



Department of the
Environment
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DISCUSSION DOCUMENT

ON

ENVIRONMENTAL GOVERNANCE

IN

NORTHERN IRELAND

SYNOPSIS OF RESPONSES

February 2016

INTRODUCTION

The Minister of the Environment, Mark H Durkan MLA, announced in September 2015 that he intended to reopen the debate on the future of environmental governance in Northern Ireland, citing the proposed reorganisation of NI Departments as a key driver.

As the first stage in this process, on 30 November 2015, the Department issued a discussion document to key stakeholders across a range of sectors. The distribution list is attached as Annex 1 to this document. The discussion document was also published on the Department's website, giving access to the public and other stakeholders not contacted directly. The document remained open for comments for an eight week period, closing on 25 January 2016.

The discussion document outlined the background to the issue and highlighted four potential options. However, it was recognised that other options (or permutations of the highlighted options) existed and rather than asking specific questions the document invited stakeholders *"...to express their views on all aspects of environmental governance and/or suggest new ideas"*.

This document attempts to summarise the responses received by the Department.

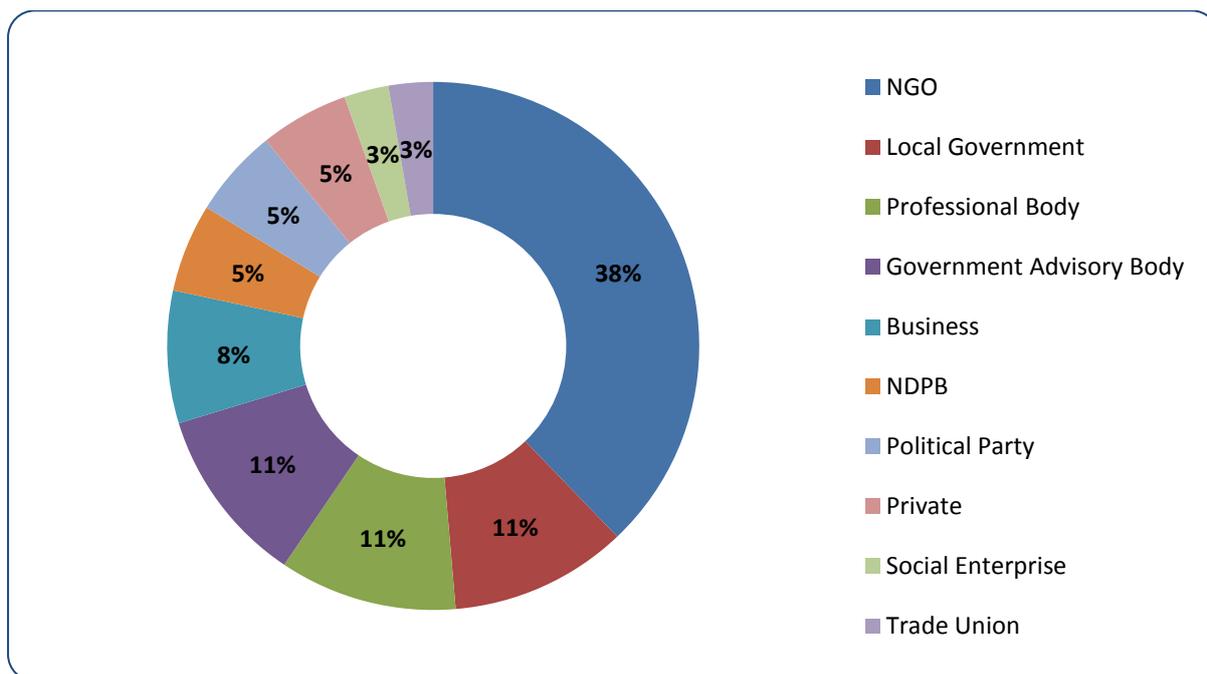
SUMMARY OF RESPONSES

The discussion document was distributed to approximately 70 key stakeholders from the: local and central government; business and industry; environmental NGO; and trade union sectors. A total of 18 of the organisations on the distribution list submitted responses, as did 19 other organisations and individuals. Details of the respondents are attached to this document as Annex 2.

The total of 37 responses is split across the following sectors:

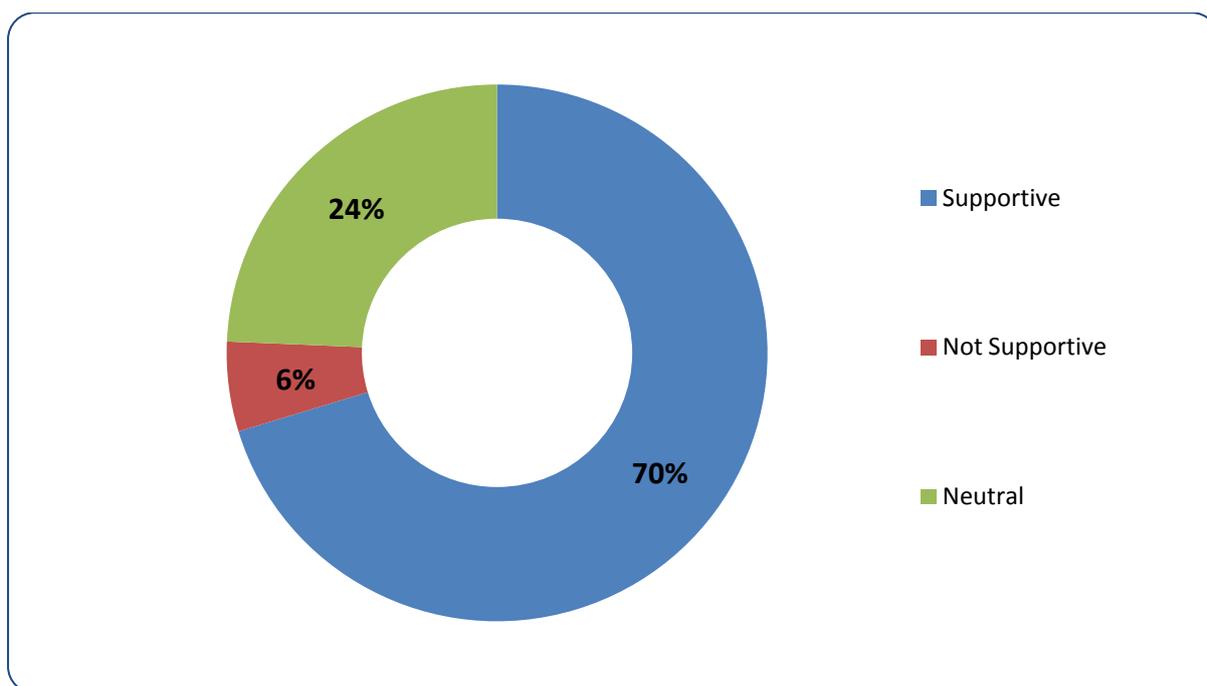
- NGO (14)
- Government advisory bodies (4)
- Professional bodies (4)
- Local government (4)
- Business (3)
- NDPB (2)
- Political parties (2)
- Private individuals/groups (2)
- Social enterprise (1)
- Trade union (1)

Figure 1: Responses Received by Sector



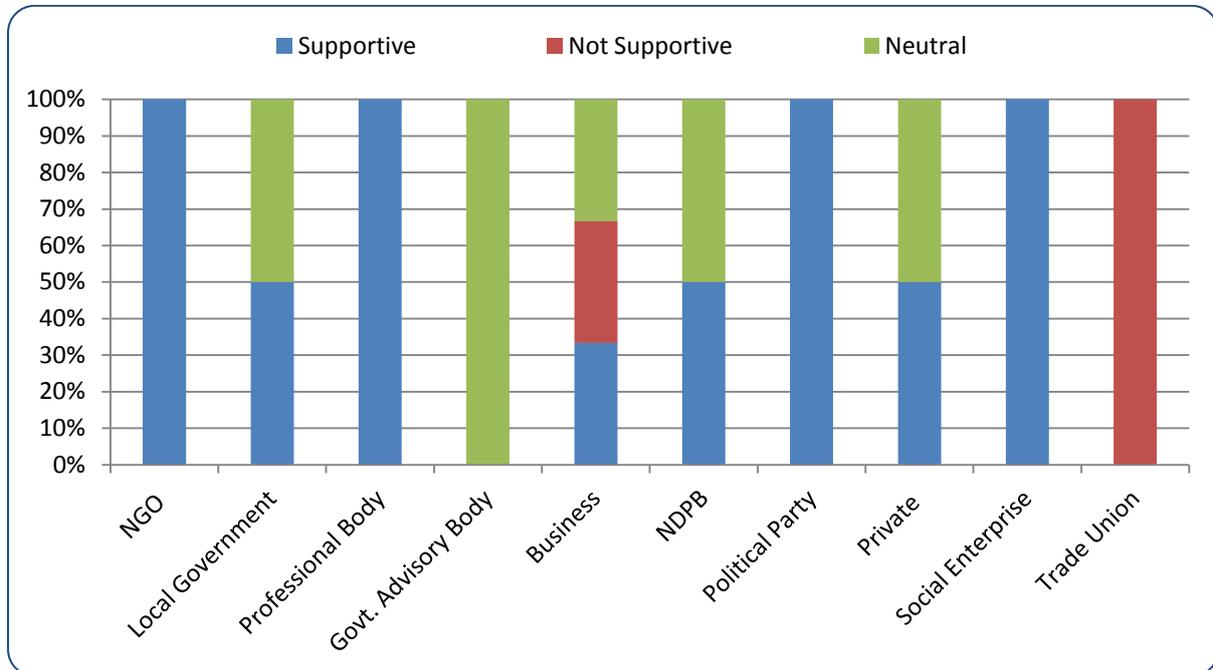
All of the responses have been assessed in respect of the general principle of creating an independent environmental protection agency and categorised as being either: supportive; not supportive; or neutral. Given the relatively small sample size some caution should be exercised when interpreting these data.

Figure 2: Support for General Principle of an Independent Agency



The degree of support for the general principle of establishing an independent environmental protection agency has also been analysed by sector.

Figure 3: Support for Independent Agency by Sector



DETAIL OF RESPONSES

The charts above are provided as a quick reference but, as previously stated, it is difficult to draw firm conclusions simply by conducting a statistical analysis. The sample size is too small and in any case the discussion document was not designed with that type of analysis in mind. The discussion document deliberately invited respondents to provide general comments and to express ideas that were not included within the paper’s options. This section aims to summarise the narrative of the responses received, highlighting support (or otherwise) for specific options and outlining alternative suggestions for a way forward. Comments are necessarily paraphrased and, while every effort has been made to ensure that these are an accurate reflection of the respondents’ intent, mistakes may have occurred. DOE will be happy to correct any such mistakes on request. For convenience, this narrative summary is structured by reference to the sectors described above.

Non Governmental Organisations

A total of 14 responses were received from the NGO sector, all of which were supportive of the principle of creating an independent agency.

Northern Ireland Environment Link (NIEL) is a networking and forum body for a wide range of environmental NGOs in Northern Ireland – several of the other submissions received were essentially endorsements of the NIEL response, which highlighted the following points:

- focus should be on environmental outcomes, not just the mechanism;
- opportunity to address issues of environmental governance should not be missed – if not now then as soon as possible in the new mandate;
- the status quo is not an acceptable option;
- preferred option is Option C with Option D as a potential interim position;
- importance of JNCC in environmental governance across the UK;
- concern that proposals may be rejected for political or funding reasons without proper consideration;
- environmental NGOs have commissioned an independent research report on environmental governance.

Lagan Rivers Trust, one of the organisations endorsing the NIEL response, added their concern regarding the failure of the current administration to meet deadlines regarding EU Directives and an apparent lack of will to do so in the future.

The **National Trust (NT)** commented that:

- since 2008 it is clear that, in terms of outcomes, the overall state of the environment in Northern Ireland has not improved;
- there is ongoing decline in a number of priority habitats and species and a reduction in NIEA's funding to commission necessary ongoing monitoring;
- research links access to a healthy environment to improved public health outcomes, potentially displacing future spending in the health service;
- there are opportunities in the future to take a more innovative approach to 'natural capital accounting';
- a 2006 report suggested economic activities related to the NI environment contributed £573m to the regional economy and supported 32,750 (FTE) jobs;

- the social and economic benefits of investing in good environmental governance are significant, and will result in savings elsewhere;
- while Options B and D are seen as improvements on the status quo, Option C is NT's preferred option.

While welcoming the reopening of the debate, the **Royal Society for the Protection of Birds** (RSPB) expressed frustration at the lack of progress on an issue for which "*...the case has already been made*". Specific comments included:

- a broad suite of options and ways forward need to be considered;
- to solve many of the issues of species and habitat loss will require the new department to work collectively on difficult issues and take hard decisions, underpinned by the principles of sustainable development;
- hallmarks of good environmental governance are transparency and accountability;
- regulation plays a central role in protecting the natural capital upon which our long-term prosperity and well-being ultimately depend;
- a good system of environmental governance will be appealing to those wishing to invest locally;
- better environmental governance could attract foreign direct investment;
- Option C is RSPB's preferred option.

In its submission **Friends of the Earth** (FoE) included comments on the following issues:

- support for the creation of an independent environmental regulator among the NGO sector, business community, and cross-party politics;
- over emphasis on economic development at the expense of sustainable development has resulted in a regulatory culture that seeks to placate those in breach of environment law rather than seek justice and restitution;
- environmental degradation exacerbated by the policy of prioritising the biggest offences, creating the impression there are offences not worth pursuing;
- currently there are at least 6 complaints on breaches of European law lodged with the European Commission, with several more in preparation;

- Northern Ireland, as part of the UK, is in breach of the UN Aarhus Convention because of the high cost of legal action in environmental cases;
- Option C is preferred but Options B and D may also have merit;
- there is also a need for dedicated environmental courts.

Ulster Wildlife (UW) raised a number of issues, including:

- the need for investment in capacity building to underpin compliance, particularly for the agricultural community and wider SME sector;
- an IEPA, responsible and accountable to the NI Executive and the public, would help to demonstrate renewed commitment to the environment;
- independence is particularly important when dealing with contentious issues impacting on local communities – e.g. fracking, gas storage etc.
- the formation of an EPA is not feasible during the current NICS restructuring process and will be a matter for the new administration;
- UW keen to see consolidation of any synergies arising from restructuring;
- cross-border issues are a particular problem and effective control mechanisms across the two jurisdictions will be essential moving forward;
- NI increasingly perceived across the rest of the UK and EU as a ‘lawless’ society in respect of our environmental performance;
- need to embed environmental ethics and leadership and make these the norm within the public and private sectors.

One response from the NGO sector was from an organisation with a focus on the built environment which was excluded from the discussion document. The **Ulster Architectural Heritage Society (UAHS)** indicated its support for the general principle of independence but highlighted the need to consider this issue not only for the natural environment but also for the built environment. UAHS suggested that, where appropriate, independent regulation of the built and natural environment should be integrated.

Government Advisory Bodies

This sector provided 4 responses: 3 Statutory Advisory Councils to DOE and a Ministerial Advisory Group to DCAL.

The responses received from the **Historic Monuments Council** (HMC) and the **Historic Buildings Council** (HBC) both highlighted their concerns over the exclusion of the historic environment from the environmental governance debate. In particular, HMC suggested that this exclusion could lead to the perception that the discussion document is espousing a view that the protection of built heritage is less important than the areas considered in the document.

The **Council for Nature Conservation and the Countryside** (CNCC) also stated its focus was on outcomes rather than mechanisms at this stage but welcomed the recognition of environmental justice as an issue and highlighted the need for collaboration, not only with ROI but also with other EU member states. CNCC also stressed the importance of regulation being based on a sound scientific understanding of environmental systems and their functions and resilience.

The **Ministerial Advisory Group for Architecture and the Built Environment for Northern Ireland** (MAG) advises the DCAL Minister on relevant issues. MAG's response welcomed the reopening of the debate and the discussion document's emphasis on the need to work smarter with less. However, it suggests that more evidence could be produced on the benefits of an independent agency and the lessons learned from other jurisdictions.

Professional Bodies

Four professional bodies responded to the discussion document, all of whom were supportive of an independent environment agency in principle.

The **Chartered Institute of Environmental Health** (CIEH) response reiterated the importance of the NI environment in terms of several key economic priority areas and the need for confidence in its protection and enhancement. It also highlighted the need to properly consider issues of consistent and efficient joint working with NI councils and regulators in other jurisdictions.

The **Landscape Institute Northern Ireland** (LINI) endorsed the NIEL response, reinforcing the need to focus on outcomes and to ensure that any new body has sufficient status, powers and resources to address issues.

The **Society for the Environment** (SocEnv) submitted a very detailed response highlighting:

- the potential to learn valuable lessons from Natural Resources Wales;
- the danger of focusing only on an NDPB as the appropriate type of arm's length body, suggesting that a Non Ministerial Government Department (along the lines of the Utility Regulator) might be worthy of consideration;
- of the options outlined, Option C is SocEnv's preference;
- the need to focus on being part of the delivery of a better environment as a bedrock of a stronger economy and community;
- the benefits of a wider and more integrated remit, particularly with regard to landscape management, forestry and flooding;
- the need for the robust business case alluded to in the discussion document.

The **Geological Society** limited its comments to issues of governance so far as they concern mineral and energy development, groundwater resources and the management of ASSIs of geological interest. The Society supports an independent EPA as it would expedite and improve the transparency of the processing of applications for mineral and energy exploration permits and licences and render them less likely to be subject to fluctuating political considerations, increasing the potential for inward investment in these sectors. Underground water reserves and geological formations and landscapes are highlighted as assets that can be best protected and managed under an independent authority. SEPA in Scotland and the EPA in ROI are suggested as appropriate models for a new body.

Local Government

Four responses were received from this sector, two from district councils and two from waste management groups. The councils were supportive of the principle of an independent agency while the waste management groups were neutral.

The response received from **arc21**, a waste management group representing 6 councils, made the following comments:

- the document would have benefited from a wider and more holistic approach – e.g. councils' role in environmental governance;
- none of the relevant bodies in other jurisdictions is truly independent from some form of political accountability;
- the baseline amount of Grant in Aid and the principle of a commitment to future funding of the new body would have to be known;
- a more robust costing analysis of the options is required.

Armagh City, Banbridge and Craigavon Borough Council and **Newry, Mourne and Down District Council** indicated their support in principle for the creation of a suitably accountable independent agency focused on delivering more robust and efficient regulation of the local environment. The councils also advocated further public consultation on draft legislation accompanied by a fully costed business case.

The **North West Region Waste Management Group** raised several issues including:

- initial focus should be on outcomes – form should follow function;
- the need for a joined up approach between local and central government;
- any new structure needs to recognise the democratic mandate;
- clear and unequivocal accountability should be cornerstone of discussions;
- appropriate resources must be made available;
- a clearer evidence base is needed to move the debate forward;
- the inclusion of indicative costs is unhelpful at this stage and may unduly influence the outcome of the debate.

Business

Indaver Ireland Ltd, the operator of an Energy from Waste facility, highlighted its positive working relationship with NIEA and the company's view that NIEA have

made significant steps in addressing the issues raised within the Mills Report. It outlined issues it felt were important from an industry perspective, including:

- a regulated and compliant waste industry will ensure all waste arisings are accounted for with the subsequent environmental and economic benefits;
- waste must be viewed as a resource in which the maximum value is extracted through recycling and energy recovery;
- environmental protection is now firmly established as a key area of co-operation under the NSMC arrangements – an independent agency may be able to further develop co-operation with its counterparts in ROI;
- a governance system with a level of independence would be able to deliver an improved regulatory regime, more attractive to business, and help to deliver a better economy.

The **Quarry Products Association Northern Ireland** (QPANI) is supportive of an independent environment agency in principle and suggests that it “...*provides an ideal opportunity for Industry, Government and Environmental NGOs to work together to ensure the protection of the environment and support environmentally responsible businesses*”. More detailed comments included:

- a new agency should focus on enforcement and the provision of information and advice to promote best environmental practice;
- fiscal and tax incentives for the adoption and implementation of environmental best practice should be considered;
- a new agency should have a board drawn from various stakeholders;
- a charging regime to ensure competitive charging with incentives to encourage good environmental behaviour should be developed;
- staff should be committed to providing a professional, fair and balanced service, consistent with the three pillars of sustainability;
- a consistent risk-based approach to environmental enforcement and an understanding of: (a) the competitive business environment; and (b) the need to provide customer orientated support and service, are required;

- need close links to other relevant NI bodies and similar agencies elsewhere.

The **Ulster Farmers' Union** indicated its firm opposition to the creation of an independent agency, advocating instead the continued development of existing structures to improve environmental protection. Further comments included:

- although there are still issues, NIEA is becoming better at understanding the agricultural sector;
- environmental protection is not achieved through structures – it is achieved through actions and outcomes;
- UFU would prefer maintaining the status quo of Option A;
- European law will continue to be the dominant influence in setting framework for environmental governance in Northern Ireland;
- the local devolved Assembly should be directly accountable for environmental governance rather than an arm's length agency;
- concern that an independent agency would inevitably lead to greater income raising measures through application fees, inspection fees and cost recovery from enforcement with the farming industry in particular being an 'easy target';
- there is a need for the introduction of a simpler, clearer, more effective system that is easier to understand;
- an independent agency would create additional red tape for the farming industry, going against the principle of better regulation;
- while there may be greater flexibility with a higher degree of independence to make necessary changes to speed up decisions and actions, these decisions/actions may not be the right ones.

Non-Departmental Public Bodies (NDPBs)

While perhaps not strictly accurate, the term NDPB is used here for convenience. Two NDPBs responded to the discussion document, one of which was supportive of the principle of an independent agency, while the other was neutral on the issue.

The **Loughs Agency** (LA) response proposed a quite different structure to the options laid out in the discussion document but this would also be non-departmental in nature and therefore LA is considered to be supportive to the principle of an independent agency. LA indicated its concern that the issues surrounding the presence of an international border had not been addressed and suggested that an alternative solution would be to expand the remit of LA both geographically and functionally. The new agency's remit would cover all dynamic water-based environment functions along with some others but would not deal with issues that did not have a cross-border dimension.

Northern Ireland Water (NIW) did not express a view on the merits or otherwise of an independent agency but recognised the vital role environmental governance plays in protection of the environment. NIW welcomed the Regulatory Transformation Programme with its aim of reducing red tape for business and at the same time improving the effectiveness and efficiency of NIEA, indicating that it had experienced benefits from this programme, particularly with the introduction of more provision for advice and guidance. NIW further commented that further detail on the role of Natural Resources Wales would have been useful in the discussion document.

Political Parties

Responses were received from two Northern Ireland political parties, both of which were supportive of the principle of an independent agency.

The **Alliance Party of Northern Ireland** (APNI) made the following comments:

- EPA must be in a position to scrutinise policy and evaluate decisions based on what is best for the environment as opposed to departmental priorities;
- despite reorganising EHS into NIEA bringing improvements, concern remains over lack of separation between policy and operational responsibility;
- as responsibility for regulation and policy lies with DOE, there isn't the same capacity for public debate on legislation and policy as in other parts of the UK;
- improved environmental governance will provide opportunities and benefits for business by delivering stable environmental regulation;
- Option C is APNI's ultimate goal but Options B or D could be interim measure.

The **Green Party in Northern Ireland** response highlighted the following areas:

- DOE's "poacher-gamekeeper" role will inevitably compromise its effectiveness as a regulator;
- the public simply perceives that our environment is less well protected here than in other jurisdictions;
- the environment is an unfashionable issue with our major political parties for which future generations will judge them harshly;
- an independent EPA will strengthen economic performance, not hinder it;
- Option C is fully supported.

Private Individuals

Two private individuals responded to the discussion document. One of these responses supported an independent agency while the other offered no view on that issue. One of these responses highlighted the omission from the discussion document of any reference to the future status of a group of around 40 staff who carry out work on behalf of NIEA but are employed by councils. The response emphasised the need to consider this issue as part of any overall costing exercise. The other response came from a former independent board member of NIEA who suggested that, due to ever growing party political influence on departmental decisions and priorities in Stormont and the NI Civil Service, the environment in NI will be at growing risk without an environmental governance body that is independent.

Social Enterprise

One Social Enterprise organisation submitted a response that was supportive of an independent agency. **Community Places** reiterated many of the points raised by other respondents, concluding that: *"Environmental governance should be free from immediate political considerations – the environment is a specialist area of public law and needs to be developed with a long-term vision"*.

Trade Union

NIPSA represents a wide range of staff potentially involved in any proposal to revise environmental governance arrangements and has indicated its strong opposition to the creation of an arm's length environment agency. Specific issues raised by NIPSA included:

- placing the responsibility for environmental protection at arm's length from democratic scrutiny and accountability to a Minister is 'wrong-headed';
- Mills Report recommended that *"a single Executive Director should be responsible for delivering this outcome [of creating a compliant waste sector]"*;
- NIPSA shares stakeholders' concern that further fragmentation of environmental functions may result in the environment being relegated in importance as it competes with other priorities in the new Departments;
- adequate enforcement of environmental laws should be main focus of consideration of future structures;
- discussion document lacks evidence of the supposed benefits of an independent agency;
- no coherent argument is advanced to justify the additional costs of an IEPA;
- timing of consultation not helpful given the impending restructuring;
- if such an agency were to be set up, NICS pay, pensions and terms should be retained.

DISCUSSION DOCUMENT DISTRIBUTION LIST

AES UK & Ireland
Antrim and District Angling Association
Antrim and Newtownabbey Borough Council
ARC 21
Ards and North Down Borough Council
Armagh City, Banbridge and Craigavon Borough Council
B9 Energy Services Ltd
Belfast City Council
BirdWatch Ireland
Bryson Recycling
Business in the Community
Causeway Coast & Glens Heritage Trust
Causeway Coast and Glens District Council
CBI - Northern Ireland Branch
Centre for Coastal & Marine Research (UUJ)
Chartered Institute of Environmental Health
Chartered Institute of Waste Management
Chief Environmental Health Officer
Chief Environmental Health Officers' Group
Conservation Volunteers NI
Construction Employers' Federation
Council for Nature Conservation & the Countryside
Department of Agriculture & Rural Development
Department of Culture Arts & Leisure
Derry City and Strabane District Council
Environment and Planning Law Association of NI
Federation of Small Businesses
Fermanagh and Omagh District Council
Friends of the Earth
Historic Buildings Council
Historic Monuments Council
Institute Of Directors
Keep Northern Ireland Beautiful
Lisburn and Castlereagh City Council

Lough Neagh & Lower Bann Advisory Committee
Loughs Agency
Mid and East Antrim Borough Council
Mid Ulster District Council
Mobile Operators Association
Mourne Heritage Trust
National Trust
Newry, Mourne and Down District Council
NI Food and Drink
NI Water
NIPSA
North West Region Waste Management Group
Northern Ireland Agricultural Producers Association
Northern Ireland Amenity Council
Northern Ireland Chamber of Commerce and Industry
Northern Ireland Environment Link
Northern Ireland Independent Retail Trade Association (NIIRTA)
Northern Ireland Local Government Association
Northern Ireland Renewables Industry Group
Outdoor Recreation NI
QPA NI
RSPB
Rural Network (NI)
Society of Local Authority Chief Executives
Southern Waste Management Partnership
Strangford Lough Management Advisory Committee
Tourism NI
UKELA (NI)
Ulster Angling Federation
Ulster Farmers' Union
Ulster Society for the Protection of the Countryside
Ulster Wildlife Trust
Waste & Resources Action Programme
Wildfowl & Wetlands Trust
Women in Business
Woodland Trust
WWF NI

ANNEX 2

Respondent	Category	Supports principle of IEPA?
Alliance Party of Northern Ireland	Political Party	Yes
arc21	Local Govt.	Neutral
Armagh City, Banbridge and Craigavon Borough Council	Local Govt.	Yes
Blackhead Angling Club	NGO	Yes
Chartered Institute of Environmental Health	Professional Body	Yes
Community Places	Social Enterprise	Yes
Council for Nature Conservation and the Countryside	Govt. Advisory Body	Neutral
Derg Valley Community Angling Club	NGO	Yes
Fermanagh Anglers' Association	NGO	Yes
Freshwater Task Force	NGO	Yes
Friends of the Earth	NGO	Yes
Green Party in Northern Ireland	Political Party	Yes
Historic Buildings Council	Govt. Advisory Body	Neutral
Historic Monuments Council	Govt. Advisory Body	Neutral
Ian Needham	Private Individual	Neutral
Indaver Ireland	Business	Neutral
Lagan Rivers Trust	NGO	Yes
Landscape Institute Northern Ireland	Professional Body	Yes
Loughs' Agency	NDPB	Yes
Martyn Todd	Private Individual	Yes

Respondent	Category	Supports principle of IEPA?
Ministerial Advisory Group for Architecture and the Built Environment for Northern Ireland	Govt. Advisory Body	Neutral
National Trust	NGO	Yes
Newry, Mourne and Down District Council	Local Govt.	Yes
North West Region Waste Management Group	Local Govt.	Neutral
Northern Ireland Environment Link	NGO	Yes
Northern Ireland Marine Task Force	NGO	Yes
Northern Ireland Public Service Alliance	Trade Union	No
Northern Ireland Water	NDPB	Neutral
Quarry Products Association Northern Ireland	Business	Yes
Roe Angling Limited	NGO	Yes
Royal Society for the Protection of Birds	NGO	Yes
Society for the Environment	Professional Body	Yes
The Geological Society	Professional Body	Yes
Ulster Angling Federation	NGO	Yes
Ulster Architectural Heritage Society	NGO	Yes
Ulster Farmers' Union	Business	No
Ulster Wildlife	NGO	Yes