



Northern Ireland  
Assembly

Committee for Agriculture, Environment and Rural Affairs

# Report on the Legislative Consent Memorandum on the UK Government Environment Bill

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Ordered by the Committee for Agriculture, Environment and Rural Affairs to be  
printed 18 June 2020

Report: NIA 12/17-22 Committee Agriculture, Environment and Rural Affairs

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## Powers

1. The Committee for Agriculture, Environment and Rural Affairs is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of Strand One of the Belfast Agreement and under Assembly Standing Order No. 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Agriculture, Environment and Rural Affairs (DAERA) and has a role in the initiation of legislation. The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of 5.
2. The Committee has the power to:
  - Consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocation;
  - Approve relevant secondary legislation and take the Committee Stage of relevant primary legislation;
  - Call for persons and papers;
  - Initiate inquiries and make reports; and
  - Consider and advise on matters brought to the Committee by the Minister of DAERA.

## Background

3. Much existing UK environmental policy and legislation derives from the EU, the implementation of which is largely monitored and enforced by EU institutions such as the European Commission. Following the end of the implementation period under the Withdrawal Agreement, the UK will be operating outside of the EU's environmental governance arrangements. The UK Environment Bill<sup>1</sup> provides a new domestic framework for environmental governance, the purpose of which includes to ensure there is no environmental governance gap in the UK on 01 January 2021. The Bill also provides for environmental improvement in respect of a number of specific environmental areas namely waste and resource efficiency, air, water, nature and biodiversity, and conservation covenants.

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<sup>1</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017-2022/environment-bill-as-introduced.pdf>

4. The UK Environment Bill is the re-introduction of the Environment Bill 2019<sup>2</sup> which passed second reading unopposed but fell as a result of a calling of a General Election in December 2019. The latest Bill was introduced to the UK Parliament and given its first reading on 30 January 2020. It passed its second reading without division on 26 February 2020.
5. The UK Environment Bill 2019-20 contains 133 provisions and 19 schedules, a significant proportion of which apply to Northern Ireland. It sits alongside the Government's longer-term objective for "this, to be the first generation to leave the environment in a better state than that in which we inherited it."
6. Much of the Bill applies to England and Wales or to England only but a significant number of provisions cover Great Britain, the UK (for non-devolved matters) as well as containing NI only provisions. The Bill extends to this jurisdiction in respect of principles, governance, environmental improvement plans, extended producer responsibility, resource efficiency, environmental standards and labelling, waste crime (including waste tracking), chemicals and water environment regulatory change. Whilst there are provisions throughout the Bill that apply here, Part 2 contains the main environmental governance provisions directly relevant to this jurisdiction.
7. Legislative Consent Motion was laid in the Assembly on 19 March 2020. The draft motion, tabled by the Minister for DAERA is:

*"That this Assembly endorses the principle of the extension to Northern Ireland of the provisions of the Environment Bill, as introduced on 30 January 2020, dealing with: Environmental Governance: Northern Ireland in clauses 45 and 46 and Schedules 2 and 3; Waste and Resource Efficiency in clauses 47 - 53, 56, 58, 62, 64 and 68 and Schedules 4 - 9; Water Quality in clause s 81 and 83; and Amendment of REACH legislation in clause 125 and Schedule 19."*

## Committee Consideration

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<sup>2</sup> <https://services.parliament.uk/bills/2019-19/environment.html>

8. At its meeting on 27 February 2020, the Committee received an oral briefing from DAERA outlining the detail of the Bill as it relates to NI and informing the Committee that a Legislative Consent Motion would be required.
9. The Committee took oral and written evidence on 27 February 2020 from the following stakeholders:
  - The Northern Ireland Environment Link
  - Chartered Institute of Wastes Management
  - The Ulster Farmers' Union
  - Northern Ireland Agricultural Producers' Association; and
  - Brexit and Environment.
10. The Committee commissioned a briefing paper on the Environment Bill from the Northern Ireland Assembly Research and Information Service. The Committee also received a written submission from the Northern Ireland Food and Drink Association and from the British Heart Foundation.
11. Having considered the evidence, the Committee identified a number of important issues that warranted further discussion with DAERA. The Committee received a further briefing on these issues at its meeting on 11 June 2020.

## Brief overview of the Environment

12. The environment is hugely important to those living in, working and visiting here and brings great health, social and economic benefits. As such, it is vitally important that the environment is not only protected but improved.
13. According to the State of Nature 2019<sup>3</sup> Report, pressures upon wildlife in Northern Ireland come from a wide range of sources including agricultural management, urbanisation, pollution, hydrological change, woodland management, invasive non-native species, contamination and eutrophication in coastal waters. In addition, it is argued that climate change is not only creating pressure, it is driving widespread changes in the abundance, distribution and ecology of wildlife here. The report highlights that:
  - NI is the least wooded jurisdiction in the UK;
  - Of the 2,450 species found in locally that have been assessed using the IUCN Regional Red List criteria, and for which sufficient data were available, 272 (11%) are currently threatened with extinction from Ireland as a whole (NI specific assessments are not available).
  - An abundance indicator based on nine butterfly species has decreased by 43% since 2006, and an indicator of average abundance in 36 wintering water bird species has declined by 25% since 1988, and by 24% over the past 10 years.
14. Findings from the Northern Ireland Environment Statistics Report<sup>4</sup>, a compendium report provides information on a range of environmental indicators, published in May 2020 include:
  - 79% of households participating in the Continuous Household Survey reported being very or fairly concerned about the environment in 2019/20, climate change, the illegal dumping of waste and pollution in rivers being the environmental problems considered most important;

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<sup>3</sup> <https://nbn.org.uk/stateofnature2019/reports/>

*The State of Nature partnership consists of over 70 partners drawn from conservation NGOs, research institutes, and the UK and national governments. The partnership has worked together to assess the state of the UK's wildlife, and to understand this in the light of the pressures on nature and the responses being made to recover our natural heritage.*

<sup>4</sup> <https://www.daera-ni.gov.uk/publications/northern-ireland-environmental-statistics-report-2020>

- In 2018 there were 1,793 incidents reported to NIEA or discovered by NIEA during inspections, of which 924 (51.5 per cent) were substantiated (confirmed) as having an impact on the water quality of the receiving waterway. Of these, 12 per cent were considered to be of High or Medium Severity.
- In 2019/20, the area of terrestrial protected sites under favourable management in NI was recorded as 204.83km<sup>2</sup> whilst the area of marine protected sites under favourable management was recorded as 115.00km<sup>2</sup>.
- Between 1994 and 2018, the average population change amongst the 37 species for which the Breeding Bird Survey produces statistically robust trends in NI showed a 42 per cent increase. Between year changes varied considerably in size and direction between species. While numbers of Wren and Dunnock have more than doubled during the last ten years, those of Linnet and Lesser Redpoll have declined by a half. In the short term, many songbird species, including Pied Wagtail, Robin, Willow Warbler, Goldcrest and Bullfinch, showed statistically significant declines between 2017 and 2018.
- Between 1994/95 and 2017/18, the total wetland bird population is estimated to have decreased by 6 per cent. Over that time, coastal populations increased by 18 per cent while freshwater populations declined by 44 per cent. The large decline recorded at freshwater sites is strongly influenced by the notable fall in wintering diving duck numbers at Lough Neagh.
- Area of new forest and woodland plantings decreased between 2000/01 and 2019/20.
- In 2018/19, the household waste recycling rate was 50.0 per cent. This was an 8.0 percentage point increase on the 2014/15 level. The recycling rate for all waste collected, both household and non-household waste, was 49.8 per cent in 2018/19.

15. In oral evidence to the Agriculture, Environment and Rural Affairs Committee on 27<sup>th</sup> February 2020<sup>5</sup> from Northern Ireland Environment Link, RSPB and the National Trust, it was reported that this jurisdiction is facing a climate and biodiversity crisis with a loss in habitat and wildlife, the threat of extinction and

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<sup>5</sup> <https://youtu.be/dtf6K9akLhM>

less than a third of rivers being in good condition, there is a need for stronger legislation to protect the environment.



## **CONSIDERATION OF EVIDENCE AND KEY ISSUES - UK PARLIAMENT ENVIRONMENT BILL**

16. The Agriculture, Environment and Rural Affairs Committee has considered the Bill which contains 133 provisions and 19 schedules, a significant proportion of which apply to Northern Ireland.
17. The Committee notes that there has been no formal public consultation in NI on the environmental plans, principles and governance elements of the Bill although there has been engagement by the Department of Agriculture, Environment and Rural Affairs (DAERA) with key stakeholders and with other Government Departments.
18. Due to the level of detail and complexity of the Bill and the limited time available to scrutinise it, the Committee wishes to be clear that it has not had the opportunity to explore all of the clauses which extend to Northern Ireland in full. Nevertheless, the Committee has identified a number of key issues for the consideration of the Department of Agriculture, Environment and Rural Affairs (DAERA) and the Northern Ireland Assembly as set out in this paper. These are:
  - A UK Environment Bill vs. an Environment Bill for this jurisdiction;
  - Potential regression/weakening of environmental protection provisions;
  - Implications for the Protocol;
  - The potential for governance gaps;
  - Enforcement; and,
  - Penalties.
19. The Committee has not taken a position on the draft Legislative Consent Motion which endorses the principle of the extension to NI of the provisions of the Environment Bill, as introduced on 30 January 2020. The Committee would much prefer an Environment Bill for this jurisdiction to deal with governance arrangements regarding environmental protection and improvement, tailored to the unique circumstances here, making provision for areas of key importance such as non-regression, the Protocol, tougher penalties and cross-border issues.

### **A UK Environment Bill vs. an Environment Bill for this jurisdiction**

20. The first issue raised by the Committee is that the Environment Bill is a piece of UK legislation with provisions for NI. The Bill provides a framework for governance

and for the production of environmental regulations in a number of areas, none of which can be introduced here without the agreement of the Assembly/DAERA. The Committee considered the merits of this approach when compared with the introduction of primary legislation in the form of a bespoke Environment Bill for this jurisdiction. Research by the Assembly's Research and Information Service commissioned by the Committee<sup>6</sup> points out that many of the policy principles forming the Bill were consulted on at the UK level while NI was without an Executive e.g. deposit return scheme, producer responsibility.

21. The Committee notes that each devolved administration has taken a different approach to the principles and governance aspects of the Environment Bill. Neither Scotland nor Wales are participating in the principles and governance aspects of the Bill; they are making their own separate arrangements to put the required legal frameworks in place. In other areas, such as producer responsibility, a common approach is taken.
22. In oral evidence to the Committee,<sup>7</sup> DAERA officials have indicated that the Department does not have any plans to bring forward an Environment Bill for this jurisdiction now and that if the UK Environment Bill does not go forward *"it is unlikely that there will be governance arrangements in place in time; you may end up with a gap at the end of this year where we do not have environmental principles or oversight."* They have also indicated that if *"the Bill gets legislative consent and is implemented, it will not prevent Northern Ireland from making changes to it or doing things in addition that it wants to do."*
23. The Committee strongly believes that an Environment Bill for this jurisdiction developed locally, taking into account the unique circumstances here, would better deliver environmental governance and improvement locally. It is of the view that the UK Environment Bill fails to take account of key issues such as cross-border issues and the Protocol. Not only does much of Bill not fit the local context, in some cases, it contracts it.
24. The Committee believes that an Environment Bill for this jurisdiction would give local people greater say in decision-making in relation to the environment and

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<sup>6</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017-2022/raise-briefing-paper-uk-govemment-environment-bill-.pdf> page 18

<sup>7</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017-2022/daera-environment-bill.pdf> page 4

would also result in more effective and tailored policy-making. This would deliver environmental policy that reflects the needs and priorities of NI. The Executive has agreed to a number of existing environmental commitments which would be best reflected in an Environment Bill for this jurisdiction.

25. The Committee queried if it would be feasible at this stage of the passage of the Bill to include a sunset clause on the NI provisions in the Bill. DAERA officials indicated that it was still possible to include a sunset clause but if it is possible to persuade DEFRA to include one is a different matter.<sup>8</sup> The Committee recommends that a sunset clause on the NI provisions be included in the Bill and that a standalone Environment Bill for this jurisdiction taking into account the unique circumstances and needs to the jurisdiction be brought before the Assembly. The following Committee members opposed the inclusion of a sunset clause - Mr William Irwin MLA, Mrs Rosemary Barton MLA and Mr Harry Harvey MLA.

### **Potential regression/weakening of environmental protection provisions**

26. The second issue raised by the Committee is the potential weakening of environmental protection provisions. It has been argued that the UK Environment Bill does not appear to contain equivalent protections to those provided by the EU, raising the potential for significant regression and a lowering of environmental standards. Stakeholders have identified a number of areas where this risk arises and have raised concerns that the Bill does not contain a specific provision on non-regression (the principle prohibiting any recession of environmental law or existing levels of environmental protection) for NI.
27. In oral evidence to the Committee on 27 February 2020<sup>9</sup>, DAERA officials asserted that:

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<sup>8</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017-2022/daera-environment-bill.pdf> page 10

<sup>9</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017-2022/daera-environment-bill.pdf> page 4

*“There is nothing in the Bill that will weaken environmental protections. What it will do is maintain, as far as possible, some of the things that were in the EU that we would otherwise lose.”*

28. In its written evidence to the Committee<sup>10</sup>, Northern Ireland Environment Link (NIEL), the networking and forum body for non-statutory organisations concerned with the built and natural environment of Northern Ireland, recommended that Part 2 of Schedule 2 be amended to include a binding target on non-regression so that current standards cannot be weakened or watered down.
29. The Committee raised the issue of the failure to have a non-regression clause within the Bill with Departmental Officials again at its meeting on 11 June 2020.
30. At the meeting, Departmental officials highlighted the need to draw a distinction between environmental governance arrangements and environmental protection. Governance arrangements will change but there is nothing in the Bill that threatens environmental protection. Existing measures will still be there. In terms of non-regression, the UK government decided not to include a non-regression clause and have no intention of changing that position. Scotland and Wales are considering introducing non-regression clauses in their devolved legislation and that would be open to the Assembly to do the same in the future. Whilst the UK government do not have any intention to include a non-regression clause, neither do they have any intention of reducing environmental protections, nor do DAERA. The Committee notes, however, that intention does not equate to legislative protection and that government intentions can change over time.
31. The Committee is concerned by this and is of the view that it is critically important that there should be no regression. NI is facing a climate crisis and commitments have already been given on a range of environmental issues. This jurisdiction should act as an exemplar and exceed the standards to the UK as a whole and of the EU. NI should set the highest possible benchmark for delivering clearly defined, significant improvements to the natural environment. This should be applied to every Department and across all policies. The Committee recommends that a specific non-regression clause for this jurisdiction be included in the Bill to

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<sup>10</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/niel-briefing-paper.pdf> page 2

ensure, as a minimum, no weakening of environmental protection provisions occurs.

32. The further evidence from Departmental officials on 11 June 2020, which stated that the UK government has no intention of including a non-regression clause, which could be considered a threat to protection and highlights the need for an Environment Bill for this jurisdiction which includes a specific non-regression clause.

33. The Department also indicated that the Bill is cross-cutting. The agreement to move to legislative consent was agreed by the Executive and the provisions will affect other Departments. One of the functions of the Office for Environmental Protection will be to oversee compliance by public authorities with environmental laws. It will therefore extend to all Departments in relation to environmental protection.

#### **Implications for the Ireland/Northern Ireland Protocol (the Protocol)**

34. The third issue identified by the Committee is the implications of the Bill for the Protocol.<sup>11</sup> Research commissioned by the Committee<sup>12</sup> indicates that, as part of the Withdrawal Agreement, the Protocol effectively binds NI to a series of EU environmental regulations such as those relating to products, goods and substances, waste and packaging.

35. The Committee notes that the Bill makes no specific reference to this Protocol. The Committee has expressed concern that attempts may be made to circumnavigate the Protocol and this could have implications for NI not only in terms of environmental standards, but also in relation to access the EU single market.

36. In its written evidence to the Committee<sup>13</sup>, *Brexit & Environment*, an academic network investigating the impacts of Brexit on UK and EU environmental policies and governance, noted that the EU environmental laws that NI must remain compliant with under the Protocol omit key water, waste and air laws.

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<sup>11</sup> <https://www.gov.uk/government/publications/new-protocol-on-irelandnorthern-ireland-and-political-declaration>

<sup>12</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise-briefing-paper--uk-govemment-environment-bill-.pdf> page 20

<sup>13</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/brexit-and-environment-group-briefing-paper.pdf> page 3

37. Northern Ireland is required to automatically adopt any changes to the EU environmental regulations listed in Annex 2 of the Protocol and new regulations can be added to the Annex. Any potential divergence between this jurisdiction and EU legislation as a result of the Bill could have implications for the Protocol and therefore for access to the EU single market e.g. for the agri-food sector. This raises further questions such as which takes precedence, what are the implications for common frameworks and who will be responsible for enforcement.
38. The Committee raised the issue of the implications of the Bill for the Protocol with DAERA officials. The Committee is particularly concerned with what preparation is being made for readiness for the Protocol and what Ministerial action has been taken to ensure this preparation is delivered. The Committee requested that a timeframe be published and shared with the Committee and the Assembly in order to assess progress and implications before the end of the Bill.
39. The Committee acknowledges that more clarity is required in relation to the Protocol. DAERA have agreed to providing further briefings on the Protocol.
40. The Committee raised the question as to whether legal positions on the implications of the UK Environment Bill for the Protocol and on any delay in implementation of the Protocol had been sought.
41. In its oral evidence to the Committee,<sup>14</sup> DAERA officials commented:

*“We are seeing negotiating positions being set out and committees being set up that are supposed to deal with the interpretation of how the protocol works. The bottom line about the force of the protocol is that the European Union (Withdrawal Agreement) Act 2020 that went through Parliament in January says that the agreement, of which the protocol is part, is part of UK law ... as far as Northern Ireland is concerned, the regulations identified in the protocol have to be obeyed. Now, some work will have to be done to see how that is interpreted.”*

42. In further evidence to the Committee on 11 June 2020, Departmental Officials highlighted that the Bill brings into domestic law things that already exist and so it

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<sup>14</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/daera--environment--bill.pdf> page 4

is hard to see how the Bill will make the implementation of the Protocol more difficult. Whilst the Committee recognises that there may be little difference at the end of the implementation period under the Withdrawal Agreement, over time difficulties may well arise should divergence occur.

43. Research commissioned by the Committee<sup>15</sup> raised a number of further scrutiny points for consideration including whether the proposed provisions have been tested to see if they are compliant with the Protocol; any concerns DAERA might have in relation to their ability to influence any potential changes to Annex 2 of the Protocol; as well as a number of issues around compliance, enforcement and reporting.

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<sup>15</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise-briefing-paper--uk-government-environment-bill-.pdf> page 20-21

## The potential for governance gaps

44. The fourth issue that concerns the Committee is the potential for governance gaps. Whilst the Bill offers opportunities to address potential governance gaps that may arise as a result of leaving the EU, the Committee has expressed concern that gaps may still arise, for example, in the period in which it takes to develop an Environmental Improvement Plan for NI (see Clause 45) or until an Office for Environmental Protection (OEP, see Clause 46) is established here to take over the functions currently performed by the EU, if so decided. Governance gaps may also result from the limited representation of this jurisdiction on the OEP and as a result of questions around the level of independence of the OEP.
45. In written evidence to the Committee,<sup>16</sup> *Brexit & Environment* have stated that the UK Environment Bill “*goes some way towards addressing the environmental governance gaps that the United Kingdom’s (UK) exit from the European Union (EU) opens*” but have expressed concern that governance gaps will emerge in places where EU institutions have exercised governance functions, such as preparing legislation, conducting evaluations, sharing data or overseeing enforcement.
46. The Committee noted that in order to develop environmental legislation as a result of leaving the EU, DAERA/NIEA may require significantly increased resources, including people, to avoid governance gaps.
47. A number of stakeholders have expressed the desire for a greater emphasis on the oversight and scrutiny role of the NI Assembly in aspects of the Bill such as the OEP. The Committee supports this view and recommends that provision be included to reflect this.
48. A further consideration is that the COVID-19 pandemic may impact on the ability to implement provisions contained in the Bill within the required timeframe in order to avoid a governance gap. Indeed, COVID-19 has already led to a delay in the passage of the Bill, therefore potentially increasing the risk of governance gaps emerging.

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<sup>16</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/brexit-and-environment-group-briefing-paper.pdf> pages 1-2



## Enforcement

49. The fifth issue of concern to Committee is in relation to enforcement. The Bill makes provision for the establishment of an Office for Environmental Protection but does not make reference to the Independent Environmental Protection Agency (IEPA) proposed in New Decade New Approach.<sup>17</sup> Nor does it address any potential overlap between these organisations and other enforcement bodies such as the Northern Ireland Environment Agency and local government councils.
50. In addition to the above, research commissioned by the Committee<sup>18</sup> also highlighted the potential overlap between the OEP and the Northern Ireland Public Service Ombudsman who also deals with complaints about public authorities here and asks how this would be addressed.
51. Departmental Officials have indicated that they do not see this as a problem and the various organisations will play distinct roles.
52. However, the Committee is of the view that the role of each of the various environmental bodies should be clear and should provide full coverage. A number of Members reported instance where environmental issues are not addressed as a result of a lack of clarity over which body is responsible.
53. At its meeting on 11 June 2020, the Committee noted that there is a commitment to the establishment of an Independent Environmental Protection Agency for this jurisdiction. Therefore, is it not reasonable to try to match our commitment on that in the medium term to what's in the Bill in the immediate term and that a timetable for that should have been flagged up for the preparations and timing for those. Fundamental to governance of these matters going forward will be the Independent Environmental Protection Agency and how that sits with the measures that are in this Bill.
54. In further evidence to the Committee on 11 June 2020, Departmental officials indicated that the establishment of an IEPA would require an assessment of costs

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856998/2020-01-08\\_a\\_new\\_decade\\_a\\_new\\_approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf) page 44

<sup>18</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise-briefing-paper--uk-government-environment-bill-.pdf>

and economic appraisal before the Minister would undertake this. They argue that development of an IEPA for NI is a significant undertaking in terms of policy development, economic appraisal and the development of legislation which requires primary legislation and this would take time to do. Rather, the aim of the Environment Bill is to plug the potential governance gaps as a result of Withdrawal from the EU.

55. The Committee recommends the establishment of an Independent Environmental Protection Agency to act as an overarching body and to ensure independence as soon as possible.

## Penalties

56. The issue of penalties for breaches of environmental law is an area of major concern for the Committee. There are a number of examples of serious pollution incidents, including repeat offenders and of waste crime. The Committee has expressed concern that:

- The financial gains from the illegal dumping of waste appear to greatly outweigh the penalties for doing so including cross-border waste crime.
- The devastating impact of pollution on the natural environment and on the wider community are not reflected in the fines imposed on those who pollute. Further, in reality, there is no negation for polluters to rectify what went wrong - more detail is required on how polluters will be made to pay; and, that
- It appears that the only means of enforcement by the OEP is through domestic judicial review - it does not appear to have any fine/infraction powers.

57. In its oral evidence to the Committee,<sup>19</sup> DAERA officials indicated that:

*“It is difficult for us to legislate for the penalties that are imposed in court, because the judiciary is independent. A lot of environmental law has unlimited fines for transgressions, but it is a matter for the courts to decide what fines they impose.”*

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<sup>19</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/daera--environment--bill.pdf> page 9

58. DAERA officials have indicated that the Bill *“has one or two measures – they are not extensive – to enable a wider range of penalties to be used by the agency.”*<sup>20</sup>
59. In its written submission to the Committee, the Ulster Farmers’ Union (UFU)<sup>21</sup> noted that farmers are often victims of waste crime and indicated that they are pleased to see the Bill put some measures in place to address illegal activity. UFU recommended that there must be a recognition of cross-border waste issues.
60. The Committee is of the view that current fines imposed are inadequate. Further, the Committee believes that the threat of a fine can act as a deterrent and as such the OEP in this jurisdiction should have the power to issue fines. Whilst the Committee accepts that fines are imposed in court, DAERA could make more robust representations regarding this, particularly where fines are ineffective in acting as a deterrent. For example, fines for pollution should include all costs associated with dealing with the pollution.

### Other influencing factors

61. There are a number of factors outside the Bill that will influence its provisions and operation. These include:
- Conventions and International laws;
  - The Good Friday/Belfast Agreement - implications for North/South cooperation on environmental protection;
  - Parallel work by the Committee on the Agriculture Bill and Fisheries Bill as well as other legislative areas e.g. planning;
  - The New Decade New Approach commitment to the establishment of an Independent Environmental Protection Agency;
  - Financial and resource implications including infrastructure to deliver the provisions in the Bill; and the,
  - Impact of the Covid-19 pandemic.
62. These are discussed in more detail at the end of this report.

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<sup>20</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/daera--environment-bill.pdf> page 7

<sup>21</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/ufu-briefing-paper--uk-government-environment-bill.pdf> page 2

## COMMITTEE DELIBERATIONS ON CLAUSES THAT EXTEND AND APPLY TO NORTHERN IRELAND

### Clause 45: Improving the Natural Environment: Northern Ireland

63. The Environment Bill Explanatory Notes<sup>22</sup> state that *“Clause 45 introduces Schedule 2, which includes provision for environmental improvement plans and policy statements on environmental principles in Northern Ireland.”*

#### *Environmental Improvement Plans*

64. Part 1 of Schedule 2 requires DAERA, in consultation with other relevant Departments, to produce and maintain an Environmental Improvement Plan (EIP) which is reviewed and, if appropriate, updated at least every five years; to publish a statement on the data it will obtain to determine whether the natural environment (or elements of it) are improving; and to report progress towards environmental improvement to the NI Assembly on an annual basis.
65. The Committee noted that this jurisdiction does not currently have an Environmental Improvement Plan, the purpose of which being to *“significantly improve the natural environment.”* The Committee raised a number of concerns in relation to the Plan, primarily around the need for wide consultation, the need for the targets, issues around data collection and the timescale for the development of the Plan (particularly in light of the potential for governance gaps as discussed in the previous section). The Committee also sought assurances that the Plan would be laid before the Assembly.
66. In its oral evidence to the Committee,<sup>23</sup> DAERA officials informed the Committee that the Department is currently developing a new Environmental Strategy and that this could potentially become this jurisdiction’s first Environmental Improvement Plan:

*“The provisions also include the preparation and publication of environmental improvement plans, and the environmental strategy may well be the first of those in Northern Ireland.”*

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<sup>22</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 59

<sup>23</sup> <http://data.niassembly.gov.uk/HansardXml/committee-21510.pdf> page 2

67. The Department indicated that targets will flow from the Plan and that that the Environmental Strategy could be redesignated as an Environmental Improvement Plan without the need for further consultation.
68. Research commissioned by the Committee<sup>24</sup> raised a number of questions including if the Environmental Improvement Plan will be target or outcomes based; if it will be in line with the Programme for Government; if this requires any new arrangements for obtaining the required data; whether the Department has the necessary resources, personnel, expertise and equipment to collect, monitor, analyse and share findings of required data and whether the new Environment Strategy consultation took the requirements of an Environmental Improvement Plan into consideration.

### Stakeholders Issues and Concerns

69. *Brexit & Environment*<sup>25</sup> and NIEL<sup>26</sup> expressed concern at the lack of an Environmental Improvement Plan for NI and have called for the development of one as a matter of urgency to avoid a governance gap. They expressed concern that the Bill does not require the Plan to be underpinned by specific targets or to be time-bound.
70. *Brexit & Environment* have suggested the Plan should be “*sufficiently ambitious and deliver meaningful improvement*” and also expressed the view that it is regrettable that it is left to the Department to decide which data are appropriate without requiring coordination with other parts of the UK, the Republic of Ireland and/or the European Environment Agency (EEA).
71. NIEL<sup>27</sup> recommended that the Minister should commit to underpinning the strategy by time-bound targets that sufficiently cover terrestrial, air, water, and marine

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<sup>24</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise-briefing-paper--uk-government-environment-bill-.pdf> page 26-27

<sup>25</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/brexit-and-environment-group-briefing-paper.pdf>

<sup>26</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/niel-briefing-paper.pdf>

<sup>27</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/niel-briefing-paper.pdf> page 6

environments. NIEL further recommended that any review of an EIP be undertaken by an independent regulator or statutory nature conservation body.

72. UFU<sup>28</sup> expressed the view that Environmental Improvement Plans should reflect the importance of maintaining and protecting the environment and that the Bill should require DAERA to consult with stakeholders on the content of future Environmental Improvement Plans.
73. The Committee recognises the urgent need for high benchmark standards and specific targets to meet these standards. It is of the view that a lack of specific targets encourages poor performance. This also requires the definition of 'significant improvement.' The Committee recommends the inclusion of targets and that these targets on environmental standards should apply to all Departments.
74. The Committee recognises the importance of consultation and recommends that that any Draft Environmental Improvement Plan should be subject to full public consultation.

### **Policy statement on environmental principles**

75. Part 2 of Schedule 2 requires DAERA to prepare a policy statement on the environmental principles. Sub-paragraph (2) provides specific information on what the environmental principles policy statement must include. The five environmental principles identified are:
- (a) the principle that environmental protection should be integrated into the making of policies,*
  - (b) the principle of preventative action to avert environmental damage,*
  - (c) the precautionary principle, so far as relating to the environment,*
  - (d) the principle that environmental damage should as a priority be rectified at source, and*
  - (e) the polluter pays principle.*

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<sup>28</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/ufu-briefing-paper--uk-government-environment-bill.pdf>

76. In oral evidence to the Committee,<sup>29</sup> DAERA officials have said that:

*“... if the principles are not reinstated, as it were, into domestic law by the Bill, we will lose them.”*

### Stakeholders Issues and Concerns

77. The Chartered Institution of Wastes Management (CIWM)<sup>30</sup> gave evidence that the five environmental principles in the Bill are important guiding principles as new policies but that they need to be strengthened.
78. UFU<sup>31</sup> have indicated that they would support the inclusion of such principles in legislation with a policy statement outlining clearly how these principles are to be interpreted to ensure clarity and transparency for farmers planning their businesses future and propose the inclusion of the proportionality and innovation principles. The Committee recommends these inclusion of proportionality principles.
79. *Brexit & Environment*<sup>32</sup> and NIEL<sup>33</sup> raised concerns about the requirement to have regard to the principles, as they argue that the principles could effectively be bypassed.
80. *Brexit & Environment*<sup>34</sup> also raised a number of concerns including that the principles fail to address new challenges, such as the need for an environmental improvement or cross-border principles; that NI should reflect on which principles would be particularly valuable to include in its own context; that the policy statement can be amended by the Minister at any time and it is only targeted at

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<sup>29</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/daera--environment-bill.pdf> page 4

<sup>30</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/ciwm-briefing-paper--environment-bill.pdf>

<sup>31</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/ufu-briefing-paper--uk-government-environment-bill.pdf> page 1

<sup>32</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/brexit-and-environment-group-briefing-paper.pdf>

<sup>33</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/niel-briefing-paper.pdf> page 6

<sup>34</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/brexit-and-environment-group-briefing-paper.pdf>

Ministers rather than public authorities in general and that the Department would be able to decide who should be consulted on draft policy statements.

81. NIEL<sup>35</sup> called for clarity on the consultation process for the development of a policy statement on environmental principles and point out that the policy statement need only be applied “proportionately” when making policy and that this may allow Government Departments and Ministers to trade off environmental principles against socioeconomic considerations, thus weakening environmental protections.
82. Research commissioned by the Committee<sup>36</sup> highlighted a number of other scrutiny points regarding the policy statement on environmental principles including whether consultation on the draft Statement will include public consultation and whether the Department need to ensure that it (or a Minister of the Crown) takes “environmental principles” that relate to EU requirements, particularly under Annex 2 of the Protocol, into consideration.
83. The Committee raised the issue of the strength of the provisions on principles with DAERA Officials at its meeting on 11 June 2020. DAERA Officials indicated that the provisions in the Bill are for the preparation of a policy statement on environmental principles, that being a statement explaining how the principles should be interpreted and proportionately applied. Officials indicated that there is latitude for the Executive, as it will be a cross-cutting matter, to determine what should be in the statement and that Department is working on a common approach, the detail of which has yet to be worked out.

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<sup>35</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/niel-briefing-paper.pdf>

<sup>36</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise-briefing-paper--uk-government-environment-bill-.pdf> page 28



### Interpretation

84. Part 3 establishes the interpretation of ‘natural environment’ and ‘environmental protection’. In its evidence to the Committee, NIEL<sup>37</sup> have highlighted that the definition of ‘natural environment’:

*“which includes amongst others, living organisms, land, air and water, risks excluding significant elements of the natural world. The extent to which the marine environment is provided for within Schedule 2 is unclear. Similarly, the historic environment is not explicitly included. For legal clarity, the inclusion of marine, and historic environments should be specified.”*

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<sup>37</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/niel-briefing-paper.pdf> page 7

### Clause 46: The Office for Environmental Protection: Northern Ireland

85. Clause 46 introduces Schedule 3, which allows the Office for Environmental Protection (OEP), established for England by Part 1 of the Bill, to be extended to Northern Ireland. The Environment Bill Explanatory Notes<sup>38</sup> state this *“makes provision for the functions of the OEP in terms of its activities in Northern Ireland, as well as amendments to this Bill to reflect those functions.”*

The Schedule:

- Allows the OEP to monitor the implementation of environmental law and progress in improving the natural environment in accordance with any environmental improvement plans put in place by DAERA;
  - Enables the OEP to provide NI Departments with advice - for example on any proposed changes to environmental law; and
  - Gives the OEP powers to investigate alleged failures by public authorities here to comply with environmental law and take appropriate enforcement action.
86. The OEP will replace the oversight role of the European Commission in holding government to account in relation to its implementation of environmental law.
87. The Committee raised a number of queries and concerns in relation to the establishment and operation of the OEP if extended to NI, namely:
- The role of the DEFRA Secretary of State, DAERA and the Assembly in the appointment of a specific NI member;
  - The adequacy of NI representation on the OEP;
  - How the role of the OEP differs from the role of other bodies such as the Northern Ireland Environment Agency and the proposed Independent Environmental Protection Agency;
  - What constitutes a high profile/high level enforcement case;
  - The effectiveness of Judicial Review in holding public authorities to account;
  - The level of independence of the OEP from government;
  - The location of the OEP (will there be an office based here?);
  - How the OEP will be funded in this jurisdiction; and,
  - The role of NI Assembly in scrutinising the OEP including mechanisms for reporting to the Assembly.

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<sup>38</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 59

88. In its oral evidence to the Committee,<sup>39</sup> DAERA officials have said that this jurisdiction currently has:

*“oversight through the Commission and the European Court of Justice, and if we did not have an OEP to replace that, we would again lose that ... an OEP will not be able to impose fines for infraction as the Commission or the European Court of Justice can, but then that is a mechanism outside the state, so it could do that. Ultimately, an OEP cannot ever be as independent as the Commission would have been.”*

89. DAERA officials advised that a decision has yet to be made as to whether the OEP will be extended here but if it is the OEP:

*“is to be distinguished from the environmental regulator, the Northern Ireland Environment Agency (NIEA), which is, of course, part of DAERA at the moment. We can expect a small number of high-profile cases per year for the OEP to deal with, whereas the Northern Ireland Environment Agency regulates thousands of instances of approvals and permitting throughout the year. They are very distinct functions.”<sup>40</sup>*

90. DAERA officials also indicated that:

*“The Assembly needed to have a role in certain aspects and that there would be accountability in Northern Ireland for the OEP's functions here. Assuming that we decide to extend it to Northern Ireland, the chair of the OEP will have to be appointed jointly by the DEFRA Secretary of State and by DAERA. There is a role there. We have also ensured that there is provision in the Bill for a specific Northern Ireland member to be appointed to the OEP board to ensure that Northern Ireland's interests are represented adequately. That Northern Ireland member would be appointed by DAERA; they would have to consult the DEFRA Secretary of State and the chair of the OEP, but the appointment would actually be*

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<sup>39</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/daera--environment--bill.pdf> page 4

<sup>40</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/daera--environment--bill.pdf> page 2

*by DAERA. DAERA would also be consulted on the appointment of all the other non-executive members of the board. In terms of accountability, the OEP would have to lay its strategy, annual reports and certified annual accounts before the Northern Ireland Assembly, as well as before Parliament.*<sup>41</sup>

91. In relation to the OEP, the Committee recommends that:

- The OEP be extended to NI with a base located there and that this should be adequately resourced;
- There should also be an Interim NI Member until this OEP becomes operational to avoid a governance gap;
- Restrictions on who can report to the OEP should be removed;
- The ability to impose fines should be included; and that,
- The maximum degree of independence should be ensured.

### Stakeholders Issues and Concerns

92. UFU<sup>42</sup> indicated that, in response to the DEFRA consultation on the draft Environmental Principles and Governance Bill, they supported the creation of a UK wide statutory body rather than creating a separate organisation in NI to take over the current EU functions and provide environmental scrutiny. However, given that it now appears that this OEP may only extend its powers to England and NI, UFU is reconsidering this position. UFU recommended that:

- The OEP/equivalent body must be required to act proportionately, instead of only the need to “have regard to” act proportionately;
- There should be a time limit for the completion of investigations;
- The OEP/equivalent body should only intervene in proceedings if it is in the public interest for it to do so;
- The way the new organisation works with the Assembly and its structures must be clearly defined and must be transparent - there should be no duplication with existing structures. There must be consideration/ recognition of cross-border issues; and,

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<sup>41</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/daera--environment-bill.pdf> page 4

<sup>42</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/ufu-briefing-paper--uk-government-environment-bill.pdf> pages 1-2

- The OEP/equivalent body should include a balance of individuals from a business/economic position as well as an environmental and legal background. If the OEP model is accepted, there must be an NI representative on the Board and an appropriate regional sub-group.
93. *Brexit & Environment*<sup>43</sup> provided detailed evidence regarding the OEP and raised a number of concerns including issues around information sharing; the role of the Secretary of State in the appointment of members and funding; the budget; the lack of provision for the appointment of the NI OEP member to involve or allow involvement and oversight from the NIA; concerns around reporting; the lack of clarity around resourcing, staffing, expertise and timescales; and around investigations. *Brexit and Environment* urge that the OEP must be operational by 1st January 2021 to avoid a gap in environmental governance and that DAERA will need to commence the relevant provisions as soon as possible. They have also suggested that Members may wish to amend provisions to require that the OEP advice to DAERA on changes to environmental law is also laid before the Assembly.
94. The Chartered Institution of Wastes Management (CIWM)<sup>44</sup> raised a number of issues including how the OEP will work locally e.g. in relation to border issues; whether an additional OEP will be required in this jurisdiction; how independent the OEP will be; and whether the OEP will have sufficient powers.
95. Northern Ireland Agricultural Producers' Association (NIAPA)<sup>45</sup> noted that *“the overarching body will be the Office of Environmental Protection (OEP). Here in Northern Ireland we have the Northern Ireland Environment Agency (NIEA). In addition, we have Shared Environmental Services (SES) which is a body established by local authorities yet answerable to whom?”*

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<sup>43</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/brexit-and-environment-group-briefing-paper.pdf> pages 7-9

<sup>44</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/ciwm-briefing-paper--environment-bill.pdf> page 3

<sup>45</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/niapa-briefing-paper.pdf> page 1

96. NIEL<sup>46</sup> strongly support the extension of the OEP to NI but have concerns regarding the date by which the OEP will be operational here; resourcing; enforcement power; and the appointment of the NI Member and seek clarity on i) the timeline for establishing the OEP in NI; ii) resource availability to ensure the OEP can effectively function here; iii) clarification on interim governance arrangements for this jurisdiction in the time following the transition period but before the OEP is established; iv) seek Assembly oversight on the appointment of the NI member of the OEP; and, v) seek clarification on the future cross-border cooperation of the OEP and counterparts in the Republic of Ireland.
97. NIEL note that Schedule 1 (Clause 4) gives powers to DEFRA to appoint an interim-chief executive until the OEP becomes operational and strongly support a similar provision be included relating to an interim NI member and have recommended that the Minister should seek clarity from DEFRA that work to establish the OEP takes full account of the resourcing, staffing and expertise needed for the body to operate effectively here. They also note that the OEP lacks the enforcement power of the CJEU, whereby it can only provide decision notices and seek a Judicial Review in instances of serious breaches of NI environmental law. NIEL support the inclusion of a provision to address the lack of involvement and oversight from the Assembly in the appointment of an NI board member.
98. In addition to a number of points raised above, research commissioned by the Committee<sup>47</sup> highlighted a number of other queries including:
- The role of the OEP in the enforcement of climate change legislation;
  - Questions around the definition of environmental law;
  - Whether other Government Departments have been consulted on the Bill, especially in relation to the role of the OEP;
  - Questions around complaints including authorities' internal complaints procedures;
  - The definition of a "serious failure"; and,
  - Questions around enforcement and particularly around Judicial Review.

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<sup>46</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/niel-briefing-paper.pdf> pages 7-8

<sup>47</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise-briefing-paper--uk-government-environment-bill-.pdf> page 21-24 and 29-36

## Clauses 47 and 48: Producer responsibility

99. Clauses 47 and 48 cover producer responsibility. For both these clauses, DAERA is identified as the relevant national authority in Northern Ireland although the Secretary of State may make regulations on behalf of DAERA if it gives consent.

### Clause 47: Producer responsibility obligations

100. The Environment Bill Explanatory Notes<sup>48</sup> state that *“Clause 47 introduces Schedule 4, which allows the relevant national authority to make regulations about producer responsibility obligations and the enforcement of those regulations.”* Clause 47 repeals the Producer Responsibility Obligations (Northern Ireland) Order 1998. Producer responsibility is defined as a means by which businesses which place certain specified products or materials on the market are obliged to take greater responsibility for those products or materials once they have become waste. The Environment Bill provides the means through which existing UK-wide producer responsibility schemes can be replaced and updated and new obligations can be placed on producers in relation to the re-use, redistribution, recovery and recycling of products.

### Clause 48 - Producer responsibility for disposal costs

101. The Environment Bill Explanatory Notes<sup>49</sup> state that *“Clause 48 introduces Schedule 5, which allows the relevant national authority to make regulations that require those involved in manufacturing, processing, distributing or supplying products or materials to meet, or contribute to, the disposal costs of those products.”* Schedule 5 gives powers to make producers of goods responsible for full net costs of collection, treatment and recycling of their goods when they become waste. This is intended to incentivise producers to design their products with sustainability in mind, with the aim of ultimately reducing consumption of raw materials.
102. The Committee raised concerns that by making producers pay for disposal costs this could encourage waste crime including cross-border crime where

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<sup>48</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> pages 59-60

<sup>49</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 60

there may be different approaches in each jurisdiction to disposal costs and recommends that that provisions to address this should be included.

103. In its evidence to the Committee,<sup>50</sup> DAERA officials advised that there will be further consultation on producer responsibility schemes to reduce packaging in 2022-23. Please note that this may be subject to review due to the impact of Covid-19.
104. At its meeting on 11 June 2020, the Committee noted that the issue of waste has become particularly pronounced during the Covid pandemic, particularly as communities go out to reclaim ownership of the roads and engage in litter picking campaigns and there has also been serious issues associated with fly-tipping. The Committee asked if the Department has explored whether levies could be designed in a way that could contribute towards effective waste reduction. Departmental Officials indicated that the provisions are about making sure the cost of dealing with waste is paid by the producer. This will help fund the costs of collecting and dealing with packaging as it goes through its lifecycle and ends up as waste. This will help councils with the costs in dealing with waste.

#### Stakeholders Issues and Concerns

105. UFU<sup>51</sup> have stated that the cost of the requirements to meet the full net cost of dealing with packaging waste or new plastic levies should not just simply be passed along the supply chain to primary producers like egg packers, dairy processors and those in the horticulture sector. They have highlighted that any packaging decisions are made further up the supply chain by retailers and brands, but farmers and growers are in a much weaker position to pass on any costs. They also suggested that the costs and benefits of any proposals to extend charges to plastics such as films and wraps must be carefully assessed.

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<sup>50</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/daera--environment-bill.pdf> page 7

<sup>51</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/ufu-briefing-paper--uk-government-environment-bill.pdf> page 2



106. Northern Ireland Food and Drink Association (NIFDA)<sup>52</sup> have indicated that, whilst they believe the current system needs reform in order to drive up recycling rates, create greater transparency around the use of funds and to increase investment in recycling infrastructure, they are committed to working with other stakeholders to build a “truly circular economy for food and drink packaging.” It is their view that it is important that the proposals lead to a coherent, transparent and integrated system that will minimise negative impacts on business, local authorities and consumers as well as promote long term infrastructure investment and planning. NIFDA argue that it is vital that the proposals work holistically and that organisations do not end up paying multiple times for the same packaging item. NIFDA would like the principle of moving to a full net cost recovery approach for producers to be altered - shared responsibility approach needs to be maintained across the packaging chain in order to help foster collaboration and encourage all businesses to do the right thing. In addition, NIFDA suggest that Government needs to recognise that business alone will not be able to absorb all these costs and that a proportion will need to get passed on to consumers. Encouraging and educating the public about responsible disposal is an important element of ensuring success. Whilst NIFDA fully accept that it must contribute appropriately to collection and recycling infrastructure improvement and behaviour change campaigns, this will be ineffective if consumers do not play their part by using the systems provided.

107. Northern Ireland Environment Link (NIEL)<sup>53</sup> have indicated that they:

*“...welcome the fact that provisions within the Bill focus on waste reduction and resource efficiency, but overall, the measures in the Bill itself are too focused on ‘end of life’ solutions to waste and recycling. Much more emphasis is needed on reduction and design for resource efficiency, including through reuse, at the design stage.”*

108. In relation to Clause 47 and Schedule 4, research commissioned by the Committee<sup>54</sup> highlighted a number of other scrutiny points including whether

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<sup>52</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/nifda-position-paper--uk-government-environment-bill.pdf> page 3-4

<sup>53</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/niel-briefing-paper.pdf> page 5

<sup>54</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise-briefing-paper--uk-government-environment-bill-.pdf>

this will require much change to the existing scheme; how this will fit in with streamlined licensing systems; whether the Department has the resources for this and if compliance with the scheme will be mandatory or voluntary.

109. In relation to Clause 48 and Schedule 5, research commissioned by the Committee<sup>55</sup> highlighted a number of other scrutiny points including how costs associated with cross-border fly-tipping will be dealt with and by what authority and if the Department will ensure consistency with any associated costs across the border so as to ensure one side of the border doesn't become more attractive for unlawful disposal.

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<sup>55</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise-briefing-paper--uk-government-environment-bill-.pdf> pages 39

### **Clauses 49 and 50: Resource efficiency**

110. Clauses 49 and 50 cover resource efficiency. For both these clauses, DAERA is identified as the relevant national authority in Northern Ireland although the Secretary of State may make regulations on behalf of DAERA if it gives consent.

### **Clause 49: Resource efficiency information**

111. The Environment Bill Explanatory Notes<sup>56</sup> state that Clause 49 *“gives effect to Schedule 6, which gives the relevant national authority the power to make regulations that set requirements for manufacturers and producers to provide information about the resource efficiency of their products. The purpose of the power is to enable the regulation of products that have a significant impact on natural resources at any stage of their lifecycle, with the object of reducing that impact primarily through ensuring consumers are supplied with information about the resource efficiency of those products in order to drive more sustainable consumption.”*

112. This is designed to require clear labelling on products to enable consumers to identify those which are more durable, repairable and recyclable.

### **Clause 50: Resource efficiency requirements**

113. The Environment Bill Explanatory Notes<sup>57</sup> state that Clause 50 *“gives effect to Schedule 7, which gives the relevant national authority the power to make regulations that set resource efficiency requirements that products are required to meet. The purpose of the power is to enable the regulation of products that have a significant impact on natural resources at any stage of their lifecycle, with the object of reducing that impact primarily through setting requirements relating to durability, reparability and recyclability, and the recycled content of products and materials. Regulations may impose requirements on any person connected with a product’s supply chain, and in relation to any type of product other than some specified exceptions.”*

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<sup>56</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 60

<sup>57</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 61

114. These are enabling powers and future consultations are planned when appropriate products are identified for these measures. Any powers would need to be on a UK-wide basis to ensure a level playing field in terms of the UK market.

#### **Clause 51: Deposit schemes**

115. The Environment Bill Explanatory Notes<sup>58</sup> state that Clause 51 and Schedule 8 enable the relevant national authority including DAERA “*to make regulations establishing deposit return schemes*” whereby a deposit is included in the price of an in-scope item (such as a drink in a bottle or can) which is redeemed when the item is returned to a designated point. It allows the Secretary of State to make regulations for Northern Ireland, subject to consent. Such schemes aim to increase recycling and reuse and reduce littering.

116. The Committee noted that such schemes have the potential to bring about improvements in plastics recycling and queried what analysis of international actions the Department is carrying out in relation to the impact of such schemes.

117. In its evidence to the Committee,<sup>59</sup> DAERA officials advised that they have looked to Germany where reverse vending machines are used and where there are very high recycling rates for plastics and argued that a Deposit Return Scheme (DRS) is the only way of achieving targets of 80% or 90%. They also advised that there will be another round of consultations on DRS in 2022-23.

118. At its meeting on 11 June 2020, the Committee queried if the Department had completed any research into what a deposit return scheme might look like in this jurisdiction.

119. Departmental Officials indicated that there was a three-part consultation on producer responsibility, deposit return and plastic tax last year and that that work is being progressed with other devolved administrations and DEFRA on producer responsibility and deposit schemes with a view to consulting further on issues such as what would the DRS cover, the type of technology required and what material would be collected.

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<sup>58</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 61

<sup>59</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/daera--environment-bill.pdf> page 5

## Stakeholders Issues and Concerns

120. The Chartered Institution of Wastes Management (CIWM)<sup>60</sup> noted that the deposit return scheme may increase recycling and reduce litter but raised a number of issues including issues with the retail sector and space/resources to manage the scheme; that Councils will be left to collect lower value recyclates and how this will operate locally (cross-border issues).
121. Northern Ireland Food and Drink Association (NIFDA)<sup>61</sup> argued that whilst a well-designed DRS has merits, a Northern Ireland Scheme has challenges in terms of its unique geography; it would remove some of the most valuable material from the kerbside collection scheme and ultimately costs would rise for consumers and given the high level of cross-border trade between the Republic of Ireland and NI there is the potential for cross border fraud and issues with economies of scale in the production of packs and labels. NIFDA have suggested an “on-the-go” voluntary collection scheme could be incorporated as part of an Extended Producer Responsibility Scheme is preferable, focusing on small PET (polyethylene terephthalate) bottles, cans, cartons and coffee cups. This should be introduced and evaluated before a DRS is considered here.
122. Research commissioned by the Committee<sup>62</sup> raised a number of questions in relation to deposit return schemes including whether DRS would entail changes in labelling and significant set-up costs, particularly for small businesses; how DRS would impact on existing household recycling systems and the potential for leakage of materials and subsequent fraudulent activity on a cross-border basis.

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<sup>60</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/ciwm-briefing-paper--environment-bill.pdf> page 6

<sup>61</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/nifda-position-paper--uk-government-environment-bill.pdf> page 4-5

<sup>62</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise-briefing-paper--uk-government-environment-bill-.pdf> page 41

### Clause 52: Charges for single use plastic items

123. The Environment Bill Explanatory Notes<sup>63</sup> state that Clause 52 gives effect to Schedule 9 which allows *“for the making of regulations about charges for single use plastic items.”* This allows relevant authorities including DAERA to make regulations about charging by sellers of goods or services for single use plastic items, building on the success of charging for single use carrier bags.
124. The Committee notes that England, Scotland and Wales are considering restricting certain single use plastic items. The Committee also notes the planned EU ban on certain items where there are currently suitable alternatives that are not made of plastic such as single-use plastic cutlery, cotton buds, straws and stirrers.
125. At its meeting on 11 June 2020, the Committee sought the Departments view on the EU Single Use of Plastics Directive and asked if that is the kind of principles, values and legislation that should be applied here.
126. Departmental Officials indicated that the EU Single Use Plastics Directive is due to be transposed by the middle of next year so it is not something the UK would be obliged to implement but there are aspects that would be relevant here such as banning single use plastic items such as cotton buds etc.
127. In relation to plastic charging, Northern Ireland Food and Drink Association (NIFDA),<sup>64</sup> have expressed concern that, given the high level of cross-border trade between the Republic of Ireland and NI, the proposed tax could cause distortion in the market and create a competitive disadvantage for operators manufacturing goods and selling in NI. They are concerned that many food producers will not be able to mitigate the impact of the tax which is therefore likely to be passed on to consumers in the form of higher food prices, hitting the poorest members of society hardest.

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<sup>63</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 62

<sup>64</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/nifda-position-paper--uk-government-environment-bill.pdf> page 5

**Clause 53: Charges for carrier bags**

128. The Environment Bill Explanatory Notes<sup>65</sup> state that “*Clause 53 amends Schedule 6 to the Climate Change Act 2008*” and allows DAERA to require sellers of single use carrier bags to register with an administrator, applications for registration, amount and payment of registration fees.
129. The Committee noted the use of revenue raised from charging for carriers bags and queried if this could be used to deliver environmental improvements.

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<sup>65</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 62

### Clause 56: Electronic waste tracking: Northern Ireland

130. The Environment Bill Explanatory Notes<sup>66</sup> state that “*Clause 56 amends the Waste and Contaminated Land (Northern Ireland) Order 1997 to create powers to introduce electronic (digital) waste tracking in Northern Ireland, and to create associated criminal offences (punishable by a fine) and civil penalties.*” These new powers allow for the establishment of a mandatory electronic system to record and monitor the movement of waste. The clause also includes powers to impose fees and charges and to create associated criminal offences (punishable by a fine) and civil penalties for breaches of any regulations made under the powers. This provision aims to improve the management and tracking of waste therefore assisting the detection and reduction of waste crime.

131. In its evidence to the Committee,<sup>67</sup> DAERA officials indicated that there is a project in place to deliver a comprehensive electronic tracking system to follow waste wherever it goes and that the Department is getting down to the selected bidder and that the system by 2021-22 at the earliest.

132. Research commissioned by the Committee<sup>68</sup> raised a number of questions in relation to electronic waste tracking including:

- Whether the NIEA will make regulation under this provision;
- Who the designated person would be;
- If the Department has the funding and resources to support this in terms of the technology requires, loans/grants etc.;
- How this fits in with the new Waste Management Plan for NI;
- Whether reference to provisions in retained direct principal EU legislation includes waste legislation under the Ireland/NI Protocol; and,
- Whether the Minister would consider introducing provisions similar to the separate collection of waste provisions which do not apply to NI.

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<sup>66</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 71

<sup>67</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/daera--environment-bill.pdf> page 7

<sup>68</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise-briefing-paper--uk-government-environment-bill-.pdf> pages 44-45



### Clause 58: Hazardous waste: Northern Ireland

133. The Environment Bill Explanatory Notes<sup>69</sup> state that Clause 58 amends “*the Waste and Contaminated Land (Northern Ireland) Order 1997*” to update existing powers of DAERA for making regulations in relation to prohibit, restrict the treatment, keeping or disposal of hazardous waste.
134. This includes the incorporation of a power which will enable DAERA to make provision for the imposition of civil sanctions in respect of contraventions of regulations relating to hazardous waste.
135. Research commissioned by the Committee<sup>70</sup> highlights that Clause 57, which relates to hazardous waste in England and Wales, provides a new definition of hazardous waste and queried if this definition extends to Northern Ireland. The Committee recommends that this definition be extended to this jurisdiction.

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<sup>69</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 75

<sup>70</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise-briefing-paper--uk-govemment-environment-bill-.pdf> page 45

### Clause 59: Transfrontier shipment of waste

136. Please note legislative consent is not being sought on this clause as this is a reserved matter. It was, however, considered by the Committee as it applies to Northern Ireland.
137. The Environment Bill Explanatory Notes<sup>71</sup> state that “*Clause 59 amends Section 141 of the Environmental Protection Act 1990*” which contains a power to make regulations to prohibit or restricted waste imports and exports. This includes banning or restricting waste import and exports, the landing and loading of waste in the UK, loading or transit of waste for export.
138. Regulations may allow DAERA to recover costs via the charging of fees on persons involved in the import/export/transit of waste. Civil sanctions may also be imposed for offences under the regulations.
139. The Committee noted that the announced ban on plastic exports to OECD countries is not mentioned in the Bill. The Committee also expressed concern at how waste is disposed of when it gets to its destination and feels that this is an area that needs strengthened to prevent, for example, sea pollution.
140. Research commissioned by the Committee<sup>72</sup> raised the following scrutiny points:
- The detail of the regulation and functions to be performed by DAERA are to be made by the SoS and subject to affirmative procedure - where will this take place, Westminster or the NI Assembly?
  - There does not appear to be any mention of consultation with DAERA, or devolved legislatures in the drafting of regulations - what level of say will NI have in the drafting of any regulations?
  - The Queen’s Speech and a Ministerial statement stated that a ban on plastic exports to OECD countries would be introduced through the Bill, yet there is no mention of this on the face of the Bill. Will this come in regulations and what level of consultation will take place?
  - NI is bound to EU legislation on shipments of waste under the Protocol, however the UK is not post transition. Could any differences in processes or costs result in NI becoming main thoroughfare for international

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<sup>71</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 76

<sup>72</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise-briefing-paper--uk-government-environment-bill-.pdf> pages 46-47

shipments into EU? What impacts have been considered in light of this? What checks and balances will there be? Will there be enough resources to deal with this?

## Clause 62: Waste charging: Northern Ireland

141. The Environment Bill Explanatory Notes<sup>73</sup> state that *“Clause 62 amends the Waste and Contaminated Land (Northern Ireland) Order 1997 and the Waste Management Licensing Regulations (Northern Ireland) 2003 to supplement existing charging powers available to the Department of Agriculture, Environment and Rural Affairs.”*
142. This includes new powers to allow for fees to be charged to recover costs incurred through interventions at unlicensed waste sites or those in breach of a licence, the levying of fees in relation to prescribed requirements in existing and future producer responsibility schemes and fees for waste management licensing exemptions. The powers will enable the fees and charges to be updated by way of a charging scheme. Charging for regulatory activities carried out reduces the burden on general taxation. This clause aims to ensure that costs associated with enforcement activity are appropriately recovered.
143. New powers for waste charging schemes for DAERA to:
- Recover costs of preventing unauthorised or harmful deposit, treatment or disposal of waste;
  - Recover costs for interventions at unlicensed waste sites;
  - Recover costs of existing and future producer responsibility regime; and
  - Charge fees for exemption applications to waste licensing etc.
144. DAERA must conduct appropriate consultation before making a charging scheme and lay a copy of any scheme before the Assembly.
145. Research commissioned by the Committee<sup>74</sup> asks what form of “appropriate consultation” would be conducted and what happens with the recovery of costs at cross border locations, or cross border waste deposit.

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<sup>73</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 80-81

<sup>74</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise-briefing-paper--uk-government-environment-bill-.pdf> pages 47-48

### Clause 64: Enforcement powers: Northern Ireland

146. The Environment Bill Explanatory Notes<sup>75</sup> state that Clause 64 “*amends Article 27 of the Waste and Contaminated Land (Northern Ireland) Order 1997.*” This includes a new power to allow the Department to ensure that waste can be collected and disposed of when normal processes fail. It makes provision for DAERA to give directions around the acceptance, treatment, disposal or delivery of waste to:

- Account for circumstances in which waste might not be taken to an appropriate storage site in the first instance, or otherwise not directly treated or disposed of.
- Allow the Department to direct a registered carrier of controlled waste to collect specified waste and deliver it to a specified site.
- Allow the Department to direct a keeper of controlled waste, or the owner or occupier of the land on which the waste is being kept, to facilitate the collection of the waste by the specified waste carrier, to pay the waste carrier’s reasonable costs and the reasonable costs of the person the waste is delivered to.
- Clarify that the Department may choose to pay the reasonable costs incurred by the registered carrier of controlled waste or the specified person to whom the waste is delivered.

147. The clause ensures that the Department will have powers to direct a registered carrier to collect specified waste and to deliver it to a specified site. This addresses a gap in the current legislation with respect to the removal of harmful waste from a site and its safe treatment or disposal thus protecting local people and the environment.

148. Research commissioned by the Committee<sup>76</sup> raised the issue who takes responsibility for direction and costs in cross-border cases.

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<sup>75</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 82

<sup>76</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise-briefing-paper--uk-government-environment-bill-.pdf> pages 48

**Clause 68: Waste regulation: amendment of Northern Ireland Order**

149. The Environment Bill Explanatory Notes<sup>77</sup> state that Clause 68 *“amends Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997 to reflect departmental changes in the Northern Ireland Executive.”*
150. This relates to interpretation and covers definitions for terms used within that Order to reflect the transfer of responsibilities from the old Department of the Environment to DAERA.
151. This is a technical amendment to ensure that amendments to the Waste and Contaminated Land (Northern Ireland) Order 1997 by the Environment Bill will confer functions on DAERA rather than the /Department of the Environment which was dissolved in 2016.

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<sup>77</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 84

### **Clauses 81, 83 and 85 - Water Quality**

152. Clauses 81, 83 and 85 relate to water quality in Northern Ireland.
153. Clause 81<sup>78</sup> (Water Quality: powers of Secretary of State) provides a regulation-making power for the DEFRA Secretary of State *“to make provision about the substances to be taken into account in assessing the chemical status of surface water or groundwater, and to specify standards for those substances, or in relation to the chemical status of water bodies.”* This allows for updates to substances and standards in legislation implementing the Environmental Quality Standards Directive. It enables additional provision that may need to be introduced as a result of exercising the powers including, for example, specifying a date by which a standard for a specific substance must be achieved, changes to monitoring regimes to cover newly specified substances or new measures to be introduced into river basin management plans in respect of such substances.
154. Clause 83<sup>79</sup> (Water Quality: powers of Northern Ireland Department) confers a regulation broadly comparable with that in clause 81 on DAERA to make provision about the substances to be taken into account in assessing the chemical status of surface water or groundwater, and to specify standards for those substances, or in relation to the chemical status of water bodies. It gives powers to the Department to change key regulations overseeing the protection of water in NI and requires consultation with persons or bodies that represent the interests of those likely to be affected by the regulations.
155. Clause 85<sup>80</sup> (Water quality: interpretation) contains definitions used in the clauses on water quality. Legislative consent is not being sought on this Clause.

### Stakeholders Issues and Concerns

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<sup>78</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 99

<sup>79</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 99

<sup>80</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 100

156. In its written submission, *Brexit & Environment*<sup>81</sup> asserted that the powers conferred in Clause 83 raise three distinct types of concerns: (1) the potential for weakening water quality protection (2) lack of stakeholder engagement/consultation in undertaking major governance changes (3) issues for cross-border cooperation linked to the three transboundary river basins shared between Ireland and Northern Ireland.
157. NIEL<sup>82</sup> have suggested that Clauses 81 and 83 should be strengthened to ensure targets and standards cannot be weakened without thorough public consultation and independent scientific advice. The Committee agrees that these clauses should be strengthened.
158. NIAPA<sup>83</sup> have indicated that water quality is an issue NIAPA have been dealing with for some time and producers are working continuously to improve the standards of water, although they are by no means the sole cause of pollution occurrences yet due to the imposition of financial penalties imposed on Single Farm Payments the penalties are often multiples of those imposed by civil proceedings.
159. Research commissioned by the Committee<sup>84</sup> raised the following scrutiny points:
- There does not appear to be any requirements or conditions laid down for the reviewing process of any changes made. There are no timescales for when substances lists should be reviewed either. How will this fit in with changes made to the EU Water Framework Directive?
  - These regulations are subject to negative resolution. The Delegated Powers Memorandum states that the power is circumscribed, meaning it cannot be used to make wider changes beyond updating the chemical substances and Environmental Quality Standards. However, does this provide a high enough level of scrutiny?

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<sup>81</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/brexit-and-environment-group-briefing-paper.pdf> pages 9-10

<sup>82</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/niel-briefing-paper.pdf> page 5

<sup>83</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/niapa-briefing-paper.pdf> page 1

<sup>84</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise-briefing-paper--uk-government-environment-bill-.pdf> pages 49



## Clause 125: Amendment of REACH (Registration, Evaluation, Authorisation and restriction of Chemicals) Legislation

160. The Environment Bill Explanatory Notes<sup>85</sup> state that Clause 125 “*gives effect to Schedule 19, which gives the Secretary of State the power to amend Articles of the REACH Regulation, as amended by the REACH Exit Statutory Instrument.*” It will allow the Secretary of State to amend, or add to, the transitional provisions to ensure effective regulatory transfer of the REACH Regulation into the UK and facilitate future changes. It excludes certain articles [from amendment by this power], including those which set out the fundamental aims and principles of REACH.
161. The devolved administrations must grant their consent before any regulations are made by the Secretary of State. The Secretary of State must consult the UK REACH Agency (i.e. the Health and Safety Executive) and people it (or DAERA) considers appropriate.
162. The clause also gives the Secretary of State and the devolved administrations the power to amend the REACH Enforcement Regulations.

### Stakeholders Issues and Concerns

163. NIEL<sup>86</sup> have expressed concern “about this provision granting DEFRA such sweeping power to amend the main UK REACH text, as this could be used to reduce the level of protection for the public and the environment from hazardous chemicals. Similar to Clauses 81 and 83, Clause 125 should be strengthened to ensure that targets and standards cannot be weakened without thorough public consultation and scientific advice.” The Committee supports this view and believes that any proposed changes should undergo public consultation.
164. Research commissioned by the Committee<sup>87</sup> notes that REACH is listed under Annex 2 of the Ireland/NI Protocol and raises the scrutiny point as to whether this means post transition, the UK may make further amendments to diverge,

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<sup>85</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/environment-bill-explanatory-notes.pdf> page 122

<sup>86</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/niel-briefing-paper.pdf> page 5

<sup>87</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise-briefing-paper--uk-government-environment-bill-.pdf> page 50

whereas NI is bound by the Protocol. The research further asks if this could potentially make common frameworks difficult and how will this fit in with Clause 19.

## **OTHER CLAUSES THAT EXTEND TO NORTHERN IRELAND BUT FOR WHICH LCM IS NOT BEING SOUGHT**

### **Clause 19**

165. Statement about Bills containing new environmental law: requires Ministers to make statements about Bills containing new environmental law as to whether or not it reduces the level of protection provided by existing law.

### **Clause 21-40: The Office for Environmental Protection (OEP)**

166. These Clauses:

- Create a new, statutory and independent environmental body to hold government to account on environmental law and its EIP once the UK leaves the EU.
- Define the scrutiny, complaints and enforcement functions of the OEP and their scope;
- Establish an OEP enforcement process of environmental review in the Upper Tribunal.
- Deal with the provision of information to the OEP and its disclosure of information.

### **Clause 41-44**

167. Interpretation of Part 1 -defines meaning of “natural environment”, “environmental protection” and “environmental law” in order to determine the remit of the OEP. The term “natural environment” is not defined solely to determine the remit of the OEP but also for the purposes of defining the scope of EIPs.

### **Clause 60: Regulations under the Environmental Protection Act 1990**

168. Clause 60 amends the Environmental Protection Act 1990 by inserting new section 160A, and making consequential amendments to other sections of the Act. These changes consolidate the parliamentary procedure requirements for regulations and orders under the Act, including for regulations and orders made under new powers in the Environment Bill.

### **Clause 71: Environmental recall of motor vehicles etc. (reserved matter)**

169. Clause 71 provides for the Secretary of State to make regulations making provision for the recall of relevant products i.e. certain vehicles and engines - or parts of certain vehicles and engines - that do not meet relevant

environmental standards. It sets out the “relevant products” that can be specified or described in the regulations as:

- (a) a mechanically propelled vehicle;
- (b) a part of a mechanically propelled vehicle;
- (c) an engine that is, or forms part of, machinery that is transportable (including by way of self-propulsion);
- (d) a part of such an engine, or any other part of such machinery that is connected with the operation of the engine.

170. Although legislative consent is not being sought on this Clause, NIAPA<sup>88</sup> have commented that “Climate change is obviously topical in future discussions as is the situation regarding emissions from whatever source and once again mitigation measures must be encouraged. In relation to agriculture there must be discussion with all parties to develop solutions with immediate imposition of regulations not an answer. Given the present state of farming income with a 26% drop in real terms in the past year there is not an abundance of capital to invest from an agricultural perspective.

171. It has also been pointed out that this jurisdiction has a land border with an EU member state and that emissions do not respect such borders.

**Clause 72: Compulsory recall notices (reserved matter)**

172. Clause 72 provides that regulations made under Clause 71 confer a power on the Secretary of State to issue a “compulsory recall notice”. The Secretary of State must have grounds for believing that a relevant product does not meet relevant environmental standards prior to issuing such a notice. Where a relevant product forms part of another product, a notice may require return of the entire product. Supplementary requirements may be imposed on a recipient including requirements to publicise the recall, to achieve a minimum recall rate, to pay compensation or to prevent any relevant products being sold while subject to a notice.

173. The Secretary of State may provide for an appeal mechanism or for a means of withdrawing a notice or a supplementary notice.

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<sup>88</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/niapa-briefing-paper.pdf>

**Clause 73: Further provision about regulations under 71 (reserved matter)**

174. Clause 73 provides that regulations made under Clause 71 may impose a duty on both manufacturers and distributors to notify the Secretary of State if they consider that a relevant product does not meet an environmental standard and that the Secretary of State may in the regulations confer investigative and information gathering powers on themselves or a designated person for the purposes of deciding whether to issue a compulsory recall notice. The regulations may also make provision about enforcement of the regulations, including the imposition of financial penalties, powers of entry to take documents and samples where there are reasonable grounds for suspecting a manufacturer or distributor has failed to comply with a requirement imposed by or under the regulations, and for appeals against the imposition.

175. The Secretary of State may in the regulations:

- confer investigative and information gathering powers on themselves for the purposes of deciding whether to issue a recall notice.
- Make provision about the enforcement of the regulations, including about the designation of an enforcement authority, the imposition of financial penalties, powers of entry to take documents and samples where reasonable grounds for suspecting a manufacturer or distributor has failed to comply with a requirement imposed by or under the regulations, and for appeals against the imposition of a financial penalty.

**Clause 126: Consequential Provision**

176. Clause 126 confers a regulation-making power on the Secretary of State to make further consequential amendments which arise from the Bill or regulations made under it and which may amend, repeal or revoke an enactment. Regulations that amend or repeal primary legislation are subject to the affirmative procedure; other regulations made under this clause are subject to the negative procedure. Equivalent powers are provided for DAERA, subject to legislative competence.

**Clause 127: Regulation**

177. Clause 127 provides that regulations made under this Bill may make supplementary, incidental, transitional or saving provision. It allows regulations to make different provision for different purposes or places. Regulations are to be made by statutory instrument or statutory rule (NI only).

### **Clause 128**

178. Crown application. This Bill does not contain any provision to exempt the Crown from its requirements. Subsection (2) of this clause sets out that, where this Bill amends or repeals other legislation, the Crown is bound by that provision to the same extent as in the amended or repealed legislation.

### **Clause 129: Financial Provisions**

179. Costs from the Environment Bill will include, but are not limited to:

- The establishment and running of the Office for Environmental Protection.
- Additional activities for public bodies, such as local authorities, arms-length bodies, other government departments (e.g. additional costs for the justice system and additional responsibilities for policymakers across government) and DEFRA.
- Additional resources to support the delivery of activities, such as enforcement officers and policymakers.
- Infrastructure and other assets, such as estates costs for the Office for Environmental Protection, and enhanced IT systems to deliver certain measures.

### **Clause 131: Commencement**

180. Clause 131 sets out the commencement arrangements for all provisions of the Bill. With the exception of a limited provision concerning chemicals, none of the Bill's NI provisions can be commenced without the affirmative consent of the Assembly. (For technical reasons the chemicals provisions must commence at the same time throughout the UK but implementation still requires the consent of DAERA).

### **Clause 132: Transitional or saving provision**

181. This clause provides that Commencement regulations made under this Bill may also make transitional or saving provision. Subsection (8) allows those regulations to make different provision for different purposes or places. Equivalent powers are provided for Scottish and Welsh Ministers and for DAERA, subject to respective legislative competence.

### **Clause 133: Short title**

182. This clause confirms the short title of the Bill.

## CLAUSES THAT DO NOT EXTEND TO NORTHERN IRELAND

183. The following is a list of clauses that do not extend to Northern Ireland and which the Committee have not considered due to a lack of time.

- Clauses 1-6: environmental targets
- Clauses 7-14: environmental improvement plans
- Clause 15: environmental monitoring
- Clauses 16-18: policy statement on environmental principles
- Clause 20: reports on international environmental protection legislation
- Clause 54: separation of waste
- Clause 57: hazardous waste: England and Wales
- Clause 63 and Schedule 10: enforcement powers
- Clause 65: littering enforcement
- Clause 66: fixed penalty notices
- Clause 67: regulation of polluting activities
- Clause 75: water resources management plans, drought plans and joint proposals
- Clause 76: drainage and sewerage management plans
- Clause 77: authority's power to require information
- Clause 79: electronic service of documents
- Clause 80: water abstraction: no compensation for certain licence conditions
- Clause 86: valuation of other land in drainage
- Clause 88: valuation of agricultural land in drainage district: England and Wales
- Clauses 90-92 and Schedule 14: biodiversity gain in planning
- Clauses 93-94: biodiversity objective and reporting
- Clauses 95-99: local nature recovery strategies
- Clauses 100-101 and Schedule 15: tree felling and planting
- Clauses 102-124 and Schedule 16: conservation covenants
- Schedule 17: application of Part 7 to Crown land
- Schedule 18: consequential amendments relating to Part 7

## OTHER INFLUENCING FACTORS

### Conventions and International laws

184. The UK Environment Bill should not contradict conventions such as the Basel Convention on the Transboundary Shipment of Hazardous Waste and the Aarhus Convention.
185. NIEL<sup>89</sup> note that Aarhus rights (public access to environmental information, public participation in environmental decision making and access to justice in relation to environmental matters) have been removed from the draft Bill and have suggested that DAERA should use Schedule 2 as an opportunity to restate the importance of these rights and the need to ensure they are respected, protected and fulfilled.
186. *Brexit & Environment*<sup>90</sup> have suggested that greater reference should be made to international standards based on expertise, with for instance both minimum standards and more aspirational targets, such as the UN Sustainable Development Goals. *Brexit & Environment* recommend the creation of new legislation that incorporates and provides for Aarhus principles rights within a single piece of legislation.
187. The Committee is of the view that the above highlights the need for a standalone Environment Bill for this jurisdiction and the need for a non-regression clause.

### The Good Friday/Belfast Agreement

188. The Good Friday/Belfast Agreement provides for North/South cooperation on environmental protection - the Committee queried the implications for Strand Two (North-South) arrangements with regards to the environment. DAERA officials<sup>91</sup> have said that *“there is nothing in the Bill that contradicts the requirements in the*

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<sup>89</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/niel-briefing-paper.pdf>

<sup>90</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/brexit-and-environment-group-briefing-paper.pdf>

<sup>91</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/daera--environment--bill.pdf>



*Good Friday Agreement such as the North/South Ministerial Council and other arrangements.”*

189. However, *Brexit & Environment*<sup>92</sup> have suggested that if NI changes the pollutants measured, or the method measured - for example, following England in moving to an, as yet to be determined, ‘close to natural state’ approach, this would raise challenges for continued North/South cooperation on water quality and especially on the implementation of the Water Framework Directive, for example in relation to providing comparable data between the two jurisdictions and creating added barriers to practical cooperation between the governments and agencies in NI and the Republic of Ireland.

#### Implications for other legislation

190. Parallel to the scrutiny the Committee is carrying out on the Environment Bill, the Committee is also considering the Agriculture Bill and the Fisheries Bill. The Committee notes that there are implications of the Environment Bill for other legislation and is concerned that the Environment Bill does not dovetail with, for example, the Agriculture Bill as might be expected. The Environment Bill may have implications for other legislative areas such as planning.

#### An Independent Environment Protection Agency

191. The Committee notes that New Decade New Approach commits to the establishment of an Independent Environmental Protection Agency (IEPA). More information is required as to what ministerial directives or objectives are being set in relation to the establishment of an IEPA and how this will interact with the OEP if established.

192. DAERA officials<sup>93</sup> have indicated that they do not see the relationship between the OEP and an Independent Environmental Protection Agency as problematic.

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<sup>92</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/brexit-and-environment-group-briefing-paper.pdf>

<sup>93</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/daera--environment-bill.pdf>

193. *Brexit & Environment*<sup>94</sup> have, as a matter of urgency, called for “*the immediate creation of an independent environment agency for Northern Ireland, highlighted in the recent negotiations in the reformation of Stormont and the subsequent climate change vote.*”

#### Financial and resource implications

194. The Bill raises questions regarding the financing and resourcing of the proposals. In the case of the OEP, clarity is required around the establishment and running costs of the OEP, additional activities for public bodies, additional resources to support delivery activities such as enforcement and policymakers, infrastructure and other assets. For example, how much funding will go towards the OEP’s operation in this jurisdiction? Will any of this come from the block grant? Will NI have to contribute to the funding of the OEP? Who will be responsible for the resources for the set up and running of the OEP in NI? Will the OEP have revenue-generating abilities in NI? Will the OEP have a branch based here? Will the OEP have sufficient resources and powers to perform its functions effectively here? If the OEP extends to NI, the jurisdiction will be expected to make a contribution to the funding of the OEP. The cost of this is currently unknown. Questions have also been asked about revenue generation e.g. plastic bag levy? Could costs be recouped from moneys brought back in? Does the Department have the infrastructure in place to introduce the Bill?

195. DAERA officials<sup>95</sup> have indicated that there will be some cost in relation to the OEP whilst the deposit return scheme and extended producer responsibilities will be paid for by industry.

196. *Brexit & Environment*<sup>96</sup> have, as a matter of urgency, called for “*clarity regarding the financing and resourcing of the OEP, the new independent environment agency and DAERA in order to deliver improved environmental governance in Northern Ireland.*”

#### Impact of the Covid-19 pandemic

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<sup>94</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/brexit-environment-environment-bill.pdf>

<sup>95</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/daera-environment-bill.pdf>

<sup>96</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/brexit-environment-environment-bill.pdf>

197. The Committee notes that the Covid-19 pandemic has brought environmental issues to the fore. This has included reduced travel and efforts in the community to improve the natural environment through, for example, litter-picking initiatives.

## List of Abbreviations and Acronyms used in this Report

CIWM	Chartered Institution of Wastes Management
CJEU	Court of Justice of the European Union
DAERA	Department of Agriculture, Environment and Rural Affairs
DEFRA	Department for Environment, Food and Rural Affairs
DRS	Deposit Return Scheme
EEA	European Environment Agency
EIP	Environmental Improvement Plan
EU	European Union
IEPA	Independent Environmental Protection Agency
IUCN	International Union for Conservation of Nature
NI	Northern Ireland
NIEA	Northern Ireland Environment Agency
NIEL	Northern Ireland Environment Link
NIFDA	Northern Ireland Food and Drink Association
OECD	Organisation for Economic Co-operation and Development
OEP	Office for Environmental Protection
PET	Polyethylene Terephthalate
REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals
RSPB	The Royal Society for the Protection of Birds
SES	Shared Environmental Services
SOS	Secretary of State
UFU	Ulster Farmers' Union
UK	United Kingdom
WMPNI	Waste Management Plan Northern Ireland



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