

PLANNING ENVIRONMENTAL GOVERNANCE WORK PROGRAMME

Introduction

Environmental compliance – the adherence to a wide range of environmental laws, regulations and standards – is a fundamental tenet on which the planning system is based. Planning authorities are required to make good, environmentally sound planning decisions while ensuring compliance with important obligations and responsibilities under European Environmental Directives transposed in domestic planning legislation. While these obligations have always been an important consideration in the planning decision making process, in recent years planning authorities' environmental compliance has come under increased scrutiny and challenge as interest in environmental matters increase.

The Department and councils face administrative, financial and staffing demands in terms of meeting increasing environmental compliance obligations and managing the various complaints and challenges. The risk of non-compliance is both reputational and financial – important considerations for planning authorities. But more important is the risk of significant environmental harm, badly planned development or significant delay or derailment of vital projects because of legal challenges on environmental grounds.

The Department is committed to responding effectively to these various challenges in a pro-active, strategic and co-ordinated manner, bearing in mind the role and responsibility of local government under the two-tier planning system. It recognises the opportunities that exist to enhance good practice. This work programme sets out the Department's vision, objectives and actions to increase environmental compliance across the planning system. Together these will help to support the delivery of sustainable development, ensure planning authorities continue to understand and meet environmental obligations and ultimately promote and increase good, environmentally sound planning decision-making.

This work programme is a living document which will continue to evolve and develop in light of developments including, for example, emerging findings, new challenges, case law and resources etc.

Vision/Overarching Objective

Build a confident and coherent approach across public sector planning in NI to foster a supportive community recognised for the quality of its approach to environmental governance.

Challenges

- The need to secure delivery of environmentally sustainable infrastructure and development in an increasingly complex regulatory environment.
- Coordination of effective environmental compliance in the context of the 2-tier planning system and central government reorganisation.
- Achieving consistency in quality decisions and application of key environmental regulations and fundamental principles.
- 'Competent authority' status for DfI and councils (without NIEA); and a new 'competency' requirement under the amended EIA Directive.
- Planning applications with increased complexity / controversy e.g. the extractive industries, gold mines; Lough Neagh sand dredging.
- Effective long-term engagement with environmental organisations and other international bodies e.g. EC, UK Government, ROI.
- Clarity of DfI planning role and input into broader challenges to the NICS e.g. major capital projects (A5; A6) and intensive farming.
- Management of legal and other complaints, challenges, requests, etc.

Strategic Response

Three key strands:-

- Programme of capacity building, engagement and support.
- Programme of targeted and prioritised monitoring and review of council operational activity (with initial focus on unauthorised EIA development and enforcement).
- Programme of engagement with EU, UK and ROI.

Objectives

1. Develop Planning Group environmental governance capacity building framework.

2. Ensure Departmental and council staff understand fundamental environmental governance principles and strengthen depth and breadth of knowledge in key regulatory areas.
3. Facilitate ongoing improvement by establishing an active and unified EIA/Environmental Governance Community in NI, which identifies and shares effective local case studies, engages with UK and International good practice and enables planning authorities to take collaborative ownership of environmental governance performance.
4. Establish a targeted and prioritised programme of monitoring and review of council planning operational activity in support of good practice and systemic compliance with environmental obligations (with particular focus on compliance with the EIA Directive as regards enforcement activity).
5. Engage meaningfully with EU, UK and ROI on environmental governance matters and provide robust defence against complaints and challenges at international level.
6. Over longer term deliver a cultural shift across NI's public sector planning community to collaboratively support excellence in all aspects of environmental governance.

Strand 1: Capacity building, engagement and support				
Objective 1: Develop Planning Group environmental governance capacity building framework				
ACTION	TARGET DATE	POSITION AT 31 MARCH 2019	% COMPLETE	TARGET COMPLETED
Establish resource and capacity in Planning Group to take the work programme forward	April 2018	Cross-disciplinary team under banner of 'Operational Governance' with an 'Environmental Governance' strand formed	100	July 2018
Secure the delivery of an embedded / out posted solicitor to DfI to cover environmental compliance issues. (Following previous Board agreement at conclusion of Environmental Governance Working Group (EGWG) project)	March 2018	Secured embedded solicitor for 4 days a week from 21 January for a two year period.	100	January 2019
Secure the services of a 'Critical Friend' / expert consultant to support Planning Group in delivering the work programme	January 2019	Tender issued in December 2018 and successful tenderer selected in January 2019. Contract for 2 year period to commence in April 2019.	100	January 2019
Identify partner Council(s) to develop and implement initiatives around environmental governance	End 2018	Agreement reached with Causeway Coast & Glens in October.	100	October 2018
Complete a review of DFI / LPA capacity and confidence	June 2019	External specialist selected in January 2019 and contract for 2 year period to commence in April 2019. Work plan, which will include review of DFI/LPA capacity, to be agreed.	--	

Strand 1: Capacity building, engagement and support				
Objective 2: Ensure staff understand fundamental environmental governance principles and strengthen depth and breadth of knowledge in key regulatory areas				
ACTION	TARGET DATE	POSITION AT 31 MARCH 2019	% COMPLETE	TARGET COMPLETED
Raise awareness of new EIA Directive / Regs and key changes and requirements through delivery of EIA presentation to Planning Managers Group. Follow up with individual councils to deliver EIA presentation to planning staff	August 2018	Presentation delivered to Planning Managers Group and individual councils	100	August 2018
Deliver initial message to Councils re Environmental Governance Work Programme and seek endorsement / support via SPG and SOLACE	September 2018	EG team and Chief Planner attended September SPG and secured endorsement of environmental governance work programme including review of identified planning applications and/or enforcement cases. "Environmental Governance" standing item on Strategic Planning Group (SPG) agenda. Engagement with SOLACE to be arranged.	75	
Publish new EIA Guidance on the amended EIA Regulations	First quarter 2020	External specialist selected in January 2019 and contract for 2 year period to commence in April 2019. Work plan, which will include review of draft EIA guidance, to be agreed.	--	

Strand 1: Capacity building, engagement and support				
Objective 2: Ensure staff understand fundamental environmental governance principles and strengthen depth and breadth of knowledge in key regulatory areas				
ACTION	TARGET DATE	POSITION AT 31 MARCH 2019	% COMPLETE	TARGET COMPLETED
Develop HRA Guidance in collaboration with Shared Environmental Services (SES)	Third quarter 2020	External specialist selected in January 2019 and contract for 2 year period to commence in April 2019. Work plan, which will include HRA guidance, to be agreed. Scoping discussions to be held with SES.	--	
Deliver targeted EIA training for DfI and Council planning staff	2019/2020	External specialist selected in January 2019 and contract for 2 year period to commence in April 2019. Work plan, which will include delivery of EIA training, to be agreed.	--	
Provide advice on key CJEU cases and judgments	Ongoing	Ongoing	--	
Investigate scope for supporting accredited environmental qualifications for council and DFI staff	Ongoing	Initial review of accredited qualifications undertaken.	50	

Strand 1: Capacity building, engagement and support				
Objective 3: Facilitate ongoing improvement by establishing an active and unified EIA/Environmental Governance Community in NI, which identifies and shares effective local case studies, engages with UK and International good practice and enables planning authorities to take collaborative ownership of environmental governance performance				
ACTION	TARGET DATE	POSITION AT 31 JANUARY 2019	% COMPLETE	TARGET COMPLETED
Following success of previous project, re-establish DfI EGWG on permanent basis	May 2018	Next meeting to be arranged	100	May 2018
Establish schedule of DfI/DAERA/SES engagement meetings for communication and mutual support around regional EG issues	August 2018	Ongoing	--	August 2018
Establish a Planning Environmental Officers Forum (EOF) with representatives from each council and observer status for DfI	First quarter 2020	Approach agreed by SPG. External specialist selected in January 2019 and contract for 2 year period to commence in April 2019. Work plan, which will include establishment of EOF, to be agreed.	10	
Investigate options/opportunities for engagement with the wider environmental community/stakeholders	End 2020	External specialist selected in January 2019 and contract for 2 year period to commence in April 2019. Work plan, which will include options for stakeholder engagement, to be agreed.	--	

Strand 2: Monitoring / review of Council's operations including potential 'systemic' issues

Objective 4: Establish a targeted and prioritised programme of monitoring and review of council planning operational activity in support of good practice and systemic compliance with environmental obligations (with particular focus on compliance with the EIA Directive as regards enforcement activity)

ACTION	TARGET DATE	POSITION AT 31 MARCH 2019	% COMPLETE	TARGET COMPLETED
Review council enforcement strategies and resourcing of enforcement activity	December 2018	Initial trawl completed and review commenced.	50	
Develop draft guidance on ex-post EIA cases	June 2019	Ongoing	--	
Review enforcement practice notes re: advice on regulation 32 in the 2017 EIA Regulations and national v EU law	End 2019		--	
Identify priority retrospective minerals applications and prepare list of priority cases/councils for review	September 2018	List prepared and review of live cases in system ongoing.	100	September 2018
Review priority cases and identify next steps	Ongoing	Fortnightly internal review meeting established. Engagement with council case officers ongoing	--	
Early warning system to be agreed with councils to ensure retrospective applications/enforcement cases are brought to the Department's attention	December 2018	Weekly lists of new applications are picked up internally and trawled for relevant applications. EIA identifier requirements highlighted in respect of future ASRB work	50	

Strand 3: Engagement with EU, UK and ROI				
Objective 5: Engage meaningfully with EU, UK and ROI on environmental governance matters and provide robust defence against complaints and challenges at international level				
ACTION	TARGET DATE	POSITION AT 31 MARCH 2019	% COMPLETE	TARGET COMPLETED
Complete amendments to environmental legislation / policy etc. to prepare for UK exit from EU	March 2019	NI specific amendment Whitehall S.I. made and coming into operation on Exit Day. Scheduled direct contact with MHCLG ongoing.	100	December 2018
EU Pilot	Ongoing	Ongoing contact with DEFRA and Commission. Latest response sent 31 October 2018	--	
Aarhus complaint C/90	Ongoing	Awaiting response from ACCC following submissions March 2018	--	
Determine future relations with ROI on common environmental governance issues	Ongoing	Meeting held at start October. Discussions and engagement will be ongoing	--	
Agreement of EIA transboundary consultation protocol with ROI to comply with amended EIA Directive	December 2018	Flowcharts sent to DHPLG which are in line with NI legislative requirements. Awaiting confirmation from DHPLG that protocols align with ROI legislative requirements. Guidance note on new procedures under 2017 EIA Regs issued to councils in November 2018.	80	