



**Northern Ireland
Assembly**

COMMITTEE FOR THE ENVIRONMENT

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Organisation: (if applicable) Friends of the Earth Northern Ireland (FoE NI)

Date: 7 August 2015

We welcome the opportunity to comment on the Environmental Better Regulation Bill. As enabling legislation, many of the clauses are to be welcomed and are non-controversial.

FoE NI recognises, in this existential critique of the Bill, that there are many examples of exemplary environmental standards driven often by companies themselves.

Premature

The problem is that we have created conditions in Northern Ireland where good *and* bad business can flourish, with the latter often operating to the detriment of the former. FoE NI therefore remains unconvinced that this is the right Bill at the right time.

The consideration of this Bill has to be seen in the context of the Explanatory and Financial Memorandum. This explains the overall aim of the Bill and the Regulatory Transformation Programme, of which the Bill is a key component.

The aim of the programme is to provide “a more streamlined and effective regulatory system for **business and regulators**” (paragraph 3). The Bill’s role will be interpreted to “**reduce regulatory burdens and red tape for business**” (paragraph 6). This aligns with the policy of the Department in recent years.

We concede that this is an acceptable aim but there are other aims for regulation - to create fairness and consistency in competitive markets and to protect and enhance the environment. By not acknowledging the environment in the ‘background and policy objective’ section of the Explanatory Memorandum, a document that carries significant weight, FoE NI considers the Bill to be fundamentally flawed. Burdens on business are unconditionally accepted as a policy driver yet burdens on the community, human well-being or the environment (the essential client base for environmental regulation) are not expressed.

It could also be argued that it is premature to invest effort in these legislative changes at a time when the context is a dysfunctional regulatory regime that is so weak that the system requires profound structural change. Furthermore, independent assessments of performance are not commissioned and recent structural changes (with the demise of the DoE and local government reform) require objective independent research and monitoring to establish if even basic performance and standards are being achieved.

An explicit agenda to ‘de-regulate’, as the policy objective and driver, and an exclusive focus on business interests, does not fit easily with the evidence of persistent and widespread failures across many parts of government to manage their environmental responsibilities. The result of good environmental regulation should be good environmental outcomes but this is not the policy objective of the Bill.

The purpose of legislation is to to guide the policy of government and to ensure a code of conduct between government, business, society and citizens. In this case the legislation is being guided by a policy objective that has, in our opinion, been

wrongly expressed, framed too narrowly and potentially unlawfully expressed because consistently there is a failure to address in policy terms our legal (and moral) obligations to the environment.

(It should be noted that as an Enabling Bill the definition in Clause One relating to the protection the environment carries with it no practical authority.)

Distraction

The incontrovertible policy context is a well-documented history of institutionalised neglect over decades in relation to environmental regulation and governance in Northern Ireland. (See, for example, 1991 House of Commons Committee Report, 2004 Professor Richard Macrory report, 2007 Review of Environmental Governance, 2014 QUB research, various reports by the CJINI and Audit Office etc).

FoE NI has also developed an evidence base that these systemic failures in regulation appear to be getting worse and the system appears ill equipped to deal with the challenges of new industries such as oil and gas and the many proposed factory farms across Northern Ireland.

The outcomes of this institutional failure are illegal dumping on an industrial scale, many unauthorised quarries and mines, poor water quality not meeting its 2015 obligations under the Water Framework Directive, dramatic declines in biodiversity, unacceptable greenhouse gas emissions and a widespread failure to comply with the rule of environmental law. The costs of failure are a highly pressurised DoE; aggressive industry lobbying; an uneven playing field characterised by business uncertainty; the likelihood of infraction fines; enriched vested interested profiteering from unauthorised activity that will maintain barriers to improving governance; clean-up costs that cannot be met; loss of heritage and identity; in localised areas, widespread community tension; and a country where it pays certain industries not to comply with basic environmental standards. The irony is that this will ultimately undermine the ability of Northern Ireland to attract business.

The policy objective should be to cure all these problems.

It is the role of the Committee not just to scrutinise legislation but to challenge the Department and the Minister.

There is no bigger challenge for the law makers of the Environment Committee than to ensure that environmental and planning legislation is predicated on a mature and functioning regulatory system, a fair and consistent enforcement regime, a reliable scheme of deterrence upheld by the judiciary, lobby groups cooperating with fair and sensible regulation, and an end to political interference in environmental enforcement.

Put simply, the Bill may simplify and harmonise processes (an agenda that FoE NI fully supports) but until the structural constraints to effective performance around governance and enforcement are resolved the environmental outcomes will **not** be achieved. Outcomes for some businesses **may** be achieved (and, of course, this is the policy driver for the Bill) but the long term economic prosperity will be undermined.

We therefore ask the Committee to consider pre-empting consideration by commissioning research and soliciting evidence relating to governance, standards and performance of environmental regulation in Northern Ireland.

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