

INVESTIGATION REPORT

Addressed to the Department of Agriculture, Environment and Rural Affairs in relation to its compliance with The Environment Act 2021 regarding an Environmental Improvement Plan for Northern Ireland

21 October 2024



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Executive summary

Executive summary

This investigation report is published by the Office for Environmental Protection (the OEP) pursuant to Schedule 3, paragraph 7 of the Environment Act 2021 (the Act) at the conclusion of its investigation into the Department of Agriculture, Environment and Rural Affairs' (DAERA) compliance with the Act regarding an Environmental Improvement Plan (EIP) for Northern Ireland.

An EIP was required to be laid before the Northern Ireland Assembly and published by DAERA by 25 July 2023. This did not occur. The OEP engaged with DAERA prior to and after the statutory deadline was missed, and subsequently with Minister Muir once the devolved institutions in Northern Ireland were reestablished in February 2024. This engagement did not result in the laying and publication of an EIP.

Accordingly, the OEP initiated an investigation on 3 June 2024 and gave DAERA an Information Notice on the same date. We acknowledge the constructive engagement and cooperation of DAERA Departmental Officials and Minister Muir throughout the investigation.

The OEP considers that DAERA failed to comply with environmental law and that the failure was serious due to DAERA's ongoing failure to lay and publish an EIP for Northern Ireland. On 25 September 2024, the OEP's Board resolved to give DAERA a Decision Notice to this effect.

The Northern Ireland Executive agreed the matter of an EIP on 26 September 2024 and an EIP was laid before the Northern Ireland Assembly and published by DAERA on 27 September. Accordingly, it was no longer necessary to give DAERA the Decision Notice.

The OEP therefore concludes that DAERA failed to comply with paragraph 1 of Schedule 2 to the Act between 25 July 2023 and 27 September 2024. Following the laying and publication of the EIP, the OEP has determined that the failure to comply with environmental law is no longer continuing and has concluded its investigation into this matter.

The OEP is required to monitor progress in improving the natural environment in accordance with the current EIP and prepare progress reports in this regard.¹ This investigation report is solely concerned with the OEP's investigation into the laying and publication of the EIP. The OEP will report separately on EIP progress in due course.

¹ Environment Act 2021, Schedule 3, paragraph 1.



Legal Framework

1.0 Legal framework

Paragraph 1 of Schedule 2 to the Act sets out the requirements relating to the NI EIP. The obligation is placed on ‘the Department’ to prepare an EIP for NI. ‘The Department’ is defined as DAERA under paragraph 11 of Schedule 2 to the Act.

DAERA is required by the Act to prepare and publish an EIP. An EIP is a plan for “significantly improving the natural environment”.^{2,3} It may relate to a specified period or be of no specified duration.⁴

The EIP must set out the steps that DAERA intends to take to improve the natural environment, and any steps that any other Northern Ireland Department intends to take to improve the natural environment.⁵ It may also set out steps that any Northern Ireland Department intends to take to improve people’s enjoyment of the natural environment.⁶

In preparing an EIP, DAERA must consult such other Northern Ireland Departments as it considers appropriate.⁷

DAERA was required to lay before the Northern Ireland Assembly and publish an EIP before the end of the twelve-month period beginning on the day the paragraph came into effect.⁸ Schedule 2 of the Act was commenced by the Environment (2021 Act) (Commencement and Saving Provision) Order (Northern Ireland) 2022 on 25 July 2022. The EIP was therefore due by 25 July 2023.

Northern Ireland Assembly

The Northern Ireland Assembly did not sit between May 2022 and February 2024. As a result, there was no DAERA Minister in post in July 2023 when the EIP became due. Minister Muir was appointed in February 2024, when the institutions were re-established.

In the absence of Ministers, civil servants were granted decision-making powers by virtue of the Northern Ireland (Executive Formation etc) Act 2022. Guidance from the Secretary of State set out that while certain decisions should be taken by civil servants in the absence of Ministers, such as where not taking such a decision could

² Environment Act 2021, Schedule 2, paragraph 1(2).

³ The OEP is required to monitor progress in improving the natural environment in accordance with the current EIP, in accordance with Schedule 3, paragraph 1 of the Act. The content of this report is solely concerned with the OEP’s investigation into the publication of the EIP, which does not in any way pertain to the OEP’s monitoring duty under Schedule 3, paragraph 1.

⁴ Environment Act 2021, Schedule 2, paragraph 1(3).

⁵ Environment Act 2021, Schedule 2, paragraph 1(4).

⁶ Environment Act 2021, Schedule 2, paragraph 1(5).

⁷ Environment Act 2021, Schedule 2, paragraph 1(6).

⁸ Environment Act 2021, Schedule 2, paragraph 1(7).

result in failing to comply with a statutory obligation, “any major policy decisions...should normally be left for Ministers to decide or agree.”⁹

Referral of the matter of an EIP to the Northern Ireland Executive

Northern Ireland devolved institutions are established according to the provisions of the Northern Ireland Act 1998 (‘the NI Act’). There are currently nine Northern Ireland Departments, each of which is headed by a Minister.

Ministers are required to act in accordance with the Northern Ireland Executive Ministerial Code,¹⁰ which sets out the rules and procedures for the exercise of duties and responsibilities by Ministers and junior Ministers of the Northern Ireland Assembly.

The Ministerial Code also sets out the functions of the Northern Ireland Executive, which is a committee of Ministers, jointly chaired by the First Minister and deputy First Minister.

One of the functions of the Northern Ireland Executive is to provide a forum for the discussion of, and agreement on, matters which are significant or controversial or which cut across the responsibilities of two or more Ministers. Ministers have a responsibility to bring such matters to the attention of the Executive.

The DAERA Minister referred consideration of the NI EIP to the Executive Committee in March 2024, and it was tabled several times at subsequent meetings before the Executive Committee agreed the matter of an EIP in September 2024.

⁹ Secretary of State for Northern Ireland, *Guidance on decision-making for Northern Ireland Departments until an Executive is formed or for the six month period beginning with the day on which the Northern Ireland (Executive Formation etc) Act 2022 is passed (6 December)*, (19 December 2022).

¹⁰ [Northern Ireland Ministerial Code](#).



Investigation

2.0 Investigation

The OEP had engaged with DAERA both prior to and after the statutory deadline for the publication of an EIP in July 2023. The OEP sought clarity from DAERA in relation to the publication of an EIP in the absence of Ministers.

The DAERA Permanent Secretary indicated in a letter to the OEP dated 11 September 2023 that it was “not... appropriate for officials, acting in the absence of democratically elected ministers, to decide to introduce what would clearly be a new, major policy which carries with it new major public expenditure commitments.”¹¹

This decision was subject to review by DAERA officials every three months but did not change following those reviews.

The OEP received two complaints from external parties in January 2024 regarding DAERA’s failure to comply with the statutory deadline set out in the Act. These complaints were used as further evidence-gathering to inform the OEP’s ongoing work on this issue.

The resumption of the Assembly in February 2024 did not result in the publication of an EIP. The OEP therefore commenced an investigation on 3 June 2024 as it considered that DAERA may have failed to comply with environmental law by not laying and publishing an EIP by 25 July 2023 and in accordance with the provisions of the Act.

At the launch of the investigation, the OEP gave DAERA an Information Notice. The OEP may give an information notice to a public authority if the OEP has reasonable grounds for suspecting that the authority has failed to comply with environmental law and it considers that the failure, if it occurred, would be serious.¹² An information notice is a notice which describes an alleged failure of a public authority to comply with environmental law, explains why the OEP considers that the alleged failure, if it occurred, would be serious and requests information.¹³ An information notice is a necessary prerequisite to any enforcement action by the OEP.¹⁴

DAERA responded to the Information Notice on 2 and 9 August 2024 and confirmed that an EIP had not been laid before the Northern Ireland Assembly and published, as required by the Act. DAERA further provided information which demonstrated that the matter of an EIP had been referred by the DAERA Minister to the Northern Ireland Executive on several occasions, but that agreement had not been secured. DAERA indicated that in its view, it could not lay and publish an EIP in the absence of agreement by the Executive.

Accordingly, the OEP determined that DAERA had failed to comply with environmental law by failing to publish the EIP by the statutory deadline. On

¹¹ Letter from DAERA Permanent Secretary to the OEP dated 11 September 2023, [Failure to meet NI EIP deadline ‘deeply regrettable’ | Office for Environmental Protection \(theoep.org.uk\)](https://theoep.org.uk).

¹² Environment Act 2021, Schedule 3, paragraph 9(1).

¹³ Environment Act 2021, Schedule 3, paragraph 9(2).

¹⁴ Environment Act 2021, Schedule 3, paragraph 10(5).

Wednesday 25 September the OEP's Board decided to proceed to the next stage of the enforcement process by giving DAERA a Decision Notice to this effect, setting out steps for DAERA to take, including laying and publishing the EIP. The Decision Notice was due to be sent to DAERA on Monday 30 September, however DAERA's failure to comply with environmental law was brought to an end when the EIP was laid before the Assembly and published on Friday 27 September 2024. This therefore obviated the need for the Decision Notice to be given.



Findings and analysis

3.0 Findings and analysis

The OEP concluded that DAERA failed to comply with the requirements of Schedule 2, paragraph 1 of the Act and the failure was ongoing from 25 July 2023 to 27 September 2024.

The OEP also concluded that the failure was serious for the reasons outlined below.

Point of law

Northern Ireland's first EIP is required under the Act as a central part of the governance framework to protect and improve the environment. Given the importance of this plan across a broad scope of environmental law and policy, and the fact a deadline for its publication is specified within the legislation, the OEP considers that it is a serious failure not to meet that deadline.

Risk of harm

The failure had the potential to cause harm to the environment and to public health. Delay in publishing the plan delayed DAERA and other Northern Ireland Departments setting out which steps they intend to take to improve the natural environment. DAERA's response to the Information Notice confirmed that there has not been any formal assessment of the environmental impacts pertaining to the delay in publishing the EIP.

Transparency

Laying and publishing the EIP provides transparency in relation to the government's plan to significantly improve the natural environment. That transparency is imperative to accountability and enabling all parts of society to act consistently with the EIP in their contributions towards environmental protection and improvement.

Frequency and duration of the conduct

By its nature, failure to meet a statutory deadline to lay before the Assembly and publish the EIP is a one-off event. However, that failure was ongoing for fourteen months by the time an EIP was laid. This was a protracted period and the seriousness of the failure to comply with relevant environmental law increased over time.



Conclusions

4.0 Conclusions

The failure to lay and publish an EIP for Northern Ireland by 25 July 2023 represented a failure by DAERA to comply with environmental law.

This failure was brought to an end by the laying and publication of the EIP on Friday 27 September 2024. This meant that the OEP did not have to give DAERA a Decision Notice. Instead, we have produced this investigation report in conclusion of the investigation, in accordance with the Act.

The adoption of the EIP marks the start of the OEP's role in scrutinising and monitoring progress toward achieving the commitments it sets out and its effectiveness for significantly improving the natural environment of Northern Ireland.