

Environmental Plans, Principles and Governance for Northern Ireland

Public Discussion Document



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



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

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The Covid-19 pandemic has forced us all to live and work differently, to think differently and to behave differently. There is much still to be done in terms of managing the crisis, and a large part of that must be about managing the recovery over the coming months. The environment will be a central element contributing to that recovery.

I am keen to ensure that as we work towards the restoration of our economy we use our planning for recovery from the effects of the pandemic, alongside the United Kingdom's departure from the EU, as an opportunity to look afresh at how we tackle climate change, protect the environment and build a sustainable economy in the coming decades.

This discussion paper seeks your views on environmental plans, principles and governance after the ending of the EU withdrawal transition period. This is the framework for environmental policies which support green growth. The environmental improvement plans in particular will be central to a co-designed Green Growth Strategy and Delivery Framework which aims to transform our society to net zero by 2050, protect and enhance our environment and sustainably grow our economy by embedding a Green Growth approach in future government policies and business strategies. Achieving this requires effective environmental governance. The measures covered in this consultation will provide that.

I would encourage you to consider this document carefully and take an active role in shaping our approach to environmental plans, principles and governance.

Edwin Poots MLA
Minister of Agriculture, Environment and Rural Affairs

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PURPOSE OF THE DISCUSSION DOCUMENT

The purpose of this document is to highlight that oversight of, and accountability for, the environment will change after the end of the EU withdrawal transition period. We are seeking your views on environmental plans, principles and governance.

The Environment Bill introduced to Parliament on 30 January 2020 gives NI Ministers the option to:

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

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

However, if you do not feel these are the most appropriate mechanisms or organisational structures for good environmental governance then we welcome your comments and opinions on other options.

Given that decisions on future environmental plans, principles and governance arrangements for Northern Ireland are devolved this is your opportunity to provide views on how these functions are addressed locally. Your comments and suggestions will inform Ministers' decisions on implementation.

1. Strategic Context in Northern Ireland

The draft Programme for Government (PfG) for the 2016 – 2021 Assembly mandate was published in May 2016. The Department of Agriculture, Environment and Rural Affairs (DAERA) is the designated lead department for Outcome 2: ***We live and work sustainably – protecting the environment***

The environment is all-encompassing and can contribute to many, if not all, of the PfG outcomes.

“Ultimately, health and prosperity depend on our natural environment. Achieving economic growth at the cost of its degradation through over-exploitation or pollution is not sustainable.” (Draft Programme for Government Framework 2016 - 21, p.19).

At a Departmental level, DAERA’s vision is: ***Sustainability at the heart of a living, working, active landscape, valued by everyone.***

To help realise that vision, the DAERA Minister recently announced the adoption of a Green Growth approach, essentially a roadmap to achieving net zero carbon by 2050, protecting and enhancing our environment and sustainably growing our economy.

This roadmap includes a co-designed Green Growth Strategy, a framework of policies to achieve its objectives, and the establishment of an inter-ministerial group to help embed Green Growth within future Government policies. It is envisaged that Northern Ireland’s strategy for environmental improvement will be a core element of the Executive’s overarching Green Growth Strategy and Delivery Framework.

The New Decade, New Approach (NDNA) agreement also makes a number of commitments relating to the Environment. These commitments were later debated and supported by the NI Assembly. The Minister has confirmed that, subject to Executive agreement, DAERA will progress a Climate Change Bill with the aim of introducing the Bill to the Assembly within this mandate.

He has also written to the independent expert UK Committee on Climate Change (CCC), for advice on what would be our equitable contribution to the UK’s net zero emissions target. This is to ensure targets are credible and evidence based. The CCC has now responded to the Minister’s request and the information is currently being reviewed.

The UK's membership of the EU provided the framework for most environmental policy and legislation in Northern Ireland. This includes important aspects of environmental principles, planning and governance embedded in EU Treaties. Until the end of December 2020 the European Commission and the Court of Justice of the European Union (CJEU) will exercise an oversight role which includes the environment.

The UK and EU have been discussing the implementation of the Ireland/Northern Ireland Protocol (the Protocol) as part of the UK's withdrawal from the EU. Legislation covering a number of environmental areas is specifically referenced in Annex 2 to the Protocol and has been implemented through a number of statutory instruments.

1.1 Environmental Principles in the EU

Environmental principles are a specific set of principles which have been used to guide and shape modern environmental law.

Four core environmental principles are enshrined in Article 191(2) of Treaty on the Functioning of the European Union (2007) (TFEU). The four principles underpin the development of EU environmental policy, and are commonly defined as:

- (a) Precautionary principle. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation;
- (b) Polluter Pays principle. The polluter should bear the cost of pollution control and remediation;
- (c) Prevention principle. Preventative action should be taken to avoid environmental damage; and
- (d) The principle that environmental damage should be rectified at source.

A fifth, the integration principle, which requires environmental protection measures to be integrated into all EU policies and activities is also included in Article 11 of TFEU¹.

These EU environmental principles have to be read and implemented in the context of wider principles of EU law, including the fundamental rights of individuals,

¹ The Environment Bill: <https://publications.parliament.uk/pa/bills/cbill/58-01/0009/20009.pdf> contains these five principles

proportionality and legal certainty. For example, the principle of proportionality is important in interpreting how the environmental principles interact with economic and social objectives.

Whilst these principles are central to government policy, at a national level we do not currently set them down in one place, or define their role in policy-making or delivery. So, after the end of the transition period, if we are to maintain the current position we need to have a new framework in domestic law. It will remain government's responsibility to set policy within the framework of these principles.

1.2 EU Environmental Planning and Information

The European Environment Agency (EEA) is an agency of the European Union which provides independent information on environmental matters. For those involved in developing, adopting, implementing and evaluating environmental policy the EEA is a key source of information. The business community, academia, civil society and the public are all able to use the information provided by the EEA.

The EEA currently has 33 member countries and six other cooperating countries. Through collaborative joint working, the EEA countries are responsible for bringing together national networks involving many institutions (about 350 in all), typically comprising national environment agencies or environment ministries.

The EU's Environmental Action Programme, currently in its 7th iteration, covering the period to 2020, guides EU environmental policy. Its long term vision and key objectives are:

"In 2050, we live well, within the planet's ecological limits. Our prosperity and healthy environment stem from an innovative, circular economy where nothing is wasted and where natural resources are managed sustainably, and biodiversity is protected, valued and restored in ways that enhance our society's resilience. Our low-carbon growth has long been decoupled from resource use, setting the pace for a safe and sustainable global society."

It identifies three key objectives:

- (a) to protect, conserve and enhance the Union's natural capital;

- (b) to turn the Union into a resource-efficient, green, and competitive low-carbon economy; and
- (c) to safeguard the Union's citizens from environment-related pressures and risks to health and wellbeing.

The Commission also carries out the Environmental Implementation Review (EIR)², which is a tool to improve implementation of EU environmental law and policy. The second EIR was adopted in April 2019 and fits in with a series of activities aimed at improving the implementation of environmental legislation.³

Whilst the UK's future relationship with the EU may shape requirements for monitoring, measuring and reporting in the longer term, much of the information currently reported at international level, including to the EU, is also essential at local level to guide and inform our policy development. After the end of the transition period this information will still be gathered and reported to comply with international agreements and to meet domestic needs and requirements. Public bodies will continue to have monitoring and reporting duties.

1.3 Governance by the European Commission

Under current EU environmental governance arrangements, the European Commission monitors the implementation of EU environmental law and has the option of commencing infraction proceedings. Where necessary, the Commission brings cases to enforce environmental law in the CJEU. The CJEU provides rulings on the interpretation of EU environmental law to ensure it is applied correctly by Member States,

If a Member State fails to comply with a judgement of the CJEU, it is open to the Commission to take further action against that Member State. If the matter is referred back to the CJEU, and it is found that the Member State has not complied with the initial judgement, the Court may impose a fine on the Member State, in the form of a lump sum or penalty payment or both.

² https://ec.europa.eu/environment/eir/index_en.htm

³ https://ec.europa.eu/environment/legal/implementation_en.htm

1.4 Leaving the EU

At the end of the transition period (depending on what agreements are in place between the UK and EU at that time) we will leave these arrangements. However, many environmental requirements reflect enduring international obligations to which the UK is a signatory. As the EU often acted as an intermediary in implementing the effects of International treaties, like the Basel Convention on waste movement, many arrangements will continue in place. The UK Government has highlighted its commitment to maintaining and improving environmental standards after the UK leaves the EU and has enacted a raft of legislation to maintain the operability of existing environmental legislation in Northern Ireland after withdrawal. EU legislation identified in the Protocol will continue to apply directly.

This legislation did not cover the environmental principles and governance aspects of EU arrangements. As a result, in 2018, the Secretary of State for Environment, Food and Rural Affairs proposed that environmental principles, and governance should be included in an Environment Bill, along with environmental improvement plans.

2. Environment Bill

Following consultation in England, the Secretary of State published the draft Environment (Principles and Governance) Bill in December 2018.

When publishing the Bill, the Secretary of State stated in the accompanying policy paper⁴ that he was content to co-design proposals for environmental governance and principles with the devolved administrations to ensure they would work more widely across the UK. Wales and Scotland have decided to make their own arrangements on environmental principles and governance but are participating in other elements of the Bill. Wales and Scotland issued public consultations on governance arrangements in 2019. The Welsh Government⁵ and Scottish Government⁶ have both published responses made to their consultations on environmental principles and governance

⁴ <https://www.gov.uk/government/publications/draft-environment-principles-and-governance-bill-2018/environment-bill-policy-paper>

⁵ <https://gov.wales/environmental-principles-and-governance-wales-post-european-union-exit>

⁶ <https://www.gov.scot/publications/analysis-responses-consultation-environmental-principles-governance/>

and the Scottish Government has included relevant provisions in its recently introduced UK Withdrawal from the European Union (Continuity) (Scotland) Bill⁷.

The environment is (largely) a devolved matter in Northern Ireland and, normally, our environmental legislation would be enacted through the Northern Ireland Assembly. However, DAERA, as the lead Department, took the opportunity to work with the UK Government to provide the option for Northern Ireland Ministers to underpin environmental regulation and policy-making in Northern Ireland (as is the case in the current EU regime), by including provisions in the Environment Bill which:

- (a) set out principles defined on a statutory basis, and a duty to produce a policy statement which the Northern Ireland Departments will then be required to take into account when devising policy;
- (b) establish the Office for Environmental Protection (OEP) as Northern Ireland's independent environmental oversight body to replace a role currently performed by the European Commission; and
- (c) require DAERA to prepare environmental improvement plans.

The Bill also included clauses related to resources and waste management; chemicals; air quality; sustainable water resources; and measures for restoring and enhancing nature and green spaces. Not all of these provisions extend to NI and, in any case, this discussion document deals only with the provisions for Northern Ireland relating to environmental plans, principles and governance.

The Environment Bill⁸ was introduced to Parliament on 15 October 2019 and received cross-party support at second reading on 28 October. The Bill fell on the dissolution of Parliament prior to the last general election, with a very similar Bill being introduced to the new Parliament on 30 January 2020. Like the original Bill it contains provisions on environmental plans, principles and governance (and other matters) which extend to Northern Ireland. It is important to note that commencement of all of the provisions of the Bill that relate to the matters discussed in this document requires the approval of the Assembly and some may also require the agreement of the Executive.

⁷ [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Bill](#)

⁸ <https://publications.parliament.uk/pa/bills/cbill/2019-2019/0003/20003.pdf>

As the Bill progresses through Parliament it will be subject to amendments. These will be considered by the DAERA Minister on a case by case basis and decisions made on their extension to Northern Ireland, taking account of issues such as consistency with other jurisdictions, effectiveness and specific local requirements.

Due to delays caused by the Covid-19 crisis Royal Assent for the Bill will not be granted until spring 2021 at the earliest.

The rest of this document sets out the proposals in the Bill for environmental plans, principles and governance and seeks your opinions on these provisions. If you do not believe these provisions should be implemented we would welcome your views on alternatives.

2.1 Legislative Consent

There is a long-standing convention that, while the UK Parliament has a constitutional right to make, repeal or change any legislation, where that legislation relates to devolved matters the consent of the relevant devolved legislature should be sought.

As almost all of the provisions of the Bill applying to Northern Ireland do relate to devolved matters it was necessary to seek the consent of the Assembly.

A Legislative Consent Memorandum was laid at the Assembly on 19 March 2020, triggering a process whereby the Committee on Agriculture, Environment and Rural Affairs gathers evidence from the Department and other stakeholders and produces a report in advance of the Legislative Consent Motion being debated. Due to the constraints of measures introduced to address the Covid crisis it was not possible to publish the Committee's report⁹ until 18 June.

While the Committee did not take a position on the Legislative Consent Motion, its report did make a number of recommendations, including: the introduction of a sunset clause; a specific NI non-regression clause; a greater emphasis on the oversight and scrutiny role of the NI Assembly in aspects of the Bill such as the OEP; the establishment of an Independent Environmental Protection Agency as soon as possible; and a future NI Environment Bill.

⁹ [Report on the Legislative Consent Memorandum on the UK Government Environment Bill](#)

The Legislative Consent Motion was debated on 30 June and passed without formal division. Should any subsequent amendments be made to the Bill as it progresses through Parliament that are outside the scope of the original motion, a further motion would need to be tabled and debated by the Assembly.

3. Environmental Principles

As a Member State of the EU, UK environmental regulation and policy making has been underpinned by a set of environmental principles that have been used to guide and shape environmental law. Environmental principles are embedded in a range of international agreements and have been implemented through the EU Treaties.

As outlined in section 1.1 above, the Bill¹⁰ contains a list of five environmental principles currently enshrined in the Treaty on the Functioning of the European Union:

- (a) the principle that environmental protection should be integrated into the making of policies,
- (b) the principle of preventative action to avert environmental damage,
- (c) the precautionary principle, so far as relating to the environment,
- (d) the principle that environmental damage should as a priority be rectified at source, and
- (e) the polluter pays principle.

Whilst these principles are central to government policy, at a national level we have not needed to set them down in one place, or define their role in policy-making or delivery, as we have instead been able to rely on EU law. So, as we approach the end of the transition period, we need to consider a new framework of environmental principles to guide policy-making. It will remain government's responsibility to set policy within the framework of these principles.

The Bill requires the Defra Secretary of State to publish a policy statement setting out how the principles should be interpreted and applied by UK Ministers when making policy.

The broad meaning of the individual environmental principles is as follows:

¹⁰ <https://publications.parliament.uk/pa/bills/cbill/58-01/0009/20009.pdf>

- (a) The principle that environmental protection must be integrated into the making of policy: *Environmental protection must be embedded in the making of policies;*
- (b) The principle of preventative action to avert environmental damage: *Preventive action should be taken to avert environmental damage;*
- (c) The precautionary principle so far as relating to the environment: *Where there are threats of serious irreversible environmental damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;*
- (d) The principle that environmental damage should as a priority be rectified at source: *Environmental damage should as a priority be rectified by targeting its original cause and taking preventive action at source;* and
- (e) Polluter pays principle: *The costs of pollution control and remediation should be borne by those who cause pollution rather than the community at large.*

If equivalent provisions are brought into operation in Northern Ireland, DAERA will also be required to publish a policy statement on principles. DAERA will carry out a public consultation – including with all Northern Ireland departments – on the draft statement and any draft and final statements will be laid before the Assembly. All Northern Ireland departments – and Ministers of the Crown when making policy in respect of Northern Ireland – will then have a duty to have due regard to the policy statement on environment principles in their policy-making process.

Further direction on these environmental principles will be set out in the policy statement.

Question 1: 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 outlined above?

4. Environmental Improvement Plans

The Bill provides for requirements to: (a) prepare; (b) review and revise; and (c) renew Environmental Improvement Plans (EIPs). Annual reports on progress must also be prepared, laid and published. 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. If relevant provisions specific to Northern Ireland are approved by the Assembly, similar arrangements will apply here.

A key difference here compared to England is that we do not, as yet, have a document that would serve as an EIP. The Bill's provisions for England were drafted with the UK Government's environment plan, '[A Green Future: Our 25 Year Plan to Improve the Environment](#)', available to perform that function. While that document was published (in January 2018) under the UK Government banner, it should be noted that the vast majority of the content applies only to England, and not the whole of the UK.

A strategic approach is required to develop a coherent and effective set of interventions to deliver improvements in the quality of the environment and thereby improve the health and well-being of our citizens, create opportunities to develop our economy and play our part in protecting the global environment for decades to come.

The Department launched a public discussion document on ideas for a strategic approach on 18 September 2019 and this closed on 5 February 2020, with around 2500 responses received. The analysis of the responses is available on the DAERA website and will help inform the development of our first Environmental Strategy, which, subject to the consent of the NI Assembly, will be designated NI's first Environmental Improvement Plan.

The DAERA Minister has announced his intention to take a 'Green Growth' approach to tackle our climate change and environmental challenges and to help with recovery from the Covid-19 pandemic (statement to the Assembly on 23 June 2020^[1]).

The aim of Green Growth is: To transform our society to net zero by 2050, protect and enhance our environment and sustainably grow our economy. This is supported by objectives to:

^[1] [Official Report \(Hansard\) 23 June 2020](#)

- (a) transform Northern Ireland society to net zero carbon by 2050;
- (b) improve and protect the quality of our land, seas, air, water and biodiversity;
and
- (c) grow a strong and sustainable economy through greater productivity, innovation and capacity.

The Green Growth framework consists of two elements: (1) an overarching strategy which extends to 2050 but which includes immediate, medium and long term actions; and (2) a series of foundation programmes to create momentum and deliver the change necessary to achieve the outcomes. Some programmes, like 'Forests for our Future', are already in motion and other foundation programmes will be established in tandem with the strategy.

Northern Ireland's strategy for environmental improvement will sit at the heart of the Executive's overarching Green Growth Strategy and Delivery Framework underpinning environmental protection and improvement and climate action for decades to come.

Another key difference between the Bill's provisions for England and Northern Ireland is with regard to statutory targets. The Bill only contains provisions for statutory targets in England – this is because relevant environmental targets must flow from the Green Growth and Environment Strategies and as a result could not be included in the Bill at this stage. If it is considered necessary to place environmental targets on a statutory footing it would be necessary to introduce new primary legislation to the Assembly.

Question 2: How do you feel alignment of the Environment and Green Growth Strategies can be best achieved?

5. Environmental Governance in Northern Ireland

This discussion document explores the functions, as outlined in the Environment Bill, of a new, independent, statutory environmental body to hold government to account on environmental matters. The role that the new body fulfils will also take account of any future relationship negotiated with the EU on environmental matters. In the Bill this body is named the Office for Environmental Protection (OEP). The OEP has attracted most attention of the matters dealt with on the face of the Bill and hence its discussion takes up the greatest part of this document.

The OEP will:

- (a) provide independent scrutiny and advice on the development and implementation of environmental law and policy;
- (b) investigate environmental complaints from members of the public; and
- (c) oversee the delivery of environmental law by public authorities and take steps to bring about compliance where needed.

The principal environmental regulator in Northern Ireland is the Northern Ireland Environment Agency (NIEA), which is an executive agency within DAERA. It is, and will remain, responsible for environmental regulation. Where necessary the agency takes enforcement action to ensure our environmental standards are met. This is **not** the job that the new governance body will be doing. It will operate at an oversight level to ensure that government and regulators are doing their job.

An environmental oversight body is required to replace the governance functions of the European Commission and **not** the NIEA (see Section 6 below).

The following sections set out proposals in the Environment Bill for the extension of the OEP's jurisdiction to Northern Ireland.

6. Interaction with the Northern Ireland Environment Agency

As noted earlier, the NIEA is the environmental regulation body for Northern Ireland. NIEA will remain as the principal environmental regulator in Northern Ireland.

The OEP will replace the independent environmental oversight (so the body could not also regulate) which we already have via the European Commission. The OEP will

contribute to the protection and improvement of the natural environment in the absence of oversight by the EU.

Question 3: Should the OEP be implemented in Northern Ireland?

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

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.

7. Interactions with other Oversight Bodies

The proposed OEP and the Northern Ireland Public Service Ombudsman (NIPSO) could potentially deal with complaints against public authorities in Northern Ireland, albeit generally in quite different contexts, which would minimise likely overlaps. However, in order to deal with any possible overlap, as well as establishing practical arrangements for cooperation between the bodies, it is envisaged that a memorandum of understanding or agreement will be necessary. This will allow the best use of public resources. Measures are included in the Bill to address these types of issues. For example, the OEP will be obliged to set out how it intends to avoid any overlap between the exercise of its investigatory functions and those of NIPSO in its strategy. There are also likely to be some cases which will involve Northern Ireland and one or more of the other UK administrations. Arrangements for collaboration and information sharing between the OEP and any devolved environmental governance body will be required and the Bill makes provision for this.

There may be instances where it will be necessary for NIPSO or other oversight bodies to share information with the OEP. Steps are being taken to clarify this issue with NIPSO and Defra.

Question 4: Are there other public bodies with whom the OEP should establish particular arrangements and why?

8. Establishing the OEP in Northern Ireland

The OEP will be a non-departmental public body, receiving and investigating complaints and performing enforcement, advisory and monitoring functions in relation to the environment for England and Northern Ireland.

8.1 Interim Arrangements

In England the aim is for the OEP to be operational as soon as possible after the end of the transition period for withdrawal from the EU to minimise any governance gap when we lose the oversight of the European Commission. Due to delays caused by the Covid-19 crisis it is likely that the OEP will not be operational in England until 1 July 2021 at the earliest and, consequently, interim arrangements are being put in place to handle complaints that may fall under the OEP's remit.

In Northern Ireland it is proposed to put in place appropriate interim arrangements to handle complaints from 1 January until the OEP begins operating - which is of course subject to NI Assembly approval. Beyond complaints it will also remain possible to employ existing mechanisms and for people to raise concerns through Departmental processes, the Ombudsman or via the established judicial review process.

Question 5: 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?

8.2 Appointments and Remuneration

The OEP will consist of: a non-executive Chair; a non-executive board member representing the interests of Northern Ireland; between two and five other non-executive members; a Chief Executive (who is to be the Accounting Officer of the body); and between one and three other executive members. The make-up of the Board will ensure a balance of non-executive and executive members. Setting the maximum size of the Board at eleven members enables the body to have a strategic focus while ensuring that the required expertise can be fully represented.

If the OEP is implemented in Northern Ireland, the following arrangements will apply.

- (a) the first Chair will be appointed by the Secretary of State for the Environment, Food and Rural Affairs (SoS) and jointly with DAERA thereafter;
- (b) one non-executive member will be appointed by DAERA (after consulting the SoS and the Chair) to represent Northern Ireland interests on the Board;
- (c) the other non-executive members will be appointed by the SoS after consulting DAERA and the Chair;
- (d) the executive members will be appointed by the OEP other than the first Chief Executive who will be appointed by the Chair. Before appointing a Chief Executive the Secretary of State and DAERA must be consulted.

Due to delays to the Bill's Parliamentary progress caused by the Covid crisis, it will not now be possible to establish a fully operational OEP by 1st January 2021. There is, however, a provision in the Bill that will allow for the appointment of an interim CEO to permit the OEP to operate at a statutory minimum level until such time as the Chair and other board members can be appointed.

Responsibility for matters of remuneration, allowances and compensation for all members will lie with the Defra Secretary of State. DAERA will be consulted on these matters at the appointments stage.

Question 6: 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 think it should be structured?

8.3 Funding

Northern Ireland will be required to pay a proportionate contribution to the funding provided to the OEP to enable it to carry out its functions – the amount and mechanism of the funding is not set out on the face of the Bill.

Question 7: How do you think the OEP or an alternative should be funded in Northern Ireland?

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

9. Practical Arrangements and Extent

The Environment Bill provides for the OEP to be Northern Ireland's environmental governance oversight body just as it provides for the OEP to perform that function in England. The extension of the OEP does not mean that a body designed for one jurisdiction (England in this case) is covering Northern Ireland. All UK jurisdictions need to address the environmental oversight gap left by the UK's departure from the EU. Wales and Scotland have chosen to take their own course. By using the OEP as Northern Ireland's environmental governance body, we are likely to be able to save money and effort as well as contributing to a more consistent approach to environmental governance across the UK. Bespoke solutions are always likely to be more expensive.

Implementation of the OEP in Northern Ireland will require decisions about whether there should be a distinct presence here and how this might be resourced. It should be borne in mind that any Northern Ireland presence for the OEP is likely to add to costs.

Question 8: Should there be a permanent office in Northern Ireland and how should it be staffed?

Question 9: What other practical arrangements should be addressed in advance of setting up the OEP or an alternative in Northern Ireland?

10. Functions of the OEP

The OEP will carry out a number of monitoring, advisory and enforcement functions:

Monitoring

The OEP will have powers to monitor the implementation of environmental law in England and Northern Ireland. This will include the production and publication of reports to be laid before the Assembly.

The OEP will also be given powers to monitor progress in improving the natural environment in accordance with any environmental improvement plans put in place by DAERA. In England the UK Government's 25 Year Environment Plan will be its first EIP. In Northern Ireland we do not yet have an EIP document. The OEP's monitoring function in relation to EIPs will not, therefore, come into operation until required in Northern Ireland. DAERA is, however, committed to developing an Environmental Improvement Plan as a central element of the Green Growth Strategy and Delivery Framework.

Advisory

The OEP will have powers to provide UK departments, DAERA and other Northern Ireland Departments, with written advice on any proposed changes to environmental law, either at the request of a Department or on its own initiative. A Department will also be able to request advice on any other matter relating to the natural environment.

Enforcement

The OEP will have powers to investigate alleged failures by public authorities to comply with environmental law that have been brought to its attention through complaints or other sources of information.

Where the OEP suspects there has been a failure to comply with environmental law, it will have powers to serve an information notice on a public authority. Following that, if it is satisfied that there has been a breach, it will be able to issue a decision notice setting out the steps it considers the authority should take in relation to the failure. These notices will not be legally-binding.

Where cases are not resolved through informal action or at the information and decision notice stages, the OEP will be able to apply for a judicial review in Northern Ireland. This differs from the proposed approach in England where the OEP will be able to make a referral to a bespoke enforcement mechanism (known as an environmental review).

The OEP will also be able to make an application for judicial review without issuing a decision notice if there has been a serious failure to comply with environmental law and an urgent application for judicial review is necessary to prevent or mitigate serious damage to the natural environment or to human health.

Environmental law is defined in the Bill as something that mainly concerns environmental protection. In the context of this part of the Bill, this means protecting the natural environment¹¹ and people from the effects of human activity on it as well as maintaining, restoring or enhancing the natural environment. The test of whether legislation is 'mainly' concerned with environmental protection is applied at individual provision level and not the whole Act, Regulation, Order etc. The only matters explicitly excluded from the definition of Northern Ireland environmental law are disclosure of, or access to, information, and taxation, spending or the allocation of resources within government. There is also provision in the Bill for DAERA to clarify the definition of 'environmental law' through regulations. It will be for the OEP to assess whether or not it considers a legislative provision to fall under the definition on a case by case basis when determining whether or not it has legal powers to act in that area. In most cases, it is expected that the answer to this question will be clear, and agreed by all parties. However, there may be cases of uncertainty or disagreement and, in these instances, it may be for the courts to decide whether a specific provision falls within the definition or not.

Question 10: Are you satisfied that the OEP or an alternative should carry out the described functions in Northern Ireland?

¹¹ 'natural environment' is defined in the Bill as:

- (a) plants, wild animals and other living organisms,
- (b) their habitats,
- (c) land (except buildings or other structures), air and water, and the natural systems, cycles and processes through which they interact.

11. Transboundary Issues

Northern Ireland is the only part of the UK which shares a land border with another EU member state. On this basis special consideration was given to transboundary issues. The Bill makes provision to allow the OEP to share information with certain bodies outside the UK that have functions in connection with the protection of the natural environment. This would enable the OEP, if it considered it appropriate or necessary, to share information with, for example, the European Commission in relation to transboundary issues. Any arrangements would take account of current North/South governance.

Question 11: 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?

12. The OEP and the Ireland/NI Protocol

A number of issues have been raised about the relationship between the OEP and the Protocol and whether the former will have an adverse or contradictory impact on the latter.

The OEP's remit will cover environmental law. In terms of individual pieces of legislation in NI, this covers hundreds of regulations, orders and acts on issues such as drinking water, waste water, air quality, environmental impact assessment, biodiversity, noise, habitats, marine planning and so on.

The Protocol covers around 20 pieces of EU legislation making them continue to be directly applicable in NI after the end of the transition period. In NI these will have to be updated as the EU updates its legislation in these areas and the EU's mechanisms for enforcing them through the Commission and CJEU via the infraction process will continue.

The introduction of the OEP will not affect, detract from or undermine these obligations which arise from the Agreement on the UK's withdrawal from the EU and the subsequent EU Withdrawal Act 2020 which gives that Agreement force in domestic

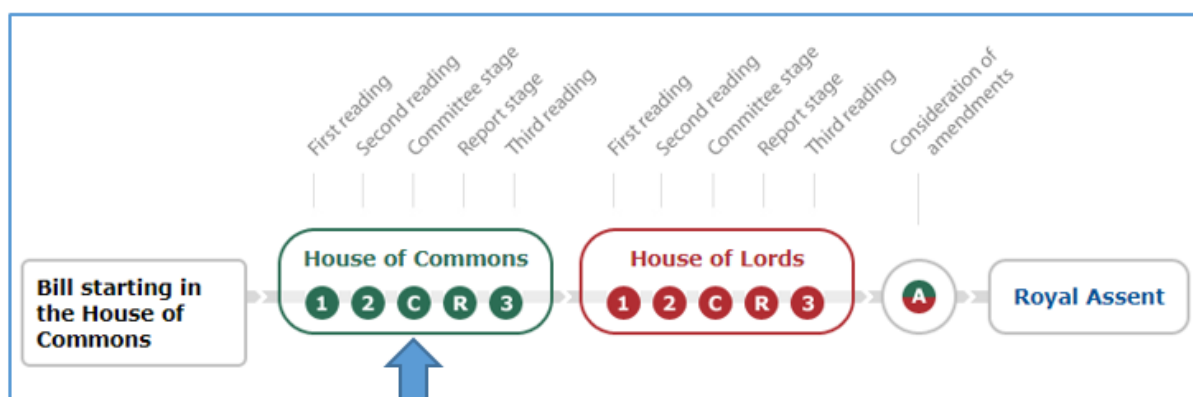
law. Similarly the OEP’s functions will not conflict with retained EU law which has been preserved under the Withdrawal Act 2018 and now forms part of the UK’s domestic law. The same is the case for any domestic environmental law, which, in a number of areas, implements international treaties and conventions.

It is the case that many environmental obligations arising from international agreements are enforced through domestic law whereas EU law has supranational enforcement mechanisms. These will persist in the case of provisions contained in the Protocol and the OEP will need to take account of this overlap just as it will with other oversight bodies such as the Ombudsman. In the case of the Protocol the regulations and directives listed have been included principally to protect the single market including matters such as the safety standards of goods placed on the market rather than for reasons of domestic environmental protection, which will be the OEP’s focus.

13. Next Steps

The current Environment Bill was introduced to Parliament on 30 January this year and passed second reading¹² unopposed on 26 February. Committee Stage¹³ commenced on 10 March but was then suspended on 19 March due to Covid restrictions. The Committee’s scrutiny of the Bill concluded on 26 November 2020 and will shortly move to Report Stage. This discussion document will run concurrently with the progress of the Bill.

Figure – Progress of the Bill¹⁴



¹² [House of Commons Hansard 26 February 2020](#)

¹³ [Public Bill Committee](#)

¹⁴ <https://services.parliament.uk/Bills/2019-21/environment/stages.html>

As previously mentioned, all of the Northern Ireland provisions of the Bill relating to environmental plans, principles and governance are subject to decisions by Ministers and the approval of the Assembly as to whether they are brought into operation. On that basis any responses and views will be used to help inform the DAERA Minister, in relation to those decisions.

All of the inputs we receive will be considered and analysed in the context of an open and inclusive discussion on the future of our environmental plans, principles and governance.

14. How to Respond

This engagement exercise uses the [Citizen Space Hub](#)¹⁵, as the primary means of response, in order to make it as accessible as possible.

However, you may download a response template from the [DAERA consultation website](#) and reply by e-mail or hard copy respectively to:

environment.bill@daera-ni.gov.uk

Or

Environmental Principles and Governance Discussion
Department of Agriculture, Environment & Rural Affairs
Environmental Policy Division
2nd Floor
Klondyke Building
1, Cromac Avenue
Gasworks Business Park
Belfast
BT7 2JA

Early responses are encouraged but all responses should arrive no later than **5pm on 26 February 2021**. Before you submit your responses please read the “Freedom of Information Act 2000 - Confidentiality of Consultation Responses” section below,

¹⁵ <https://consultations.nidirect.gov.uk/daera-neq/environmental-plans-principles-and-governance-ni>

which gives guidance on the legal position. If you require any further information, contact Alice Bradley on 028 90569317 or by e-mail at: environment.bill@daera-ni.gov.uk

15. Freedom of Information Act 2000 – Confidentiality of Consultations

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

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

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

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

- (a) the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- (b) the Department should not agree to hold information received from third parties 'in confidence' which is not confidential in nature;
- (c) acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

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

Tel: (028) 9027 8757

Email: ni@ico.org.uk

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

ANNEX A - SUMMARY OF QUESTIONS

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>

No.	Question
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>