



Department of the
Environment

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**Response to the Northern Ireland
Agri-Food Better Regulation and
Simplification Review**

May 2010

INTRODUCTION

The overall aim of the Better Regulation and Simplification Review was to improve the way in which the Department of Agriculture and Rural Development (DARD) and the Department of the Environment (DOE) operate to meet their regulatory policy objectives and EU obligations, so that compliance by the agri-food sector is facilitated and the cost of compliance is reduced.

An independent panel, comprising Mr Michael Dowling (Chair), Mr David Graham and Dr Brian Jack, was appointed to undertake the Review and report on the main administrative burdens falling on the agri-food sector, make proposals to simplify existing regulations and suggest how new policy could be screened to minimise burdens in the future. The Panel published its final report in April 2009 after which DARD and DOE asked for comments from stakeholders during an informal consultation period which ended on 30 September 2009.

The Department recognises the importance of the agri-food sector to the economy of Northern Ireland and welcomes the panel's report. The Department accepts almost all of the recommendations, at least in principle, and remains committed to progressing the better regulation agenda and realising real benefits for the Agri-food industry in Northern Ireland.

Of the 85 recommendations made, 28 relate in some way to DOE activities but only 4 are the sole responsibility of the Department. 2 of the recommendations are directed at DETI in its "Better Regulation Champion" role. This response covers only those recommendations which affect DOE.

RESPONSE TO RECOMMENDATIONS

Recommendation 43 (DARD/DOE):

That DARD Service Delivery Group and NIEA review the period of advance notice given for SFP eligibility or cross-compliance inspections, (other than those involving cattle) with a view to increasing these above current levels. Any increase to be consistent with maintaining control objectives and effectiveness.

Agree: NIEA (Agric Regs) already give up to the maximum period of advance notice (2 weeks) for planned inspections as stipulated by the Cross Compliance Regulations. No notice is given for reactive breaches. It should be noted that each competent control authority must demonstrate that the period of notice does not compromise the nature of the visit.

Recommendation 44 (DARD/DOE):

Risk factors, evaluation criteria and weightings used to assess selection for cross-compliance and SFP eligibility checks by both DARD CCAs and NIEA should be made public.

Agree: The risk-based selection process takes account of those features required by the Commission as well as a number of key factors which relate to the Statutory Management Requirements. NIEA will publish a table of all these risk factors and criteria each August for the selection process for that year.

Recommendation 47 (DARD/DOE):

As with IACS / SFP literature, any written communication on cross-compliance issues not already Plain English tested to meet the Plain English Campaign's 'Crystal Mark' standard, should undergo this process.

Agree in part: DOE will ensure that all guidance is written in clear language appropriate to the target audience, with quick start guides for more substantial guidance. Consideration will be given to Crystal Marks for key documents. However, it must be recognised that the cost of testing to "Crystal Mark" standard is likely to be very high and may not be justifiable in all cases.

Recommendation 49 (DARD/DOE):

That the forthcoming review of the Nitrates Action Programme by DARD and DOE should incorporate assessment using better regulation principles.

Agree: Both Departments will be working over the coming months on the review of the current Nitrates Action Programme Regulations (NI) 2006 (NAP Regulations). The review will include a full consultation with stakeholders on the existing NAP Regulations and as part of this process the Departments will be seeking feedback from farmers on any difficulties they experienced in complying with the requirements of the legislation. The new Action Programme for 2011-2014 will, where practicable and without compromising the aims of the Nitrates Directive, take account of the comments from stakeholders. In line with recommendation 49, the review of the current NAP Regulations will be taken forward using the 'Five Principles of Good Regulation', namely Proportionality, Accountability, Consistency,

Transparency and Targeting. The implementation plan will consider the scope for reducing the administrative burden on farmers under the Nitrates Action Programme for 2011-2014.

Recommendation 58 (DOE):

That electronic templates for transfer notes are provided on the NIEA website.

Agree: NIEA is producing an electronic template which can be downloaded from the NIEA website. In addition, NIEA is developing an online application and payment facility for most of its permitting regimes. 30 application forms will be available online by December 2010.

Recommendation 59 (DOE):

The Panel notes that NIEA is currently scoping the options for an environmental permitting programme for Northern Ireland and recommends that DOE give consideration to whether the introduction of simplified environmental permits could reduce the cumulative burden of environmental regulations for the agri-food industry.

Agree: NIEA and PEPG officials are considering the potential to introduce simplified or integrated environmental permitting as part of the wider Better Environmental Regulation agenda. Standard and bespoke permits and a level of integration are being considered.

Recommendation 60 (DARD/DOE):

That both Departments should continue to utilise Better Regulation Units, with DOE establishing an equivalent unit within the policy section. Their working objectives should be such that, in each Department, they are tasked with assisting policy makers developing new policy/regulations or revising existing ones and with providing advice and training on better regulation to staff throughout each Department.

Agree in principle: PEPG has established a Better Regulation Team to explore ways in which the environmental policy function of the Department can reduce regulatory burdens resulting from its environmental protection activities. Due to the diverse nature of DOE activities, further consideration needs to be given to whether it is appropriate for this recommendation to be addressed within environmental policy or more centrally within the Department.

Recommendation 62 (DARD/DOE):

That the Minister for Agriculture and Rural Development, the Minister for the Environment, and the Northern Ireland Assembly Agriculture and Environment Committees should exercise their respective powers to ensure that officials report regularly on the progress being made by each Department towards attaining better regulation goals.

Agree: DOE officials already report regularly on progress to the Minister, the Committee and the Better Regulation Board. However, there is a need to consider suitable indicators and measures to report against.

Recommendation 63 (DARD/DOE):

That non-executive board members should play a more active role in monitoring progress on better regulation within each Department.

Agree: NIEA officials already report quarterly to the NIEA Board which includes two non-executive members.

Recommendation 64 (DARD/DOE):

That each Department should make managers responsible for ensuring that better regulation techniques are embedded within policy and operational work programmes at all levels.

Agree: Once policy on Better Regulation is established and resources are available, Heads of Branches should be trained in appropriate Better Regulation techniques and be responsible for their implementation.

Recommendation 65 (DARD/DOE):

Stakeholder forums on better regulation established by each Department should be directly involved in evaluating the administrative burden posed by regulations not considered in this report and in identifying measures by which that burden might be reduced. In addition, those forums should oversee and evaluate the steps taken by each Department to embed better regulation principles.

Agree in principle: The DOE Better Regulation Board already provides comment on progress in delivering Better Regulation and the way forward. DOE officials are currently exploring ways in which the role of the Better Regulation Board can be enhanced to

give it greater involvement in developing Better Regulation Policy. However, the current Board only meets twice a year and may not be in a position to take on evaluation of each piece of regulation.

Recommendation 66 (DARD/DOE):

That DARD and DOE, indeed all NICS departments, should be subject to external scrutiny and be required to account for the progress being made in implementing better regulation practices and achieving better regulation targets.

Agree in principle: The DOE Better Regulation Board provides a level of scrutiny of the Department's regulatory approach and on progress in delivering the Better Regulation programme. The Environment Committee also provides an important, independent scrutiny role, seeing all consultation papers before they are published. However, providing it adds value and can be achieved at reasonable cost, DOE has no objection to further external scrutiny.

Recommendation 67 (DETI):

That the audit function should be conducted by a DETI Better Regulation Team with enhanced resource, as long as sufficient safeguards are in place to guard against conflicts of interest between its role as an advisor and as an auditor, and that it is sufficiently independent of the Government departments that it is called upon to audit.

Agree in principle: Each NICS Department is responsible for ensuring their processes and policy developments are within NICS guidelines and have audit capacity built into their respective

performance monitoring arrangements. The Department acknowledges that DETI could be an appropriate auditor although the DETI Better Regulation Team would need significantly enhanced resources even if it were only scrutinising DARD and DOE.

Recommendation 68 (DETI):

DETI should ensure that the principles set out in the Regulatory Compliance Code, introduced in England, should also apply to regulators in Northern Ireland.

Agree in principle: DETI is undertaking a review of the NI Better Regulation Strategy and along with all NI Departments will consider the extent of application of the principles of the Regulatory Compliance Code to regulators in NI and will take necessary action as considered appropriate. However, there are likely to be resource implications associated with the various requirements and it should be noted that in England and Wales the Environment Agency increased their regulatory fees to partially cover additional costs.

Recommendation 69 (DOE):

DOE should take steps to become more accessible to those seeking advice on particular regulations through the introduction of dedicated telephone helplines and possibly through maintaining an advisory presence in DARD Direct offices or other regional offices.

Agree in principle: The resource implications would need to be carefully considered to ensure value for money could be obtained. The current NIEA structural review will address this issue.

Recommendation 70 (DARD/DOE):

Both Departments should review their web pages to improve content, structure and ease of reference. All advice and guidance should comply with the BERR Code of Practice on Guidance on Regulation.

Agree: DOE is involved in an ongoing process to review and revise its web pages with the aim of making them more useful and user-friendly. NIEA has recently re-launched its website which is subject to user-testing and is being assessed for Plain English compliance.

All NI Departments are working with DETI on the draft NI Code of Practice on Guidance, which is based on the BERR (now BIS – Business Innovation & Skills) Code.

Recommendation 71 (DARD/DOE):

All guidance documents published by each Department should comply with Plain English guidelines and the BERR Code of Practice on Guidance on Regulation. Consideration should be given to gaining Plain English Crystal Mark status for key documents.

Agree in principle: DOE fully supports the aim of this recommendation and agrees that, where possible, the Department should aim to comply with both Plain English guidelines and the BERR Code of Practice. However, it must be noted that there may be significant legal and policy resource implications in achieving full compliance. For example, the requirement to issue guidance 12 weeks in advance of Regulations would be difficult to achieve in all cases.

Consideration will be given to obtaining Crystal Mark status for key documents but, due to the cost involved, this is likely to be the exception rather than the norm.

Recommendation 72 (DARD/DOE):

All guidance documents published by each Department should be accompanied by a 'quick-start summary' identifying those affected by the regulations and providing a summary of the essential actions that they are required to take under those regulations.

Agree: DOE fully supports this recommendation and already provides a similar summary to some of its main guidance documents. For example, the technically complex guidance to the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 is accompanied by a short operator guide outlining the main issues and responsibilities.

Recommendation 73 (DOE):

DOE should consider the development of integrated environmental permitting.

Agree: DOE is exploring the potential for better environmental permitting as part of the wider Better Regulation agenda. NIEA is preparing a scoping paper with a range of permitting options in view of the Environment Agency's progress in implementing their environmental permitting programme. Standard and bespoke permits and a level of integration are being considered.

Recommendation 74 (DARD/DOE):

Each Department should establish a web portal through which farmers and agri-businesses can submit ideas for reducing administrative burdens and draw attention to inaccuracies or inconsistencies within guidance materials. Both Departments should have an obligation to reply within 90 days explaining how the issue will be taken forward or setting out why it is not appropriate to do so.

Agree: DETI is undertaking a review of the NI Better Regulation Strategy and along with all NI Departments and collectively will consider the web presence needs for better regulation activities to provide a customer focused service, taking into account wider NICS policy on web development and service delivery online, in particular the business web service – www.nibusinessinfo.co.uk. As part of this review DETI is developing a Better Regulation feedback portal for NI businesses to comment on regulations, burdens and any issues on guidance. DOE will continue to work with DETI on this issue. Within DOE, NIEA also has a dedicated Better Regulation email address for queries and issues.

Recommendation 76 (DARD/DOE):

Both Departments should adopt the principle that new regulations should come into force on common commencement dates, such as 6 April and 1 October.

Agree in part: DOE will aim to bring new regulations into operation on as few commencement dates as practicable. However, it must be recognised that this will not always be possible due to the need to comply with European Directives etc. The Department is also looking at ways in which communication

with business and industry can be improved as this is seen a key issue for operators preparing for the introduction of new legislation.

Recommendation 77 (DARD/DOE):

Where either Department wishes to introduce regulations to amend those already in force, consolidated legislation should be published which clearly shows the effect of the amendment upon the previous legislation.

Agree in principle: Although the production of consolidated legislation would be beneficial to regulators and operators alike, the resource implications of consolidating every time legislation is amended could be prohibitive. Where it is practicable and not prohibitively expensive, DOE will consider the potential to consolidate legislation.

Recommendation 78 (DARD/DOE):

Both Departments should ensure that all policy makers and regulators receive full training in better regulation principles and should benchmark their training programmes against those being provided by DEFRA.

Agree in principle: DETI has devised, along with NICS training providers, a course on completion of a Regulatory Impact Assessment. DOE staff will attend this course as appropriate.
See also Recommendation 64.

Recommendation 79 (DARD/DOE):

Independent audit reports evaluating the progress made by each Department and highlighting the measures that each has taken should be prepared and published on a regular basis.

Agree: DETI already publishes, with input from the NI Departments, a Better Regulation Annual Report. Regular independently audited progress reports such as these are welcomed by DOE and beneficial to operators.

Recommendation 80 (DARD/DOE):

Regulatory Impact Assessments should always be used and should act as a key measure in minimising the administrative burden posed by new regulations.

Agree: DOE already uses RIAs for all legislative proposals in accordance with DETI's "*Better Policy Making & Regulatory Impact Assessment: A Guide For Northern Ireland*". DOE has recently included an assessment of administrative burden in its RIA of the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009. DOE will continue to work with DETI as it considers revisions to the RIA process.

Recommendation 81 (DARD/DOE):

A presumption should be adopted that regulatory proposals likely to result in increased administrative burdens should not proceed. Where this presumption is overturned, the increased administrative burden should be formally justified and the justification set out in full in the RIA document published upon the website of the Department concerned.

DOE notes this recommendation and will consider it further as part of its work progressing the Better Regulation agenda.

Recommendation 82 (DARD/DOE):

Better Regulation Units should assist policy makers in conducting RIAs as part of their role in promoting better regulation measures in each Department.

Agree: The Better Regulation Unit within NIEA has shown its value in the great strides achieved towards realising Better Regulation objectives. The Department has recently established a Better Regulation Team within one of its policy divisions to develop Departmental policy. However, due to the diverse nature of DOE activities, further consideration needs to be given to whether it is appropriate for this recommendation to be addressed within environmental policy or more centrally within the Department.

Recommendation 83 (DARD/DOE):

Consultations with stakeholders, small firms and other Government departments and regulators should normally occur on the basis of a full RIA document. Where this is not the case, this should be justified within the full RIA document published on the web-site of the Department concerned.

Reject: Current DOE practice is to complete the RIA in accordance with the DETI document “*Better Policy Making & Regulatory Impact Assessment: A Guide For Northern Ireland*”, which advocates consultation on the basis of a partial RIA. It is not generally feasible to consult on the basis of a full RIA document because a very important part of the RIA process is the input from stakeholders which helps to shape the full RIA. Furthermore, policy changes as a result of consultation responses will have an impact on the full RIA. However, the Department agrees that the partial RIA should be as complete and detailed as possible.

Recommendation 84 (DARD/DOE):

Before a RIA is forwarded to a Minister for signature, it should first be recorded as approved by an official at Director level (Grade 5) or above in the Senior Civil Service who must confirm that the RIA process has been fully and adequately complied with.

Agree: It is normal practice for PEPG Directors to clear all submissions in respect of new legislation. In doing so, they effectively confirm that the process has been complied with. Consideration will be given to formalising this confirmation.

Recommendation 85 (DARD/DOE):

Each RIA should be open to scrutiny by the independent monitoring and assessment body.

Agree in principle: DOE agrees that the independent monitoring and assessment body should have access to all RIAs for scrutiny and comment. However, it must be recognised that scrutiny of all RIAs would represent a very large volume of work and hence would require considerable resources. It would be undesirable if this scrutiny stage were to hold up a legislative process which is already generally constrained by challenging timetables.