

ENVIRONMENTAL BETTER REGULATION BILL

CONSULTATION RESPONSE

This consultation response is provided on behalf of the Environmental and Planning Law Association of Northern Ireland (EPLANI), a registered charity that aims to promote understanding of environment and planning law in Northern Ireland. Its membership comprises of planning and environmental professionals in the private and public sectors along with students and members of the public with an interest in planning and environmental matters.

EPLANI very much welcomes this consultation and the proposals put forward. Environmental permitting is still seen as a barrier to development and innovation in Northern Ireland and we would welcome the increased transparency and reduction in administrative burden that an integrated permitting regime should provide. We look forward to the development of more detailed proposals and the opportunity to comment on those once published in draft form.

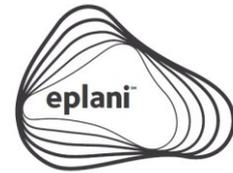
Integrated Environmental Permitting

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

EPLANI considers this a positive move that should provide for a streamlined and less complex and bureaucratic system that should reflect many of the benefits of the single permitting system seen in England. In particular EPLANI would like to see a system that allows for rapid business development and innovation but that also achieves and retains strong environmental protection principles.

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

EPLANI would question whether integration of permits across the three Directorates would ultimately be effective or desirable, if this is the intention ultimately. The Directorates are potentially too diverse in function and attempts at unification creates the risk of a lack of robust enforcement and monitoring. Alternatively the unified permit may become only that in name and from a structural/enforcement perspective it may not be possible to make the system more efficient if the breadth of issues that an allocated site inspector is required to review is too wide, leading to over-dependence on central experts. It is reasonable in



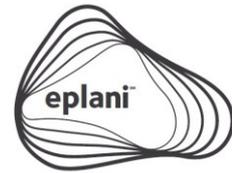
principle to seek to unify permitting, for example in relation to PPC, waste regulation and water discharges, but it is difficult to see where the advantages or true efficiencies may arise in incorporating, for example, Built Heritage into such permits.

A critical factor in any integrated permitting regime is certainty, particularly in relation to timelines. Businesses that must make important investment and strategic decisions over the next few years need to be able to understand likely timelines for the implementation of the proposed legislation and transitional arrangements. The “Better Regulation” policy drive has been in place within the NIEA for over 5 years and progress has been slow and uncertain. The move towards single permitting requires clear timescales and a very transparent process that moves beyond simply enacting primary legislation. There are many examples of radical legislative changes that have stalled at the primary legislation stage, for example Part III of the Waste and Contaminated Land Order (NI) 1997 or the 2011 Planning Act which have not been implemented by the necessary secondary legislation. Businesses need a clear road map of how and when this legislation will be implemented along with the necessary guidance.

It is also critical that the interaction between permitting and the development control regime is clearly set out in both permitting guidance and planning policy as this will be critical to delivering a planning system that is robust and fit for purpose. At present delays frequently occur in obtaining planning consent for regulated businesses where it is unclear what level of information is required for the planning application and any subsequent environmental permit. New clear guidance and policy should be developed between the NIEA and DOE Planning (and subsequently local councils) in relation to the interaction of the two consent processes.

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

- Numerous pieces of primary and secondary legislation along with amending legislation make it difficult and complex for businesses to understand their statutory obligations.
- Multiple enforcement and monitoring teams within the NIEA which often do not provide consistent messages and lead to uncertainty. We have come across many examples where licensing teams have been prepared to take a more pragmatic/commercial approach to businesses achieving compliance which have been overridden by an excessively prescriptive (and willing to prosecute) Environmental Crime team.
- Multiple appeal mechanisms, or in other cases for example for exemptions from waste management licensing, no appeal mechanisms.



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?

EPLANI supports the development of a common permitting hierarchy. It is difficult at this stage to comment more fully until further detail is provided on the types of activities likely to fall into each category. Clearly the primary factor that must be considered is risk to the environment and those activities that present the greater risk should be subject to more detailed and rigorous permitting requirements.

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

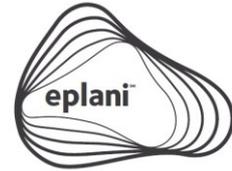
EPLANI would welcome this proposal provided that the rules/thresholds were not so flexible as to create uncertainty for businesses if there was a risk that those rules/thresholds could be amended with little warning or consultation.

This must also be balanced against the ability of the rules and thresholds to be adapted where novel techniques are introduced and a regular review mechanism should be available which would allow for industry/process specific changes to be made relatively quickly. This would provide for new processes/techniques to be adopted rapidly to encourage innovation whilst retaining the necessary levels of environmental protection. A comparable example could be the mechanisms available at EU level for example in relation to exemptions from the RoHS Directive for specific applications of substances otherwise restricted where it can be demonstrated that environmental risk is minimised, balanced against the commercial necessity of retaining the application.

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?

Relevant criteria should include;

- Risk to the environment
- Proximity to protected sites/areas/species
- WFD catchment and water body condition & status
- Size/scale of the operation
- Complexity of processes
- Well established processes/techniques v novel processes
- Demonstration projects/research



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

EPLANI fully supports this approach and this would have particular benefits for more low-risk operations.

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

Again EPLANI supports this approach provided that it is backed up by consistent enforcement/monitoring across multiple sites.

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

EPLANI fully supports this approach and looks forward to further detailed proposals of how this might operate.

Q10 What are your views on introducing business prosperity commitments?

EPLANI would support the concept in principle subject to further detail.

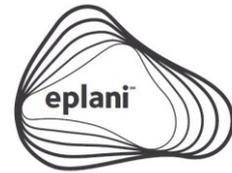
Powers of Entry & Associated Powers

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)?

EPLANI supports this approach in principle. However there is a risk that rationalisation of inspection and inspectors may lead to ineffective inspection and regulation if individuals are required to cover a very large inspection remit (see also the response to Q2 above). EPLANI understands that the NIEA would also rely on experts in specific areas of regulation to back up and support inspectors which would work in principle but it is important that any such "back-up" is properly resourced to allow issues to be dealt with rapidly.

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

This would be very helpful as at present there is a lack of transparency on this issue.



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?

All such powers of entry and inspection require legislative support in order for them to be effective and enforceable.

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

EPLANI agrees with this point. Enforcement and inspection officers require strong statutory backing to their powers of entry and inspection to allow effective monitoring and enforcement. For example the entry and inspection powers in relation to waste have recently been reinforced and it would be counterproductive to see any weakening of such powers.

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

No further comments.

EPLANI

24 July 2013