

NOTE FOR THE ENVIRONMENT COMMITTEE

PROPOSED DEPARTMENTAL AMENDMENT TO THE ENVIRONMENTAL BETTER REGULATION BILL TO PROVIDE FOR ENABLING POWERS FOR THE SECRETARY OF STATE TO ISSUE DIRECTIONS RE MATTERS OF NATIONAL SECURITY

BACKGROUND

The Environmental Better Regulation Bill (Part 1 and Schedule 1) provides enabling powers for a new environmental permitting regime. During the ongoing policy development in respect of the draft Northern Ireland Environmental Permitting Regulations to be made under the Bill, after the Bill has been passed, an issue has arisen relating to national security.

National security is an excepted matter under paragraph 17 of Schedule 2 to the Northern Ireland Act 1998 (the 1998 Act). Under section 8 of that Act, the consent of the Secretary of State shall be required in relation to a Bill which contains —

- a provision which deals with an excepted matter and is ancillary to other provisions (whether in the Bill or previously enacted) dealing with reserved or transferred matters; or
- a provision which deals with a reserved matter.

DETAIL

The draft NI Environmental Permitting Regulations will contain several provisions where the interests of 'national security' need to be taken into account.

For example, the Regulations will need to allow for exclusions from the public registers which are required to be kept by regulators. These registers would normally contain details of all applications for permits, representations, appeals, notices, etc. However, the Secretary of State may issue a direction to the regulator that in the interests of national security specified information must be excluded from a register. Directions of this nature may be made under existing NI environmental permitting legislation. Generally they do not exclude environmental information from public registers, but may include e.g. requirements to avoid labelling specific locations on site plans which security advisors judge might be vulnerable for important facilities.

The Department has sought legal advice from the Departmental Solicitors Office (DSO) as to whether current provisions in the Bill would allow the Secretary of State to issue such directions or whether specific enabling powers would need to be extended to the Secretary of State via an amendment to paragraph 4 of Schedule 1 to the Bill.

Legal Advice

DSO has advised that the Bill as currently drafted does not contain a suitable enabling provision and that an amendment to the Bill will be required to confer powers on the Secretary of State to enable the

interests of national security to be taken into account in relation to environmental permitting.

DSO has also confirmed that national security in the context of the NI Regulations is ancillary to a transferred matter for the purposes of section 6(2)(b) of the 1998 Act and therefore it is within the legislative competency of the Assembly to confer such powers.

Next Steps

The Department will need to engage, as a matter of urgency, with Northern Ireland Office officials and with the Secretary of State in order to obtain the necessary consent before the amendment can be tabled at Consideration Stage.

This is a common enabling provision already included in various pieces of Northern Ireland environmental legislation¹.

¹ Paragraph 3 of Part 1 of Schedule 1 to the Environment (NI) Order 2002

Article 21 of the Industrial Pollution Control (NI) Order 1997

Article 35 of the Waste and Contaminated Land (NI) Order 1997