

March 2008

Better Regulation for a Better Environment

EHS Better Regulation Programme



Environment &
Heritage Service
www.ehsni.gov.uk

“We will work closely with those we regulate to raise awareness of obligations and good practice, to simplify compliance and engagement with our regulatory teams and to reward those organisations who actively identify and manage their risks to the environment.”

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Introduction

The purpose of this document is to inform both the regulators and the regulated and provide reassurance for all concerned that the focus of the Environment & Heritage Service (EHS) is on achieving better standards for the environment through Better Regulation.

As the lead environmental regulator working with Northern Ireland's business community, EHS recognises the key pressures on private companies: the impact of regulations to protect the natural and built environment; and customer demands for better goods and services at a lower price and at a lower cost to the environment.

An informed and concerned general public is seeking more robust safeguards to protect the environment and tightly control those activities which pose a threat. European Directives are increasing the number of environmental management controls and raising the compliance standards required. At the same time businesses need to concentrate on their core activities and want clear, understandable regulation which is consistently and proportionately applied.

To meet the parallel and paramount needs for economic success and a protected environment, EHS has embarked on an ambitious programme of "Better Regulation" initiatives. This will modernise and simplify our approach to regulation to help the competitive position of business by lowering the administrative burden and, at the same time, improve the quality of the environment.

Regulation which is easier to understand will be easier to adhere to and to implement, making the regulatory experience more effective for everyone involved. By improving awareness and compliance assistance, through effective and consistent enforcement, and by simplifying permitting and data returns, EHS will be able to provide a more balanced and integrated system of protection for the environment.



EHS and Environmental Regulation

The introduction of environmental legislation in Northern Ireland has brought about significant improvements in environmental standards and our quality of life, from the Pollution Control and Local Government Order 1978 to the more recent integrated Pollution Prevention and Control Regulations 2003, from the Environmental Order 2002, and its measures to protect habitats, to the Historic Monuments and Archaeological Objects Order 1995, safeguarding our built heritage.

Our regulations have traditionally specified “end of pipe” conditions but have progressively applied controls at each stage of a process. In recent years, there has been move towards target and market-based regulation to positively influence behaviour and practices.

EHS regulates through a process of permits, consents, licences or management agreements, inspections to check compliance and enforcement action for breaches, including prosecution for serious or repeat offenders. Other instruments used include agreements and trading schemes.

Ultimately, our objective is to assist the regulated community to go beyond mere compliance and to raise their environmental performance as an inherent part of good practice. To achieve this, we must go further in our efforts to inform and assist those who are amenable to the message of sustainability.

We are committed to delivering the best possible environmental outcomes through effective, risk-based regulation. Through ongoing stakeholder engagement, we will work to ensure that Northern Ireland businesses and landowners can continue to prosper without adverse impacts on the environment or human health.

We recognise the need for a smarter and more integrated approach to regulation and fully support the drive for Better Regulation at both the European and the UK level. With this in mind, we have embarked on a new programme to look at how we can support our stakeholders to manage their environmental risks and how we can deliver effective enforcement which is proportionate and risk-based.



Better Regulation

The drive towards Better Regulation is based on the recognition that regulatory bodies could and should do more to encourage compliance and use a risk-based approach to carrying their enforcement duties. Better Regulation delivers maximum benefits with minimum cost, ensuring individuals and organisations understand the purpose of regulation and how to comply, with less form filling and less intervention where risk is lower or well managed.

EHS regulates a wide range of stakeholders from large multi-national companies to smaller local businesses, from farmers and other landowners to manufacturing companies. Many of the businesses in Northern Ireland are not subject to direct regulation by EHS but are nonetheless required to comply with environmental legislation. The differing scales and activities covered by our regulations demand that we adopt a smarter range of tools and approaches to suit the nature and risk of an organisation.

Europe

As the source of much of our legislation, the European Union has recognised the impact that the regulatory framework can have on business competitiveness and ability to grow and the need to simplify and consolidate its laws. In its "Strategic Review of Better Regulation in the European Union" (November 2006), the European Commission identified opportunities for member states to take forward simplification programmes and improve their application of European law. Better Regulation is now one of the EU's core priorities, aimed at cutting red tape and improving the quality of legislation for consumers and businesses alike.

UK

Based in the new Department for Business Enterprise and Regulatory Reform, the Better Regulation Executive is driving through the Government's Better Regulation agenda and setting challenging targets for simplification. A suite of reviews on inspection and enforcement, transposition of European legislation, business support and consultation have provided the basis for a significant programme of change for regulators, including the adoption of flexible administrative penalties, reducing red tape and ensuring inspections are proportionate to risk.

Northern Ireland

DETI produced a Better Regulation Strategy in 2001 which placed obligations on all Government Departments in Northern Ireland to promote Better Regulation and provide clear guidance to obligated businesses well in advance of the introductions of new regulations. Following a comprehensive review of the Strategy, a series of recommendations and an action plan for implementation have been endorsed by all Departments, including the Department of the Environment. The first Better Regulation Annual Report for 2006-07 was published in March 2008.



Principles of Better Regulation

EHS will adhere to the five guiding principles of Better Regulation, in informing the development of new regulations or amendments and in delivering existing regulations.

Proportionate or Risk-based

Regulations and our actions must be appropriate to the risk they aim to address. Resources should be deployed in such a way that higher risk and poorly performing operations receive greatest attention and bespoke conditions and that robust enforcement action should be focused on activities causing, or likely to cause, greatest environmental harm. The need for consistency of approach must be balanced against the operator's performance record, management systems and local environmental conditions.

Accountable

As regulators, we must be able to explain and justify our decisions. We must set and publish clear standards and criteria on which we base our actions.

Consistent

Our regulated community needs to be assured that regulation will be applied in a predictable fashion across the board to provide stability and certainty. The same rules and standards must be constant and fairly applied.

Transparent

Regulators should be open and ensure that their rules and systems are simple and user-friendly. Our policies and processes should be clearly explained and understood by all stakeholders.

Targeted

Our regulatory activity should focus on the problem and on delivering the desired environmental outcomes. Regulatory processes should be periodically reviewed to check their effectiveness and to highlight improvements needed.



EHS Better Regulation Programme Areas

EHS has already made considerable progress in simplifying the requirements of recent regulations and improving its engagement with individuals and organisations in introducing and implementing regulations. The Northern Ireland Better Regulation Annual Report 2006/07 outlines the various steps taken by EHS to reduce the burden on businesses, from setting higher thresholds for packaging waste obligations to introducing simplified record-keeping for the Nitrates Action Programme.

We are taking part in the current DARD/DOE Better Regulation and Simplification Review for the agri-food sector to measure the administrative burden of our regulations and develop a simplification plan for implementation.

Our Better Regulation Summit with key industry representatives in November 2007 provided both the regulated and regulator alike with a useful forum to discuss opportunities and challenges for complying with and delivering regulations effectively. Industry feedback has been used to devise our programme for Better Regulation.

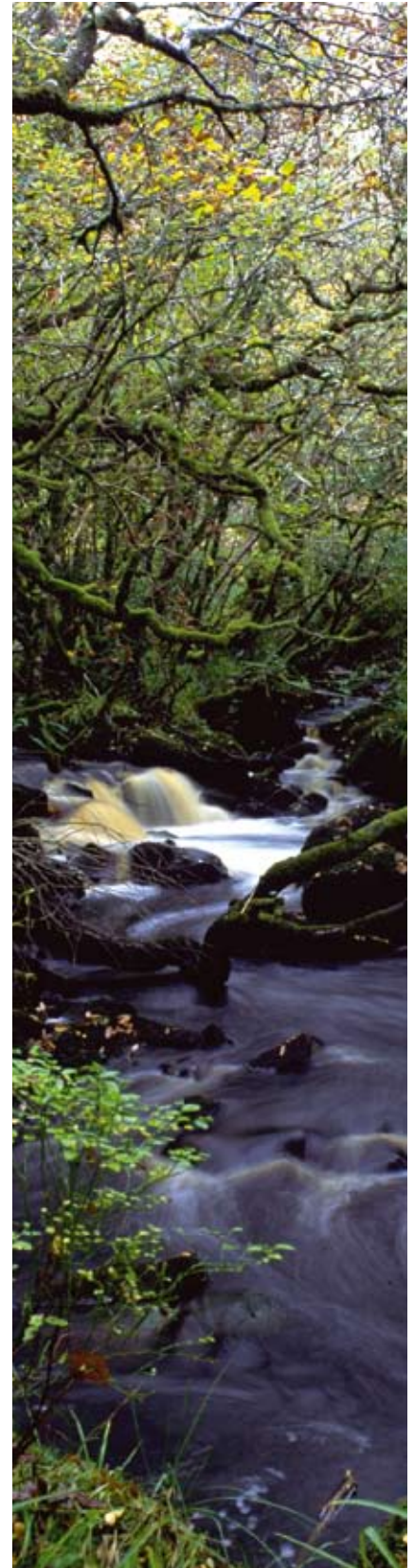
Clear guidance on environmental regulations for small businesses is available through our highly commended NetRegs website (www.netregs.gov.uk), which provides tailored advice for a vast range of business types and valuable information on environmental topics and good practice.

However, we acknowledge that much more needs to be done to promote environmental compliance and support the regulated community in their efforts to comply and meet standards.

We will work closely with those we regulate to raise awareness of obligations and good practice, to simplify compliance and engagement with our regulatory teams and to reward those organisations who actively identify and manage their risks to the environment. Simpler, easier to understand regulations will allow businesses and organisations more time to focus on putting in place systems to ensure compliance and greater environmental performance.

The 4 main elements of Better Regulation for EHS are:

- Compliance Assistance
- Streamlined Permitting
- Compliance Assessment
- Effective Enforcement



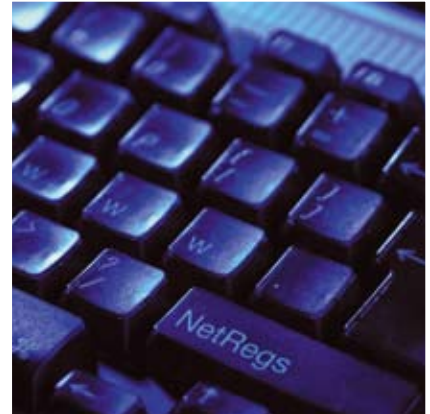
Compliance Assistance

It is vital that those obligated under a regulation are fully aware of its existence and relevance to their activity, as well as how to comply. Many of our smaller businesses are uncertain about how their activities could impact upon the natural and built environment and the need to comply with environmental regulations, representing a significant threat to the environment and human health across Northern Ireland which needs to be addressed.

We will place greater emphasis on raising awareness of all of our regulations and their purpose through a programme of information and education. Through the adoption of a sector-based approach, we can develop integrated tools and guidance to cover the breadth of EHS regulations affecting a particular sector. This is of particular importance for those organisations who are not directly regulated through permits or other instruments.

Organisations are becoming increasingly aware of the benefits of “green credentials” in today’s market place. We will continue to provide advice and case studies through tools such as our NetRegs website (www.netregs.gov.uk) which has proved invaluable to many small businesses in identifying legislation relevant to their business and highlighting practical steps to improve resource efficiency and performance. This tool has been developed in partnership with the Environment Agency and SEPA (Scottish Environment Protection Agency).

We will work closely with stakeholder bodies to identify barriers to compliance, to provide clear, unambiguous guidance which takes the guesswork out of compliance and develop innovative tools to help individuals and organisations improve their environmental performance.



Streamlined Permitting

For the regulated community, the process of applying for and receiving environmental permits or consents can be onerous, time-consuming and repetitive. In some cases, the permitting of activities can take up a disproportionate amount of time and resource for EHS, diverting staff away from other key areas such as compliance assistance and enforcement. For certain activities, the system could and should, be simpler for all concerned.

In today's world, most transactions are carried out online and this could be the case for many EHS applications. To streamline the permitting process, where regulations allow, we will work towards making application forms available online, including payments.

We will work towards a more integrated system for handling and processing permits, applying requirements according to nature of the activity and level of environmental risk. We are progressively looking at standard permits, simpler registrations, management agreements and codes of good practice for lower risk activities. However, the onus will remain with businesses to ensure that they comply with all environmental regulations that affect them.

Planning legislation is closely aligned with environmental regulation. We will also liaise with Planning Service to ensure a more complementary and integrated system for securing permissions in a timely and predictable way.



Compliance Assessment

Assessing compliance through site visits, monitoring and returns from businesses is a fundamental part of our regulatory framework. We will check compliance with permit conditions or agreements and that the desired environmental outcomes are being achieved through our sampling programmes. In response to an incident or complaint, we will inspect sites to identify the cause or issue to be resolved.

However, we will devote most resources to those activities and sites presenting the greatest risk. This will be based on the nature of the activity, management and compliance performance and the location of the site with regard to waterbodies, important habitats, centres of population etc. To help us determine the level of risk, we will develop a risk assessment model to direct inspection and enforcement activity.

We are assessing the effectiveness of Environmental Management Systems (EMS) as a measure of environmental compliance and performance to see if it can be incorporated into a more flexible, risk-based compliance system led by the operator. We will continue to promote EMS as sound business practice, providing a useful system for managing risks associated with a business activity and demonstrating compliance.

Through more joined up working within EHS, we have already progressed to integrated inspections targeting the agricultural sector, thereby reducing the burden associated with multiple regulations linked to Cross-Compliance. Our goal is to apply this approach to other sectors to reduce the number of inspections where compliance and good management have been demonstrated. In addition, as we move beyond mere compliance, we would expect our visits to look more at the overall environmental performance of business and suggest areas for environmental improvement and savings.

Some regulations require periodic returns to EHS (data or reports). We will move increasingly to electronic systems for these submissions and will endeavour to devise multipurpose returns to address multiple regulatory requirements.



Effective Enforcement

The ability to take firm and coherent enforcement action to deal with breaches and threats to the environment is central to our Better Regulation approach. In the interests of business, consumer and environment, harmonising compliance and securing a level playing field is vital. Everyone needs to be clear on the consequences of non-compliance. We will consult this year on our revised Enforcement Policy, which will outline the range of enforcement options at our disposal and when we are likely to apply them.

We are working to strengthen our enforcement action against serious or persistent offenders who present a serious risk to the environment, by increasing powers for investigation staff and developing closer working relationships with the Assets Recovery Agency and the Police Service of Northern Ireland to halt criminal activity, for example, the illegal disposal of waste.

To improve the speed and effectiveness of enforcement action, we are scoping the functions and focus of an EHS-wide Environmental Crime Unit, as recommended by the Criminal Justice Inspectorate in their review of DOE enforcement ("Enforcement in the Department of the Environment", Oct 2007). This development would also allow auditing and advisory teams to concentrate on working in partnership with businesses to bring about operational improvements to safeguard the environment and human health.

EHS is in favour of the shift towards a wider range of sanctions and penalties for regulators and we are reviewing our powers to identify the full extent of our options for enforcement. The use of sanctions such as cessation notices and voluntary undertakings, as well as fixed penalty notices, will empower the regulator to work closely with business/industry to bring about more immediate measures to safeguard the environment.

The availability of more flexible administrative penalties for less damaging or technical offences will reduce the burden on businesses and free up valuable regulatory resources to focus on more serious or persistent offenders. This will help to redress the anti-competitiveness of illegal activity and provide assurance for legitimate businesses.



Working in Partnership

Building on our initial Better Regulation Summit with industry, we will continue to work closely and build relationships with businesses and their stakeholder bodies to build business trust and confidence in our regulatory system and our trust in Northern Ireland businesses to meet standards and work to protect the environment.

Sharing information and good practice with other agencies and departments will be invaluable for delivering maximum benefits at minimum costs. Partnership working with the Environment Agency and SEPA has been particularly effective in delivering cost-effective and timely solutions to generic problems. We will continue to build on our relationship with our counterparts in the Republic of Ireland, the Environmental Protection Agency (EPA) to provide island-wide support and guidance for businesses.

We will work closely with the Planning Service to improve the business experience of the planning and permitting regimes and ensure that they help and not hinder the development process. To strengthen our enforcement activity, we will continue to work closely with other enforcement agencies and with the Public Prosecution Service.

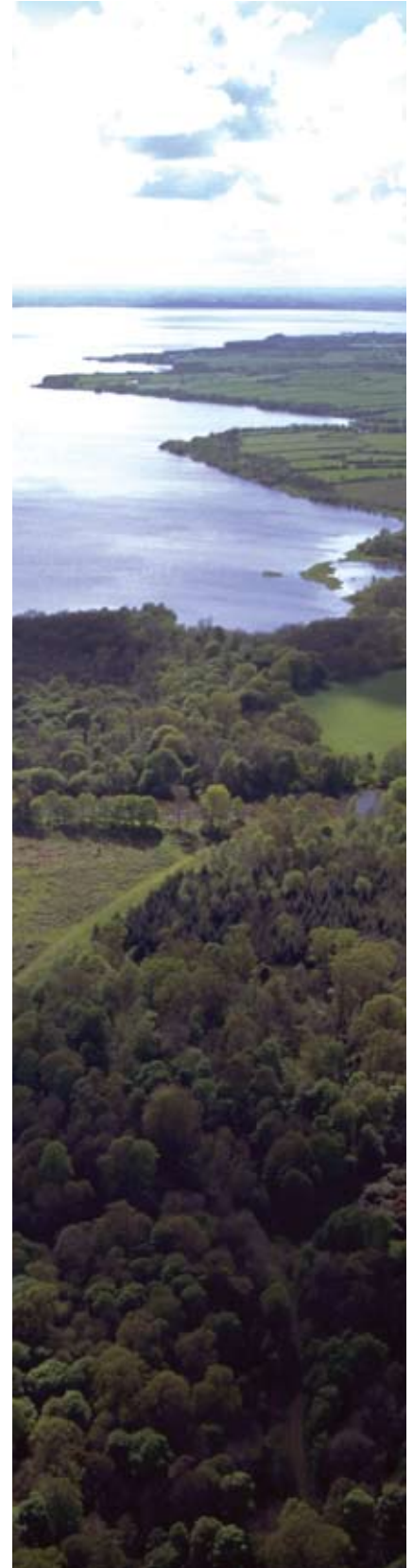
Businesses will want to demonstrate that they are playing their part to ensure sustainable development in Northern Ireland and meet the standards expected by our regulations. They want to be confident that there are appropriate incentives for those who meet or exceed those standards. To make sure that business in Northern Ireland is fully engaged and supported in protecting the environment, we will work with Invest NI, Department of Finance and Personnel and other government departments. Government will continue to show leadership by directing procurement and support to individuals and organisations who can demonstrate environmental compliance and sound environmental practices.



Areas for investigation

In developing a programme for more effective and efficient delivery of regulation, a number of areas have been identified for further examination. These include:

- **Integrated Environmental Permitting**
Scope opportunities, costs and benefits of streamlining and consolidating the permitting process across EHS regulations, where appropriate.
- **Generic Data Returns**
Scope requirements for a central portal for businesses to provide data using return forms required to meet their regulatory obligations.
- **Current powers for flexible, administrative penalties**
Review regulations to identify full range of penalties available to EHS.
- **Effectiveness of Environmental Management Systems (EMS)**
Establish whether an EMS is a reliable measure of compliance and good environmental performance and to inform risk-based approach.
- **Development of suitable risk assessment model**
Assessment tool to assign risk-rating to an activity or site.
- **Development of risk-based inspection regime**
Procedures to guide application of risk assessment to inspections programme.
- **Review of charging**
Examine EHS charging schemes for consistency and appropriateness.
- **Training/service standards for EHS staff.**
Identify training needs and standards for EHS staff, to improve effectiveness of environmental regulations.



Influencing future policy

Better Regulation is an evolving process and we will continue to incorporate its principles into how we carry out our duties and how we inform the development of future regulatory instruments. Using our experience and feedback from stakeholders, we will work closely with our policy colleagues within the Department of the Environment to inform new policy and provide sound evidence for policy changes necessary to maximise the effectiveness of our regulatory framework.

At the heart of Better Regulation is the reduction of the administrative burden associated with complex regulation and the use of that relief to deliver better environmental outcomes. This means moving away from lengthy, prescriptive permits in many cases, and towards standard guiding rules with information and guidance to focus on the real risk areas and thereby deliver real improvement on the ground. The goal is to enable companies to understand their responsibilities and manage their environmental impacts.

Comments

We invite comments on our approach from those we regulate and from our other stakeholders to help us progressively improve our regulatory systems.

Examples of excessive burden or indeed of apparent insufficient control and suggestions for improvement can be forwarded to the email address below. These will be considered and, if appropriate, factored into to our improvement programme.

Email: BetterRegulation@doeni.gov.uk

More information on the Better Regulation programme and our regulations is available on the EHS website - www.ehsni.gov.uk



EHS Better Regulation Programme 2008-2010

Compliance Assistance

- a) Continued maintenance of NetRegs regulation guidance tool and develop new features;
- b) Examine options for improving EHS guidance and support to businesses;
- c) Engage with industry to raise awareness of obligations and good practice, and identify further opportunities for compliance assistance (Programme of engagement and specific projects);
- d) Produce Waste Directory (map-based waste facilities locator tool) with Invest NI; and
- e) Influence implementation of Central Procurement Directorate's Sustainable Procurement Action Plan.

Streamlined Permitting

- f) Scope and develop systems for online applications and payments;
- g) Measure administrative burden of EHS Regulations using Standard Cost Model);
- h) Produce Scoping Paper for Integrated Environmental Permitting;
- i) Produce Scoping Paper for Generic Data Returns;
- j) Assess opportunities for greater integration of environmental obligations in Planning process (aim is to provide e-guidance in advance to applicants); and
- k) Minimising greenhouse gas emissions from environmentally regulated industry (SNIFFER project).

Compliance Assessment

- l) Develop risk assessment tools for monitoring, inspection and enforcement activity;
- m) Targeted Risk-based Approach to Compliance Assessment (SNIFFER project); and
- n) Assess effectiveness of Environmental Management Systems (EMS) as a measure of environmental performance and compliance.

Effective Enforcement

- o) Review EHS Enforcement and Prosecution Policy and publish for consultation;
- p) Initiate a programme for reviewing regulation-specific guidance on enforcement action; and
- q) Review current regulations and identify opportunities for administrative penalties and other sanctions.

Sector-specific

- r) DARD/DOE Better Regulation and Simplification Review of Agri-food sector; and
- s) Programme of Sector-based support and guidance (awareness surveys, obstacles to compliance, gaps).

General

- t) Better Regulation – Rethinking the approach for SMEs (SNIFFER UKCC19); and
- u) Awareness-raising sessions for EHS staff on Better Regulation approach.



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

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