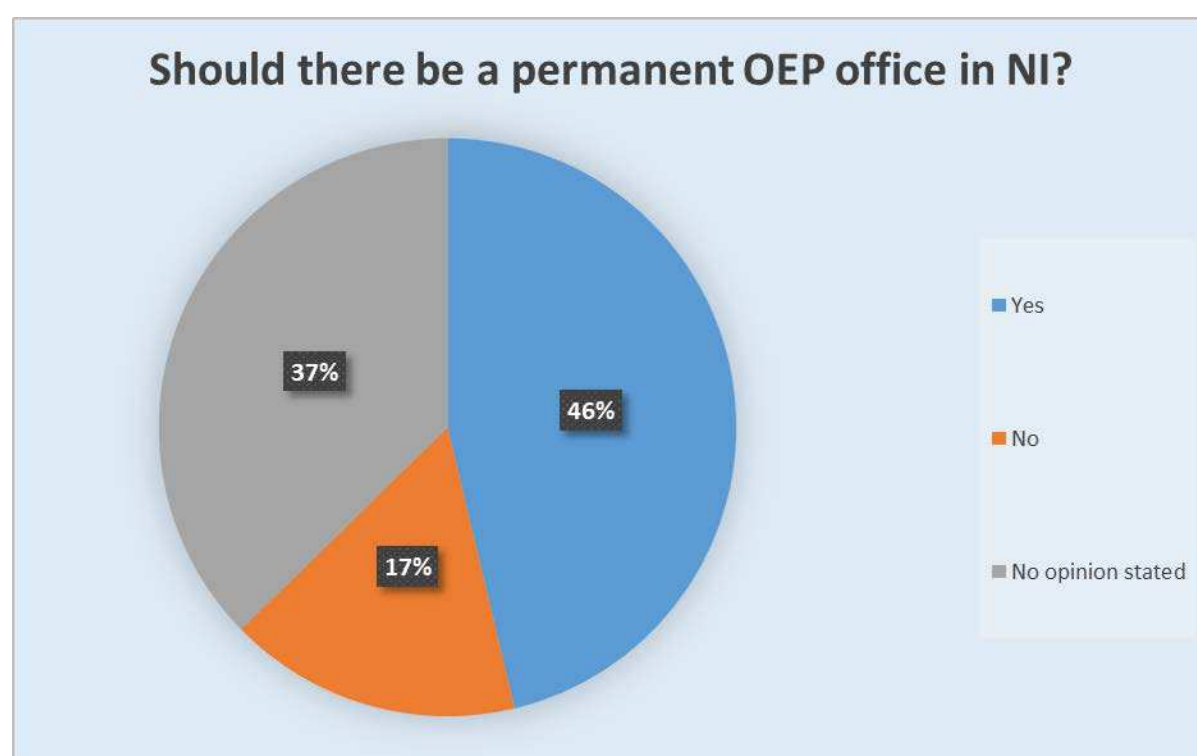
There was also the idea from one local government group of using money raised from permitting/licensing/inspection/sampling fees. Other suggestions, mentioned by individuals, included the use of environmental taxes or NI bonds.

A recurring theme was that funding should be on a multi-annual basis and ring-fenced for a number of years with a review period built into this model, and that this be enshrined in the legislation. One local government group highlighted the need for the OEP to ensure its business case is robust and well argued, so that its funding is sufficient, allowing it to set its own strategic direction. That the OEP will be obliged by statute to state annually to Parliament whether it has been sufficiently resourced to carry out its function was thought important by one of the environmental sector respondents.

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

There was a proposal that an expanded Council for Nature Conservation and the Countryside could have an independent scrutiny role in NI but, as with the OEP, costs would be involved.

Q8. Should there be a permanent office in Northern Ireland and how should it be staffed?



Whilst there was a majority view from respondents who expressed an opinion that there should be a Permanent Office for the OEP in NI, there was a wide spectrum of comments on the subject. The middle ground highlighted home working during the

Covid crisis, which has lessened the belief that a physical office is a necessity. Many preferred to focus on the staffing question, highlighting the need for staff who are familiar with NI's unique position within the UK of having a land border with the EU, and the socio-economic conditions here that differ from England. One environmental stakeholder group mentioned how it was important that consideration was given to ensuring the range and suitability of expertise within, and available to, the OEP was sufficient to enable it to function effectively in NI.

One environmental sector group stated expertise in environmental legislation, science, and enforcement and regulation across domestic, European and international jurisdictions was deemed critical to ensuring that the OEP will be able to fulfil its reporting, advisory, and enforcement functions as effectively as possible along with an understanding of the NI Protocol and the TCA.

Those who called for a NI office cited the need to avoid the impression that this is simply an English body extended to cover NI and highlighted the risk that the OEP becomes remote from policy developments in NI. A permanent office, it was believed, would help the OEP build the vital cross-sectoral and cross-community relationships needed to deliver on its vision.

Some respondents believed the OEP's Board should have the ability to decide, in consultation with key stakeholders, what form their presence in NI should take as a small permanently staffed office may not be the most effective way of working here. Other options suggested by stakeholders included: regular visits by OEP staff to NI, including for public and sectoral engagement; or a postal address here.

Of those who were content with an England based office one environmental sector group believed it would enable an organisational culture to be developed and a consistency of approach ensured across England and NI during the formative stages of the OEP.

As regards the actual number of staff employed very few suggested a specific figure but several indicated that it needed to be sufficient in number and expertise for the OEP to achieve the full impact of its important role. In the small number of cases where a figure was suggested for NI staffing, it was in the 3 to 4 persons range. There were a range of views on how the OEP should be staffed, from being recruited independently, to thoughts that initially they should be seconded from the NI Civil

Service and eNGOs, bringing knowledge gained to their parent organisations on return. Other ideas included: staff recruitment from the EC and Ireland; and the establishment of a board of experts to be called on when needed.

Several respondents suggested that the need for a NI office, and local staffing levels, should be reviewed periodically.

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

It was felt important by several of the stakeholder organisations that the profile of the OEP should be raised amongst the public, Government departments and public authorities. Some asked for clarity on the timeframe for the appointment of the OEP Board members, full establishment of the OEP as an operational body, and how the OEP would differ from an IEPA. One individual thought that there should be a clear directive to all departments that the OEP must have access to information as required and its reports must be acted upon.

Housekeeping arrangements such as providing office space/associated infrastructure were mentioned by an individual, whilst ensuring that the appropriate number of suitably qualified staff are recruited and trained was viewed important by some respondents.

Immediate commencement of work on a 25 year Environmental Improvement Plan was highlighted as an area where work could proceed during the interim period.

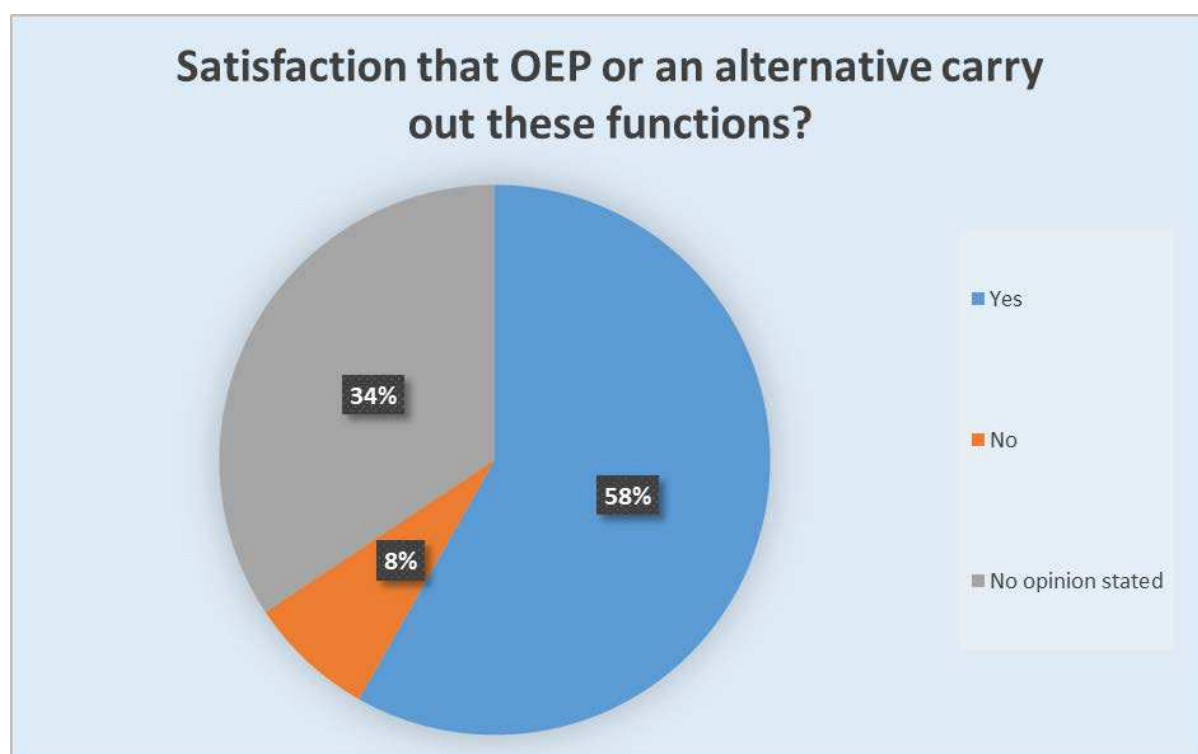
Other arrangements referred to that should be addressed included: the setting up of a dedicated Environmental Court at High Court level to manage planning and environmental cases (including JRs); agreeing protocols for dispute resolution on cross-jurisdictional issues; acquiring the services of environmental law experts to aid elected representatives, the NIEA/IEPA and the OEP.

It was suggested by one of the agri-food sector organisations that the NI Executive should establish a Working Group involving all stakeholders (NI Departments, industry, NGOs etc.) with a remit to work with DAERA in developing the NI Climate Change Bill. This Working Group could provide the core of a NI Committee under the OEP.

Enhanced powers afforded to a re-named Loughs Agency to deal with cross-border environmental crimes was also put forward as an idea.

One trade body suggested that consideration should be given to who will provide oversight of the OEP and/or what recourse to appeal there might be in the case of disagreements regarding decisions reached by the OEP.

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



There is strong support for the implementation and establishment of the OEP in NI as the government watchdog and advisor, and some stakeholders from the agri-food sector stated they were content with the OEP and its proposed functions here. Many respondents made little or no comment but the majority of those who did highlighted perceived weaknesses in the OEP. The main concerns of several respondents, and amongst eNGOs in particular, are that many crucial roles and responsibilities that were performed by EU institutions have been lost and are not provided for within the OEP.

Independence - The need for the OEP to be independent from government was a common theme. There was wide criticism from eNGOs, academia and individuals of

the recent UK Government amendment, granting a power to DAERA to provide guidance to the OEP on the development and application of its enforcement policy. There was a concern that the new power will have the effect of allocating Ministers a central role in shaping the basic principles of the watchdog and it was seen as inverting the intended hierarchy. A feeling prevails that insufficient scrutiny of this power in the context of NI has been carried out. If such a power was given to DAERA it was proposed that, as the enforcement policy will apply across all Departments, there should be a requirement to consult with the NI Executive or the guidance be scrutinised by the AERA Committee.

Enforcement - it was felt the OEP should have broad scope to act where it thinks it is most needed and it must be enabled to take a wide ranging and strategic approach to environmental oversight and the enforcement of environmental law. There was a feeling that the current version of the Bill does not give the OEP a sufficiently wide remit to ensure adequate oversight of environmental law or to properly fulfil its potential. Unlike the CJEU, the OEP will not have the power to impose penalties such as fines. One professional body proposed that the OEP/alternative should also be able to initiate direct legal proceedings based on merit, including powers to issue quashing orders, prohibiting orders, mandatory orders and compensation orders.

It was suggested by some that, as neither “information notices” nor “decision notices” are binding, it was not clear that these will be an effective way to remedy failures to comply with environmental law. The use of JR being only an option where there may be ‘serious damage’ to the environment and/or human health was queried with the question asked that if important points of environmental legislation are to be considered why should ‘non serious’ cases be exempt? There was interest expressed in using Environmental Review in NI rather than a JR. The use of a JR where the Public Body under examination may be operating in 2 jurisdictions was also raised.

The exclusion of individuals who exercise “functions of a public nature” was deemed unnecessary, and was thought to limit the scope to whistle blow. It was felt by one political party that the Bill should be amended to remove this restriction.

Reporting and advising – it was felt by some stakeholders that reporting on EIPs, and the capacity to take action, will only be effective if the EIPs are underpinned by binding interim and long-term targets.

One individual proposed that if a Department ignores advice it must be bound by law to state that it has considered the advice and then give reasons why it was not followed, and confirm that its chosen path is compliant with all relevant environmental protection legislative obligations. Also, given the cross-cutting nature of environmental legislation, and to foster the greatest transparency and integration, any advice provided to departments should be laid in the Assembly.

A local government group did highlight, as a positive, UK government support post Brexit, for non-regression of environmental standards with a commitment to bring legislation forward.

One eNGO group suggested a need to periodically review the performance and functioning of the OEP.

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

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

A wide range of bodies was mentioned. Most responses were in relation to the NI/Ireland (EU) border but links with Scotland, Wales, international commitments and indeed the global community were referred to.

The bodies most commonly referred to in relation to Ireland and the EU were The North South Ministerial Council; The British-Irish Council; The Irish Environmental Protection Agency; The Loughs Agency; Waterways Ireland; Transboundary Geopark management; all-island eNGOs; The Irish Planning Appeals Board; National Parks & Wildlife Service; The Department for Agriculture, Food and the Marine; Department of Housing, Local Government and Heritage; The Department for Communications, Climate Action and the Environment; The European Commission; The Court of Justice EU; European Environment Agency; European Chemicals Agency.

Responses from the agri-food sector in regard to the NI Protocol suggested it was important that there be no duplication between the work of the OEP and the EC. Each organisation should have clear boundaries, methods of working and a good relationship.

Within a UK context some stakeholders suggested the OEP should establish relationships with the Inter-Ministerial Group for Environment, Food and Rural Affairs; the Committee on Climate Change; relevant bodies in Wales and Scotland; Environmental Standards Scotland; Joint Nature Conservation Committee (JNCC).

In terms of international issues – bodies mentioned were the United Nations; the governments of the UK's Overseas Territories; the Conference of the Parties; and the Secretariat of the Convention on Biological Diversity. There were queries about whether the OEP would have a role in carrying out the UK reporting in relation to International Treaties/Conventions and, if so, agreements with Scotland and Wales would be needed.

Next Steps

Progress on the Environment Bill resumed at Commons Report Stage on 26 May 2021 and is now progressing through the House of Lords. The Bill is likely to return to the House of Commons in September with the expectation of achieving Royal Assent by autumn 2021.

The IEGS has been functioning in England and NI since early January 2021. In both jurisdictions it processes complaints about public authorities failing to comply with environmental law, for the OEP to action when it is legally established. In England it has the additional function of monitoring progress on the UK Government's 25 year plan for the environment. An Interim OEP, with a broader remit including strategic planning and preparing for operational readiness, and reporting to a shadow board under the leadership of Chair-designate, Dame Glenys Stacey, will replace the IEGS on 1 July 2021, with the expectation that the OEP will be established as a legal entity in late 2021. It is hoped that it will be possible to recruit a non-executive NI Non-Executive Member to sit on the Interim OEP board by early autumn 2021.

Work is continuing on the development of the Environment Strategy for Northern Ireland, which is intended to become our first EIP. The draft strategy is nearing

completion and it is anticipated that it will be published as a public consultation by the end of June 2021.

A draft Policy Statement on Environmental Principles for Northern Ireland is currently being developed including engaging with a range of internal and external stakeholders, with a view to issuing a public consultation on the draft statement as soon as it is practicable to do so.

All of the responses to this discussion document have informed and will continue to inform the development of policy on all three of the core elements of the Bill. Some of the contributions to this exercise are relevant to the work being carried out now, while others will become more relevant at a later date, but all will be carefully considered as we seek to enhance environmental protection and improvement going forward.

Annex A

No.	Question
1.	<p>Should Northern Ireland continue to be guided by these environmental principles in the long term?</p> <p>If so would you agree with the mechanism for a policy statement of Environmental Principles as outlined above?</p>
2.	<p>How do you feel alignment of the Environment and Green Growth Strategies can be best achieved?</p>
3.	<p>Should the OEP be implemented in Northern Ireland?</p> <p>If no, how would you envisage we maintain existing systems of environmental governance?</p> <p>Please note- If you have indicated that you do believe there should be an alternative governance body for Northern Ireland then your answers to the remaining questions will be read on that basis.</p>
4.	<p>Are there other public bodies with whom the OEP should establish particular arrangements and why?</p>
5.	<p>Do you have any comments on interim arrangements for Northern Ireland?</p> <p>If suggesting an alternative to the OEP how would you address the longer development and implementation period that would result in a lengthier governance gap?</p>

6.	<p>Are you satisfied with the arrangement for Northern Ireland representation on the Board of the OEP?</p> <p>Or</p> <p>If you have indicated that you believe there should be an alternative governance body, how do you think it should be structured?</p>
7.	<p>How do you think the OEP or an alternative should be funded in Northern Ireland?</p> <p>If an alternative, how would you justify the additional costs that would be involved in establishing a bespoke Northern Ireland approach?</p>
8.	<p>Should there be a permanent office in Northern Ireland and how should it be staffed?</p>
9.	<p>What other practical arrangements should be addressed in advance of setting up the OEP or an alternative in Northern Ireland?</p>
10.	<p>Are you satisfied that the OEP or an alternative should carry out the described functions in Northern Ireland?</p>
11.	<p>What bodies should the OEP or an alternative be working with on transboundary issues?</p> <p>If an alternative, what arrangements should that body have for working with the OEP?</p>

Annex B

Name	Organisation	Response Type
Barney Patrick		Citizen Space
Tom White		Citizen Space
Peter Douglas	Southern Health and Care Trust	Citizen Space
John Faulkner		Citizen Space
Stephen Beggs		Citizen Space
Michele Strong		Citizen Space
Mairead Connolly		Citizen Space
Margaret McMahon	Fermanagh and Omagh District Council	Citizen Space
Dr Mike Johnston MBE	Dairy Council for Northern Ireland	Citizen Space
	Antrim and Newtownabbey Borough Council	Citizen Space
Paddy Graffin	Estates Services, Northern Health and Social Care Trust	Citizen Space
Ciaran McLarnon		Citizen Space
	Loughs Agency	Citizen Space
Anne Donaghy	Mid and East Antrim Borough Council	Citizen Space
	NILGA, the Northern Ireland Local Government Association	Citizen Space
Clive Mellon		Citizen Space
Aileen Lawson	Ulster Farmer's Union	Citizen Space
Collette Casey		Citizen Space
Judy Meharg	Belfast Hills Partnership	Citizen Space
Nichola Hughes	Sustainable Northern Ireland (SNI)	Citizen Space
Nikki Ardill		Citizen Space
Eimear Montague	Northern Ireland Resources Network (NIRN)	Citizen Space
Jason Reeves	Chartered Institute of Ecology and Environmental Management	Citizen Space
Sinéad Magner	Green Party Northern Ireland	Citizen Space
Patrick Casement		Citizen Space
Stephen Acheson		Citizen Space
Jennifer Fulton	Ulster Wildlife	Citizen Space
Paul Armstrong	The Woodland Trust	Citizen Space
John Andrews	Killinchy Rural Preservation Group (KRPBG)	Citizen Space
Pat Jennings	Chartered Institute of Waste Management	Citizen Space
Diane Ruddock	The National Trust	Citizen Space
Ian Garner	Waste and Resources Action Programme (WRAP)	Citizen Space
Vincent McAlinden		Citizen Space

Dr Helen McAvoy	Institute of Public Health in Ireland (IPH)	Citizen Space
Deirdre McIvor	Northern Ireland Pork & Bacon Forum	Citizen Space
Helen Lawless	Mountaineering Ireland	Citizen Space
Dr Viviane Gravey	Queen's University Belfast	Citizen Space
Ian Montgomery		Citizen Space
Doris Noe		email
	The Council for Nature Conservation and the Countryside (CNCC).	email
Malachy Campbell	Northern Ireland Environment Link	email
Colm Warren	Natural World Products Ltd	email
Jane Clarke	Royal Society for the Protection of Birds NI	email
Declan Allison	Friends of the Earth NI (FOE)	email
Signe Norberg	Aldersgate UK	email
Ruth Chambers	Greener UK	email
Neil Hutcheson	Federation of Small Business	email
Pat McQuigan	Milltown House Group	email
Jane Clarke	Nature Matters NI	email
Paul Hughes	Enagh Youth support FOE position	email
Nuala Crilly	The Gathering support FOE position	email
Diane Greer	Supports FOE position	email
Olga Harper	Supports FOE position	email
J.D. Harper	Supports FOE position	email
Mary Kay Mullan	Supports FOE position	email
Chris Murphy	Supports FOE position	email
Marian Farrel	Supports FOE position	email
Casey Aspin	Supports FOE position	email
Colin Buick	Supports FOE position	email
Nuala Crilly	Supports FOE position	email
Emmet McAleer	Supports FOE position	email
S Beggs	Supports FOE position	email
Fidelma O'Kane	Supports FOE position	email
Mary McQuigan	Supports FOE position	email
Cormac McAleer	Supports FOE position	email
Annette Carville	Lisburn and Castlereagh City Council	email
Conor O'Gorman	British Association of Shooting and Conservation	email
Patricia Bradley	Mid Ulster Council	email
Jill Devenney	NI Food and Drink Association	email
Ciarán O'Connor	Sinn Féin Policy Team	email

Annex C

Public Bodies Referred to in Question 4
Agri-food and Biosciences Institute;
AONB and Geopark management
Attorney General for Northern Ireland;
CAFRE
Committee on Climate Change/any future NI equivalent;
Council for Nature Conservation and the Countryside;
Court of Justice of EU
DAERA
Department of Health
Environmental NGOs;
European Union
Environmental Standards Scotland
Government departments
Irish Environment Protection Agency
Irish Environmental Bodies
Irish Government
Joint Nature Conservation Committee
Local Councils
Loughs Agency
Marine Management Organization
NI Audit Office
NI Courts and Tribunals
NI Housing Executive
NI Public Service Ombudsman

NIEA/any future Independent EPA
NI Statistics and Research Agency
NI Water
North-South Ministerial Council
Planning and Water Appeals Commission
Police Service NI
Public Health Agency in Northern Ireland
Public bodies engaged in environmental monitoring and protection
Rivers Agency
Rural Community Network
Supporting Communities
Utility Regulator
Welsh Governance Body