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**Friends of
the Earth**

**Northern
Ireland**

Dear Alison

Sustainable Development: The Regulator's Role

The following response is made on behalf of Friends of the Earth (England, Wales and Northern Ireland). The headings underlined below relate to various chapters of the Utility Regulator's consultation document.

3. Are Northern Ireland's Utilities Developing Sustainably?

The following recommendations, adapted from the Green Alliance/RSPB report referenced below, would help to facilitate a more sustainable water regulatory framework:

Longer planning horizons must be established for investment to manage the shift from 'end of pipe' to source control solutions.

The benefits of source control measures are often realised over extended timescales. There will also be scenarios in which source control solutions will need to run in parallel with 'end of pipe' options to ensure the maintenance of acceptable quality standards. This must be recognised within the planning cycle by allowing the water industry to put in place 'dual' programmes, with source controls delivered to coincide with the end of asset life (for example of a water treatment plant). This will require water resource and sewage management programmes to be identified through a long-term planning system (covering periods of 20-50 years), and embedded in the shorter-term framework of the Water Framework Directive's river basin planning cycle (every six years).

Future industry investment must be within the cycle of river basin planning, and be subject to cost-benefit analysis, taking full account of environmental and resource costs.

A combined formal delivery timetable would provide links between the Water Framework Directive and the periodic review process that are currently missing.

- a) Programmes of measures developed in River Basin Management Plans must be a key determinant of the quality improvements programme in the periodic review.
- b) Final price determination should follow completion of the River Basin Management Plan and its six yearly cycle in order to take this link fully into account.
- c) Industry investment should be subject to cost-effectiveness appraisal techniques which take full account of environmental and resource costs. The application of these techniques should be undertaken jointly by the environmental and economic regulators.

Government and regulators must establish clear targets and incentives for innovation.

A key barrier to innovation is the lack of a holistic appraisal of proposed investment measures, and the lack of incentives within the regulated market for the application of sustainable technologies. A number of options exist to promote innovation by the industry. We suggest that government and its regulators undertake research now into which would be the most effective, and introduce these ahead of the next investment planning cycle. Three possible approaches are:

- a) The development and application by the environmental regulators of bench-mark standards, targets or scoring systems to test company-proposed solutions in terms of their overall environmental footprint. Companies could be asked to demonstrate that they are using the most sustainable technologies to deliver the required outcomes.
- b) The development by the economic regulator of financial incentives for more sustainable projects and programmes. This could be based on assessments of resource and environmental costs.
- c) The full application of cost-effectiveness analysis to programmes of investment. However whilst we recommend this as an essential first step, we feel it is unlikely to drive forward innovation on its own. This is because it can only compare approaches that have been worked up already, rather than actively require alternatives.

Regulators must be flexible when assessing investment decisions as innovative techniques will not always guarantee the same certainty of outcome as engineered options.

The regulatory system must be flexible enough to allow the most cost-effective solutions to be implemented. Government should charge its regulators to produce joint guidance on this issue, identifying when and where there may be trade-offs between certainty of outcome and overall environmental costs and benefits. Such trade-offs will need to be appraised in the context of the risk of failure. For example, the risks of a serious degradation in the quality of public water supply may make tougher standards appropriate; whereas the achievement of discharge standards for nutrients may legitimately be sought through more innovative means.

Government must ensure that other sectors, in particular farming and spatial planning and development, contribute to sustainable water management so that the burden does not fall exclusively on NIW and its customers.

Action to protect and restore the quality of the water environment must be cross-sectoral; an approach confirmed by the principles of river basin planning. Little financial or regulatory pressure has so far been applied to sectors such as farming and construction. Government must ensure that other sectors play their full part in delivering environmental outcomes in an equitable and cost-effective manner. This will require:

- Action on diffuse agricultural pollution
- Action to ensure improved standards of water
- Efficiency in housing (both new-build and existing stock);
- Action to tackle urban drainage.

The spatial planning system must be formally linked to water resource and sewerage services planning

Acknowledging water as a material consideration in spatial planning would provide a strong basis for managing demand for water and sewerage services and delivering Water Framework Directive objectives. Recognising the impacts of supplying water and sewerage services to new housing would also encourage innovative mitigation measures, including dual quality water supply and on-site waste water treatment. The following steps, if taken, would deliver the formal links between water and spatial planning necessary to secure truly sustainable development:

- a) A new Planning Policy Statement on Water to ensure that full account is taken of water availability and sewerage capacity when preparing Area Plans and taking planning decisions.

- b) A strong legal duty on DRD and DOE to take into account water quantity and quality, and specifically Water Framework Directive requirements, in carrying out their planning functions. A similar duty should be imposed on DFP which is responsible for policy and legislation relating to Building Regulations.
- c) Formal, long-term, water industry sewerage and urban drainage plans developed under guidance from the regulators. Strategic planning of wastewater treatment would avoid the current “tack-on” approach to improved standards, reduce environmental and resource costs, and give NIW greater certainty about future investment requirements.

5. Statutory duties of the Utility Regulator

The Utility Regulator in Northern Ireland faces a unique challenge in fulfilling its sustainable development duties in that, unlike elsewhere in the UK, there is no independent environmental regulator with a statutory duty to protect the environment. While Ofwat has at times found itself at loggerheads with the Environment Agency over the need to invest in environmental protection measures, it is unlikely that the Utility Regulator will face similar pressure from central government, where environmental regulation remains located. This is because the Northern Ireland Executive is faced with funding new investment in the waste water infrastructure from its own resources and will want to minimise capital expenditure in the absence of water charges. While the Executive faces pressure to comply with EU directives, sanctions are generally seen as being a relatively distant prospect; this leaves a particular onus of responsibility for contributing to sustainable development on the economic regulator.

The Statement of Regulatory Principles and Intent (SORPI) agreed between EHS and NI Water illustrate the problem. The SORPI “takes cognisance of the funding available to NIW and the capital works programme (CWP) of NIW”. While it is perfectly reasonable for the history of under-investment in water infrastructure to be taken into account by issuing time-bounded discharge consents, this should be related not to the availability of funding but to the practical constraints on achieving compliance: the CWP cannot be delivered overnight. To explicitly recognise funding constraints in this enforcement policy is to hand a ‘blank cheque’ to both the economic regulator and central government to decide what levels of investment in achieving environmental standards are acceptable. As central government has a vested interest in constraining investment, the economic regulator is in an unusual position, though not an invidious one given its duty to contribute to sustainable development.

In practical terms, the Utility Regulator should respond to this situation by recognising that environmental regulation in Northern Ireland remains weak and that a careful interpretation of its sustainable development duties is therefore appropriate. The consultation paper on the Regulator’s sustainable development role is particularly welcome in this regard.

Consultation Response Pro Forma

3.1 Respondents are asked to comment on the balance between present and future climate change costs.
The Stern Review concluded that the benefits of bold and early international action on climate change far outweigh the economic cost of inaction. The Review estimated that unabated, climate change could reduce global GDP by up to one fifth, whereas abatement costs could amount to as little as 1% of global GDP.
3.2 Respondents are asked to give their views on the relationship between sustainability and security and diversity of supply.
Sustainability and fuel security are twin imperatives in the face of: depleting oil reserves; instability in oil and gas producing regions of the world; and rising carbon emissions

<p>which are destabilizing our climate and life-support systems. Sustainability must enjoy primacy, however, if the demand for diversity of supply is not to result in the continued survival of Kilroot as a coal-fired power station, the construction of a lignite-fired power station, or the development of nuclear generation. The need for fuel security and diversity of supply must be met sustainably, using a mix of indigenous renewable energy sources.</p>
<p>3.3 Respondents are asked to give their views on the degree to which sustainability issues should drive the Utility Regulator’s first NI water price review.</p>
<p>The Northern Ireland Executive is faced with funding new investment in the waste water infrastructure from its own resources and will want to minimise capital expenditure in the absence of water charges. While the Executive faces pressure to comply with EU directives, sanctions are generally seen as being a relatively distant prospect; this leaves a particular onus of responsibility for contributing to sustainable development on the economic regulator. In the absence of independent environmental regulation, it falls to the Utility Regulator to give the highest possible priority to sustainability issues when regulating Northern Ireland Water.</p>
<p>3.5 Respondents are asked to consider whether a monetary value of CO₂ equivalent or shadow price of carbon ought to be included within guidance on use of business cases.</p>
<p>A shadow price of carbon (SPC) ought to be included in order to reduce the viability of high-carbon investments and drive innovation. Given the certainty that over time, carbon costs will be reflected in energy costs, it seems likely that industry in Northern Ireland would be unprepared and uncompetitive if shielded from these costs in the short-term.</p>
<p>3.6 Respondents are asked to indicate their preference for inclusion of “carbon footprint” monitoring and target setting within the new regulatory contract at the first NIW price review.</p>
<p>The Water industry accounts for around 1% of UK carbon dioxide emissions, therefore it is essential that carbon footprint monitoring and challenging targets are included within the new regulatory contract at the first NIW price review.</p>
<p>3.7 Respondents are asked to consider the benefits of going beyond the “Economic Level of Leakage”, possibly by the inclusion of the carbon shadow price in calculations.</p>
<p>Despite the improvements reported in the consultation document, leakage accounts for more than 27% of the total water into distribution in Northern Ireland. This water has been treated and pumped, resulting in the emission of climate-changing gases. Factoring in externalities such as the cost of carbon would increase the number of leaks that can be repaired economically.</p>
<p>3.8 Respondents are asked to consider the degree to which NIW should be incentivised to increase its uptake of renewable energy and reduce its non-CO₂ gas emissions and mechanisms by which this might be achieved.</p>
<p>Water UK has given a voluntary commitment that at least 20% of all energy used by the UK water industry will come from renewable sources by 2020. The Utility Regulator should include a target for the proportion of energy coming from renewable sources in the new regulatory contract at the first NIW price review.</p>
<p>5.1 Respondents are asked to comment on the balance of the Utility Regulator’s duty to protect present and future customers.</p>
<p>We are unclear whether the question refers to protection from costs or protection from the effects of climate change. But the science is clear: now is the time to act on climate change. Stern is also clear: early action to mitigate climate change is more cost-effective than delay or inaction. The principle of inter-generational equity dictates that this generation must bear the cost of mitigating climate change.</p>

5.4 Respondents are asked to comment on whether the Utility Regulator should seek to be designated under section 25 (1) of the Northern Ireland (Miscellaneous Provisions) Act 2006.
The Utility Regulator's statutory duties with respect to gas and electricity are merely to 'have regard to the effect on the environment'. With respect to the water industry, its duty to contribute to sustainable development is subject to a number of other statutory duties. These duties are inadequate to the challenge of achieving sustainable water, gas and electricity industries. The question is this: should the Utility Regulator be making a low-cost system as sustainable as possible, or should it be making a sustainable system at the lowest possible cost? We suggest the latter and suggest that the Energy (Northern Ireland) Order 2003 and Water and Sewerage Services (Northern Ireland) Order 2006 be amended to give primacy to the sustainable development duty. We have no view on whether the Northern Ireland (Miscellaneous Provisions) Act 2006 also needs to be amended to reflect these new duties.
6.1 Respondents are asked to comment on the three main roles for the Utility Regulator identified in chapter 6 of this paper as: <ul style="list-style-type: none"> • gathering and publishing evidence, • contributing to wider energy policy, • regulating differently.
We support the Utility Regulator's proposal to become involved in the evidence-gathering and the policy development process. An important benefit of independent regulation is the regulator's freedom to contribute to the development of policy.
6.3 Respondents are asked to suggest innovative methods of developing and promoting the gas industry as a means of reducing Northern Ireland's carbon footprint.
The Regulator's duty to promote the gas industry may create a bias against renewable energy. This could have environmental impacts and may disadvantage the renewables industry. Gas could, as a result, be installed in areas where a renewable source would be more appropriate. We view with concern the idea that gas companies are incentivised to increase the volumes of gas sold. While it is true that gas is a lower carbon fuel than oil and coal, it sits below renewable energy in the 'carbon hierarchy'. We therefore recommend that the Utility Regulator be given a duty to promote the renewables industry and adopt the view that gas is a transitional fuel on the path to a decarbonised energy system.
7.2 Respondents are asked to identify what they consider to be the top three priorities from the list of proposals and rank them in order of importance.
<ol style="list-style-type: none"> 1. Continue to work with partners and stakeholders to ensure renewable generation can be equitably accommodated on the electricity network. 2. Carry out a full strategic review of energy efficiency delivery mechanisms. 3. Developing sustainability within the NIW price control.
7.3 Respondents are asked to list any further proposals which they think should be considered.
The Utility Regulator should seek to develop a flexible and responsive electricity network that can accommodate renewables and small-scale generation. Distribution systems need to be capable of carrying electricity in two directions to facilitate new technologies seeking connection to the system in future. The consultation paper makes reference to the difficulties of coping with the variable generation capacity of renewables like wind. It explains that the transmission network was originally designed to accommodate dispatchable generation plant. An acceptance of this status quo discourages the

indigenous and sustainable generators whose contribution should be greatly encouraged. The Regulator should make every effort to remove the barriers to renewables identified in this paper.

Thank you for the opportunity to comment on this document. If you have any questions regarding our response, please don't hesitate to contact me using the details below.

Yours sincerely

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