



**Friends of
the Earth**
Northern Ireland

May 2024

Environmental governance and an independent Environmental Protection Agency

Friends of the Earth has been campaigning for an independent Environmental Protection Agency since the 2004 publication of 'Transparency and Trust: Reshaping Environmental Governance in Northern Ireland'. The arguments in favour of an independent Environmental protection Agency (EPA) have been well rehearsed multiple times since.

The Northern Ireland Environment Agency's position as environmental regulator is undermined due to its dependence upon, and subservient position within, the Department of Agriculture, Environment, and Rural Affairs (DAERA), the lack of separation between policy and regulatory roles and its lack of political independence.

There is considerable support for the creation of an independent environmental regulator among the NGO sector, business community, and cross-party politics. The creation of an independent EPA was given further impetus by its inclusion in the New Decade New Approach (NDNA) agreement. The consensus view is that such a body should be well funded and staffed and given sufficient authority to be an effective regulator.

Principles

For an Environmental Protection Agency to be effective it must have these key features:

- It must be independent of government so it can operate without ministerial interference;
- It must be sufficiently funded and staffed;
- It must have inspection and enforcement powers;
- It must be responsible for both land and sea; and
- It must have the authority to bring prosecutions.

Northern Ireland requires specific legislation to be enacted that strengthens the application of environmental principles in the context of a devolved legislature and with a specific legacy of environmental multi-dimensional and deep-seated environmental problems. NI specific legislation must be in place to secure and strengthen these principles (and not those restricted in the limiting context of the UK Environment). These principles must be legally binding on Ministers, Departments, and all public authorities – to merely "have regard" to these principles is insufficient and otiose.

FoE NI supports legal enunciation in Northern Ireland legislation of the principles currently enshrined in the Treaty on the Functioning of the European Union namely:

- i. The principle that environmental protection should be integrated into the making of policies;

- ii. The principle of preventative action to avert environmental damage;
- iii. The precautionary principle, so far as relating to the environment;
- iv. The principle that environmental damage should as a priority be rectified at source;
- v. The polluter pays principle; and
- vi. Aarhus principles relating to redress, consultation, and participation in all aspects of environmental decision making.

Justice functions

The functions of an independent EPA must be underpinned by law. An environmental watchdog that doesn't have the force of law behind it is a toothless watchdog.

An independent EPA must have a functioning relationship with the Office of Environmental protection (OEP), the Irish EPA, the Lough's Agency, the Northern Ireland Climate Commissioner, and other relevant statutory bodies both north and south. The island of Ireland is a single continuous biogeographical region. As such cross-border, and cross-regional co-operation and co-ordination is essential.

A well-funded Environmental Protection Agency, fully independent from government, is a crucial part of effective environmental regulation. The Northern Ireland Assembly is committed to introducing one via the NDNA. The next Assembly must deliver.

Current structures

In this section we will look at the structure of environmental regulation in Northern Ireland. The responsibilities listed aren't necessarily those that an independent EPA would take on, though an argument could be made for each of them. However, it is worth including them for context and to illustrate how dispersed, and therefore potentially misaligned or contradictory, environmental governance is.

The environmental governance regime in Northern Ireland has taken multiple forms over the past few decades. Prior to 1st July 2008, the role was carried out by the Environment and Heritage Service (EHS). EHS was an arm's length agency of the then Department of the Environment (DOE). Following a sustained campaign by civic society calling for an independent EPA, the then Environment Minister responded by creating the Northern Ireland Environment Agency (NIEA), which was just a rebranded EHS. Following a restructuring of Assembly departments in May 2016, DAERA was created and NIEA was brought fully into the new department.

1. Northern Ireland Environment Agency

It has been said and written many times over the past few decades, but Northern Ireland remains the only part of the UK or Ireland that has no independent environmental watchdog. The role is carried out by the Northern Ireland Environment Agency, an Executive Agency fully controlled by the Department for Agriculture, Environment, and Rural Affairs. The Chief Executive of NIEA is also an Executive Board member of DAERA. NIEA doesn't have a dedicated website, simply a section on the DAERA website.

NIEA lists its key priorities as:

- A fully compliant regulated industry;
- Freshwater and marine environment at 'good status';
- A compliant crime free waste sector;
- Good habitat and landscape quality with species abundance and diversity; and
- Promotion of environmentally sustainable development and infrastructure.

As such the agency has responsibility for:

- Monitoring and regulating discharges;
- Inspecting industrial, construction, demolition, and agricultural sites;
- Water quality monitoring, in conjunction with local councils;
- Investigating and prosecuting breaches of environmental crime;
- Seizing assets under the Proceeds of Crime Act 2002;
- Managing country parks and nature reserves;
- Monitoring and mapping biodiversity; and
- Advice and guidance to local councils, farmers, and industry

2. Planning authorities

Planning responsibilities are split between the Department for Infrastructure (DFI) and local councils. DFI is responsible for legislation, regional policy, strategically significant developments, and oversight of councils' responsibilities.

Councils are responsible for drafting development plans, processing planning applications, community planning, and habitats assessments via Shared Environmental Services.

3. Waste management

Waste policy and licensing of waste carriers and facilities are the responsibility of DAERA. NIEA is the regulatory authority and will inspect sites, investigate complaints, and issue enforcement proceedings against non-complaint sites or operators.

4. Minerals and petroleum licensing

Minerals and petroleum licences are issued by the Department for the Economy (DfE) with the exception of gold and silver, which are dealt with by the Crown Estate.

5. Marine licensing

Licensing and enforcement of marine developments is retained by DAERA. Developments such as harbours, rock armour, land reclamation, discharges, and dredging are covered by marine licences.

6. Loughs Agency

The Loughs Agency is a cross-border body responsible for inland fisheries, licensing of aquaculture, and developing marine tourism.

7. Licensing of water and sewerage companies

The Utility Regulator issues licenses to water and sewerage companies, and ensures they provide a high-quality service. NI Water is the only water and sewerage company operating in Northern Ireland.

8. Historic environment

The Department for Communities (DfC) is responsible for the historic environment, including monuments, listed buildings, and archaeological sites. DfC takes enforcement action in regard to listed buildings and historic monuments. The department also offers advice to planning authorities and maintains a map of historic sites.

9. Office of Environmental Protection

The Office of Environmental Protection (OEP) was created in November 2021. Its purpose is to fill the void in environmental scrutiny created by the UK leaving the European Union, though it doesn't have the full powers of the European Commission.

The OEP is focused entirely on public bodies, or private companies with the functions of public bodies. Bodies within its remit include Assembly departments, Ministers, regulators, local councils, and companies such as NI Water.

It scrutinises programmes, plans, policies, and decisions made by public bodies. It offers advice to government on matters of environmental law. In addition, it will investigate complaints about public bodies and bring legal proceedings.

The OEP does not regulate private individuals or companies. The OEP's role is crucial, but it is not an alternative to an independent Environmental Protection Agency. We need both bodies.

Conclusion

The case for an independent environmental regulator is compelling. Enforcement of environmental law as it applies to individuals and the private sector by a body, free from political interference is needed. The Better Regulation Taskforce describes the benefits of independent regulation as:

- More consistency of decision making;
- Long term decisions rather than short term;
- More transparency;
- Better accountability;
- More trust between the regulated and the regulator; and
- Freedom from political interference.

We must ensure we get the right type of regulator though. It must have these key elements:

- Independent of ministerial interference;
- Sufficiently funded and staffed;
- Inspection and enforcement powers;
- Responsible for both land and sea; and
- Authority to bring prosecutions.

In addition to the creation of an independent regulator, Friends of the Earth recommends environmental courts should be established. Such courts would raise the profile of environmental crime and should act as a deterrent. They would send a signal to the public, business, and public bodies that environmental crime would be treated as seriously as any other crime. Environmental protection should not continue to be deprioritised by policy makers, Assembly departments, and the judiciary.