



**National
Trust**

Consultation on proposals for an Environmental Better Regulation Bill

Response from the National Trust

The National Trust would like to thank the Department for the opportunity to reply to this important consultation.

Please see below our responses to individual consultation questions. Additional comments follow at the end.

Response to consultation questions – Integrated Environmental Permitting

Q1 What are your views on the introduction of an integrated environmental permitting regime in Northern Ireland? (Please give reasons for your answer).

We welcome the Department's statement that an integrated regime is intended to give 'effective controls to manage impacts and ensure good environmental outcomes'. By integrating and simplifying the system it should be possible to increase compliance and deliver better environmental outcomes – as more straightforward rules are easier and cheaper to adhere to for the majority of licensees. However the aim of reform must always be to achieve the best outcomes for our environment, natural and built heritage – rather than delivering cost savings for their own sake.

Q2 What particular issues do you think the Department should take into account when developing its approach to integrated environmental permitting?

It will be vital for the Department to take into account the new arrangements for local councils (particularly with reference to functions which are transferred). This is especially the case when permitting for new development is taking place, working in parallel with the planning system - which is also undergoing radical change.

We would also encourage the Department to work actively with representatives of the judiciary and legal system before and after any new system is implemented. This will be vital for the small number of cases which end up in front of the courts - so that offenders face proper sanctions and that the courts can understand the course of action taken by the Department/NIEA. One possibility might be training for all those involved so that they can better understand potential environmental impacts.

We welcome the idea of recognising 'the visionaries' who go beyond compliance. We would like to see the Department take into account how such organisations will be celebrated and rewarded. How can more and more 'visionary' behaviour be encouraged in organisations which do not already have an overtly 'green' focus? How can we promote achievement in a simple and effective way, and perhaps avoid duplicating awards or certification schemes which already exist?

The Department will need to take careful account of how, and in what order, changes are phased in. Integrated permitting should hopefully lead to more and better compliance – however for cases of non-compliance the Department must stay focussed on sustained detection and prosecution at all stages. The new system could lead to a more co-operative, partnership approach between the Department and licensees, however it will be crucial to establish where the boundaries lie.

Q3 What do you think are the problems with the current procedures which could be addressed by a new integrated permitting regime?

The complexity and fragmented nature of the system is frustrating for licensees and the Department. A lack of common terminology and approaches across procedures is also problematic.

In many cases it appears regulation has been ignored because it is expensive and difficult. However an even bigger factor in non-compliance is likely to be the fact that there have been historically low levels of enforcement and penalty.

Integrated permitting could address many of the problems with the current system - but only if it is made very clear to businesses that there are major economic advantages to compliance and major penalties for those who wilfully break the rules. A single-point scheme could also help eliminate a lack of clarity about which government body is responsible for which aspect of consent.

Examples from our own experience: complexity and cost

The National Trust has direct experience of the cost and complexity of the current system.

For National Trust land that falls under the Single Farm Payment we make a single application for all of our sites for a number of different waste activities, with no fee required. However, for land not deemed to be agricultural we have to apply for separate exemptions for each waste activity for each individual site, for example composting at Mount Stewart.

The fees for exemptions are disproportionately high – so much so that we believe they could discourage sound waste minimisation practices. For example the fee per site for composting is £585 per annum and an exemption for burning plant matter is £808 per site every 3 years. Yet our colleagues arranging exemptions in England can register all of these activities as a group exemption across multiple sites for a considerably reduced fee.

There are clearly advantages in a simplified system for individual organisations and businesses therefore. More importantly however, it could free up time for government officials to focus on effective regulation and better enforcement instead.

Q4 What are your views on the principle of the common permitting hierarchy and do you have any suggestions for how NIEA should adopt this approach?

We welcome a common permitting hierarchy in principle. As NIEA adopts this approach it needs to give very clear guidance to help organisations understand the level at which they need to engage. We would also suggest that there needs to be careful thought as to how and when an organisation might shift from one part of the hierarchy to another (for example when a business' activities shift or grow) and how to help them adapt.

We would suggest that NIEA should set out measures for how broad compliance at the 'General Environmental Rules' level will be assured. The rationale for not notifying NIEA about every low risk activity under the new hierarchy is clear – however how will adherence to general environmental rules be tracked or sampled? It would be good to have assurance that the new system is delivering in this area, and that cumulative low level impacts are being avoided or safely managed.

Q5 What are your views on NIEA adopting the flexibility of having rules and thresholds set in guidance rather than legislation?

We understand the need for specific rules and thresholds to be set out in guidance to enable the Department to be flexible to keep up with changing technology and emerging science. There should be a commitment to update guidance regularly, and to ensuring it is understood and interpreted consistently. Legislation should specify that robust evidence must be used to ensure regulation/guidance sets out firm base level requirements.

Q6 What do you think should be considered in the risk assessment exercise that will be used to determine the thresholds and the positioning of activities in the permitting hierarchy?

We believe the risk assessment exercise needs to determine thresholds purely on the basis of potential environmental impacts, outcomes and potential damage. It will also be important to develop a mechanism around cumulative impacts – continuous low level breaches taken together could be just as damaging as single events higher up the threshold.

Q7 What are your views on the proposal to streamline compliance conditions into a single, easy to understand environmental permit document?

We welcome this proposal.

Q8 What would the benefits be if NIEA introduced corporate permits? Can you see any disadvantages?

The benefits of corporate permits would be to significantly reduce the amount of administration which organisations (and presumably the Department) have to undertake around compliance. However our own experience also shows how site-specific individual permits can be. There could be a potential disadvantage if individual sites within an organisation or business are so divergent as to make it hard to apply a corporate permit to all of them in a safe and straightforward way.

We are therefore supportive of corporate permits in principle, but careful thought needs to be given as to how to achieve the best environmental outcomes across different individual sites covered by single permit. We would suggest that the Department reserves the right to issue a small number of separate permits in special circumstances.

Examples from our own experience: multiple sites

At the National Trust in Northern Ireland we hold over 80 permits with NIEA in relation to wastewater treatment alone.

Q9 What are your views on the introduction of accredited permits?

Q10 What are your views on introducing business prosperity commitments?

We welcome the possibility of accredited permits and business prosperity commitments. The National Trust in Northern Ireland has successfully entered into an environmental management scheme and has been accredited to BS 8555 (Level 2). This helps us fulfil our charitable purpose of safeguarding special places ‘for ever, for everyone’.

We would urge the Department if introducing accredited permits and prosperity commitments, to make sure that participation in these is as straightforward yet robust as the rest of the permit system proposed. Accreditation should be transparent and, crucially, independent.

Response to consultation questions – Powers of Entry & Associated Powers

Q11 What are your views on the Department’s proposals to introduce enabling powers to allow future legislative changes to rationalise the existing complex powers of entry and associated powers (inspection and investigation regime)?

The National Trust welcomes moves to rationalise powers of entry and associated powers where it will lead to more efficient, fairer and more proactive enforcement.

Q12 What are your views on the proposal to require the Department to prepare guidance on the exercise of powers of entry and associated powers?

This would seem a reasonable proposal in order to clarify the situation for business and other organisations, while ensuring consistency across the Department’s activities. However any revision of powers and/or new guidance should not rule out the possibility of unannounced inspections, which will still be necessary in some circumstances.

Q13 Do you have any views on the need to ensure that appropriate legislative safeguards are in place to apply to powers of entry and associated powers?

We have no specific comment on these proposals.

Q14 Do you agree that, in relation to environmental protection, the proposals relating to powers of entry and associated powers should not result in any weakening of the law? Please give reasons for your views.

We absolutely agree that any changes should not result in a weakening of the law. Where powers of entry and associated powers are needed to ensure proper compliance and avoid or mitigate environmental damage they should be retained.

Q15 Have you any other comments on the proposals for powers of entry and associated powers?

We have no further specific comments on these proposals.

Additional Comments

- We urge the Department to work with other NI Departments as it undertakes this important reform. In particular if it was possible to simultaneously harmonise and pool elements of environmental permitting and enforcement which sit elsewhere (e.g. within DARD Marine), the advantages would be considerable.
- We urge the Department to invest in existing and if necessary additional staff resource to ensure there is adequate inspection expertise and that staff have the necessary skills to help licensees transition to a new regime.
- We believe the most effective way to ensure better regulation and enforcement is to have the clearest possible separation between policy making and regulation functions. The process of regulation/enforcement must be independent.

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18 July 2013