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3 June 2024  
OEP ref: CMS-544

**By email only**

Dear Minister Muir,

**Missed statutory deadline for publishing Northern Ireland's Environmental Improvement Plan – Investigation and Information Notice**

I write in respect of an alleged failure to comply with environmental law by the Department of Agriculture, Environment and Rural Affairs (“DAERA”) in relation to the deadline for publishing an Environmental Improvement Plan (“EIP”) for Northern Ireland, as required by Paragraph 1 of Schedule 2 of the Environment Act 2021 (“the Act”).

I welcome your acknowledgment of the importance of the EIP in your letter to us dated 9 April 2024, and note that you approved the content of the EIP soon after assuming office on 3 February 2024, subsequently progressing the same to the NI Executive.

It is a matter of disappointment, therefore, that several months after the resumption of government, the EIP remains unpublished. This is in circumstances where the statutory deadline for publication was almost one year ago.

Following assessment, the OEP has decided to launch an Investigation in accordance with paragraph 7 of Schedule 3 of the Act on the basis that DAERA may have failed to comply with environmental law and if so, that failure would be serious. Furthermore, I enclose an Information Notice in connection with this matter, which sets out the information DAERA is requested to provide.

In view of the forthcoming general election and the importance the OEP places on acting independently and with political impartiality, we do not intend to make any public announcements regarding this investigation until after 4 July.

Under paragraph 9 of Schedule 3 of the Act, DAERA is required to respond in writing to this Information Notice and, so far as is reasonably practicable, provide the information requested. Its response should also address the alleged failure to comply with the law described in the notice and set out what, if any, steps it intends to take in relation to that allegation. DAERA must respond to this Information Notice by 3 August 2024.

I look forward to hearing from you.

Yours sincerely,



**Natalie Prosser**

Chief Executive  
Office for Environmental Protection



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# Information Notice

## Schedule 3, paragraph 9 of the Environment Act 2021

**Public Authority:** Department of Agriculture, Environment and Rural Affairs

**Date of this Notice:** 3 June 2024

**Case name:** Investigation of potential failure to comply with environmental law due to the missed statutory deadline for publishing an Environmental Improvement Plan for Northern Ireland.

**Case reference:** CMS-544

### 1. Background

1.1 The Office for Environmental Protection (“OEP”) may give an Information Notice to a public authority if the OEP has reasonable grounds for suspecting that the authority has failed to comply with environmental law and it considers that the failure, if it occurred, would be serious.<sup>1</sup> The information notice is a notice which describes an alleged failure of a public authority to comply with environmental law, explains why the OEP considers that the alleged failure, if it occurred, would be serious and requests information.<sup>2</sup>

### 2. Description of alleged failure

2.1 This Information Notice relates to the following alleged failure of the Department of Agriculture, Environment and Rural Affairs (“DAERA”) to comply with environmental law.

2.2 The Environment Act 2021 (“the Act”) requires DAERA to prepare and publish an Environmental Improvement Plan (“EIP”).<sup>3</sup>

2.3 An EIP is a plan for “significantly improving the natural environment”.<sup>4</sup>

2.4 The EIP may relate to a specified period or be of no specified duration.<sup>5</sup>

2.5 The EIP must set out the steps that DAERA intends to take to improve the natural environment, and any steps that any other Northern Ireland Department intends to take to improve the natural environment.<sup>6</sup>

2.6 It may also set out steps that any Northern Ireland Department intends to take to improve people’s enjoyment of the natural environment.<sup>7</sup>

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<sup>1</sup> Environment Act 2021, Schedule 3, paragraph 9(1)

<sup>2</sup> Schedule 3, paragraph 9(2)

<sup>3</sup> Schedule 2, paragraph 1(1)

<sup>4</sup> Schedule 2, paragraph 1(2)

<sup>5</sup> Schedule 2, paragraph 1(3)

<sup>6</sup> Schedule 2, paragraph 1(4)

- 2.7 In preparing an EIP, DAERA must consult such other Northern Ireland Departments as it considers appropriate.<sup>8</sup>
- 2.8 DAERA was required to lay before the Northern Ireland Assembly and publish an EIP before the end of the twelve month period beginning on the day the paragraph came into effect.<sup>9</sup>
- 2.9 Schedule 2 of the Act was commenced by the Environment (2021 Act) (Commencement and Saving Provision) Order (Northern Ireland) 2022 on 25 July 2022. The EIP was therefore due on 25 July 2023. The OEP understands that an EIP was not laid before the Northern Ireland Assembly or published on or before that date.

### 3. Seriousness

- 3.1 The OEP's Enforcement Policy explains how it will assess the seriousness of an alleged failure to comply with environmental law and can be found in Annex A of its Strategy: [here](#).
- 3.2 The OEP considers that this alleged failure, if it occurred, would be serious for the reasons outlined below.

#### 3.3 Point of law

- 3.3.1 Northern Ireland's first EIP is required under the Act and will be a central part of the governance framework to protect and improve the environment. Given the importance of this plan across a broad scope of environmental law and policy, and the fact a clear deadline for its publication is specified within the legislation, the OEP considers that it is a serious failure not to meet that deadline.
- 3.3.2 The alleged failure undermines the clear, recently expressed will of Parliament in passing the legislation and specifying a date for publication of the EIP. This is damaging to public trust and confidence in the Assembly and Executive.
- 3.3.3 These factors also mean the alleged failure is serious.

#### 3.4 Risk of harm

- 3.4.1 This alleged failure has the potential to cause harm to the environment and to public health. Delay in publishing the plan will delay DAERA and other Northern Ireland Departments setting out which steps they intend to take to improve the natural environment. Delay must be avoided when urgency is needed to protect and improve the environment.

#### 3.5 Frequency of the conduct

- 3.5.1 By its nature, failure to meet a statutory deadline to lay before the Assembly and publish the EIP is a one-off event. However, that failure has now been ongoing

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<sup>7</sup> Schedule 2, paragraph 1(5)

<sup>8</sup> Schedule 2, paragraph 1(6)

<sup>9</sup> Schedule 2, paragraph 1(7)

almost 10 months by the date of this Information Notice. This therefore represents a protracted period and the seriousness of the alleged failure to comply with environmental law increases over time.

### 3.6 Behaviour of the public authority

3.6.1 The DAERA Minister and his officials have engaged constructively with the OEP in respect of this matter. It remains, however, a matter of concern that DAERA has not complied with its obligations set out in the Act.

## 4. **Our request for information**

4.1 Please provide the following information in relation to the alleged failure described above:

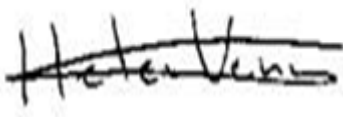
- a) confirmation that an Environmental Improvement Plan was not laid before the Northern Ireland Assembly on or before 25 July 2023 as required by paragraph 1(7) of Schedule 2 of the Act
- b) If not, please also provide:
  - i. A full explanation of the reasons why, if the EIP has not yet been laid before the Assembly, this is the case.
  - ii. DEARA's response to the alleged failure to comply with environmental law, detailed at 2.1 to 2.10, namely that it failed to lay before the Assembly, and publish an EIP for Northern Ireland.
  - iii. Any steps DAERA intends to take in relation to the alleged failure.
  - iv. The current draft of the EIP which has been approved by Minister Muir.
  - v. A copy of any assessment of the potential environmental impacts of the ongoing failure to publish the EIP.
  - vi. Confirmation of how each of the identified potential environmental impacts are being mitigated.
  - vii. Copies of correspondence or other documentation relation to cross-Departmental consultation on the development, adoption or deferral of the EIP as required by paragraph 1(6) of Schedule 2 of the Act.
  - viii. Copies of submissions to the NI Executive concerning the EIP, together with all relevant minutes of meetings where the EIP was discussed.

4.2 We draw your attention to your obligations under section 27 of the Act regarding cooperation and the candid disclosure of information. Please also note paragraph 17 of Schedule 3 of the Act, concerning the confidential handling of any information you provide to us.

Continued...

## 5. Date for response

5.1 You must respond to this Information Notice within two months of the date it is given, which in this case is by 3 August 2024.



**Helen Venn**

Chief Regulatory Officer

For and on behalf of the Office for Environmental Protection



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