



Northern Ireland  
Assembly

Committee for the Environment

# OFFICIAL REPORT (Hansard)

Environmental Better Regulation Bill:  
NIA Research and Information Service Briefing

10 September 2015

# NORTHERN IRELAND ASSEMBLY

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### Environmental Better Regulation Bill: NIA Research and Information Service Briefing

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**Members present for all or part of the proceedings:**

Ms Anna Lo (Chairperson)  
Mrs Pam Cameron (Deputy Chairperson)  
Mr Barry McElduff  
Mr Gary Middleton

**Witnesses:**

Ms Suzie Cave  
NIA Research Office

**The Chairperson (Ms Lo):** Suzie, do you want to go ahead?

**Ms Suzie Cave (NIA Research Office):** As Anna said, this paper really just gives an overview of the content and purpose of the Bill. It also looks at the different types of scrutiny afforded to the supplementary regulations that, as you can see, make up a large majority of the detail of the Bill. I have tried to give a brief comparison with other jurisdictions and highlighted possible areas for further consideration.

The first three sections of the paper consider the what, why and how of the Bill. The Bill's purpose is to reduce the complexity of environmental legislation. That relates to environmental permitting and the powers of entry so as to lessen the regulatory burdens on businesses while protecting the environment. Why is it doing that? The current regulatory arrangements for environmental permitting and powers of entry fall under separate regimes. For example, current environmental permitting is governed by more than 40 pieces of legislation, and there are over 230 pieces of legislation for powers of entry, with around 50 of those having their own suite of investigatory powers. It is due to that that the current systems have been criticised as being complex, inflexible, incoherent and time-consuming to understand. The Bill aims to overcome that by, first, introducing an integrated environmental permitting system and coordinating the existing separate regimes into a single system. That is under Part 1. It also aims to do that by, secondly, requiring the Department to conduct a review of existing powers of entry legislation, with a view to rationalising the powers. That is under Part 2. The rest of the Bill — Parts 3, 4 and 5 — is concerned with making miscellaneous amendments to existing legislation and is not related to Parts 1 and 2.

The Department has pointed out that the amendments will not make any changes to existing processes under those Parts. They are purely to simplify the authorisation process for fuels and fireplaces so that it can be carried out administratively, rather than through regulations. They will remove the requirement for councils to make further assessments of air quality. Councils support that, as it is considered a burdensome process that only supplements information that councils already

have. Finally, they will transfer responsibility for the regulation of drinking water for public supplies from the Department for Regional Development to the Department of the Environment.

Section 7 of the paper makes comparisons with other jurisdictions. While the cause for the development of the Bill has been more locally driven, changes in the rest of the UK have helped to shape it. For example, the environmental regulatory processes in England and Wales and in Scotland have undergone similar simplification and reform. Both the Environmental Permitting (England and Wales) Regulations 2010 and the Regulatory Reform (Scotland) Act 2014 are similar to the Bill; in fact, Part 3 of the 2014 Act in Scotland is most similar to the environmental permitting aspects of the Northern Ireland Bill. The powers of entry part is most closely in line with the Protection of Freedoms Act 2012 in England.

As I outlined in the paper, there are many similarities, but there are some small differences. I mentioned those on page 19, which I think is page 33 of your packs. I will go through some of those differences now. For example, under their Red Tape Challenge, the UK Government suggested a sharing of common information between the planning portal and the environmental permitting application form. It is not known whether similar considerations will be given to the Northern Ireland Bill at this stage. The Scottish Regulatory Reform Act puts a duty on regulators to contribute to achieving sustainable economic growth. However, nothing similar is mentioned in the Northern Ireland Bill at this stage.

Section 8 of the paper, which is from page 31 onwards, suggests some further considerations. I will just highlight some of the main ones underpinning the whole Bill. This is in relation to the amount of detail that is provided. The Bill is essentially enabling legislation, and it gives powers to the Department to produce regulations for a new permitting system and to review the existing powers of entry. Appreciating that regulations provide a degree of flexibility for change that primary legislation does not, the lack of detail in the Bill makes scrutiny of it quite difficult at this stage. For example, provisions on the new types of permit, making an application, the process of assessment and granting permits, as well as any associated fees, will be in regulations at a later stage, rather than in the Bill under Part 1. It is the same for Part 2 in relation to the review and consolidation of powers of entry. That will include production of a code of practice. Therefore, it is important at this stage to have an appreciation of the level of scrutiny that the Assembly will be afforded once the regulations are available.

Section 4 of the paper, which is on page 26 of your packs, gives an overview of the general type of scrutiny given to each of the regulations. In summary, those in respect to environmental permitting under Part 1 are expected to be complex and are subject to affirmative resolution. Regulations to be made under Part 2 for powers of entry will be subject to negative resolution. However, those that will amend primary legislation or create or change offences will go through the affirmative resolution process. In relation to the code of practice that I mentioned no form of Assembly procedure is given, as it is not considered delegated legislation. For more detail, members might want to refer to the delegated powers memorandum that the Department has provided.

Due to that lack of detail, it is difficult at this stage to give any appreciation of the financial implications. According to the explanatory and financial memorandum (EFM), full appreciation of those is a matter for the regulatory impact assessments that will accompany subordinate legislation for both Parts 1 and 2. The EFM expects that the likely benefits to businesses of a more effective and efficient regulatory process should offset any increase in public sector costs.

I have given a table at the end of the paper that summarises the consultation responses. They were, in general, very supportive of the proposals. However, some of the main concerns raised were on the simplification and streamlining of both the regimes in case that leads to a weakening or loss of environmental protection. I looked to the experiences of other jurisdictions, particularly England, which has had the process going since 2010. An impact assessment of the regulations was carried out by the Department for Environment, Food and Rural Affairs (DEFRA). That did not highlight any issues on reduced protection; in fact, it proposed to further relax the framework by removing the necessity to secure planning permission before an environmental permit can be issued, as it was felt that such a prerequisite was an unnecessary burden on businesses. Again, there has been no suggestion of anything similar in the Northern Ireland Bill. While the Scottish Act has not been long in force and, as yet, no review has been conducted, it is difficult to know the overall environmental protection implications at this stage.

In summary, due to the fact that there seems to be little review of the impacts of legislation on environmental protection in other jurisdictions, it is difficult to make any judgements beyond the

Department's reassurance that environmental protection will not be compromised. I have considered other concerns in the Bill, but those are mainly related to the regulations and can be teased out at a later stage during consultation.

That is me for now. If there are any questions or further discussions, they are welcome.

**The Chairperson (Ms Lo):** Thank you, Suzie. I think that you are right: the worrying bits are that it is an enabling Bill, there is so little detail and the majority of the changes are going to happen with regulations later on. I know that a lot of them will be done through affirmative resolution, which is where we will see it, but it is difficult at this stage to say how it will affect environmental protection. I think that the sector is concerned. I am concerned when you talk about so many types of permitting. We are going to just collapse them all into one or two. How is it going to cover everything that is now currently under so many types of permitting? Who will inspect premises encompassing all the various activities? I just do not know how they will do it. You have maybe 40 inspections now, which will be down to one or two inspections, but by whom? Will the person who goes out to inspect the overall environmental impact have the qualifications, be able and have the experience to do it?

**Ms Cave:** That seemed to be the overall concern with the Bill. As I said, I think that, in general, people seem to be supportive of the idea that it is to simplify and encourage businesses and growth, but the underlying question is whether it will have any impact on the procedural aspects. Sometimes with oversimplification detail can be lost.

**The Chairperson (Ms Lo):** One permit for different sites under one operator means that maybe they will not inspect different sites. They get one permit. If one operator has different sites, there is only one permit to cover all the sites.

**Ms Cave:** There would be one permit, but again —

**The Chairperson (Ms Lo):** The corporate permitting —

**Ms Cave:** You should ask the Department whether it is really just the administration and application process that it is talking about with the one permit and multiple sites and whether investigations and tests will still be carried out for each of those individual sites. It reduces the burden for the applicant, rather than the actual procedure that the Northern Ireland Environment Agency (NIEA) will carry out — *[Inaudible due to mobile phone interference.]*

**The Chairperson (Ms Lo):** So there may be one application for one permit, but the inspection will still be carried out?

**Ms Cave:** *[Inaudible due to mobile phone interference.]* — if there is a number of different sites.

**The Chairperson (Ms Lo):** Do members have any other questions?

**Mrs Cameron:** Not really, Chair. I think that you have pretty much summed it up. The fact is that it is enabling legislation, and we do not know the detail. We cannot really say anything further, given that lack of detail.

**The Chairperson (Ms Lo):** I am concerned about Part 2 as well. It is saying that there will be a review of the power of entry. Could they not have done that review before the legislation was drawn up so that we could know exactly what they are talking about?

**Ms Cave:** They have given a timeline of two years for the review once the legislation comes into force. The review would be done within that time, and whatever changes they would want to make could be made. Again, that is a bit further down the line.

**The Chairperson (Ms Lo):** Yes. You mentioned that the Scottish Act includes furthering economic sustainability, yet we do not have that in our Bill.

**Ms Cave:** No; it is very much on environmental protection for the sustainable use of natural resources, which it talks about, and improving the energy efficiency of any activities. There is nothing about

economic growth, but obviously the underlying aim of the Bill is to encourage and make the system a bit easier for small businesses and businesses that may be trying to set up.

**The Chairperson (Ms Lo):** Maybe we should ask the Department about adding an amendment on economic sustainability.

**Ms Cave:** The Scottish Act is similar, word for word, apart from that aspect. Another part gives protection against assault on any officers under the powers of entry. The Northern Ireland Bill is more of a general protection, in that it deals with anybody who causes obstruction to anybody using the powers. I am not sure whether there are more instances in Scotland of physical assaults.

**The Chairperson (Ms Lo):** Yes. We must be easier on the inspectors.

Does anyone have any questions for Suzie? We need to look into the financial implications as well.

**Ms Cave:** At this stage, it is about making the Committee aware of the regulations that are coming and ensuring that you feel that the scrutiny of what is being introduced is just.

We talked about small businesses over here, and another point is that it will probably have a great impact on those in the farming and agriculture community. The Agriculture Committee is conducting an inquiry at the moment, which I flagged in the paper. It put out a survey, and it might be useful as a supplementary to any of the evidence that you have gathered here.

**The Chairperson (Ms Lo):** Yes. OK. There are no more questions. Thank you very much for a very good paper, Suzie.