

SOCIETY FOR THE ENVIRONMENT RESPONSE TO THE DISCUSSION  
DOCUMENT ON ENVIRONMENTAL GOVERNANCE IN NORTHERN IRELAND  
*ISSUED BY THE DoENI NOVEMBER 2015*

## Summary

1. The Society for the Environment<sup>1</sup> welcomes the opportunity of contributing its knowledge to the future of the environment and in particular to the broader issue of the future of natural resources in Northern Ireland and believes that it can add value to the responses to the Consultation Document.
2. We would recommend Northern Ireland adopted option C as the most beneficial solution to Environmental Challenges currently faced. This paper provides the detailed explanation behind our recommendation along with an evaluation of other options proposed.
3. The Society would be pleased to further explain any of the details covered within our response. Please contact Dr Emma Wilcox, CEO in the first instance.  
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## General Comments on the Thrust of the Consultation

4. The Consultation Document is well written and recognises the fact that there has been a long history of consideration of the pros and cons of creating an independent environmental regulator in Northern Ireland. But the Society is of an opinion that the issues underlying the Consultation, relating to the broader issue of environmental governance as a whole, can be examined more in more depth and more extensively. In doing so it will use the more recent experiences of the creation of Natural Resources Wales, which is only referred to briefly in the Document.
5. Several issues are conflated in the Document. The first is the value of independent Arm's Length Bodies in delivering a sustainable environment; the second is extent of the 'length of the arms', the third is the scope and purpose of the organisation - the broadness which

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1. <sup>1</sup> The Society of the Environment is a confederation of 24 professional bodies with relevant interest in the sustainable management of the environment, which together have over 4,000,000 members, of whom several hundred serve in Northern Ireland. It seeks to bring coherence of approach between the environmental bodies particularly in the pursuit of virtuosity in the standards of personal performance. To that end it has a Royal Charter which enables it to oversee the award of status of Chartered Environmentalist, of which there are over 7000, many of which are in Northern Ireland and many of which work in the NIEA.

affects the former two issues. In fact, all the issues are interrelated, but we examine these initially as discrete entities.

6. The Document sets out some convincing arguments for an independent body, irrespective of its purpose, but focuses solely on the concept of an NDPB. It would have been better to have focussed on the arguments for an Arm's Length Body and then invite views on its form. An alternative to an NDPB might be to have a Non Ministerial Government Department; a comparator for this, relevant to NI is its Utility Regulator. This model might help to dispel some of the political disquiet about accountabilities, which would be to the Assembly. It might also be appropriate to consider the name to dispel any confusion. The term 'Agency' might be misleading and would not emphasise the change to independence. We will return to the name issue later, but for now we will call this the New Body.
7. A principal consideration is the length of the arms! There is a practical dilemma in how closely the ALB works with the Sponsor Minister and Department. One major role could be as Principal Adviser to The Minister; this exploits the experience and wisdom of the ALB. It secures the input of the organisation, which will have responsibility for operational to the development of Ministerial policy, but it will not compromise independence of delivery. It is important that the New Body will be part of Team NI, led by the NIG but not part of it. There is everything to be gained by being a critical friend 'inside the tent' rather than 'outside shouting in', particularly through the media. The separation of advice and delivery may not aid the team concept.
8. Any fears that an independent body might be unhelpful must be rendered meaningless. But there will always be critics and in Wales, even with an exemplary relationship between NRW and the WG, some have still felt that this was too close; so an Executive Agency would have been very unpopular. Part of the solution is to have a very clear responsibility matrix in which all parties are very clear about their roles and responsibilities. This should pervade the whole organisation, but must start at the top with well written Governance Documents, Annual Remit Letters and clarity around corporate planning processes, for example.
9. So if this thesis is accepted, the scope of the responsibilities could include: principal environmental adviser to government, regulator, statutory consultee on planning applications, operator, land manager, evidence gatherer, issuer of licences and permits, provider of outdoor recreation, partner and, we would add, source of wisdom on natural resources for the whole community.
10. The Document has within it the implications of the principles of a modern environmental body, but it does not articulate explicitly what those should be. For example, more is needed on the applications of the principles of natural capital, ecosystem services, integrated natural resources management and so on. It should be accepted that alongside the delivery of a better environment per se.... better state of nature.... there are the benefits which enhance the economy, and that includes improved community health, because good health adds to personal contribution and saves money in health care. Health and wellbeing are an essential outcome of a flourishing environment as the Document recognises.

11. The role of an ALB must be to aid these aspirations and being a simple regulator is not enough. The New Body must have a purpose of being part of the delivery of a better environment as a bedrock of a stronger economy and community. This represents a challenge in formulating a Purpose for the Body, but surmounting that challenge is worthwhile. It does mean that bringing together the complementary pieces of environmental management into one organisation based on natural resources management is a step that goes beyond the simple step of independence. The broader Purpose makes the case for independence even stronger.
  
12. If that principle is accepted, then the elements of what it should include would need appraisal. For example, recent events in England and Wales have demonstrated the value of the integration of flood risk management with other parts of environmental management. Management of forests is now based on the principles of ecosystem management and a clear response to the Christmas and New Year floods in Northern England was that upland wood and forest management can reduce flooding particularly flash flooding. This lesson has been learned and demonstrated very well in Wales. Management of landscape such as the deliberate blockage of upland drainage channels to retain water has worked well in many places in England and Wales. The advantage in Wales is that the functions are contained in one organisation which allows better coordinated strategic planning and operations. It gives a bigger and more diverse workforce, which can be mobilised in emergencies.
  
13. There are other examples of the benefits of bringing all the functions together into one organisation. For example, landscape management including forests is an essential component of the delivery of the WFD. It gives a single focus for a wider variety of partnerships such as emergency services, tourism, private forestry, conservation volunteers and so on. It enables a more effective delivery of responses to the need to improve the state of nature, for example the protection and encouragement of pollinators which does have economic, as well as environmental and social value.

### Using These General Points to Evaluate the Options

#### Option A

14. We suggest that the 'do nothing' option will become increasingly out of step in the UK with its contemporary approaches to environment and the sustainable management, use and enhancement of natural resources. Hence it would very likely inhibit these approaches from contributing to a flourishing economy. The Document sets out well the arguments against maintaining the status quo in relation to governance and these are even stronger if the broader perspective is used.

#### Option B

15. This is in effect the status quo as far as the environment and natural resources management is concerned, but addresses the issue of governance in modern society. We compliment the Document for making a persuasive argument for the change in governance, but we suggest that NI would miss the opportunity of introducing more contemporary approaches to the management of natural resources. Part of the necessary integration is to bring environmental regulation and nature conservation together.
16. It is of note that NIEA has been ahead of the rest of the U.K. in having environmental regulation and nature conservation management delivery in one organisation, but is behind in having delivery and advice split; delivery is provided by an executive agency but the NIG is advised by a separate body, the Council for Nature Conservation and Countryside. This option does not address that issue. It could be extended so that there is the opportunity of bringing advice and delivery into one organisation, much as NRW and Natural England do, for its elements dealing with nature conservation. So part of this option could be to incorporate the advisory body, the Council for Nature Conservation and Countryside, but the quid pro quo would be to ensure that there is sufficient wisdom and skills in the executive and on the Board. This would emulate the conservation roles in other Country Bodies. It would strengthen the role of NI on the JNCC.
17. It does, however, make a hint that this simple step of independence would be the easiest to achieve. We suggest that if this option is pursued that a distinct new name is created to emphasise the change.

#### Option C

18. This option now picks up the possibility of something more radical. But it is rather timid in what is being suggested. We suggest this option provides the opportunity of the most effective management of natural resources. It may need to involve other parts of NICS and maybe this is what is behind the angst in doing so. We are not so familiar with the detail of the current location, form and function of what other parts might be involved. Nor are we fully familiar with the proposed changes in Departmental accountabilities next May, except that the functions of the DoE will be delivered by DAERD. So it is difficult to comment on the challenge referred to.
19. This option would, of course, include the opportunity of bringing advice and delivery into one organisation, for its elements dealing with nature conservation and countryside. So this option would also include the incorporation of the advisory body the Council for Nature Conservation and Countryside as per Option B.
20. However, on the basis of the propositions we have outlined, the New Body C should not only include the relevant parts of the NIEA and relevant parts of the DoE, but also the Executive Agency - the Rivers Agency, and the Forestry Service. The advantage is that, as we understand the proposed changes, the destination for all these functions is DAERD, this makes any merger more manageable. Indeed, we suggest that the opportunity should be taken to include any other functions in DAERD which would add value. We agree with the proposition in the Consultation Document that other residual functions of DoE, such as Built Heritage, not relevant to this model should be located elsewhere. We do not presume to extent our response to deal with those matters, but New Body C should

probably not deal with drinking water regulation and that Regulator could join other public health functions.

21. Working together in one organisation is always more effective and efficient than inter organisational co-operation.
22. We have a great deal of sympathy with the angst expressed about the difficulties and delays that this option would cause. But if we accept that the integrated management model is the best way forward then we suggest that the wisdom of experience shows us that if the strategy is to do less than the ideal now, possibly with the intention of returning later with a second effort, then this never works out well. Planned stepped revolution works better than uncertain evolution. The rewards of the vision are never realised with a piecemeal approach. Not to do this now would be to miss a golden opportunity. As we set out earlier, this revolution is made easier in being delivered within one future department and the changes come at a time when many other changes are planned, including the assembly of the component parts in DAERD next May. Whilst there would be challenges in taking this project forward, these should not be exaggerated, and we will return to this below.

#### Option D

23. We suggest that for all the reasons we have set out above, this would address the issue of governance, but would miss the opportunity of the broader approach. Indeed, the Document refers to a sharp focus as being an advantage. We take the liberty of describing this as a narrow focus and loss of broad vision. It would be the role of the leadership of New Body C to ensure that sharp focus is applied to all of its responsibilities. We have explained that regulation is only one 'tool' to deliver better management of the environment and the natural resources. If the intention is to restrict New Body D to regulation out of concern about its impact on the economy, may we suggest that a better way is to look at matters the opposite way and ask the question, what lost opportunities to contribute as an active part of a flourishing economy would be lost.
24. It is not clear if regulation, per se, would have a conservation element in it and hence nature conservation and countryside issues seem more at risk in terms of their future.

#### **Our Suggestion is Option C**

25. So on this basis we suggest that NI should take Option C forward and find ways of delivering this as quickly and cost effectively as possible and we explore this in more detail.
26. However, the initial driver for the Consultation was the issue of independence. The document provides balanced but unequivocal arguments for this, hence the alternatives to our preference are Option B and D, but we suggest that D will not provide what NI is seeking. So Option B is the back up if Option C is considered to be too demanding, but with the elaboration that consideration be given to the need for the Council for Nature Conservation and Countryside

## Exploring Our Suggestion for Option C in More Depth

27. None of what we are suggesting is based on unproven theory. It has been applied successfully in Wales... Albeit with a number of challenges!! The advantage is that both countries are compact enough in terms of size and population to make these changes of an integrated organisation managing natural resources management very viable. NI is small enough to make the project manageable, but big enough to make it meaningful.
28. We agree that any change involving the creation of an ALB needs a business case, but that will be much stronger if it is founded on the benefits to the economy and environment of NI as well as the governance benefits. Option C is the only one which delivers on both. Yes, an NDPB is proposed, but it replaces an advisory NDPB, and three executive agencies which meets the current political tone.
29. This will require much more than just moving the 'deck chairs round'; it will require a fundamental think about how the natural resources will be managed. This response is perhaps not the right place to examine the statutory processes for embedding both governance and changes in the underlining management philosophy, but the Society would be pleased to share its wisdom, as indeed we are sure Wales would be.
30. There may be criticisms that the ultimate destination may take longer to achieve but it will be a better place to journey to, although it will be a never ending journey because of ever changing demands. Indeed, a broader more flexible organisation will be better placed to deal with the challenges of the future. Having said that, it must be recognised that there will be periods of transition and then transformation in both the ways that natural resources are managed, and in the structure if the organisation, which are interrelated issues. As with changes of this ilk elsewhere, whereby, staff will be disconcerted by changes in - management approaches, new teams and even new locations. But the end result is worth the effort. Patience will be a virtue. What will be important is that the management understands this and responds appropriately.
31. It will be essential to have the focus of creating a new integrated culture to which all parties will migrate, this must not be an NIEA 'takeover'. Nor should it be seen as dominance of any aspect, but a productive merging. The name should reflect this to emphasise the point to employees as well as customers. We are sure that if NI considers these suggestions of relevance it will wish to determine its own unique title, as Wales did in 2012.
32. A major issue will be how the day to day delivery will be managed alongside the visionary changes envisaged. It will be a challenge. But a paradigm for day 1 is that the customers will not see any changes, but they will in due course. No 'balls should be dropped'. It is essential to have clarity of vision and that can be a challenge for management to articulate in a changing political and legislative environment. So it is right to focus on communications.

33. With the experiences in Wales readily to hand and there being less of a challenge in Northern Ireland, because all of the component parts are currently vested in the NI Civil Service rather than across separate organisations in different jurisdictions, as was the case in Wales, it should be easier to achieve.
34. The Consultation Document makes much of the need for better regulation. It is worth noting that NRW had an outstanding report from the BRDO towards the end of 2015 which enabled it to carry on using the power of civil sanctions. The broader perspective helps with this.

### A More Detailed Look at Costs, Accountability and Implementation of Option C

35. We do not propose commenting in detail on Option B, but we will use the Document headings as a template for commenting on Option C. We are not in a position to comment on deep detail as we do not have evidence to hand so we restrict ourselves primarily to suggestions of principle.
36. However, we would like to point out that many of the points we make about costs, Board issues and timescale, for example, could apply equally to Option B.

#### Costs

37. We are not in a position to confirm or challenge any of the costs unless we have further evidence. However, some of the costs do not seem quite right, particularly the upper values. Branding etc., board recruitment and training seem to need some further thought, for example. There may be a need to invest in IT infrastructure. It is important to distinguish between start up and recurrent costs in making the decision to pursue this option. The business case must address this and show the benefits of any extra costs. The costs of the new organisation must be compared fairly on a like for like basis with the existing suite of organisations.
38. The size of the Board, even with this border remit seems too large. We suggest that it should comprise a Chair, 10 Members and the CEO being a Board Member. It should be appointed on the ability to oversee a well-run body with excellent governance, delivering excellent customer care and playing a leading role in a flourishing environment, as part of the green economy of NI. Board Members are not usually pensioned. The document is not crystal clear on the time commitments, but that can be resolved in due course.
39. It will be necessary to understand what decisions on management matters, such as accommodation, executive structure, and so on, will be taken by the project group, the shadow organisation, and the vested organisation. As much as possible should be left to the vested organisation to deal with as matters under the terms of Corporate Plans, Responsibility Matrix, Governance Framework and Remit Letters; the latter agreements should be negotiated initially by the Shadow Organisation, but running it for a year seems rather too long.

#### Accountability

40. A primary decision will be to determine the nature of the ALB and of course the frameworks, which we describe in the paragraph above.

41. It will be necessary to agree what the corporate planning cycle will be.

42. We suggest that the shadow period must be used to agree the Governance framework, responsibility matrix, the initial Remit Letter and the first year business plan, which must have within it the facility to create longer term corporate plans.

#### Legislation

43. We suggest that legislation would definitely be needed.

#### People

44. The points are well made for Option B and will apply equally to Option C. In view of the Civil Service origins of all parties, there will not be the challenge of pensions which existed in Wales. We cannot comment on comparative terms and condition what the total workforce size will be. A strong partnership with unions will be needed.

45. Staff engagement on the vision, values and such matters and really good communications before and after vesting is essential.

#### Timeframe

46. The points are well made for option B and apply equally to Option C. Clearly the challenge will be greater and the debates may be longer, but we cannot evaluate what these impacts will be without further information. However, it does not seem impossible to aim for a vesting date of 1April 2018. The juxtaposition of the May elections and their consequences will be a rate determining gateway. In terms of appointments, it would seem logical that the new Chair would be appointed in mid-late 2017 to assist and lead in the process of appointing, by late 2017, the CE and Board Members; the CE would then take the lead, with board oversight, for the appointment of an executive team. The TUPE rules almost certainly mean that the executive team would have to be appointed from within the so called legacy bodies. So there may be dual working by senior management which is not necessarily a bad thing.

#### Staff Resources for the Change Project

47. A skilled team will be needed, but the Society suggests that a steering group involving external experienced parties could help with resources without the need to involve consultancy companies and the Society would be pleased to help.

#### NDPB Arrangements

48. We have addressed these issue in several places, but the Document does not cover all those that we have identified. We suggest that one issue raised in this section in the Document, the location of a head office, needs to be to addressed against sensitivities in NI. It might be better not to have an HQ, but to have a small office of chair and CE located

within one of the larger operating offices, and to have a presence through the Country, subject to efficient accommodation costing. This is what Wales did.

#### Resource planning

49. We agree with the points made in the Consultation Document.

#### Other matters

50. We agree with these points. For the corporate governance bullet, we would refer you to our suggestion of the need for Governance Frameworks etc.

#### Summary

51. The Society supports the Minister in taking this initiative at this time. The time is right! The fundamental case for independent regulation is made.

52. We favour Option C with a New Body created from the NIEA, some functions of DoE, the Council for Nature Conservation and Countryside, the Forestry Service, the Rivers Agency and possibly some current functions of DARD. With a 'fair wind' this might be achievable for vesting in 2018. This New Body would be based on the principles of integrated natural resources management. The components will all be in DAERD as from May 2016.

53. In the event that Option C is not pursued, Option B is more preferable than D but the future of the Council for Nature Conservation and Countryside should be considered for incorporation.

54. The Society would be very happy to facilitate support and meantime to offer further information. One of its constituent bodies has published a series of articles of the application of natural resources management in Wales and will be publishing some lessons on regulatory processes based on these experiences. We would be pleased to share these with you.