



**The Environment & Economy in Partnership**  
***21<sup>ST</sup> Century Regulatory Innovation***

**Consultation Paper**

on proposals for an

**Environmental Better Regulation Bill**

**(Integrated Environmental Permitting  
&  
Powers of Entry and Associated Powers)**

**Closing Date 24 July 2013**

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## Foreword

The environment is at the centre of every aspect of life in Northern Ireland. Not only does it supply us with clean air, water, food and a place to live and work; it also supports a wide range of economic activities, and provides opportunities for recreation and for improving our health and well being.

The positive relationship between the environment and the economy is something that I wish to reinforce. They are in partnership, not competition, and businesses with high environmental performances are more successful and more economically sustainable. In difficult economic times, we need to find better ways to manage our rich environment, to realise its full potential and to reduce the regulatory impact on compliant companies.

This consultation is not about more regulation, or deregulation – it is about better and smarter regulation.

My core message is that we intend to build a 21<sup>st</sup> century regulatory system in which responsible businesses are freed from excessive red tape and irresponsible businesses more powerfully and swiftly feel the full force of the law.

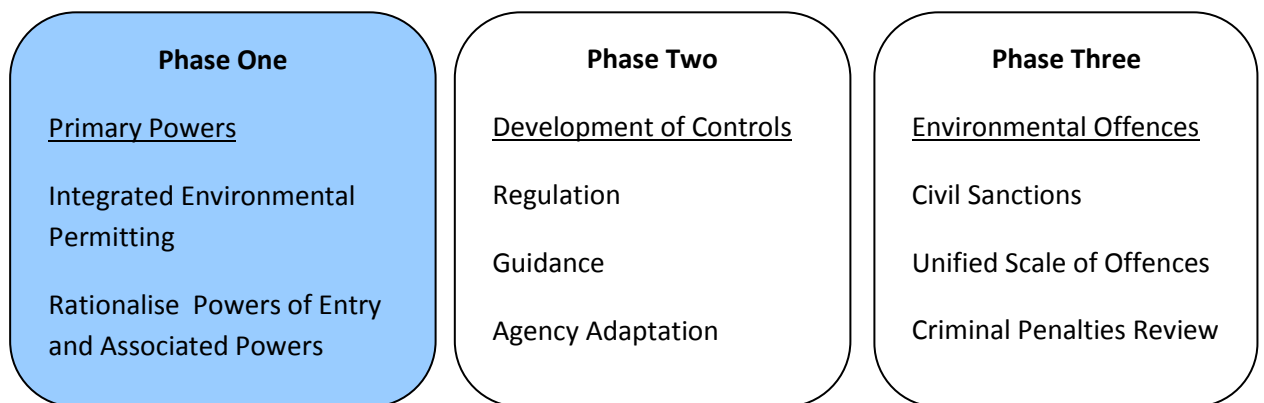
As a result, the measures proposed give better support for businesses to generate wealth and jobs, and afford better protection of the environment. I believe that these proposals will change the way we work together and, by integrating environmental protection and economic growth, make Northern Ireland a world leader.



Minister Attwood

## Summary

1. The Environmental Better Regulation White Paper published by the Department in 2011 outlined a range of proposals to reduce regulatory burdens and sought views from interested parties on those proposals. The feedback supported the 'general direction of travel' as envisaged by the White Paper
2. This consultation builds on the views expressed by stakeholders and provides a framework for a 21st century roadmap to meet today's problems and tomorrow's challenges. The Department believes that partnerships with other organisations are essential for developing and pursuing new ideas, and we are eager to work with all stakeholders who share our goals for achieving environmental results and we look forward to your comments on this consultation.
3. This document sets out proposals in relation to the first of the three phases of the Department's Better Regulation agenda highlighted in the diagram below.



4. This consultation is set within the context of the Department's programme for the transformation of environmental regulation in Northern Ireland. It relates to aspects of the Department's current policy and legislative work programme to be delivered by new Primary Legislation within the lifetime of the current Assembly.
5. It builds on the responses received to the Environmental Better Regulation White Paper (2011). The consultation focuses on proposals for new primary legislation as the first phase of an ambitious programme of regulatory reform. The measures proposed here provide enabling primary legislative powers for:
  - Integrated environmental permitting, and
  - rationalising powers of entry and associated powers

6. They will be followed by the development of new subordinate legislation, supporting measures and guidance, and changes to the way in which the Northern Ireland Environment Agency (NIEA) works with business. Finally, it is our intention to bring forward proposals for additional primary legislation on environmental offences to complement these measures. Further information is contained in Section 3.
7. The document is divided into three sections:

**Section 1** details proposals for an integrated environmental permitting regime to cover all activities currently regulated by NIEA;

**Section 2** proposes a rationalisation of environmental powers of entry and associated powers (inspection and investigation); and

**Section 3** outlines our plans to simplify the currently complex and fragmented scheme of environmental offences. This has been included for information only and does not form part of this current consultation exercise.

### **Section 1: Integrated Environmental Permitting**

8. The Department wishes to create an integrated permitting regime to replace the current array of environmental permits. This is intended to cut red tape for compliant operators and allow greater focus on higher risk activities.
9. The legislation proposed will comply with all relevant European Directive requirements to limit damage to the environment. It will introduce a standardised approach across the spectrum of permit types based on the following principles:
  - a risk-based common permitting hierarchy across all regulated activities;
  - b provision of clear advice and guidance to ensure consistency in regulation;
  - c streamlined application process including standardised online forms;
  - d consistent design of documentation for all permit types; and
  - e personal accountability for permit holders reporting compliance.
10. First, we propose to establish a common permitting regime governing pollution prevention and control, waste, water and radioactivity. Then, we propose to

integrate, where possible, permits issued by NIEA Natural and Built Heritage Directorates and by the Department's Marine Division.

**Section 2: Rationalisation of Powers of Entry and Associated Powers (inspection and investigation)**

11. The Department wishes to rationalise the powers of entry and associated powers currently available to authorised officers in the NIEA and to a lesser extent certain authorised officers in District Councils who carry out environmental inspection and investigation functions.
12. Rationalising the powers of entry and associated powers will reduce the administrative and compliance burden on businesses and regulators by unifying and simplifying the powers of inspection and investigation.
13. The proposals should provide for robust inspections, compliance assessment and investigations.

**Section 3: Environmental Offences**

14. Responses to the White Paper highlighted the need for more prominence for the restoration of environmental damage and to strengthen the response to serious offences and frequent offenders. To address this need the Department is considering how best to simplify and improve the currently complex and fragmented scheme of environmental offences to ensure a more proportionate and flexible system and a stronger system to deal more effectively with the more serious offences.
15. This has been included for information only and does not form part of the consultation exercise.

**Next Steps**

16. The Department will aim to publish its response to this consultation by September 2013. Subject to Executive agreement, the Better Regulation Primary Legislation will be drafted for introduction in the Assembly in 2014.

## How to respond

17. The duration of this consultation is eight weeks with a **closing date for responses of 24 July 2013**. Early responses would be welcome. The Department will be happy to discuss any queries or questions you may have in order to assist your response.

18. Please respond by e-mail to: [better.regulation@doeni.gov.uk](mailto:better.regulation@doeni.gov.uk) , or in writing. For further enquiries please contact:

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19. Information about this publication and further copies are available from the address above. This document is also available on the DOE website and can be made available in other formats. Please contact the Department to discuss your needs.

### **Publication of Responses**

20. In line with the Department's policy of openness, at the end of the consultation period copies of the responses received may be made publicly available, upon request, from the Department. The information they contain may also be published in a summary of responses.
21. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response please read the paragraphs below on the confidentiality of consultations which provide guidance on the legal position concerning any information provided by you in response to this consultation.
22. If you do not consent to this, you must clearly request that your response is treated confidentially. Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request. You should also be aware that there may be circumstances in which the Department will be required to communicate information to third parties on request, in order to

comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

### **Freedom of Information Act 2000**

23. The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority, in this case, the Department. This right of access to information includes information provided in response to a consultation exercise. The Department cannot automatically consider as confidential information supplied to it in the course of a consultation exercise. However, the Department does have a 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.
24. This means that information provided by you in response to this consultation will not be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:
25. 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
26. The Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature
27. Acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.
28. For further information about confidentiality of responses please contact the Information Commissioner's Office (**see website at: [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)**)

### **Human Rights Issues**

29. The Human Rights Act 1998 implements the European Convention on Human Rights. The 1998 Act makes it unlawful for any public authority to act in a way that is incompatible with these rights. We believe that the proposals in this consultation document are compatible with the Human Rights Act, but would welcome any views that you might have.
30. The Department believes that its proposals are fully compliant with the European Convention on Human Rights. The Human Rights Commission will



receive copies of this consultation document as part of the consultation exercise. We will take into account any comments that the Commission might have.

### **Comments or complaints:**

31. Should you have any comments or complaints about the consultation process (as opposed to the subject of this consultation), please contact:

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## Introduction

32. This document sets out the Department's proposals for enabling primary legislation to help simplify and streamline regulatory activities.
33. This consultation is focussed on the first phase of measures outlined in the diagram below. Accordingly, the questions posed and comments sought relate to these proposals. Phases Two and Three have been highlighted to give you an indication of the Department's forward work programme in relation to Better Regulation.



34. The document is split into three sections. **Section 1** details the proposals to create an integrated environmental permitting regime. **Section 2** describes proposals to rationalise the powers of entry and associated powers to provide a more joined up approach to regulatory activities.
35. **Section 3** outlines the Department's parallel programme of work concerning environmental offences. This section has been included for information only and does not form part of the current consultation exercise.
36. The proposals are grounded in our notion of what a 21<sup>st</sup> century regulatory system needs to achieve.
37. First and foremost, it needs to get all businesses and other regulated entities in full compliance with environmental laws. This is the basic responsibility of a regulatory system. In addition, a sophisticated regulatory system will help visionary businesses to move beyond and compliance limits and identify innovations that help them further reduce their environmental impact in ways that increase their profitability.
38. Accordingly, our proposals will ensure that those who
- **deliberately breach** environmental laws will find regulation to be powerful, expensive and swift (the worst performers);

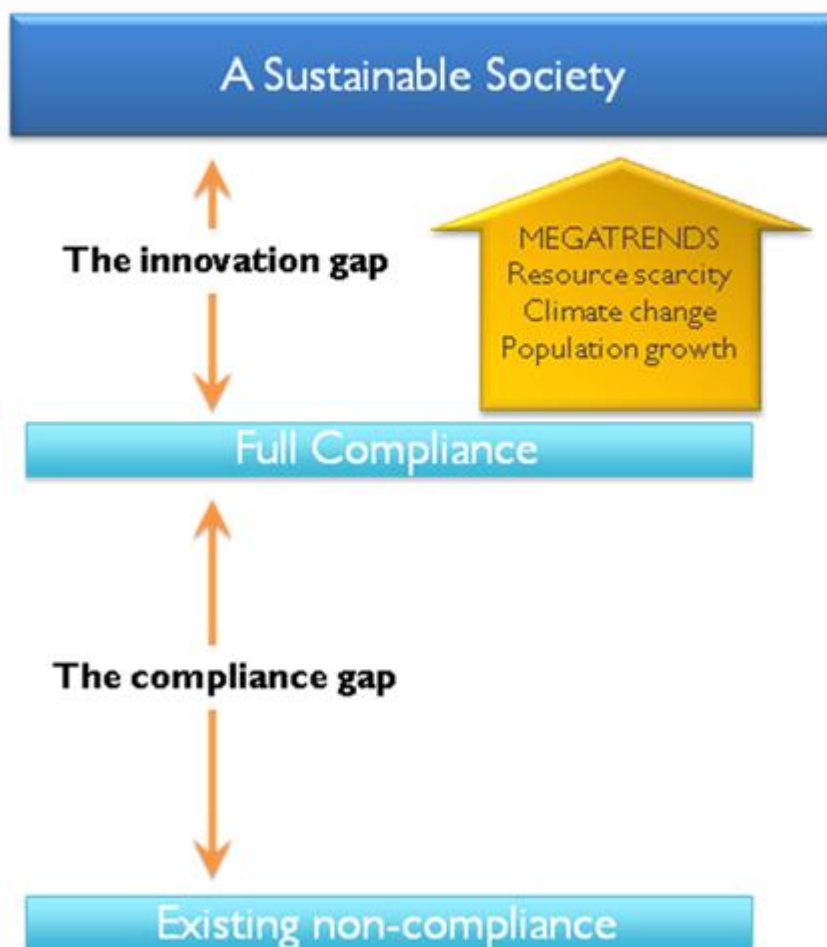
- **occasionally breach** environmental laws through lack of understanding or capacity will find regulation to be supportive and effective in bringing them into compliance (the middle performers);

- regularly comply with environmental laws will find regulation to be cheap, quick and easy (the best performers); and

- want to go '**beyond compliance**' to unlock economic opportunities through business innovation will be supported and encouraged (the visionary).

39. An integrated permitting regime will make it much easier for regulated businesses to understand their compliance requirements, easier for NIEA to assess and enforce compliance and easier for the community to hold both NIEA and regulated businesses to account. Such an approach will provide greater efficiency, effectiveness and fairness. This will enable businesses to thrive and grow in ways which protect and enhance the environment.

### 21<sup>st</sup> Century Regulatory Innovation



40. Businesses and regulators operate in a legislative environment where powers of entry and associated powers (inspection and investigation) are scattered throughout various pieces of legislation. In reality for businesses this means that, for example, those which have activities regulated by more than one set of environmental regulations can expect to be visited by more than one inspector, each interested solely in their respective specialised area. Rationalising the powers of entry and associated powers will reduce the administrative and compliance burden on businesses and regulators by unifying and simplifying the powers of inspection and investigation.
41. These proposals will affect all businesses undertaking regulated activities under environmental legislation and the regulators of environmental legislation in NIEA, Marine Division and District Councils.

# Section 1: Integrated Environmental permitting

## Current Regulatory Framework

42. One of the main ways in which the environment is protected in Northern Ireland is through environmental permits. These permits are an integral tool in the Department's approach to controlling and minimising the impact of certain activities on the environment.
43. The NIEA's current permitting arrangements fall under a range of separate regulatory regimes which are governed by over forty pieces of primary and subordinate legislation. These regimes have developed individually over the years and the procedures, terminology and regulatory tools used across them vary considerably. This largely reflects the approach taken by Europe in relation to environmental legislation which had, until the Integrated Pollution Prevention and Control Directive, always been on a single media basis e.g. waste, water, air etc.
44. The current system of environmental regulation therefore lacks coherence and integration and the NIEA's service delivery remains largely characterised by regulatory teams operating under separate regimes and charging schemes. A business survey conducted by the NIEA in 2011 has shown that only 30% of customers requiring a permit needed just one permit with the rest requiring two or more permits. This means that the majority of those requiring a permit currently have to deal with multiple NIEA permits and contacts.
45. In order to address these issues, the Department is proposing to create an integrated environmental permitting regime that will assist the NIEA to deliver a more efficient service. This service will be outcome-focused and will better protect the environment and contribute to the development of a prosperous economy.
46. Such a regime, with a single set of procedures, would simplify NIEA's existing permitting and compliance control regimes, allow the NIEA to focus resources on medium to high risk activities and cut the burden of unnecessary red tape for businesses.
47. It is envisaged that this new integrated permitting regime will become the core of a new regulatory framework, aligned to the principles of Better Regulation, from which the NIEA's advice, support, compliance and enforcement activities are derived.

## Proposed Integrated Environmental Permitting Regime

48. The proposed integrated permitting regime will allow the Department to work towards being able to issue an integrated permit that, where possible, covers all environmental controls that relate to the activities being undertaken at a site. Complete integration may not be possible in all cases due to, amongst other things, the specific requirements of some of the relevant European Directives and legislation that applies at UK level.
49. When comparing how other countries have integrated their approach to environmental regulation, it is important to recognise that responsibility for environmental protection, conserving biodiversity and the built heritage often rests with a number of separate bodies. The NIEA is set apart from other environment agencies in that it has responsibility for all of these functions and is well placed to take an all-round approach to environmental management. This provides an opportunity for Northern Ireland to operate a far more integrated regime than most other jurisdictions. The scale and profile of businesses also vary from country to country and therefore some regimes will not work in our context. Northern Ireland's revised regime will be tailored so that it provides an effective and efficient mechanism for protecting the environment that supports the delivery of growth and prosperity.
50. The Department would like to integrate, as far as possible, all of the permitting regimes currently operated by the three operational Directorates within NIEA i.e. Environmental Protection, Natural Heritage and Built Heritage, and permits issued by the Department's Marine Division. This will require substantial policy development, major legislative reform and will involve significant changes in working practices for the Department and for business. In order to make the task more manageable and the transition from the existing permitting regimes to the new regime as easy as possible for all concerned, the Department is proposing to develop an integrated permitting framework and then phase in the introduction of existing regimes.
51. It is essential that the new integrated permitting regime complies with European legislative requirements and provides effective controls to manage impacts and ensures good environmental outcomes. In addition, the Department will seek to ensure that it:
  - facilitates the streamlining of administrative processes for businesses;
  - provides consistency across all activities currently regulated;
  - provides opportunities for joined up decisions and the introduction of an integrated environmental permit;

- makes obligations clearer and simpler to understand; and
  - simplifies the legislative framework and provides a platform on which to build future regulations as required.
52. The intention is that the first phase will seek to integrate the permits currently issued by the NIEA's Environmental Protection Directorate i.e. those governing pollution prevention and control, waste, water and radioactivity. This will cover approximately 86% of all authorisations issued by NIEA. It will also cover those authorisations which are most likely to be required together. For example, 29% of those who responded to the NIEA's business survey required a waste management licence/exemption and registration as a waste carrier, and 17% required a waste management licence/exemption and a water discharge consent.
53. Further phases will be undertaken to integrate, where possible, permits issued by the Natural and Built Heritage Directorates, and by Marine Division. The Department will engage with stakeholders throughout the development of the new regime to ensure that the best possible outcome is achieved.

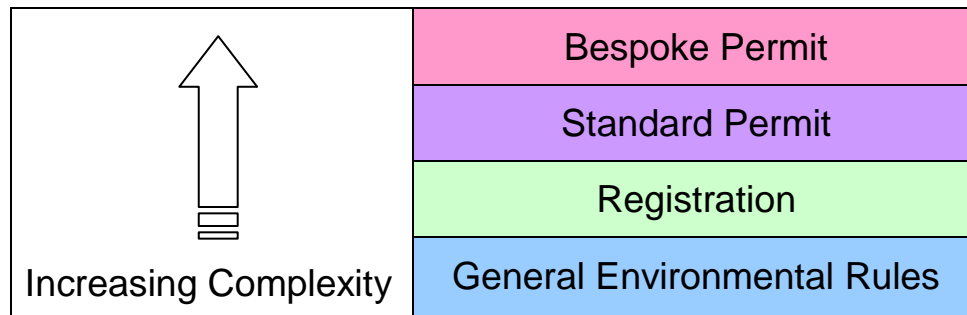
- Q1** What are your views on the introduction of an integrated environmental permitting regime in Northern Ireland? (Please give reasons for your answer).
- Q2** What particular issues do you think the Department should take into account when developing its approach to integrated environmental permitting?
- Q3** What do you think are the problems with the current procedures which could be addressed by a new integrated permitting regime?

## Features of the integrated permitting regime

54. The integrated permitting regime will be based on the following principles:
- A common permitting hierarchy
  - Consistent advice and guidance
  - A streamlined application process
  - Documents with clear conditions and compliance requirements

## The Common Permitting Hierarchy

55. The proposed common permitting hierarchy is as follows:



56. Adopting this hierarchy will allow NIEA to take a consistent risk-based approach. The level of regulation will vary depending on the potential environmental harm that can be caused by the activity. Failure to comply with the relevant level of environmental control will result in a proportionate enforcement response.
57. **General Environmental Rules** are the simplest form of control. They are intended to control low risk activities and recognise that every organisation has a basic responsibility towards the environment. They will consist of activity-specific rules or conditions set out in legislation or in rules developed by the Department under a procedure set out in the legislation. For example, less than 170kg/N/ha/year of Nitrogen from livestock manure can be applied to land on all farms. The activity would need to be carried out in accordance with the rules/conditions but the operator would not be required to notify the NIEA.
58. **Registration** would be used to control low risk activities but where there is a risk of cumulative impacts e.g. application for Nitrates Derogation. The activities would be registered against a standard set of conditions and as in the case of General Environmental Rules, the conditions would be set in legislation or in rules developed by the Department. Operators would be required to notify NIEA that they are undertaking the activity but registration would be a very light touch form of control and would have very simple procedural requirements. Operators undertaking these activities would not normally be subject to active regulation but NIEA might carry out periodic targeted inspections or campaigns.
59. **Standard Permits** would be used to regulate activities which are more complex and higher risk than those which would only require registration but which vary little across a particular sector e.g. water discharge consent. They would consist of a written document which authorises an environmental activity to be carried out subject to a common set of published conditions. Operators wishing to apply for a standard permit would be subject to the full



regulatory process including application and subsistence fees, inspections and the requirement to notify the NIEA of variations in their activity or business.

60. **Bespoke Permits** would apply to more complex and high risk activities where the conditions of the permit are tailored to the specific regulated site e.g. to operate a landfill. This could be applicable where the activity is high risk, multiple activities are being undertaken on a particular site, or where a site is located in or in close proximity to a site designated for conservation. The conditions that are set in a Bespoke Permit would take into account current environmental conditions and cumulative effects.

**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?**

61. The Department is proposing that the permitting hierarchy will be set out in legislation and that the thresholds which determine where an activity is positioned on the hierarchy will be published in guidance issued by the NIEA. Adopting this system will give the NIEA flexibility to adjust thresholds in response to new evidence and improved scientific understanding of environmental outcomes.
62. The thresholds will be determined by the existing requirements of European directives and a risk assessment exercise that will be undertaken by NIEA. In this exercise NIEA will rank all of the activities it regulates and consider the complexity of the authorisation that is required to manage each type of activity. The location of each activity within the permitting hierarchy will be set following a future public consultation exercise and further public consultations would be initiated if thresholds are reviewed.

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

**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?**

## Advice and guidance

63. With the existing regimes, businesses are, on occasions, unaware that permission is required and when they do apply, there may be insufficient detail in the application. This prolongs the application process and puts an administrative burden on both the business and the regulator.
64. The Department intends to provide clear and unambiguous advice and guidance to make it easier for an applicant to 'get it right the first time'. It is also intended that applicants will be encouraged to, and for some activities required to, participate in pre-application discussions.
65. The Department recognises that this is a significant change in legislation and will develop information and guidance for businesses and regulators to support the introduction of the new permitting regime. Training will be required so staff can drive these improved processes and provide appropriate support to businesses.

## Streamlined application process

66. We recognise that applicants want a single application that covers all aspects of the activity they undertake and a straightforward set of rules that meets any relevant European Directive requirements. The Department is aiming to standardise the application process for all types of permits and this will include further development of systems for online applications. There will be variations in the application process because of the requirements of the Directives governing some activities, but where possible, a standard set of principles will be adopted.
67. We will consider a new approach to how NIEA manages land-use planning consultations to reduce complexity and duplication, in particular with those related to permits.
68. The introduction of integrated permitting will simplify the application and decision-making process and the Department will look for opportunities to reduce turnaround times for decisions.

## Standardising Permits

69. As far as possible, the Department aims to standardise documents for all types of permits. There will be variations because of certain European regulatory requirements but the aim will be to develop permit documents that are easily understood and remove any uncertainty. This will help businesses understand what they must do to comply with the permit and help inspectors assess compliance and undertake enforcement action against non-compliant businesses.

70. Types of information that are being considered for inclusion in permit documents include:

- A named individual who is personally accountable for certifying that compliance has happened e.g. the Chief Executive Officer
- A map illustrating the geographic extent of the permit
- Conditions of the permit
- List of relevant guidance documents
- Self monitoring requirements
- Requirements for compliance and performance reporting e.g completion of an annual performance statement and for incidents that require immediate action or urgent investigation, a requirement to notify NIEA immediately of non-compliance.

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

## Other Potential Features of the Proposed Integrated Permitting Regime

### Corporate permits and accredited permits

71. The Department will look at opportunities to adopt more innovative approaches to permits. This may include the possibility of issuing corporate permits which would give businesses with multiple sites an opportunity to combine their site permits into a single corporate permit.
72. Corporate permits would seek to streamline compliance conditions into a single, easy to understand permit document. This would provide businesses with a consolidated understanding of their environmental requirements; reduce administrative burden and potentially simplify compliance reporting into a single performance statement.

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

73. The Department will also seek to recognise positive environmental performance and company compliance management systems by way of accredited permits. These could be independently audited by an approved, suitably qualified third party, and could benefit businesses by reducing inspection frequencies and charges. Businesses may also be publicly recognised as good environmental performers. NIEA is currently participating in research projects relating to third party auditing and further research will be required on this and the development of corporate permits before options are fully explored and developed. This will be covered in future consultations.

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

### **Business Prosperity Commitments**

74. Permit holders may be given an opportunity to make voluntary prosperity commitments which will help them to meet their market aims. This is commonly referred to as 'going beyond compliance' and gives the business an opportunity to focus on long-term business prosperity, market opportunities and improved environmental performance in a way that will make the business more resilient and efficient. The information in these commitments could be taken into consideration by NIEA as part of its operational risk assessment process. For example, a business could voluntarily put in place an environmental management system and this could be taken into account when determining inspection frequencies.

**Q10 What are your views on introducing business prosperity commitments?**

## Section 2: Powers of Entry & Associated Powers (Inspection and Investigation)

### Current Regulatory Framework

75. At present Northern Ireland environmental regulators operate under some 230 pieces of environmental legislation, with around 50 of these providing discrete powers for investigation and inspection in respect of environmental compliance and offences. This is a complex and unwieldy legislative landscape which is difficult for the business community and regulators to understand and implement. It is understandable how such a complex legal landscape may also have associated implications for businesses e.g. additional costs.
76. NIEA is organised into teams that focus on a particular regulation or group of regulations and therefore businesses may be visited by inspectors from more than one team. This situation is further compounded in circumstances where environmental legislation has imposed responsibility jointly on District Councils and the NIEA.
77. Some NIEA teams have identified areas of overlap and have introduced co-ordinated working practices that will make inspections more efficient. The legislative changes that are proposed in this Bill will provide opportunities to further develop and optimise the integration of inspections.

### What are Powers of Entry and Associated Powers?

78. The powers of entry allow an authorised person to enter into a private dwelling, business premises, land or vehicles or a combination of these for defined purposes.
79. Powers of entry often have associated powers attached to them to allow officials to conduct actions whilst on premises in relation to the premises or any persons found on the premises. Typically such provisions include powers to inspect, search, seize, survey, collect and retain evidence as part of a compliance inspection or to investigate a suspected offence. There are also many variants in other powers of entry and associated powers to investigate offending.
80. Existing environmental legislation confers on regulators a broad range of inspection and investigatory powers, for example:
  - Powers of entry (emergency and routine);

- Power to stop and search (people and vehicles);
- Powers to gather evidence; and
- Powers to seize and retain documents, records, vehicles;

81. These powers are listed across a broad range of, both primary and subordinate (secondary) environmental legislation.

## **Proposals for rationalising powers of entry and associated powers**

82. The introduction of new enabling powers will allow the Department to consider and bring forward subordinate legislation to rationalise the current legislative powers of entry and associated powers (environmental inspection and investigation).

83. The effect of such legislation could, for example:

- Consolidate, harmonise and simplify the current powers of inspection and investigation making it easier for all parties to understand and follow;
- Ensure authorised officers have a full range of powers enabling them to inspect and investigate all activities covered by environmental legislation; and

84. Our aim is to bring forward a much less burdensome and more effective inspection and investigation regime in keeping with the key principles of Better Regulation:

- Proportionality - matching inspection and investigation powers to the likely risks or to actual harm to the environment and human health;
- Accountability – the regulator in every case must be accountable for actions taken;
- Consistency – regulators must take a similar approach in similar circumstances to achieve similar ends;
- Transparency – regulators must operate in an open and transparent manner; and
- Targeting – inspection and investigation powers must be directed primarily at those whose activities cause or pose a risk of serious environmental damage.

85. It is proposed that the Bill will enable the Department to:
- (a) **Remove powers of entry and associated powers** which it considers to be unnecessary or inappropriate;
  - (b) **Add safeguards to powers of entry and associated powers** - this would enable the Department to introduce, where necessary, safeguards for businesses and individuals in relation to any power of entry or associated powers. This may include for example restrictions as to premises over which a power of entry may be exercised or the times at which such powers may be exercised.
  - (c) **Change powers of entry and associated powers** - this would enable the Department to rewrite or modify any power of entry, associated power or any part of any such power. The Department could for example unify, harmonise and streamline existing powers of entry and associated powers to make them more effective for regulators and less burdensome for businesses. At the same time allowance could be made for consideration of important matters concerning safeguards for businesses and individuals.
86. It is also proposed that the Bill should require the Department to consult with key interests before modifying any power of entry or associated powers.
87. In addition it is proposed that the Department should prepare guidance about the exercise of powers of entry and associated powers. The guidance should set out considerations that would apply before, during and after powers of entry and associated powers are exercised. The purpose of such guidance should be to ensure greater consistency in the exercise of powers of entry and greater clarity for businesses affected by those powers. It will clarify the regulator's actions in respect of both compliance inspection and investigation of suspected offences.

**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)?**

**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?**

**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?**

**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.**

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



## Section 3: Environmental Offences

88. In order to regulate effectively, we need a range of proportionate and flexible enforcement options that focus on securing compliance in the most effective and appropriate way. The objective is to build on our current commitments to environmental outcomes being at the core of our enforcement decision-making. This will involve directing our activities to offer more support to compliant businesses, while ensuring that criminal activities are more effectively disrupted and deterred.
89. The Department's Environmental Better Regulation White Paper 2011 identified a number of problems with the Department's current approach to dealing with environmental offences including:
- Variation of criminal penalties across the existing environmental legislation;
  - Confusion and lack of clarity within the business community due to the amount and complexity of existing legislation;
  - The need to give more prominence to restoration of environmental damage; and
  - The need to strengthen the response to serious offences and frequent offenders.
90. The White Paper laid the foundations for legislative change to address these concerns and proposed:
- Introducing administrative penalties and sanctions to increase flexibility in regulatory responses and reduce regulatory burden; and
  - Reforms to criminal sanctions to address existing loopholes and strengthen the law to deal more effectively with more serious offences.
91. The Department has continued to engage with stakeholders, research international experiences of implementing similar objectives and review its approach to dealing with environmental offences and consequently is now proposing a more comprehensive legislative reform.

## Planning the way ahead – new Environmental Offences Primary Legislation

92. The Department is initiating a programme of policy development work that will run in parallel with its proposals for integrated permitting and to rationalise powers of entry and associated powers.

This programme will explore:

- **Consolidating** as many environmental offences as possible into new legislation;
  - Creating a stable platform for the **introduction of administrative sanctions** in an integrated framework of offences, thereby illustrating their role and relationship with criminal sanctions in the clearest possible terms;
  - Repairing **loopholes and inconsistencies** between different operational regimes (For example, water, waste, built heritage, natural heritage);
  - Re-casting all offences into a clear **hierarchy** to create an integrated spectrum of enforcement responses, encompassing both administrative (administered by NIEA directly, rather than the Courts, for lesser offences) and criminal sanctions; and
  - Exploring methods of measuring the appropriate levels of enforcement response.
93. This is clearly a complex and challenging task which will require further extensive exploration as proposals are developed and will therefore be the subject of a specific detailed consultation exercise in due course. However please let us know if you have any early views on the information contained in Section 3.

# Summary of 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).
- Q2 What particular issues do you think the Department should take into account when developing its approach to integrated environmental permitting?
- Q3 What do you think are the problems with the current procedures which could be addressed by a new integrated permitting regime?
- 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?
- Q5 What are your views on NIEA adopting the flexibility of having rules and thresholds set in guidance rather than legislation?
- 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?
- Q7 What are your views on the proposal to streamline compliance conditions into a single, easy to understand environmental permit document?
- Q8 What would the benefits be if NIEA introduced corporate permits? Can you see any disadvantages?
- Q9 What are your views on the introduction of accredited permits?
- Q10 What are your views on introducing business prosperity commitments?

## 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)?
- 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?

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

## Annex A: Impact Assessments

### Impact Assessments

#### (a) Equality Issues

Under section 75 of the Northern Ireland Act 1998, public authorities have a statutory duty to promote equality of opportunity. We have completed an equality screening of the proposals and have concluded that they do not impact on equality of opportunity on any of the groups specified in Section 75. A full screening paper will be posted on the DOE Equality Unit website. The Equality Commission will receive copies of this consultation document as part of the consultation exercise. We will take into account any comments that the Commission might have.

#### (b) Rural Proofing

Rural proofing is a process to ensure that all relevant Government policies are examined carefully and objectively to determine whether or not they impact differently in rural areas to elsewhere. If it transpires that a policy, if implemented, is likely to impact detrimentally on a rural area, that policy will be re examined to explore what adjustments might be made to reflect the needs of the rural community. The Department considers that there are no Rural Proofing issues.

#### (c) Regulatory Impact Assessment

It is our view that the proposals outlined in Parts A and B should bring about reduced costs to business, better Departmental resource allocation and therefore more effective and efficient environmental protection. The Department will be developing a regulatory impact assessment to accompany the planned forthcoming consultation exercise on the actual draft of the enabling Bill (the issue of such a consultation exercise will be subject to Executive agreement).

**The Department would welcome any early comments you may have on any issues concerning costs which may arise as a result of the proposals.**

**If you wish to comment on any of the impact aspects referred to above please state whether your comments are in relation to integrated permitting, powers of entry and associated powers or both proposals.**

## Annex B: List of Consultees

arc21

Arena Network Belfast

Belfast Regeneration Office

British Library

Bryson Charitable Group

Catholic Bishops of NI

CEFNI

Chartered Inst of Environmental Health NI

Chartered Inst of Wastes Management NI

Civil Law Reform Division

Community Relations Council

Confederation of British Industry NI

Conservation Volunteers NI

Council for Nature Conversation and the Countryside

District Councils

District Judge – Magistrates' Court

Education & Library Boards

Environment Committee NI Assembly

Environmental Health Group

Environmental Law Foundation

Environmental Protection UK

Equality Commission for NI

Equality Forum NI

Executive Council of the Inn of Court of NI

Federation of Small Businesses NI  
Food Standards Agency NI  
Friends of the Earth  
General Consumer Council NI  
HM Council of County Court Judges  
HMRC  
Human Rights Commission  
Institute of Directors  
Lands Tribunal  
Law Centre NI  
Law Society of NI  
Local Government Technical Advisors Group  
MLAs  
Mourne Heritage Trust  
National Library  
National Trust  
NIC/ICTU  
NIPAK  
NIPSA  
North/South Ministerial Council  
NWRWGMG  
NI Association of Citizen's Advice Bureaux  
NI Chamber of Commerce & Industry  
NI Chief Environmental Health Officer's Group  
NI Council for Voluntary Action  
NI Court Service  
NIEL

NIEA

NI Food & Drinks Association

NI Government Departments

NI Judicial Appointments Commission

NI Law Commission

NILGA

NI MEPs

NI Ombudsman

NI Political Parties

NITB

Participation & the Practice of Rights Project

PSNI

OLC

QPANI

QUB, Law School

Royal Commission on Environmental Pollution

RSPB

Royal Society for Public Health

Society of Local Authority Chief Executives

SWaMP2008

Sustainable NI

UFU

Ulster Wildlife Trust

University of Ulster Law School

Woodland Trust NI