

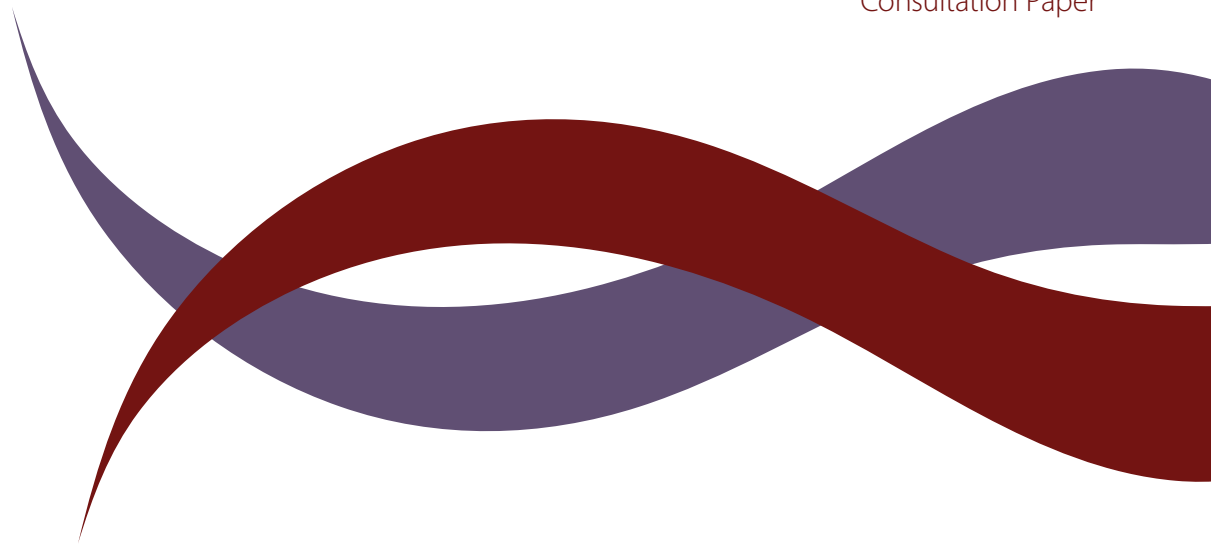
Revised Enforcement & Prosecution Policy 2009

A Consultation Paper



Revised Enforcement & Prosecution Policy

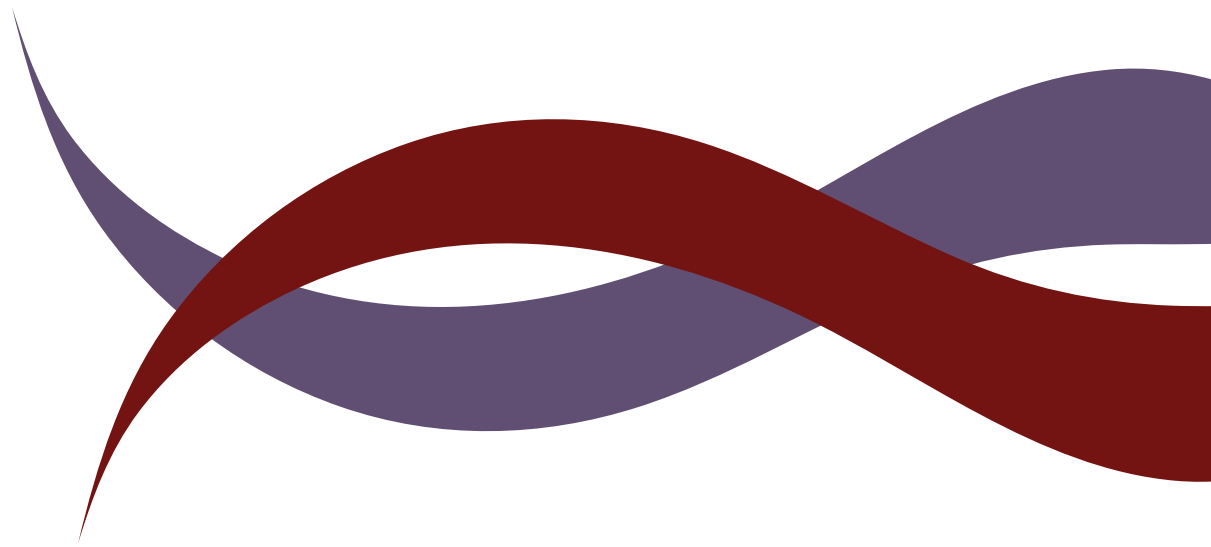
Consultation Paper



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Chapter 1 - Introduction



Chapter 1 - Introduction

1.1 The Northern Ireland Environment Agency (NIEA) has completed a review of its Enforcement Policy. The current policy published in 2002 was based on the enforcement policies of Environmental Protection and Natural Heritage. It has formed the basis of the proposals for a revised Agency-wide policy.

1.2 The enforcement policy has been reviewed in response to recommendations by the Criminal Justice Inspectorate in their review of environmental enforcement ("Enforcement in the Department of the Environment", October 2007) and as part of the Agency's Better Regulation commitment to **clear, fair and firm enforcement**.

1.3 The enforcement policy sets out the general principles that NIEA will follow in relation to enforcement and prosecution. It provides guidance to NIEA staff, businesses and the general public on the tools available to deal with breaches of legislation and ensure that these are applied in a consistent and proportionate manner.

1.4 NIEA aims to protect the natural and built environment and help safeguard human health. The Agency is committed to supporting the regulated community to meet their obligations and prevent environmental damage through tailored advice and guidance. However, where it becomes necessary to take formal action, NIEA will do so.

1.5 NIEA is working to strengthen its enforcement powers against serious and/or persistent offenders who present a serious risk to the environment. With this in mind, a new Environmental Crime Unit was established in December 2008 to facilitate a more co-ordinated approach to serious and multiple breaches of regulations. This will involve a substantive review of enforcement procedures and resources.

Consultation Purpose

1.6 The purpose of this initial consultation is to seek the views of all interested parties on the draft revised NIEA Enforcement Policy. It is our intention to take account of all responses received, and with greater understanding of the workings of the new Environmental Crime Unit, issue a further consultation paper in Autumn 2009.

Equality Issues

1.7 Under section 75 of the Northern Ireland Act 1998, public authorities have a statutory duty to promote equality of opportunity. We have completed an equality screening of the revised enforcement policy and have concluded that it does not impact on equality of opportunity on any of the groups specified in section 75. The screening paper can be found at Annex 1. Any section 75 issues raised as a result of this consultation process will be taken into consideration.

1.8 The Equality Commission will receive copies of this consultation document as part of this consultation exercise. We will take into account any comments that the Commission might have.

Regulatory Impact Assessment

1.9 We have decided that a Regulatory Impact Assessment is not required. The appropriate impact assessments will have been undertaken prior to implementation of the legislation of which this policy covers.

Human Rights Issues

1.10 The Human Rights Act 1998 implements the European Convention on Human Rights. The Act makes it unlawful for any public authority to act in a way that is incompatible with these rights. We believe that the draft revised enforcement policy is compatible with the Human Rights, but would welcome any views that you may have.

1.11 The Human Rights Commission will receive copies of the consultation document as part of this consultation. We will take into account any comments that the commission might have.

Submission of Responses

1.12 All comments should be submitted by 22 June 2009. Further copies of this consultation paper are available from the address below. The paper is also available on our website at www.ni-environment.gov.uk.

1.13 Respondents are requested to explain who they are and, in the case of representative groups, to give a summary of the people and/or organisations they represent. Respondents are also encouraged to provide evidence, where appropriate, in support of their response.

1.14 Responses should be sent to:

Ruth Murphy
Better Regulation Team
NIEA
Klondyke Building
Gasworks Business Park
Lower Ormeau Road
Belfast BT7 2JA

E-mail: BetterRegulation@doeni.gov.uk

Tel: 028 90 569409

Fax: 028 90 569371

Freedom of Information Act 2000 – Confidentiality of Consultation Responses

1.15 We may publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. We can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

1.16 The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department of the Environment in this case. This right of access to information includes information provided in response to a consultation. We cannot automatically consider as confidential information supplied to us in response to a consultation. However, we do have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

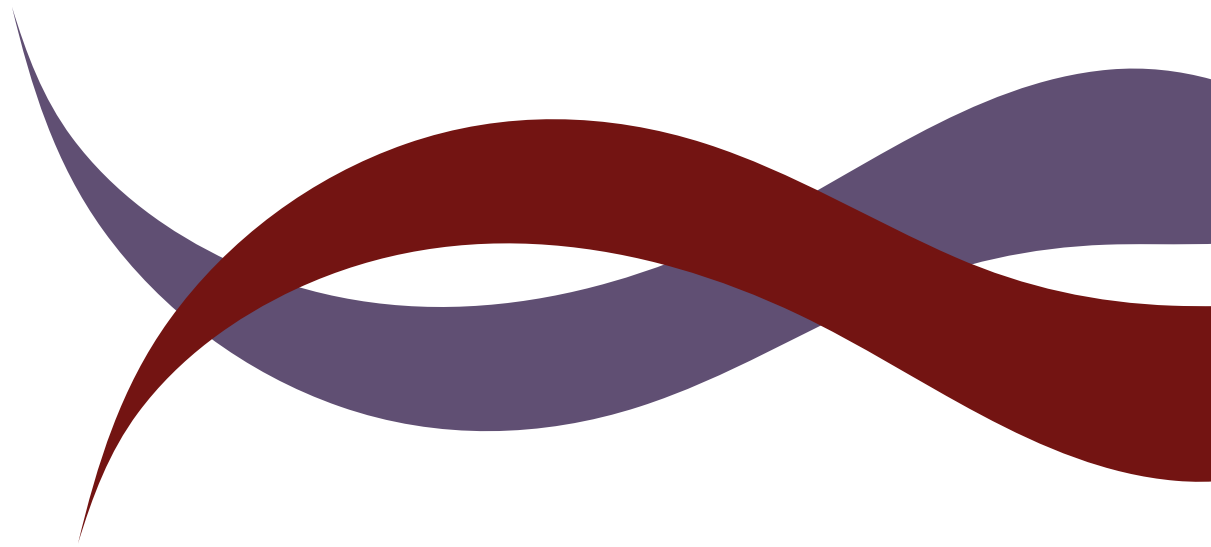
1.17 This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of its functions and it would not otherwise be provided;
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature;
-
- its acceptance of confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

1.18 For further information about confidentiality of responses please contact the Information Commissioner's Office at the following address:

Information Commissioner's Office,
51, Adelaide Street,
Belfast,
BT2 8FE
Tel: 028 9026 9380
Fax: 028 9026 9388
Email: ni@ico.gsi.gov.uk

Chapter 2 - Consultation Questions



Chapter 2 - Consultation Questions

1.19 NIEA welcomes comments on any aspect of this paper. However, we are particularly interested in comments on the following areas.

Introduction and Scope (Section 1)

1.20 In 2002 the Agency developed a specific Enforcement and Prosecution Policy for Environmental Protection. In order to bring a consistent approach to enforcement throughout NIEA, the policy has been revised to extend to the Natural and Built Heritage.

Question 1- Do you have any comments on the scope of the revised policy?

Question 2 – Have we clearly explained the nature of our regulations and links with other agencies?

Principles of Enforcement (Section 2)

1.21 The original Enforcement Policy states that NIEA will be consistent, proportionate and transparent in its approach to enforcement action. This section has been revised to include two new principles:

Targeting - NIEA will ensure that the regulatory effort is directed primarily towards those whose activities actually or potentially give rise to the most serious risks to health, loss of amenity or the natural or built environment and towards those who benefit financially from breaching environmental legislation .

Accountability - As a regulator, we will be accountable to the public for our actions while remaining independent in the decisions we take.

In addition, NIEA will publish an Annual Enforcement Report, with the primary aim of informing the people and businesses of Northern Ireland of enforcement work undertaken during the previous year.

Question3-Do you have any comments on these principles?

Question 4 – Are there any other principles that should be included?

Supporting Compliance (Section 3)

1.22 Section 3 is a new section of the policy to highlight that NIEA recognises the importance that everyone obligated under a regulation is fully aware of its existence and relevance to their activity, and how to comply. NIEA recognises the importance of raising awareness of regulations and how to comply through a range of methods including direct contact with NIEA staff, seminars, campaigns and our web-based NetRegs guidance tool (www.netregs.gov.uk), as well as the Agency website. We will continue to explore different ways and formats in which to maximise the reach, accessibility and effectiveness of NIEA advice.

Question 5 - Do you have any views on how NIEA's compliance assistance could be improved?

Enforcement Powers (Section 4)

1.23 A new section, setting out the range of enforcement powers available to NIEA to deal with breaches of legislation, have been added to the revised policy.

We anticipate that most of our dealings with the regulated community will be in relation to advice and assistance. However, it is vital that those who are subject to regulations are compliant. NIEA will use the legal powers as set out in section 4 where informal methods have been unsuccessful and breach of legislation has occurred.

Question 6 - Do you have any views on the range of enforcement powers available to NIEA and its approach to secure compliance with the law?

Question 7 – Would you welcome access to a wider range of enforcement tools, such as fixed penalties or voluntary undertakings?

Factors Determining Prosecution (Section 5)

1.24 This section has been revised to clarify factors to be taken into account by NIEA in deciding whether to submit a case to the Public Prosecution Service, recommending prosecution.

Question 8 - Do you have any comments on the factors determining whether prosecution should be pursued?

Court Action (Section 6)

1.25 This is a new section summarising the considerable powers available to the courts to punish offenders and deter others. It is further highlighted that NIEA is committed to working with the Police Service of Northern Ireland and the Serious Organised Crime Agency where significant financial benefit has been accrued from the proceeds of unlawful activity.

Question 9 - Do you have any comment on NIEA's use of financial penalties and involvement with the Serious Organised Crime Agency?

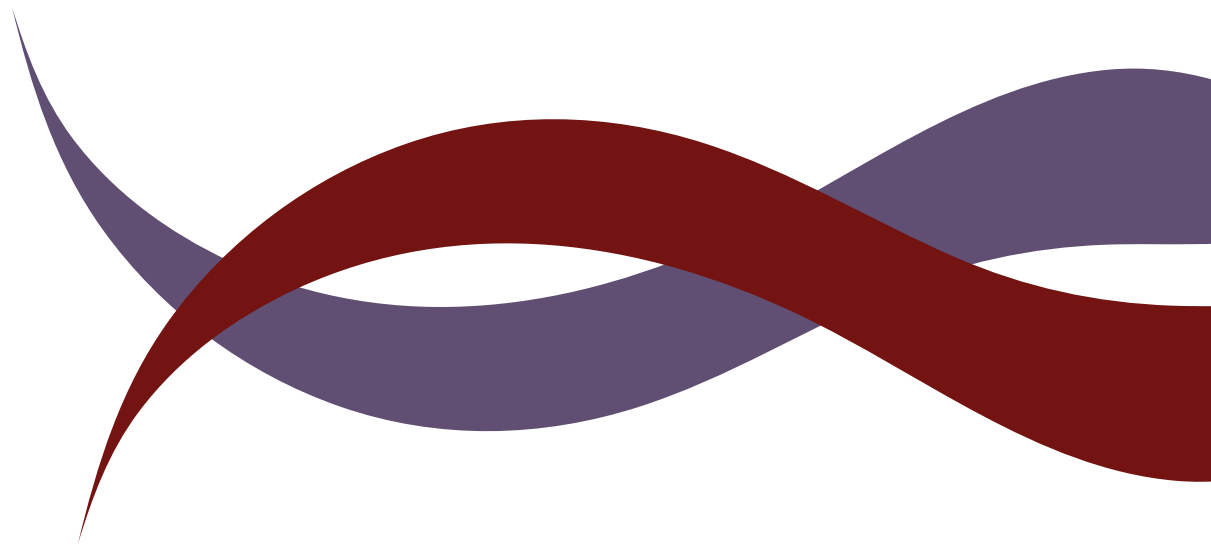
Working in Partnership (Section 7)

1.26 A new section is added to the policy to highlight that NIEA will work closely with other enforcement agencies to strengthen its enforcement activity.

Question 10 - Do you have any comments/views on NIEA's working arrangements with other enforcement agencies?

Question 11 – Are there any other enforcement agencies you think NIEA should be liaising with?

Chapter 3 - Revised Enforcement & Prosecution Policy (Draft)



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1 INTRODUCTION AND SCOPE

The Northern Ireland Environment Agency (NIEA), formerly the Environment and Heritage Service (EHS), is an agency of the Department of the Environment. Our aim is to protect, conserve and promote our natural environment and built heritage and to contribute to the protection and improvement of human health for the benefit of present and future generations.

We recognise that the best way to achieve compliance with the law is to provide guidance so that those carrying out regulated activities fully understand their responsibilities and voluntarily comply. We also recognise that the serious nature of unlawful environmental crime and criminal benefit requires that formal enforcement action is taken.

We regulate activities which may pollute land, air or water or which may damage the natural or built environment. The legislation we work under and when you may need a licence or permission is outlined in the Agency's 'Environmental Legislation and Service Standards' (EHS, 2007) under the following themes:

- Water Quality;
- Industrial Pollution;
- Waste Management;
- Protecting Historic Monuments and Buildings; and
- Conserving Nature and the Countryside.

The Agency works closely with those we regulate in order to secure improved performance. Through tailored advice and guidance, we seek to secure compliance with legislation and promote sound environmental practice. NIEA staff will take enforcement action for non-compliance with legislative requirements to prevent environmental damage.

NIEA will work with other law enforcement agencies to ensure coherent, joined up enforcement of regulation. While protection of the historic buildings and monuments rests with NIEA, the Planning Service carries out enforcement for listed buildings under the Planning (Northern Ireland) Order 1991, with assistance from NIEA.

In order to support collaboration on enforcement across the various regulatory regimes, a new Office of Environmental Enforcement was set up in December 2008 to tackle serious offences, persistent offenders and those involved in criminality which results in breaches of environmental legislation.

This Enforcement Policy sets out the general principles that we follow in relation to enforcement and prosecution. The implementation and effectiveness of the Policy will be monitored by the Chief Executive.

2 PRINCIPLES OF ENFORCEMENT

NIEA believes in firm but fair enforcement of environmental law to protect the natural and built environment and human health. Our enforcement activity will adhere to the Better Regulation principles:

- **Consistent** approach;
- **Proportionate** in the application of the law and in securing compliance;
- **Transparent** about how NIEA operates and what those regulated can expect;
- **Targeted** enforcement action; and
- **Accountable** for our services and our actions.

2.1 Consistent

We aim to be consistent in the advice we provide, in our response to all incidents that cause harm to the natural and built environment, in the use of our enforcement powers and in taking decisions on whether to submit a case to the Public Prosecution Service (PPS) recommending prosecution. However, we realise that consistency is not a simple matter of uniformity. NIEA will consider how similar situations were handled previously but, in addition, will take account of a variety of other factors; the scale of environmental impact, the attitude and actions of the operator and/or the history of previous incidents and breaches.

Any decision regarding enforcement action will be impartial and will not be influenced by any view with regard to the race, politics, gender, sexual orientation or religious beliefs of any offender, complainant or witness.

2.2 Proportionate

Proportionality means relating enforcement action to the risks posed. Any action taken to achieve compliance will be proportionate to the severity of any breach, whilst upholding legislation. The first response of NIEA will be to prevent harm from occurring or continuing both to the natural and built environment. Enforcement action taken will be proportionate to the risks posed to the environment and to the seriousness of the breach of the law.

2.3 Transparent

Transparency means helping those we regulate to understand what we expect of them, and what they should expect from us. It also means making clear why we intend to, or have taken, enforcement action.

We will be transparent in our regulatory activities so that the public can be confident that we will be effective in protecting the natural and built environment.

In dealing with those we regulate we will:

- provide an opportunity to discuss what is required to comply with the law before formal enforcement action is taken although this may not be appropriate if urgent action is required or to prevent evidence being destroyed or in some cases where there are major or serious breaches;

- confirm in writing where remedial action is found to be necessary (in cases where urgent action is required, confirmation and explanation will be issued as soon as practicable after the event); and
- provide written confirmation of any rights of appeal against formal enforcement action at the time the action is taken.

NIEA will publish an **Annual Enforcement Report** with the primary aim of informing the people and businesses of Northern Ireland of the enforcement work undertaken during the previous year.

2.4 Targeted

Targeting means making sure that the regulatory effort is directed primarily towards those whose activities actually or potentially give rise to the most serious risks to health or the natural or built environment and to those who benefit financially from the criminal activity. By prioritising effort and resources, we can ensure that those sites posing the greatest risk can be inspected more frequently.

NIEA will consider, amongst other factors, complaints from the public, the risk and control technologies of licensed sites, risks associated with activities, environmental sensitivity and information received on illegal activities when prioritising action.

NIEA will direct its focus on those individuals or businesses that:

- cause or risk serious environmental damage;
- operate unregistered outside the regulatory regime;
- persistently break the terms and conditions of their licence or consent; and/or
- knowingly and deliberately break the law.

2.5 Accountable

As a Regulator, we will be accountable to the public for our actions while remaining independent in the decisions we take. We welcome feedback where there are elements of dissatisfaction with the level of service we provide and constructive criticism about that which can be improved. Our complaints procedure is available on our website at www.ni-environment.gov.uk/or by phoning our customer coordinator on 028 9056 9213.

3 SUPPORTING COMPLIANCE

We provide advice to individuals and businesses to encourage them to integrate good environmental practices into normal working methods. In line with the Northern Ireland Better Regulation Strategy and our Better Regulation Programme, we seek to secure compliance and deliver our environmental outcomes without placing unreasonable burden on those we regulate.

We raise awareness of regulation and promote compliance through a range of methods including direct contact with staff, education programmes, publicity campaigns and online. We provide up to date information through our website (www.ni-environment.gov.uk). In addition, the NetRegs website (www.netregs.gov.uk) is a unique resource, developed to help small businesses identify environmental law relevant to them, quickly and easily. The website is a joint initiative between the UK's environmental regulators - NIEA, Environment Agency (England & Wales) and SEPA (Scotland). It is free to use, regularly updated and anonymous.

NIEA will continue to explore a range of appropriate formats to maximise the reach, accessibility and effectiveness of advice to individuals and businesses while ensuring efficient use of resources. We will collate data on the effectiveness of education, publicity campaigns and awareness raising activities carried out to improve compliance with environmental legislation. There will remain a need for regulated parties, particularly those with more technical or complex practices, to access specialist or professional advisors as appropriate.

Where regulations are breached, it is our goal to bring the offender back into compliance as soon as possible, to take suitable action to act as a deterrent to others and secure general compliance with the law. Our enforcement powers are described below.

4 ENFORCEMENT POWERS

In the event of an infringement, breach of authorisation or unlawful activity being detected, NIEA has a range of enforcement powers, both formal and informal, upon which it may rely to secure compliance with the relevant regulatory regime. It is anticipated that most of our dealings with those we regulate will be through informal avenues, providing advice and assistance. However, where informal methods have been unsuccessful, or a serious breach of legislation has, or is likely to, occur, formal enforcement action will be taken to ensure compliance with the law. Such action may include:

4.1 A Warning

A warning may take the form of a written letter or an 'on-site' warning from an inspector that will be recorded on the site inspection report. It informs the operator that NIEA considers an offence has been or is likely to be committed but does not constitute an enforcement action. It may be referred to in future action.

4.2 Enforcement, Works or Prohibition/Suspension Notices

Where legislation allows, a formal notice may be served to remedy non compliance. Such a notice will specify the action to be taken and the timescale and consequences of failure to comply. Failure to comply with an enforcement notice is a criminal offence, and prosecution will normally ensue. In addition NIEA may take proceedings in the High Court for the purpose of securing compliance with notices.

4.3 A Simple Caution

This is a specific form of warning where an individual admits committing an offence. The 'Simple Caution' is a non-statutory procedure that must be applied in accordance with Home Office guidelines and public interest principles. A 'Simple Caution' may only be used where a prosecution could be properly brought.

4.4 A Fixed Penalty

A fixed penalty is an acceptance by the offender that they have committed an offence and discharges him/her of any liability to conviction for that offence by payment of a fixed penalty and may only be used in accordance with regulation and where a prosecution could properly be brought. A fixed penalty may only be offered in place of a prosecution, where expressly authorised by statute. These are currently limited to a small number of regulations but are being considered across a broad range of legislation.

4.5 Revocation of Environmental Licences

NIEA has the power to revoke all or part of an environmental licence or consent. When a licence or consent has been revoked, it shall cease to have effect to authorise the carrying out of the activities specified in it.

4.6 Prosecution

Prosecution is an important part of any enforcement system. Prosecution acts as a punishment, a deterrent to others and as a means of avoiding a recurrence. Where the circumstances warrant it NIEA may send a case to the Public Prosecution Service (PPS) without prior warning or recourse to other methods of enforcement. We recognise that the initiation of a prosecution is a serious matter and should only be taken after appropriate consideration of the implications and consequences.

4.7 Injunction Proceedings

NIEA will take strong action against individuals and companies when they flagrantly breach the law. In cases of serious or potentially serious environmental damage, where the use of normal administrative notices or powers would fail to protect the environment or human health, or where persons or businesses are operating a particular process or carrying on a particular activity without authorisation and refuse to cease activities, we will consider applying for an injunction in the form of a court order to require compliance.

Obtaining an injunction may have major economic impact on an operator and NIEA would anticipate taking such action only in exceptional cases where it is justified and, is of the opinion that alternative proceedings would afford an ineffectual remedy. Failure to comply with the terms of an injunction could result in proceedings for contempt of court. A person can be imprisoned for this offence.

5 FACTORS DETERMINING PROSECUTION

As Regulator, it is the responsibility of NIEA to investigate breaches of environmental legislation, to gather evidence in relation to breaches and present the evidence to the prosecutor. The decision to prosecute and to conduct the case on behalf of NIEA is ultimately made by the Public Prosecution Service for Northern Ireland. The Prosecution Service is wholly independent from both the investigating agency and government; its decisions will be based on an impartial and professional assessment of the available evidence and the public interest.

The choice of enforcement action taken will depend on the individual case, but we acknowledge that there will be circumstances where immediate prosecution will be necessary.

5.1 Circumstances likely to lead to prosecution

If we consider there is sufficient evidence, we will normally submit a case to the PPS, recommending prosecution under circumstances where one or more of the following occur:

- **incidents or breaches that have significant consequences on the environment both natural and built;** The protection of Northern Ireland's environment and human health is the primary goal of all NIEA prosecutions.
- **someone knowingly carries out activities without a relevant licence or consent;** It is vital to the protection of the environment that all those required to be regulated are correctly registered.
- **someone fails to comply with formal remedial requirements,** such as enforcement works or prohibition notices; Notices of this kind are issued to protect Northern Ireland's environment from harm. Ignoring such notices undermines the regulatory system and is considered unacceptable.
- **there are excessive or persistent breaches of regulatory requirements;** It is unacceptable where an operator has been notified of previous violations that no corrective action is taken to rectify the problem.
- **failure to report an incident that threatened or caused significant environmental damage;** The concealment of an environmental incident may hamper NIEA in effecting a timely response and mitigating potential damage.
- **there is reckless disregard for management or quality standards;** Irresponsible operators pose a significant risk to the environment and must be brought in to compliance or prevented from operating.
- **someone fails to supply information when legally required** without reasonable excuse or knowingly or recklessly supplies false or misleading information: NIEA must be able to rely on the data produced by regulated industries in order to carry out its duties;
- **our staff or authorised officers are obstructed in carrying out their duties:** The obstruction or assault of NIEA staff carrying out their duties is unacceptable.

5.2 Other factors

Other factors may be considered on a case-by-case basis, where appropriate. These may include:

- the attitude of the offender;
- the deterrent effect of prosecution, on the offender and others; and
- the personal circumstances of the offender.

5.3 Evidential Test

A prosecution will not be commenced or continued unless the PPS is satisfied that the Evidential Test for Prosecution is met. Public Prosecutors must determine whether there is sufficient, admissible and reasonable evidence that the offence has been committed and that there is a realistic prospect of conviction.

5.4 Public Interest Test

Once the PPS is satisfied that there is sufficient evidence to provide a reasonable prospect of conviction, it will then consider whether it is in the public interest to prosecute. The presumption is that, where there has been a contravention of criminal law the public interest requires prosecution, although prosecutors must exercise their discretion. The following are examples of some public interest considerations for prosecution which may be relevant

- the effect of the offence on the environment both natural and built;
- whether the offence was foreseeable or the circumstances leading to it;
- the intent of the offender, individually and /or corporately;
- whether financial benefit has been accrued from the proceeds of unlawful activity and/or
- the history of the offender.

5.5 Responsible persons

Should the PPS consider that the Evidential and the Public Interest Tests for Prosecution are met, criminal proceedings will be brought against those persons responsible for the offence. Where a Company is involved, it will be usual practice to prosecute the Company where the offence resulted from the Company's activities. However, in some cases it may be necessary to consider any part played in the offence by the senior officers of the Company, including Directors, Managers and the Company Secretary. Action may also be taken against such officers (as well as the Company) where it can be shown that the offence was committed with their consent, knowledge or connivance, or was due to lack of reasonable diligence on their part.

6 COURT ACTION

Environmental law gives the courts considerable power to punish offenders and to deter others. Should legal proceedings be instigated, such cases can be dealt with at Magistrates or Crown Courts.

6.1 Fines and Custodial Sentences

The Magistrates courts can impose substantial financial penalties and/ or up to 6 months imprisonment in some cases. Unlimited fines and up to 5 years imprisonment can be imposed by the higher courts. In certain cases the courts may also impose an order requiring restoration work to be carried out. NIEA will seek to recover the costs of the investigation and court proceedings.

6.2 Criminal Confiscation Orders (Proceeds of Crime)

NIEA will conduct financial investigations where significant personal financial gain has been accrued from the proceeds of unlawful activity. The financial investigation will be conducted with a view to initiating confiscation proceedings under the Proceeds of Crime Act 2002. Criminal Confiscation Orders are required to be paid with a prison sentence in default. Following imprisonment the Order remains in force until paid.

NIEA will continue to work with the Serious Organised Crime Agency, PSNI and Public Prosecution Service, as appropriate, to obtain a confiscation order where a defendant has benefited from the proceeds of unlawful activity.

7 WORKING IN PARTNERSHIP

Where our regulatory staff and an other law enforcement body both have the power to investigate and/ or prosecute, we will liaise with that other body, to make sure that any proceedings initiated are coordinated to ensure that the most effective enforcement result is obtained.

7.1 Inter-agency co-operation

NIEA staff will work with other law enforcement agencies such as Local Councils, Planning Service, Department of Agriculture and Rural Development (DARD), Police Service of Northern Ireland (PSNI) and the Health and Safety Executive for Northern Ireland on matters of mutual interest, including planning, pollution control, public health, occupational safety and wildlife protection to ensure coherent regulation.

While protection of the built heritage rests with NIEA, the Planning Service carries out enforcement under the Planning (Northern Ireland) Order 1991 in regard to listed buildings, with assistance from NIEA. In addition, DARD has the power to penalise owners who are in breach of the Good Farming Practice Policy.

7.2 Cross Border Co-Operation

NIEA will continue to develop co-operation with its equivalent law enforcement agencies in the Republic of Ireland, including the Office of Environmental Enforcement within the Environmental Protection Agency and the Department of the Environment, Heritage and Local Government, to share intelligence and joint investigations to better prevent, deter and take action against criminal activity.

8 APPLICATION OF OUR POLICY

All our decisions will have regard to current statutory guidance and codes of practice, particularly the Government's Enforcement Concordat, the Code for Prosecutors, the Police and Criminal Evidence (NI) Order 1989 (PACE), the Human Rights Act 1998 and the Proceeds of Crime Act 2002 Codes of Practice.

8.1 Enforcement Concordat

Enforcement actions are taken within the context of a legal and policy framework. NIEA will undertake enforcement work with due regard to the Government's Enforcement Concordat (Cabinet Office 1998). The Enforcement Concordat sets out 'principles of good enforcement policy' and 'principles of good enforcement procedure'.

The principles of good enforcement policy are concerned with 'standards of service and performance that the public and business people can expect to receive; openness, helpfulness, a complaints procedure, proportionality and consistency'.

The principles of good enforcement procedure cover the provision of advice to explain why any remedial work is necessary, opportunity for discussion before formal enforcement action is taken, explanation as to why immediate action was required; and information on rights of appeal (when applicable)

Further information on the Enforcement Concordat is available from the Department of Industry Trade and Investment (DETI).
<http://www.detini.gov.uk/cgi-bin/downutildoc?id=75>

8.2 Code for Prosecutors

The Public Prosecution Service is the independent prosecuting authority who will ultimately decide on whether to proceed to court. A decision to prosecute will be made in accordance with the Code for Prosecutors, which gives guidance on general principles to be applied in determining, in any case:

- whether criminal proceedings should be instituted or, where criminal proceedings have been instituted, whether they should be discontinued; and
- what charges should be preferred

A full copy of the code is available from

Public Prosecution Service
Belfast Chambers
93 Chichester Street
Belfast
BT1 3JR

8.3 Police and Criminal Evidence (NI) Order 1989 (PACE)

NIEA will operate according to PACE Codes in conducting investigations, interviews and searches. Only staff who are competent by training and/ or experience will be authorised to take enforcement action and will have a full understanding of this enforcement policy to ensure a consistent approach to their duties.

8.4 Protection of Human Rights

This policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. NIEA staff will take care not to take any action which contravenes rights conferred by the Human Rights Act or any other legislation.

8.5 Proceeds of Crime Act 2002

The Proceeds of Crime Act 2002 (POCA) contains a comprehensive package of measures focusing on the recovery of criminal proceeds and wealth. NIEA will operate according to POCA Codes of Practice.

9 STATUS AND REVIEW

The NIEA Board adopted this policy on 21 November 2008. It will be subject to an annual review with additional reviews as and when required.

10 FURTHER HELPFUL INFORMATION

Our Customer Charter and our Environmental Legislation and Service Standards are available on our website at www.ni-environment.gov.uk or by phoning our Customer Coordinator on 028 9056 9213.

Freedom of Information

The Department of the Environment's Publication Scheme contains a list of publications produced in the course of its work. The scheme is available on the Department's website at <http://www.doeni.gov.uk/>. You can also apply for access to information at:

Information Management Branch
Room 6-01A
Department of the Environment
Clarence Court
10-18 Adelaide Street
Belfast, BT2 8GB
Tel: 028 9054 1123
Fax: 028 9054 1103
Email: foi@doeni.gov.uk

Annex 1

DOE SECTION 75 EQUALITY OF OPPORTUNITY SCREENING ANALYSIS FORM

Section 1

Introduction

This form is intended to help you to consider whether a new policy (either internal or external) or legislation will require a full equality impact assessment (EQIA). Those policies identified as having significant implications for equality of opportunity must be subject to full EQIA.

The form will provide a record of the factors taken into account if a policy is screened out, or excluded for EQIA. It will provide a basis for consultation on the outcome of the screening exercise and will be referenced in the Annual Report to the Equality Commission. Copies of completed forms should be retained on file within business areas (and a copy sent to the Equality Unit) and reference should be made to the outcome of the screening exercise and subsequent consultation in any submission made to the Minister.

Background

The Legal Background

Under section 75 of the Northern Ireland Act 1998, the Department is required to have due regard to the need to promote equality of opportunity:

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and
- between persons with dependants and persons without.

The main groups within each of the nine categories, highlighted above, are identified at Appendix 1.

In addition, without prejudice to its obligations above, the Department is also required, in carrying out its functions relating to Northern Ireland, to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinion or racial group.

Advice on Completion of the Screening Form

It is important that the screening form is completed carefully and thoughtfully. Your Divisional or Agency Equality Officer and the Department's Equality Unit in room 413A Clarence Court (ext 40203/40813) will be happy to assist with all aspects of the screening process and will help with the completion of the form, if required.

Further advice on the screening process can be accessed at Section 4 of the Equality Commission's Guide to the Statutory Duties.

Policies included for EQIA

If, after screening, it is decided that a policy will require a full EQIA, a decision will be required on the priority and timing of the assessment. The screening form should be noted accordingly, signed off and copied to the Equality Unit for inclusion in the EQIA programme.

Policies excluded for EQIA

If a decision is taken to screen out the policy or where there is ambiguity about the equality implication of the proposal, the screening form should be signed off by a senior officer responsible for the policy and a copy sent to the Equality Unit. Copies of all screening out forms will be placed on the Department's website.

Section 2 – Policy to be Screened

Definition of Policy

There have been some difficulties in defining what constitutes a policy in the context of Section 75. To be on the safe side it is recommended that you consider changes to or any new initiatives, proposals, schemes or programmes as policies. The policies covered in the Equality Scheme EQIA programme are a reasonable guide both to the nature of external departmental policies and the level at which they should be considered.

The revised Guidance from The Equality Commission emphasises that the Statutory duties apply to internal policies (relating to people who work for the organisation) as well as external policies (relating to those who are, or could be, served by the organisations).

It is important to remember that even if a full EQIA has been carried out in respect of an "overarching" policy or strategy, it will still be necessary for the policy maker to consider if a further EQIA needs to be carried out in respect of those policies cascading from the overarching strategy.

OFMDFM Guidance on Legislative Procedures (Primary and Subordinate) sets out clearly the stages at which equality of opportunity considerations should be taken into consideration in the development of legislation.

Overview of Policy Proposals

The aims and objectives of the policy must be clear and well defined. You must take into account any available data or evidence that will enable you to come to a decision on whether or not a policy may or may not have a differential impact on any of the S75 categories. Evidence may be qualitative and or quantitative and may include research or internal information and or experience in relation to service and customer monitoring exercises. Where appropriate, arrangements should be made to obtain any data necessary to assist screening. The Equality Unit or Central Statistics & Research Branch (Stephanie Harcourt ext 40878 or Michael Bennett ext 40916) are available to provide advice on data requirements.

2.1 Please insert below a brief description of the policy/legislation, including the title and all the main aims and objectives	
Title	Northern Ireland Environment Agency (NIEA) Enforcement Policy
Aims	To clarify NIEA enforcement policy and general principles to ensure transparent and consistent approach to taking enforcement action in relation to non-compliance with existing environmental regulations.
	To outline the range of enforcement options at NIEA's disposal and factors affecting prosecution.
	To ensure that enforcement action is proportionate to the risks posed and regulatory effort targeted towards those whose activities actually or potentially give rise to the most serious risks to health or the environment.

It is essential that all the aims/objectives of the policy be clearly and fully defined.

2.2 On whom will the policies/legislation impact? Please specify	
	NIEA staff
	Licence/permit holders, site operators and the business community
	All those who are subject to environmental legislation
2.3 Who is responsible for (a) devising and (b) delivering the policy, eg is it DOE, a Whitehall Department or EU? What is the relationship and have they considered this issue and any equality issues?	
(a)	NIEA, as the environmental regulator.
(b)	NIEA
2.4 What linkages are there to other NI Departments/NDPBs in relation to this policy/legislation?	
	To strengthen enforcement activity under this policy NIEA will continue to work closely with other enforcement agencies such as Local Councils, Planning Service, Department of Agriculture and Rural Development, Police Service of Northern Ireland, Health and Safety Executive, Serious Organise Crime Agency and with the Public Prosecution Service.

2.5 What data are available to facilitate the screening of this policy/ legislation?	
	None
2.6 Is additional data required to facilitate screening? If so, give details of how and when it will be obtained.	
	No

See Appendix 4 of the Equality Commission Practical Guidance on EQIA which provides a list of Sources of S75 data or speak to Central Statistics and Research Branch (Stephanie Harcourt, ext 40878, or Michael Bennett, ext 40916) or Equality Unit (Alex Boyle, ext 41194, or Laura McAleese, ext 40203).

Section 3 – Screening Analysis

In cases where there is no available quantitative evidence, you will need to take a pragmatic, common sense judgement as to whether the policy/legislation you are screening may have a particular/differential impact on any of the groups. Discussions with Equality Unit, Statistics Branch and organisations representing the Section 75 Groups will be important and helpful at this stage in obtaining qualitative evidence of impacts. Every effort should be made to ensure that assessments are evidence based.

The following criteria must be considered when screening.

3.1 Is there any indication or evidence of higher or lower participation or uptake by the following Section 75 groups?

	Yes	No
Religious belief		x
Political opinion		x
Racial group		x
Age		x
Marital status		x
Sexual orientation		x
Gender		x
Disability		x
Dependants		x

Please give details
The policy issue is for both NIEA staff and all external users. There are no differential impacts involved.

3.2 Is there any indication or evidence that any of the following Section 75 groups have different needs, experiences, issues and priorities in relation to this policy issue?

	Yes	No
Religious belief		X
Political opinion		X
Racial group		X
Age		X
Marital status		X
Sexual orientation		X
Gender		X
Disability		X
Dependants		x

Please give details

The policy issue is for both NIEA staff and external users. There are no differential impacts involved.

3.3 Have consultations with the relevant representative organisations or individuals within any of the Section 75 categories, indicated that policies of this type create problems specific to them?

	Yes	No
Religious belief		X
Political opinion		X
Racial group		X
Age		X
Marital status		X
Sexual orientation		X
Gender		X
Disability		X
Dependants		X

Please give details of any consultations carried out, and any problems identified.

No problems have been identified to date. Any section 75 issues raised as a result of this consultation exercise will be taken on board.

3.4 Is there an opportunity to better promote equality of opportunity or community relations by altering the policy, or by working with others, in Government, or in the larger community in the context of this policy?

No

Please give details

Not relevant to this policy. It applies equally to all; setting out NIEA principles to ensure compliance with existing legislation; that it has a duty to enforce.

3.5 It may be that a policy/legislation has a differential impact on a certain Section 75 group, as the policy has been developed to address an existing or historical inequality or disadvantage. If this is the case, please give details below:

There is no evidence that the policy will have a differential impact on any Section 75 group. The legislation that NIEA is under a duty to enforce applies equally to sections of society.

3.6 Please consider if there is any way of adapting the policy to promote better equality of opportunity or good relations.

Please give details

The policy outlines how NIEA will take enforcement action in relation non-compliance with existing legislation. Given the nature of the policy there is no way of adapting it to this end.

Section 4

EQIA Recommendation

You should consider carefully in this section whether full EQIA is necessary, particularly where answers to any questions in Section 3 are affirmative.

4.1 Full EQIA procedures should be carried out on policies considered to have significant implications for equality of opportunity. Please fill in the following grid in relation to the policy/legislation.

Prioritisation Factors	Significant Impact	Moderate Impact	Low Impact
Social Need.			X
Effect on people's daily lives.			X
Effect on economic, social and human rights.			X
Strategic significance			X
Financial significance			X

Please give details

The proposed revised policy sets out the general principles that NIEA will follow in relation to supporting compliance, enforcement and prosecution, in order to protect and conserve the natural and built environment and human health. This policy would be expected to have a low impact regarding the five categories above.

4.2 In view of the considerations in Section 3 and 4 do you consider that this policy/legislation should be subject to a full EQIA? Please give reasons for your considerations. If you are unsure, please consult with affected groups and revisit the screening analysis accordingly. No

No. As a result of the screening analysis it is considered that there are no significant implications for equality of opportunity or community relations as a result of this policy. The aim of the policy is to ensure that everyone is clear on the consequences of non compliance with NIEA legislation which applies to all groups. NIEA staff and all sections of the community will benefit.

4.3 If an EQIA is considered necessary please comment on the priority and timing in light of the factors in table 4.1.

N/A

4.4 If an EQIA is considered necessary is any data required to carry it out/ensure effective monitoring?

Please give details

Section 5

Endorsement

I can confirm that the proposed policy has been screened for equality of opportunity and good relations implications and has been screened out for equality impact assessment.

Signed:



Agency/Division: NIEA Strategy Unit

Date: 4th March 2009

PLEASE FORWARD A COPY OF THE COMPLETED FORM TO:

DOE EQUALITY UNIT
ROOM 413A
CLARENCE COURT
10-18 ADELAIDE STREET
BELFAST
BT2 8GB

QUERIES TO: ALEX BOYLE, EXT 41194
alex.boyle@doeni.gov.uk

LAURA McALEESE, EXT 40203
laura.mcaleese@doeni.gov.uk

Section 6

For Completion by Equality Unit

Date

Screening result recorded: _____

Placed on website: _____

Screening out completed: _____

Screening to be reconsidered: _____

Give reasons: _____

Agency/Division notified date: _____

Main Groups Relevant to the Section 75 Categories	
Category	Main Groups
Religious belief	Protestants; Catholics; people of non-Christian faiths; people of no religious belief
Political opinion	Unionists generally; Nationalists generally; members/ supporters of any political party
Racial Group	White people; Chinese; Irish Travellers; Indians; Pakistanis; Bangladeshis; Black Africans; Black Caribbean people; people with mixed ethnic group
Gender	Men (including boys); women (including girls); trans-gendered people
Marital status	Married people; unmarried people; divorced or separated people; widowed people
Age	For most purposes, the main categories are: children under 18, people aged between 18-65, and people over 65. However, the definition of age groups will need to be sensitive to the policy under consideration
"Persons with a disability"	Disability is defined as: A physical or mental impairment, which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities as defined in Sections 1 and 2 and Schedules 1 and 2 of the Disability Discrimination Act 1995
"Persons with dependants"	Persons with personal responsibility for the care of a child; persons with personal responsibility for the care of a person with an incapacitating disability; persons with personal responsibility for the care of a dependant elderly person

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www.ni-environment.gov.uk

Our aim is to protect, conserve and promote the natural and built environment for the benefit of present and future generations.



An Agency within the Department of the
Environment
www.doeni.gov.uk



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