

## Board Paper

### Date

20 February 2024

### Title

Taking Stock: Political Changes in Northern Ireland

### Report Author

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### Open paper for information

## Issue

1. The NI Assembly was restored on 3 February, after being suspended for almost 2 years.
2. This restoration will have a direct impact on the work of the OEP. One of the major issues we have faced in NI has been the lack of progress on environmental legislation, due to the absence of Ministers. We expect this to speed up, presenting new opportunities and risks for the OEP. Some of these issues are considered below.

## Recommendation

3. Board is recommended:
  - a. To discuss and consider the implications for the OEP on the restoration of the Assembly

## Background

4. The Restoration of the Assembly has been very widely welcomed. The suspension was a result of the DUP refusal to participate in Government, due to the impact of the Protocol/Windsor Framework, which they argued 'reduces' NI's position in the UK. A negotiated 'deal' has returned the DUP to Government, and [a new Executive](#) has been appointed. A full overview of the Restoration can be found in this [briefing](#) (Annex A) which has already been circulated to the Board.

5. The absence of the Assembly has led to significant delays in environmental legislation, including – the Environmental Improvement Plan, Environmental Principles Policy Statement, the Nutrient Action Programme, River Basin Management Plans, Biodiversity Strategy – among others. From our perspective, the EIP is the most crucial element, and its absence makes our ability to achieve our goal of long-term protection and improvement of the environment almost impossible.
6. We had been preparing for the restoration of the Assembly for some time. In Summer 2023 we held meetings with all five main political parties. We also considered a range of options about [political governance](#) and have agreed that our main focus in NI should be on 'Nutrients'. The restoration of the Assembly offers new opportunities for the progression of environmental legislation, and for our engagement with stakeholders in NI.

## Analysis

7. We know that there are a number of over-arching issues facing the new Executive, which are likely to cause delay in the progression of environmental matters, including:
  - a. Considerable backlog of legislation – the Assembly has only met for two of the last seven years; this has created a large backlog, with issues around health, education and economy.
  - b. Finance – it is well known that there are structural weaknesses with the NI budget. Part of the 'deal' to encourage the DUP back to Stormont was an offer of an additional £3.3bn for the NI Government, but within days of the return, the Executive had stated that there were long-term issues with the financial offer. They have already written to the PM, requesting a review of the budget settlement.
  - c. Programme for Government – a new Programme for Government will be needed. When the Assembly was restored following the previous suspension in January 2020, the 'guiding' document was [New Decade New Approach](#). This contained a number of environment-related policies (including Climate Change legislation and an independent Environmental Protection Agency).
  - d. Political Division – in some ways divisions between the parties seem to have increased in the years since the Good Friday Agreement. Good governance is dependent upon stability, and this has been absent in recent times.
8. The restored Assembly offers new opportunities for engagement. We have already:
  - a. written to the DAERA Minister and AERA Committee requesting meetings;
  - b. written to the First and Deputy First Ministers, congratulating them on their appointment and on the restoration of the Executive;
  - c. discussed the restoration with relevant DAERA officials, and have made contact with the AERA Committee Clerk;
  - d. emailed all 90 MLAs with information about the OEP and our programmes in NI (Annex B);

*This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.* Since the creation of the new Department in 2015, all of the Ministers have been DUP. Andrew Muir has a good track record on environmental issues, as does his party, Alliance. You can read more [here](#) about the Minister and Alliance.

- e. It is generally felt that the new Minister has started well. His initial comments have highlighted some priorities including:
  - i. To deliver right across the DAERA remit (i.e. a more equitable approach to agriculture and environment)
  - ii. Address the issues that have contributed to the Lough Neagh situation
  - iii. Progress the Environmental Improvement Plan
  - iv. Review environmental governance, including the need for an independent EPA, and the role of the OEP
- f. One issue to be aware of is that Alliance will only have two Ministers at the Executive table. Sinn Fein and DUP will be the majority parties, and in the past there has been a perception that these parties sometimes control the agendas, so other Ministers have found it difficult to get their priorities progressed.
- g. ENDS have produced an overview of the major issues facing the new Minister, summarised [here](#).

9. Following this initial engagement we will have other options to consider, including:

10. Other Ministers and Departments – our engagement with other public bodies in NI has been relatively limited so far, largely to introductory meetings. There are two main reasons for this. Firstly, DAERA is responsible for the vast majority of environmental policy, and most of our initial work has been focused on their ‘areas’. Secondly, we have not yet published a NI-specific report, which would provide the basis for engagement. Now that the Assembly is restored, there will be more environmental-relevant legislation across the Departments, and simultaneously, we will be producing more NI-focused material – such as the Water framework directive regulations, Bathing waters, Drivers and Pressures, and Protected Sites reports. As these come online, we will be engaging with officials, but will also have the opportunity to meet with relevant Ministers, such as Infrastructure (whose responsibilities include freshwater, planning and active travel).

11. Assembly Committees - Similar to Westminster, Stormont has a Committee system which scrutinises the programmes of the Minister and Department. The [AERA Committee](#) will be chaired by Tom Elliott (UUP), with Declan McAleer (SF) as Deputy; we have already met with 3 of the 9 members of the Committee, including the Chair. As noted above, we have written to the Committee for a meeting. Again, the Infrastructure Committee is also likely to be interested in our work – particularly in relation to the water framework directive regulations.

- a. Stormont Estate – the estate is very accessible; there is potential for making use of it for events, such as report launches. We can also consider partnering other organisations in relevant events.

- b. Other structures - The return of the Assembly also results in the restoration of other structures created under the Good Friday Agreement. These include North-south bodies such as the N-S Ministerial Council; and East-West, including the British-Irish Council and British-Irish Parliamentary Assembly (the latter pre-dates the GFA but is usually included in this 'strand'). The DUP-negotiated deal, '[Safeguarding the Union](#)', to restore the Assembly, also includes the creation of a new 'UK East-West Council', which is likely to focus on trade. These bodies should not be a particular focus for us, but they do present new opportunities for engagement, and we should monitor their work programmes. We have already been in contact with the [Centre for Cross-Border Studies](#), who have expertise in this area.

12. Once we complete the initial set of engagements we will update the Board on potential next steps.

## England

13. This item is specific to Northern Ireland. However, as we continue to develop our approach, there will be learning from our experience so far in England, particularly around engagement with Ministers, Assembly Committees etc.

## Finance and Resource

14. The restoration of the Assembly will result in changes to work patterns for the OEP; we will need to be agile and able to react at short notice. Progression of environmental legislation will lead to greater workloads in certain areas – such as monitoring of the EIP. It is also likely to require more time from Board and ExCo for consideration of NI issues.
15. There will be requirement for more physical presence of OEP staff and Board in NI. Until now, ExCo members have visited NI occasionally, and Board Members (excepting Malcolm) mainly for annual Board Meetings. We can manage this through planning, making best use of our NI-based staff, and maximising online communications.
16. This will have financial implications due to increased costs for travel/subsistence. We know that the DAERA financial contribution in 2023-24 was below our expectation, and we are planning for a similar outcome in 2024-25.

## Impact Assessments

### Risk Assessment

17. ***New structures do not engage with us*** – there is a risk that the returned structures will not engage with the OEP. This is mitigated by the level of engagement that we have already had with key stakeholders, including correspondence with the Committee Clerk, senior DAERA officers and the political parties. As noted under Finance/Resource we are considering how best to engage in the future, including having more 'presence' in NI. Our NI Working Group will be important in developing/monitoring our progress.
18. ***Understanding of political landscape*** – there is a risk that we could misunderstand the political landscape in NI, and act inappropriately. This is mitigated by the appointment of NI-

based staff who are able to advise, and by the ever-increasing level of knowledge and engagement that the wider OEP is developing in NI. To support this process, we have produced a number of papers for ExCo and Board which consider these issues, most recently in the [general OEP briefing](#) on the restoration of the Assembly.

19. **Perception of an 'English' OEP** – this is a risk that we have always been aware of, and which is heightened by the restoration of the Assembly. Again, the presence of NI-based staff, together with our increased engagement and knowledge mitigates this risk. NI-based staff should play key roles in the upcoming engagement.
20. **Finance/Resource** – there is a risk that NI matters will take up an increasing amount of resource, putting other programmes under pressure. This is mitigated through our Business planning processes, which clearly reflect the need to provide value for money in both countries. Our Risk Management processes will allow for agile management.

## Equality Analysis

21. We are conscious of the need to ensure parity regarding our programmes and engagement in our England and NI jurisdictions. So far our level of engagement in NI has been less, so this development is welcome.

## Environmental Analysis

22. The restoration of the Assembly is pre-requisite for the long-term protection and improvement of the natural environment. As such, it is fundamental to the OEP mission, and there is a clear need for us to engage with the new structures, and the resulting, wider legislative developments.

## Implementation Timescale

23. The letters noted above were sent by mid-February, and the MLA email was sent on 20 February. Initial engagement will be based around meetings with the MLAs. We expect to meet with the Minister by early March, and with the AERA Committee by early April. Further engagements will be advised.

## Communications

24. The Comms team are fully involved in this programme. We will publish any correspondence that constitutes as 'formal' to our website, and relevant stakeholders will be informed.

## External Stakeholders

25. See 'Communications'

## ANNEXES LIST

Annex A – OEP briefing on Restoration of the Assembly

Annex B – OEP Email to all MLAs

Annex A



## Briefing on Restoration of the Northern Ireland Assembly February 2024

### Background

Since 1999 (and the Good Friday Agreement) NI has had a devolved local Assembly. The Assembly has had significant periods of suspension, the most recent for two years concluding on 3<sup>rd</sup> February 2024. The Assembly was suspended when the DUP refused to participate, due to the impact of the Protocol/Windsor Framework, which they argued 'reduces' NI's position in the UK. The negotiated 'deal' which has returned the DUP to Government is set out in '[Safeguarding the Union](#)', and is summarised [here](#). Further information is available on '[How the Executive is formed?](#)' and the '[Developments in NI 2022-24](#)'.

### How Northern Ireland is meant to work

Political Governance in NI is multi-layered.

1. The UK Government is responsible for National Policy, on matters which are not devolved, such as foreign affairs, defence, social security etc. Within the UK Government, the NI Secretary of State is responsible for the NI Office.
2. The NI Office is responsible for overseeing the NI devolution settlement; for representing NI interests at UK level, and UK interests to NI.
3. NI has a devolved government. The UK Government has devolved a wide range of powers to the NI Assembly – including environment and agriculture; planning is also devolved, with most decisions channelled through local government; other relevant powers include – transport, economic development, health, culture and sport.
4. The NI Assembly was formed following the Good Friday Agreement. 90 MLAs are elected from 16 constituencies. Each MLA must designate as 'Unionist', 'Nationalist' or 'Other'.
5. The NI Executive runs the devolved government on behalf of the Assembly; it is made up of the First and Deputy First Ministers (joint chairs), and eight other Ministers; seven of these are nominated by the political parties in the Assembly (through the d'Hondt system); the Minister of Justice is appointed through a cross-community vote; in recent years power has become more concentrated with the largest parties from the unionist and nationalist blocks; the key point is that the NI Government is based on a power sharing arrangement which must include Unionists and Nationalists.
6. There are nine Government Departments in NI – led by the eight Ministers, and The Executive Office, which reports to the First and Deputy First Ministers
7. At local government level there are 11 Councils; these have much reduced powers in comparison with English Councils. Powers relevant to the environment include: waste collection and disposal; recycling; local planning; environmental protection and improvement; enforcement byelaws; parks and open spaces; local economic development; local tourism; and heritage including listed building enforcement and conservation areas.

## The Assembly February 2024

The Assembly is made up as follows:

- Sinn Fein 27
- DUP 25
- Alliance 17
- Ulster Unionists 9
- SDLP 7
- People Before Profit 1
- Traditional Unionist Voice 1
- Independents 3

For the first time a Nationalist party (SF) are the largest, although the Unionist 'block' remains bigger (due to Independents). Perhaps the most notable development has been the growth of the Alliance Party, which designates as 'Other'.

The Assembly has elected a Speaker (Edwin Poots from the DUP), and 3 Deputy Speakers (Principal Deputy Speaker Carál Ní Chuilín of SF, Deputy Speaker John Blair of Alliance (John was the Alliance party spokesperson on Agri and Environment, and we met with him last year) and Deputy Speaker Steve Aiken of the Ulster Unionists).

## The Executive February 2024

1. This Executive is made up of 4 parties:
  - a. Sinn Fein – First Minister; Finance, Economy, Infrastructure
  - b. DUP – Deputy First Minister; Education, Communities
  - c. Alliance – Justice, DAERA
  - d. Ulster Unionists – Health
  - e. SF and DUP also have one Junior Minister each in the Executive Office
  - f. The SDLP have gone into 'opposition'
2. The 'headline' about the new Executive is that it is led by Michelle O'Neill of SF; this is the first time that a Nationalist party has held the post. It has also been noted that the DUP Deputy FM, Emma Little-Pengelly, was not actually elected to the Assembly, she was co-opted.
3. An excellent overview of the individuals in the new Executive can be [found here](#)
4. The key Ministers for the environment are:
  - a. Andrew Muir (Alliance), Minister for Agriculture, Environment and Rural Affairs
  - b. John O'Dowd (SF), Minister for Infrastructure
5. Similar to Westminster, Stormont has a Committee system which is used to, among other things, scrutinise the programmes of the Minister and Department. As in Westminster, the OEP can engage with the Committees, and we can expect to be called to meetings, to give evidence etc. The [AERA Committee](#) will be chaired by Tom Elliott (UUP), with Declan McAleer (SF) as Deputy. We have previously met with Tom.
6. Other intelligence/analysis:
  - a. Overall this is an Executive with potential. There is a 'centre-left' leaning, and quite a few of the Ministers have shown an interest in environmental issues – including the Finance and Economy Ministers.
  - b. Although the Executive is meant to be power-sharing, there has been a tendency for the 2 largest parties (SF and DUP) to dominate. In practical terms this has meant that Ministers from outside the 'big 2 parties' can find it difficult to get their priorities onto the Executive table. This should work to the advantage of Infrastructure, but



less so for AERA. However, Andrew Muir will have his party leader (Naomi Long) with him at the Executive, and Alliance tend to be good at getting agreement with other parties, so we can expect some AERA priorities to be progressed.

- c. We know that there are a number of major issues facing the Executive in the coming months, which will cause delays in some of our areas of interest.
- d. The suspension of the Assembly was based on Unionist (mainly DUP) concerns with the Protocol/Windsor Framework. The [deal which the DUP has negotiated](#) with the UK Government has not been universally welcomed by Unionism; there is likely to be some ongoing rancour.

## Issues facing the Executive

1. Considerable backlog of legislation – the Assembly has only met for 2 of the last 7 years; this has created a large backlog with issues around health, education and economy. This is likely to take up most Executive business in the early months.
2. Finance – it is well known that there are structural weaknesses with the NI budget. Part of the ‘deal’ to encourage the DUP back to Stormont was an offer of [£3.3bn](#). This is a very significant amount of money for NI, considering that the block grant has been around £12-£14bn over the past few years. However, all financial analysis still says that this deal will not solve the problems in the long term. The Executive have already written to the PM, requesting a review of the budget settlement.
3. Programme for Government – a new Programme for Government will be needed. When the Assembly was restored following the previous suspension in January 2020, the ‘guiding’ document was [New Decade New Approach](#). This contained a number of environment-related policies (including Climate Change legislation and an independent Environmental Protection Agency)
4. Political Division – in some ways divisions between the parties seem to have increased in the years since the Good Friday Agreement. Good governance is dependent upon stability, and this has been absent in recent times.
5. [Pivotal](#), NI’s main public policy think tank, has produced a [summary](#) of the current position, and [topics for discussion](#).

## DAERA and the New Minister

1. The new DAERA Minister has a good track record on environmental issues, as does his party, Alliance. You can read more [here](#) about the Minister and the Alliance Party’s Manifesto for the last Assembly election.
2. ENDS have produced an overview of the major issues facing the new Minister, summarised [here](#).

## How do we engage with the new Assembly/Executive?

1. The OEP has met with the main political parties, all of the meetings were constructive.
2. We have already written letters to the DAERA Minister (requesting a meeting) and to the First and Deputy First Ministers (congratulating them on their appointment and on the restoration of the Executive)

- a. Of the other Ministers, Infrastructure should be considered, but this would be better connected to our report in connection with the water framework directive regulations (which should be published March/April). Other Ministers (such as Finance, Economy and Communities) could be considered on an ongoing basis.
3. The [AERA Committee](#) is the other main contact in the Assembly. We have already corresponded with the Committee Clerk. The preferred way to engage with the Committee will be to have an informal discussion before formally writing. We are also likely to be invited to give evidence to Committees on the back of consultation responses/reports etc.
4. Other approaches - The return of the Assembly also results in the restoration of other structures that we may want to engage with. Under the Good Friday Agreement there are North-south structures such as the N-S Ministerial Council; and East-West, including the British-Irish Council. The DUP-negotiated deal, '[Safeguarding the Union](#)', to restore the Assembly, also included the creation of a new 'UK East-West Council'. We will monitor this situation for opportunities.

## Conclusion

The restoration of the Assembly is to be welcomed. Northern Ireland's public services are extremely over-stretched. This backlog, together with ongoing resource issues, will likely be the dominating theme for the initial months of the new Executive. This means that progress on environmental issues may be slower than we would like. While we will continue to highlight the urgent need to progress environmental priorities, and the opportunity for the Executive and Assembly now to do so a measured, agile approach is most likely to be successful in the long term.

## Annex B

Email Text for all NI MLAs

Dear XXXX,

My name is Natalie Prosser and I am Chief Executive Officer at the Office for Environmental Protection (OEP). Perhaps you are aware of us already, but with the welcome return of the Assembly and Executive I wanted to take the opportunity to explain what the OEP does and some of our work, so far, in Northern Ireland.

### **Who are we?**

The OEP is a public body that protects and improves the environment by holding government and other public authorities to account.

We were created as part of the post-Brexit arrangements, by the Environment Act 2021. Our work covers England and Northern Ireland with our remit being extended to the latter in February 2022.

### **What do we do?**

Our mission is to protect and improve the environment.

The organisations and individuals we can hold to account include:

- government departments
- government ministers
- regulators
- local authorities
- some private bodies, such as water companies – but only in respect of their public powers and duties

### **How do we do it?**

We have four main powers and duties:

 <p><b>Scrutinising Environmental Improvement Plans (EIPs) and targets</b></p> <p>We review and report on progress in delivering environmental improvement plans, goals, and targets.</p>	 <p><b>Scrutinising environmental law</b></p> <p>We monitor and report on the implementation of environmental law.</p>	 <p><b>Advice</b></p> <p>We advise government on proposed changes to environmental law and other matters related to the natural environment.</p>	 <p><b>Enforcement</b></p> <p>We investigate suspected serious failures to comply with environmental law by public authorities and enforce compliance where needed.</p>
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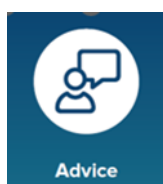
## What work have we done so far in Northern Ireland?



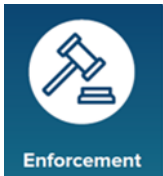
- September 2022 we provided advice to DAERA on the suitability of adopting the Draft Environment Strategy as Northern Ireland's first [Environmental Improvement Plan](#).
- In the interim we have been [engaging with DAERA on the importance of an EIP](#). The Environment Act required this be published by July 2023. This was missed during the suspension of the NI Executive and Assembly. We continue to press for the EIP to be published with the minimum of further delay.
- There has been ongoing engagement with DAERA in relation to meeting other important statutory deadlines such as the [Nutrient Action Programme](#), that deals with the significant issue of nutrient pollution that is part exemplified by the situation at Lough Neagh.
- We are carrying out a review of the drivers and pressures affecting biodiversity across Northern Ireland. This report is due to be published later this year.
- We are carrying out research into the regulation, management and monitoring of waste; a review of the available evidence on the condition of the marine environment, including identifying gaps in data; and developing an understanding of the issues around monitoring species abundance, and the setting of targets.



- We are scrutinising the effective implementation of environmental laws in Northern Ireland to support water quality and evaluating river basin management plans against legal requirements; and the implementation of laws which protect water quality at bathing sites. These reports will be published later this year.
- We are also examining the designation and management of protected sites in Northern Ireland. This report is also due to be published later this year.



- We have provided advice to DAERA on its [draft Ammonia Strategy](#); [Circular Economy Strategy](#) and to Defra on its [UK Fisheries Statement](#).
- In September 2023, we provided advice on DAERA's request on their [Environmental Principles Policy Statement \(EPPS\)](#). Once this statement has been finalised, ministers and their departments will have a legal duty to be guided by the statement when making policy.



- In May 2023, we launched [our investigation](#) into the advice given by DAERA on ammonia emissions in Northern Ireland. This investigation is ongoing, but in December 2023 [DAERA confirmed that the Northern Ireland Environment Agency \(NIEA\)](#) would no longer rely on this guidance, known as the 'Operational Protocol,' given to planning authorities.
- We have also made a number of [interventions in relations to complaints](#) involving government departments and public authorities in Northern Ireland.

I hope this email has given you a better understanding of the OEP and an insight into some of our work.

We know that time is not on our side when it comes to the environment. I look forward to working with you and your Assembly colleagues to protect and improve Northern Ireland's precious environment.

Please feel free to contact our NI Lead Craig McGuicken on [craig.mcquicken@theoep.org.uk](mailto:craig.mcquicken@theoep.org.uk) or my private office on [privateoffice@theoep.org.uk](mailto:privateoffice@theoep.org.uk) if you would like to discuss our work further.

Yours sincerely,

[Natalie's signature]

