



Department for

Infrastructure

An Roinn

Bonneagair

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**MEMORANDUM OF UNDERSTANDING BETWEEN
THE DRAINAGE COUNCIL FOR NORTHERN IRELAND
AND
THE DEPARTMENT FOR INFRASTRUCTURE**

June 2020

1. Background

- 1.1 The Department for Infrastructure (DfI) was established on 9 May 2016 and is the sponsor Department for the Drainage Council for Northern Ireland (DCNI).
- 1.2 The Drainage Council is a Non Departmental Public Body (NDPB) with advisory functions which was first established under the Drainage Act (NI) 1947 and reconstituted and expanded under the Drainage (NI) Order 1973.
- 1.3 The Drainage Council, which has a statutory membership of 18, is appointed by the Minister for Infrastructure. Members serve on a voluntary basis. The Secretariat to the Council is provided by Department for Infrastructure (DfI), Rivers Directorate officials.
- 1.4 The Rivers Directorate of the Department for Infrastructure (DfI) is the sponsor Division for the DCNI within the Department (DfI).
- 1.5 The DCNI has been classified by the Office for National Statistics as an Advisory NDPB. The main features and principles of such bodies are set out in, '*Public Bodies - A Guide for Northern Ireland Departments*'. This guidance can be accessed using the following link:-

<https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/public-bodies-guide-07.pdf>

- 1.6 Advisory NDPBs are established by Ministers, or departments, to provide independent expert advice. Advisory bodies fulfill a unique role in public life as they are independent of, but established by, their host departments. It is acknowledged that independent expert advice is key to delivering the value that departments derive from their advisory bodies. Members are appointed as individuals, not as representatives of the academic, business or other organisations for whom they may work.

2. Purpose of Memorandum

- 2.1 The purpose of this Memorandum of Understanding (MoU) is to set out the relationship between the Department for Infrastructure (DfI) and the Drainage Council for Northern Ireland which is a Non Departmental Public Body with advisory functions to the Department.

3. Role of the Drainage Council for Northern Ireland

3.1 The functions, duties and powers of the Drainage Council for Northern Ireland are laid out in Part II, 3.(4) of the Drainage (Northern Ireland) Order 1973 as follows:

- a) after considering such particulars of any watercourses in Northern Ireland as may be submitted to it by the Ministry (currently the Department for Infrastructure) or by any other person, determine which of such watercourses, or portions thereof, are to be treated or, as the case may be, are not to continue to be treated as designated watercourses for the purposes of this Order;
- b) after considering such particulars of any sea defences in Northern Ireland as may be submitted to it by the Ministry determine which of such sea defences, or portions thereof, are to be or, as the case may be, are not to continue to be treated as designated sea defences for the purposes of this Order;
- c) consider the proposals of the Ministry in respect of drainage schemes, and substantial variations suggested by the Ministry in relation to drainage schemes;
- d) consider all bye-laws proposed to be made by the Ministry under Article 22 in respect of the maintenance and efficient operation of drainage works;
- e) consider drainage proposals affecting roads, bridges, culverts and embankments;
- f) consider such matters affecting or affected by drainage questions as may be referred to it by the Ministry or, after consultation with the Ministry, by any other government department.

3.2 The Drainage Council also performs an important role in implementing the requirements of the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

- a) The main aim of the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 is to contribute to the incorporation of environmental considerations for proposed projects.
- b) It is also a requirement of the Regulations that the public are consulted and given an opportunity to participate in the decision making process.
- c) The Drainage Council's role is to examine information presented in Environment Statements prepared by DfI and reach a reasoned conclusion (informed decision) on the significant effects of the drainage scheme on the environment. This reasoned conclusion is included in the decision for approval of a scheme.

3.3 The Drainage Council will produce an Annual Report of its activities for the preceding year. The work programme to be carried out is largely determined and driven by the business of DfI Rivers and proposals brought by DfI Rivers to Drainage Council.

4. Role of the Department for Infrastructure

4.1 Within the Department, Rivers Directorate is the sponsor Division for the DCNI and the primary point of contact for the DCNI in dealing with the sponsor Department. As the sponsor Division, Rivers Directorate will facilitate DCNI in the exercise of its functions by providing an appropriately staffed and resourced Secretariat (see Section 9). The secretariat shall carry out its duties under the management of a senior officer, who shall have primary responsibility for overseeing the activities of the Drainage Council for Northern Ireland.

4.2 Relationship between Rivers Directorate, as sponsor Division and DCNI

4.3 Rivers Directorate will consult with Drainage Council on all relevant issues as identified in the role of the Drainage Council for Northern Ireland (Section 3 above).

4.4 The Drainage Council has an important facilitating as well as scrutiny role which enables DfI Rivers to deliver the Department's drainage and flood defence functions in a uniform manner.

4.5 The Minister of Infrastructure is responsible for the policy and performance of DfI Rivers Directorate charged with drainage and flood defence functions. The Minister is similarly responsible for the appointment and performance of the Drainage Council in meeting its statutory functions.

4.6 Administrative, secretarial and technical support is provided to the Drainage Council by DfI, which also meets the expenses of the Council.

4.7 The relationship between Drainage Council and DfI is one of inter-dependence which allows each to fulfil its distinctive function.

4.8 To facilitate this relationship, Rivers Directorate shall -

- Provide an induction, including Terms and Conditions of Appointment/Code of Conduct for Members and other relevant documentation, to all DCNI members on appointment; and
- Inform DCNI of relevant Executive / government policy in a timely manner and, if necessary, advise on the interpretation of that policy, and issue specific guidance to the DCNI if required.

4.9 Governance and risk management arrangements

As the sponsor Division, Rivers Directorate shall -

- Monitor the DCNI's activities and work programme to be completed which is largely driven by the business of DfI Rivers on a continuing basis;
- Address in a timely manner any significant problems arising in the DCNI,

making such interventions in the affairs of the Drainage Council for Northern Ireland as the sponsor Department judges necessary;

- Carry out a risk assessment of the DCNI's activities on a three year basis in line with the Guidance for NI Departments to inform the sponsor Department's oversight of the Drainage Council for Northern Ireland.
- Carry out an Effectiveness Review once every three years to help support governance arrangements and complement the risk management and assessment process. This process is supplemented by the annual and end of term appraisal of members' and Chair's performance at paragraph 17 below.

5. Appointment to Drainage Council for Northern Ireland

5.1 The Department is responsible for recruitment of members of the Council in line with the guidance in the *Commissioner for Public Appointments Code of Practice for Ministerial Appointments*. The Chairperson and members are formally appointed by the Minister for DfI and the Chairperson and Vice-Chairperson shall be selected by the Council from their membership.

5.2 The Council's membership is set out in legislation (Schedule 1 of the Drainage (Northern Ireland) Order 1973) which provides for it to comprise of ten representatives from Local Councils; two ex-officio members from the Department for Infrastructure; and six specialist members, one each from the drainage, agriculture, fisheries, industry, conservation and tourism sectors.

5.3 Schedule 1 para.1 of the Drainage (Northern Ireland) Order 1973 sets out the constitution of the Drainage Council as follows:

1. The Drainage Council shall consist of eighteen persons appointed by the Minister of whom—
 - (a) ten shall be appointed in accordance with paragraph 2 and shall represent district councils;
 - (b) one shall be an officer of the Ministry, who shall represent drainage and navigational interests;
 - (c) one shall be an officer of the Ministry of Finance nominated by the Minister of Finance;
 - (d) one shall represent agricultural interests;
 - (e) one shall represent fishery interests;
 - (f) two shall be appointed after consultation with the Minister of Commerce (currently the Department for the Economy), one to represent industrial

- interests and one to represent tourist interests;
- (g) one shall be appointed after consultation with the Minister of Development (currently the Department of Agriculture, Environment and Rural Affairs) and shall represent conservation interests;
- (h) one shall be specially qualified to advise on drainage matters.

5.4 Para. 3 of Schedule 1 states that appointments are for a four year term. The Minister for Infrastructure has recently confirmed that the Department will maintain its current policy for public appointments of no reappointment to a second term without open competition.

5.5 Under the *CPANI Code of Practice for Ministerial Public Appointments*, appointments for the same position are restricted to two terms and the maximum period in post must not exceed 10 years.

5.6 Members are appointed as individuals, not as representatives of the academic, business or other organisations for whom they may work.

5.7 DfI has a duty to ensure that vacancies arising, whether during or at the end of the 4 year term, are addressed in accordance with the *CPANI Code of Practice for Ministerial Public Appointments* guidance and in conjunction with the Department's Public Appointments Unit.

5.8 The DfI Secretariat will also ensure that an induction session is included in the first meeting of each new term and to provide similarly for any new appointees arising during the term.

6. Conduct of The Council

6.1 The conduct of the Council shall be in accordance with the *Terms and Conditions of Appointment and Code of Conduct for Members of the DCNI*, enclosed with each member's induction pack.

7. Declaration Of Interests And Conflict Of Interest

7.1 At the beginning of their term Drainage Council members must disclose any potential conflict of interests in a Register of Members' Interests. It is the responsibility of individual members to update the information as necessary throughout the period of their term and to declare a potential conflict of interest should such arise during the transaction of Council business. In line with good practice, declaration of interests and conflict of interest will be included as a standing agenda item at the start of each meeting of Drainage Council.

7.2 Members must have due regard to value for money in relation to their Council decisions. They must at all times act in good faith and in the best interests of the Council. They should not use information gained in the course of their public service for personal gain nor seek to use the opportunity of public service to

promote private interests.

8 Meetings of the Drainage Council

- 8.1 The meetings of the Drainage Council shall be held in such location within Northern Ireland as the Council may determine.
- 8.2 Every meeting of the Drainage Council shall be convened by the Secretary after consultation with the Chairperson.

Notice of Meetings

- 8.3 At least seven calendar clear days before every meeting of the Council a notice specifying the business to be transacted shall be sent by post to every Member of the Council. No business for determination shall be transacted by the Council other than that which appears on the notice.
- 8.4 In case of emergency, a meeting may be summoned without such seven days notice having been given and may be held by video or teleconferencing method if required.

Adjournment of Meetings

- 8.5 The Chairperson shall have power to adjourn the meeting of the Council forthwith, upon a motion for adjournment of the Council being carried by a two-thirds majority of the Members of the Council present and voting.

Selection of Chairperson and Vice Chairperson

- 8.6 The Council shall select a Chairperson and Vice-Chairperson from their membership. If any casual vacancy occurs in the offices of Chairperson and Vice-Chairperson, the Council shall, as soon as is practicable, after the vacancy arises, choose a candidate from their membership to fill the vacancy.
- 8.7 If at any meeting neither the Chairperson nor Vice-Chairperson is present at the time appointed for holding the said meeting, the Members present shall choose by majority vote someone of their membership to be Chairperson of the meeting.
- 8.8 If for any reason the office of Chairperson is vacant or the Chairperson is absent through illness, or for any other reason, the powers of the Chairperson may be exercised and the duties shall be performed by the Vice-Chairperson.
- 8.9 The Vice-Chairperson, while occupying the Chair, may exercise any of the powers and perform any duties which may be exercised by the Chairperson while occupying the Chair.
- 8.10 Any act done by the Vice-Chairperson when acting in place of the Chairperson in pursuance of these Rules shall have the same validity as if it were done by the Chairperson.

Quorum

8.11 No business shall be transacted at any meeting unless five Members are present. If within fifteen minutes after the hour at which the meeting was scheduled to be held less than five Members are present, the meeting shall stand adjourned to such time or date as may be determined by the Members present.

Determination of Drainage Proposals

8.12 Every proposal under consideration for determination by the Council shall be supported by a Proposer and Secunder. The names of the Members proposing and seconding the determination shall be entered in the minutes.

Order of Business

8.13 At all ordinary meetings of the Council the order of business shall, subject to any statutory requirements, be as follows:-

- (1) Declaration of Interests and Conflict of Interest
- (2) The appointment of Chairperson and Vice-Chairperson (as required).
- (3) The Members of the Council having received a copy of the minutes of the last meeting in advance of the meeting, will be invited to confirm whether they accept the minutes as a true record.
- (4) Matters arising out of the Minutes.
- (5) Business remaining from the last meeting (if any).
- (6) Business expressly required by statute to be carried out at the meeting.
- (7) Any correspondence, communication or other business specially brought forward by the Chairperson or Secretary.
- (8) Any presentations of matters of interest to the Drainage Council.
- (9) Any other Business which Members may wish to raise.
- (10) Determination of the date of the next meeting.

The Council may at any meeting vary the order of business so as to give precedence to any business of special urgency.

Order of Debate

- 8.14 Every proposal for determination by the Council shall be introduced by the Chairperson. The Chairperson may invite any of the officials present to provide supplementary information on the proposal under consideration.
- 8.15 Every Business submission under consideration by the Council shall be proposed and seconded before acceptance or rejection by the Council. The names of the Members proposing and seconding the determination shall be entered in the minutes.
- 8.16 A Determination once made and seconded shall not be withdrawn.
- 8.17 A Member of the Council when speaking shall address the Chair.
- 8.18 A Member who speaks shall direct his speech directly to the matter under discussion.
- 8.19 The decision of the Chairperson on points of order under debate shall be final.

9 Provision Of A Secretariat

- 9.1 The Department will ensure that an appropriate Secretariat is provided and maintained to support the work of the Council. The Department will ensure that vacancies arising, whether during or at the end of the 4 year term, are addressed in accordance with the *CPANI Code of Practice for Ministerial Public Appointments* guidance and in conjunction with the Department's Public Appointments Unit.
- 9.2 The Secretariat will also ensure that an induction session is included in the first meeting of each new term and to provide similarly for any new appointees arising during the term.

10. Preparation for Meetings

The Departmental staff acting as secretariat to the Council will ensure that:

- business items such as designation and scheme proposals are quality assured before presentation to Council;
- the business book and agenda for each meeting are circulated to members at least one week in advance;
- where possible, dates and venues for the following 2/3 meetings are set on a rolling basis; and
- that members have access to whatever information they require, including site visits, in order to fulfil their obligations at 3.1 above.

11. Follow-up action to Meetings

The secretariat to the Council will ensure that:

- appropriate and timely follow-up action is taken after each meeting, where necessary, including responses to queries from Council members;
- members' claims for travel expenses incurred in travelling to and from meetings are processed promptly;
- minutes of meetings accurately reflect the business covered and decisions made and a draft set of minutes will be sent to members for their review;
- the minutes are signed by the Chairperson;
- designation proposals accepted by Council are signed by the Secretary; and
- all riparians affected by a Council decision not to designate or de-designate a watercourse are notified of the decision and right of appeal to the Lands Tribunal. They will also be advised of their responsibility for future maintenance of the watercourse.

12. Income And Expenditure

12.1 Positions on the DCNI are not remunerated.

12.2 The DCNI does not control a budget. All expenditure relating to the work of the Council will be controlled and implemented by the sponsor Division of the Department.

12.3 When deciding on a venue for an event, minimising cost should be a key factor. The use of venues which do not incur a cost should be prioritised. Where it is necessary to hire a venue, this must be carried out in line with Departmental procurement procedures.

13. Travel, Subsistence And Expenses

13.1 An allowance for travelling, for attendance at events related to the work of the DCNI, is payable in line with standard civil service rates and arrangements. See the *Terms and Conditions of Appointment and Code of Conduct for Members of the DCNI*.

13.2 Council member expenses, for attendance at council meetings, and attendance at events to officially represent the DCNI, will be confirmed and signed off by the sponsor Division

13.3 Expenses incurred in relation to the care of dependants (for anyone in a caring position) while members are engaged on Council business may be claimed where appropriate. This must be agreed in advance with the sponsor Division.

14 Gifts And Hospitality

14.1 Members will comply with the rules set by the sponsor Department on the acceptance of gifts and hospitality which are in line with current DoF guidance, and as detailed the *Terms and Conditions of Appointment and Code of Conduct for Members of the DCNI*.

14.2 The sponsor Division will make arrangements for the provision of appropriate hospitality for DCNI meetings. The provision of hospitality will be conducted in line with Departmental and Account NI procedures.

15 Freedom Of Information Act 2000

15.1 The DCNI is defined as a public authority for the purposes of Freedom of Information (FOI) as it is listed in Schedule 1, Part IV of the Freedom of Information Act 2000. The Council is therefore responsible for answering FOI / EIR requests it receives in line with the legislation. Responses to FOI / EIR requests will issue directly from the Secretary of the Council. The sponsor Department will offer appropriate advice and support upon request.

15.2 The following guidance should be followed, which applies to NDPBs in relation to the publishing of information <https://ico.org.uk/media/1238/definition-document-northern-ireland-ndpb-and-others.pdf>

16 Records Relating To The DCNI

16.1 As a Non-Departmental Public Body (NDPB) DCNI is subject to the provisions of the General Data Protection Regulations (GDPR). The DCNI Chair and members must ensure they comply with these requirements. The sponsor Department will offer appropriate advice and support upon request.

16.2 In providing a Secretariat service to the DCNI, the Department will retain the information which it holds relating to the Council in accordance with Departmental guidance on GDPR.

16.3 Minutes of meetings, papers presented to DCNI and other relevant documentation will be transferred to the Public Records Office of Northern Ireland (PRONI) in accordance with the DfC Disposal of Records Schedule.

16.4 Members must ensure that all correspondence and documents, including emails, relating to the work of the DCNI are appropriately stored and that access to this material is appropriately restricted.

16.5 On retirement from the DCNI members will be required to either return all papers to the Secretariat for disposal or confirm that they have disposed of all papers in an appropriate manner (e.g. shredding).

17 Reporting Arrangements

Annual appraisal

17.1 An annual appraisal and end of term appraisal of the performance of the members is completed by the Chair of the Council and agreed by each member before being countersigned by the Director of the sponsor Division. The Chair will monitor performance of the members and act on any substandard performance should it occur.

17.2 An annual appraisal and end of term appraisal of the Chair's performance will be completed by the Director of the sponsor Division.

17.3 Appraisal statements will be retained by the Department for audit purposes. In the event that Members apply for another public appointment, DfI may, on request, provide the appointing Department with information relating to member's performance as a member of the DCNI.

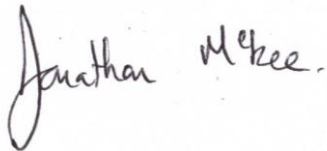
18 Complaints

18.1 Complaints against a member of the Council should be referred to the Chair in the first instance. If not resolved it should then be referred to the sponsor Division. In such circumstances, members can expect to be assessed against the *Terms and Conditions of Appointment and Code of Conduct for Members of the DCNI* and *On Board: A Guide for Board Members of Public Bodies*. This details the principles of corporate governance, roles, responsibilities, financial management and accountability and standards of behaviour.

18.2 Should a member of the DCNI raise a complaint against Departmental staff, this shall be referred to their line manager in the first instance and if the issue cannot be satisfactorily resolved, to the Director of DfI Rivers.

19 Modification Of Agreement

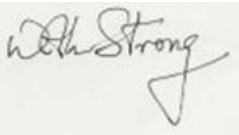
19.1 The agreement will be formally reviewed once every three years in line with Best Practice (NI Code of Good Practice) including the role and remit of the Council.

A handwritten signature in black ink that reads "Jonathan Meek". The signature is written in a cursive style with a large initial 'J'.

Signed by:

On Behalf of the Department for Infrastructure

Date 29/06/20

A handwritten signature in black ink that reads "Keith Strong". The signature is written in a cursive style with a large initial 'K'.

Signed by:

On behalf of the Drainage Council for Northern Ireland

Date: 29/06/20