



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Response of the Northern Ireland Human Rights Commission to  
the Committee for Environment's consultation on the  
"Environmental Better Regulation Bill"**

**Summary**

The Northern Ireland Human Rights Commission:

(Para 12) advises the Committee to ask the Department to set out the basis for the statement of compatibility. The NIHRC also advises that departments apply the Cabinet Office guidance. This would assist committees in their scrutiny function.

(Para 15) advises the Committee that "international obligations" as defined by the Act includes the relevant international human rights laws, not already part of domestic law, outlined in the advice.

(Para 29) welcomes that any exercise of the power to introduce regulations under Part 1 of the Bill must be for the purpose of "protecting and improving the environment".

(Para 37) advises the Committee that the consultation requirements under Clause 3 of the Bill should be amended to reflect the provisions of the Aarhus Convention, Article 8, where the regulations will have a "significant effect on the environment". This should include: removing the subjective test within Clause 3(b) and replacing it with "such other relevant persons"; including specific time-frames, and including a provision noting that the consultation outcome will be "taken into account as far as possible".

(Para 39) welcomes the comprehensiveness of the public participation provisions within Clause 4 of the Bill and advises the Committee that it is reflective of the obligations within the Aarhus Convention, Article 8.

(Para 47) advises the Committee that the Bill should be amended to ensure that no particular group, for example Travellers, is discriminated against.

(Para 50) welcomes the requirement for an affirmative resolution procedure contained within Clause 23(2)(b) of the Bill and advises the Committee of its importance to enable adequate legislative scrutiny of regulations which will engage a number of human rights standards.

(Para 55) welcomes the requirement for an affirmative resolution procedure contained within Clause 23(2)(c) of the Bill and advises the Committee of its importance to enable adequate legislative scrutiny of regulations which amend significant provisions relating to the boundaries of environmental protection within the proposed legislation.



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**Response of the Northern Ireland Human Rights Commission to  
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"Environmental Better Regulation Bill"**

1. The Northern Ireland Human Rights Commission (NIHRC), pursuant to Section 69 (4) of the Northern Ireland Act 1998,<sup>1</sup> is obliged to advise the Northern Ireland Assembly (NI Assembly) whether a Bill is compatible with human rights. Accordingly, the following statutory advice is submitted to the Committee for Environment (the Committee) on the Environmental Better Regulation Bill (the Bill) prepared by the Department of Environment (the Department).
2. The NIHRC bases its position on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR) as incorporated by the Human Rights Act 1998 and the treaty obligations of the United Nations (UN), the Council of Europe (CoE) and the European Union (EU). The relevant international treaties in this context include:
  - International Covenant on Civil and Political Rights (ICCPR);<sup>2</sup>
  - International Covenant on Economic, Social and Cultural Rights (ICESCR);<sup>3</sup>

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<sup>1</sup> The Northern Ireland Act 1998, Section 69(4) states, "[t]he Commission shall advise the Assembly whether a Bill is compatible with human rights—(a) as soon as reasonably practicable after receipt of a request for advice; and (b) on such other occasions as the Commission thinks appropriate."

<sup>2</sup> UK ratification 1976.

<sup>3</sup> UK ratification 1976.

- International Convention on the Elimination of All Forms of Racial Discrimination (CERD);<sup>4</sup>
  - CoE European Convention on Human Rights (ECHR);<sup>5</sup>
  - CoE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention);<sup>6</sup>
  - CoE European Social Charter (ESC);<sup>7</sup>
  - The Treaty on the Functioning of the European Union (TFEU);<sup>8</sup> and,
  - The Charter of Fundamental Rights of the European Union (via the Treaty of Lisbon) (CFR).<sup>9</sup>
3. The Northern Ireland Executive (NI Executive) is subject to the obligations contained within these international treaties by virtue of the United Kingdom's ratification.
4. In addition, pursuant to the European Communities Act 1972, Regulations and Directives passed by the EU, have direct effect in domestic law.<sup>10</sup> Relevant EU legislation in this context include:
- Regulation (EC) No 1005/2009 on substances that deplete the ozone layer;
  - Directive 2013/30/EU on safety of offshore oil and gas operations;
  - Directive 2012/19/EU on waste electrical and electronic equipment;
  - Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances;
  - Directive 2010/75/EU on industrial emissions;
  - Directive 2010/63/EU on the protection of animals used for scientific purposes;
  - Directive 2009/31/EC on the geological storage of carbon dioxide;
  - Directive 2008/99/EC on the protection of the environment through criminal law;
  - Directive 2006/21/EC on the management of waste from extractive industries;
  - Directive 2004/35/EC on environmental liability with regard to the prevention; and,
  - Directive 1999/31/EC on the landfill of waste.

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<sup>4</sup> UK ratification 1969.

<sup>5</sup> UK ratification 1951.

<sup>6</sup> UK ratification 2005.

<sup>7</sup> UK ratification 1962.

<sup>8</sup> Official Journal of the European Union, 2012/C 326/02, (26 October 2012).

<sup>9</sup> Ibid. The obligations within the Charter on Fundamental Rights apply to the Member States only when they are implementing Union law (see Article 51).

<sup>10</sup> Regulations have immediate direct effect, and directives have direct effect once the transposition date has passed.

5. Furthermore, the NIHRC draws to the Committee's attention a number of provisions within the Northern Ireland Act 1998 directed at ensuring the compliance of the NI Executive and NI Assembly with treaty obligations. Section 26(1) provides that:

If the Secretary of State considers that any action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations... he may by order direct that the proposed action shall not be taken.

6. Section 26(2) states that:

the Secretary of State may, by order, direct that an action be taken on a matter within the legislative competency of the Assembly as required for the purpose of giving effect to international obligations. Such action can include the introduction of a Bill into the Assembly.

7. Section 24 (1) states that:

A Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act – (a) is incompatible with any of the Convention [ECHR] rights.

8. In accordance with the Northern Ireland Act 1998, Section 6(2), it is outside the legislative competence of the NI Assembly to enact laws that are incompatible with any of the ECHR rights.
9. Finally, there exists a body of 'soft law' developed by the human rights bodies of the UN and CoE. These declarations and principles are non-binding but provide further guidance in respect of specific topic areas. The relevant standards in this context are:
  - UN Stockholm Declaration on the Human Environment, 1972; and,
  - UN Rio Declaration on Environment and Development, 1992.

#### General: Compatibility

10. The NIHRC notes that paragraph 21 of the Explanatory and Financial Memorandum states that "[t]he Department considers the provisions of the Bill to be compatible with the [ECHR]". The NIHRC notes guidance from the Westminster Government to departments about

disclosure of views regarding Convention compatibility in the Explanatory Notes that accompany a Bill. In order to discharge the government's commitment to provide a human rights assessment, departments should do one of the following:

- state that the department does not consider that the provisions of the Bill engage convention rights;
- in a case where any ECHR issues arise but are not significant, deal with the issues in a short paragraph or paragraphs in the explanatory notes;
- or where significant issues arise, state that issues arising as to the compatibility of the bill with convention rights are dealt with in a separate memorandum and provide a web address at which the memorandum can be accessed.<sup>11</sup>

11. The NIHRC notes the view of the Joint Committee on Human Rights (JCHR) which highlighted the good practice of departments in supplying a detailed human rights memorandum, giving a full explanation of the view that a Bill is compatible with human rights. The JCHR emphasised:

The provision of detailed human rights memoranda to Parliament is an important means of demonstrating the Government's fulfilment of that responsibility. It also facilitates Parliament in fulfilling its responsibility in that regard.<sup>12</sup>

12. **The NIHRC advises the Committee to ask the department to set out the basis for the statement of compatibility. The NIHRC also advises that departments consider the applicability of the advice given by the Joint Committee on Human Rights. This would assist committees in their scrutiny function.**

## **PART 1**

Clause 1: General purpose of "protecting and improving the environment"

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<sup>11</sup> Cabinet Office "Guide to Making Legislation" July 2015, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/450239/Guide\\_to\\_Making\\_Legislation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450239/Guide_to_Making_Legislation.pdf), p86

<sup>12</sup> JCHR "Legislative Scrutiny: Welfare Reform Bill", para 1.11 <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/233/23305.htm#a4>

13. Clause 1 states that “[t]he purpose of [Part 1] of the Bill is to enable provision to be made for or in connection with protecting and improving the environment”. The Bill further notes that this includes “implementing EU obligations... [and] international obligations ... relating to protecting and improving the environment”.
14. Clause 1, paragraph 2 of the Bill states that “‘international obligations’ has the same meaning as in the Northern Ireland Act 1998,” that is “any international obligations of the United Kingdom other than obligations to observe and implement [EU] law or the [ECHR] rights.”<sup>13</sup>
15. **The NIHRC advises the Committee that “international obligations” as defined by the Act includes the relevant international human rights laws (which are not already part of domestic law) outlined below.**
16. There is an intrinsic link between the environment and the realisation of human rights.<sup>14</sup> The rights to health, water, food, housing, life and privacy, all place obligations on the NI Executive and departments to take actions to prevent adverse environmental impact upon the individual. The extent of these obligations varies depending upon the right engaged.
17. The International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 12, provides for everyone the right to “the enjoyment of the highest attainable standard of physical and mental health”.
18. This right extends to the underlying determinants of health, such as water, food, sanitation, nutrition and housing,<sup>15</sup> and gives rise to the widest ranging obligations on the NI Executive and departments in relation to the environment. Similar principles are further contained in ESC, Article 11.
19. ICESCR, Article 12, explicitly obliges the NI Executive and relevant departments to take steps necessary for the “improvement of all aspects of environment and industrial hygiene”. In General Comment

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<sup>13</sup> Northern Ireland Act 1998, Section 98.

<sup>14</sup> UNHRC, Report of the OHCHR on the Relationship Between Climate Change and Human Rights UN Doc. A/HRC/10/61 (2009) para 18; also see the International Court of Justice’s Judge Weeramantry in the *Case Concerning the Gabčíkovo-Nagymaros Project*, [1997] I.C.J. Rep. 7, 91–92.

<sup>15</sup> CESCR, General Comment 14, para 11.

14, the UN Committee for Economic, Social and Cultural Rights (CESCR), which oversees the ICESCR, explains (under a heading entitled “the right to healthy natural and workplace environments”) that this obligation includes, *inter alia*:

preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; **the prevention and reduction of the population’s exposure to** harmful substances such as radiation and harmful chemicals or **other detrimental environmental conditions that directly or indirectly impact upon human health.** Furthermore, industrial hygiene refers to the minimization, so far as is reasonably practicable, of the causes of health hazards inherent in the working environment.<sup>16</sup>

20. ICESCR, Article 2(1), provides that the NI Executive and relevant departments must take steps “with a view to achieving progressively the full realisation” of ICESCR, Article 12. The CESCR explains that ‘progressive realisation’ requires “deliberate, concrete and targeted” steps and “should not be misinterpreted as depriving the obligation of all meaningful content.”<sup>17</sup> This means that ICESCR, Article 2(1):

imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.<sup>18</sup>

21. The rights to life (ICCPR Article 6(1), ECHR, Article 2; CFR, Article 2(1)) and privacy (ICCPR, Article 17, ECHR, Article 8; CFR, Article 7) also impose obligations on the State to take steps to address adverse environmental conditions. As civil and political rights, the obligations contained within these two human rights are not subject to the principle of progressive realisation, although they are narrower in reach to that of the right to health.
22. ICCPR, Article 6, and ECHR, Article 2, both recognise the right to life. According to the European Court of Human Rights (ECtHR), the NI

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<sup>16</sup> Ibid., para 15.

<sup>17</sup> CESCR, General Comment 3, para 9.

<sup>18</sup> Ibid.



Executive and relevant departments are obliged to “take appropriate steps to avoid real and immediate risk of life of which they have or ought to have knowledge”.<sup>19</sup> This includes a positive obligation to address environmental pollution where dangerous activities are undertaken, such as nuclear tests, the operation of chemical factories with toxic emissions, and waste-collection sites.<sup>20</sup>

23. The ICCPR, Article 17, and the ECHR, Article 8, both recognise privacy rights. The ECtHR’s jurisprudence has determined that the NI Executive and relevant departments must act to address adverse environmental impacts on the ‘private life’ or ‘living space’ of a person that reach a “certain minimum level” of severity. The minimum level is relative but the Court has stated that some “harmful effect” on the person’s private sphere must be demonstrated and not simply a general deterioration of the environment.<sup>21</sup> The right to privacy is, however, a qualified right and the obligations on the NI Executive and relevant departments can therefore be limited if justified by other competing public interests.<sup>22</sup>

24. The Aarhus Convention establishes a number of rights of the public with regard to the environment. These are discussed in more detail in the relevant clauses below. However, two general provisions in the Aarhus Convention are important to note. First, Article 1 identifies that the objective of the Convention is to:

contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.

25. Second, the preamble to the Aarhus Convention recalls Principle 1 of the Stockholm Declaration on the Human Environment, which states that:

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<sup>19</sup> See, *inter alia*, *L.C.B. v United Kingdom*, ECtHR, (9 June 1998), para 36.

<sup>20</sup> *Oneryildi v Turkey* (Application No. 48939/99) 30 November 2004, para 71

<sup>21</sup> *Fadeyeva v Russia*, ECtHR, Application no. 55723/00 (30 November 2005), para 68-70.

<sup>22</sup> ECHR, Article 8(2), provides that ‘[t]here shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.’

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being... .<sup>23</sup>

26. The Aarhus Convention therefore directs the NI Executive and relevant departments towards sustainability considerations when implementing the obligations within the Convention. In addition, by recalling the Stockholm Declaration, the Convention gives recognition to notions of 'ecocentric' rights which centre on protecting the environment for its own sake, as opposed to the 'anthropocentric' or human-focused rights more traditionally found in human rights law.<sup>24</sup>
27. The NIHRC notes that the ECtHR has found the Aarhus Convention to be a relevant international instrument which can inform its decisions.<sup>25</sup>
28. Finally, the TFEU lays out the competence of the EU to legislate on environmental issues.<sup>26</sup> The European Union has adopted a regulation and directives on environmental liability,<sup>27</sup> environmental inspections,<sup>28</sup> and environmental crime.<sup>29</sup>
29. **The NIHRC welcomes that any exercise of the power to introduce regulations under Part 1 of the Bill must be for the purpose of "protecting and improving the environment".**

#### Clause 2 (and Schedule 1): Regulations

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<sup>23</sup> Stockholm Declaration on the Human Environment, Principle 1 (1972). This was followed by the Rio Declaration on Environment and Development (1992)

<sup>24</sup> Terminology reflects that of Alan Boyle, in Boyle, A. *Human Rights and the Environment: A Reassessment*, UNEP Paper (2010).

<sup>25</sup> See for example, *Taskin and Others v. Turkey*, ECtHR (Application No. 46117/99) 30 March 2005, para 98-100; also see *Tatar v. Romania*, ECtHR (Application No. 67021/01) 27 January 2009, para 69.

<sup>26</sup> Articles 191-193

<sup>27</sup> [Directive 2004/35/EC](#) on environmental liability with regard to the prevention and remedying of environmental damage, [Directive 2006/21/EC](#) on the management of waste from extractive industries, [Directive 2009/31/EC](#) on the geological storage of carbon dioxide, [Directive 2013/30/EU](#) on safety of offshore oil and gas operations

<sup>28</sup> [Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances, Article 20](#) , [Directive 2012/19/EU on waste electrical and electronic equipment \(WEEE\), Article 23](#), [Directive 2010/75/EU on industrial emissions, Article 23](#), [Directive 2010/63/EU on the protection of animals used for scientific purposes, Articles 34 and 35](#), [Directive 1999/31/EC on the landfill of waste, Articles 11 to 13](#), [Regulation \(EC\) No 1005/2009 on substances that deplete the ozone layer, Article 28](#), [Directive 2009/31/EC on the geological storage of carbon dioxide, Article 15](#)

<sup>29</sup> [Directive 2008/99/EC on the protection of the environment through criminal law](#)

30. See advice under Clause 23.

Clause 3: Consultation on regulations

31. Clause 3 of the Bill obliges the Department before making regulations under Clause 2 to consult with:

(a) any regulator on whom the proposed regulations would confer functions; and

(b) such other persons as it thinks fit, including such persons appearing to it to be representative of the interests of district councils, industry, agriculture, fisheries or small businesses, as it considers appropriate.

32. The NIHRC notes that there is no accompanying language directing to what degree the Department should take account of a consultation exercise.

33. Public participation in decision-making is a key aspect of a human rights based approach to legislation and public policy design and implementation, and explicit obligations apply in the current context. The Aarhus Convention, Article 8, refers specifically to executive regulations and requires the NI Executive and relevant departments to, "strive to promote effective public participation at an appropriate stage, and while options are still open" for regulations "that may have a significant effect on the environment". Towards this end, Article 8 stipulates that:

(a) Time-frames sufficient for effective participation should be fixed;

...

(c) The public should be given the opportunity to comment, directly or through representative consultative bodies.

The result of the public participation shall be taken into account as far as possible.

34. The 'Implementation Guide' to the Aarhus Convention notes that the Espoo Convention, Appendix III, provides some guidance on what "a significant effect on the environment" should include.<sup>30</sup>

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<sup>30</sup> See Appendix I

35. The Implementation Guide further notes that the “as far as possible” provision “establishes an objectively high standard to show in a particular case that public comments have been seriously considered.”<sup>31</sup>
36. In addition, in General Comment 14 on the right to health, the UN CESCR emphasises that “[a] further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.”<sup>32</sup>
37. **The NIHRC advises the Committee that the consultation requirements under Clause 3 of the Bill should be amended to reflect the provisions of the Aarhus Convention, Article 8, where the regulations will have a “significant effect on the environment”. This should include:**
- **removing the subjective test within Clause 3(b) and replacing it with “such other relevant persons”;**
  - **including specific time-frames, and**
  - **including a provision noting that the consultation outcome will be “taken into account as far as possible”.**

#### Clause 4: Consultation on general environmental rules

38. Clause 4 of the Bill lays out a more comprehensive consultation procedure than the one described in Clause 3 (relating to the regulations generally), which is to be undertaken with the public in the case of regulations outlining general environmental rules. Clause 4, paragraphs (2) and (3) provide that the proposed rules will be published and that the public can make representations, and include a time frame of at least 28 days during which they will be made available for public inspection. Clause 4, paragraph (4) states that:

The Department must, in making the rules, have regard to any representations on the proposed rules received by it within that period.

39. **The NIHRC welcomes the comprehensiveness of the public participation provisions within Clause 4 of the Bill and advises**

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<sup>31</sup> UN, Economic Commission for Europe, *The Aarhus Convention: An Implementation Guide* (2000), p122, available at, <<http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf>>.

<sup>32</sup> General Comment 14, para 11.

**the Committee that it is reflective of the obligations within the Aarhus Convention, Article 8.**

Clause 5: Interpretation

40. See advice under Clause 23.

**Part 2**

Clause 8

41. See advice under Clause 23.

Clause 13: Interpretation

42. The definition of “premises” within Clause 13 of the Bill includes:

- (a) any land;
- (b) any vehicle, vessel, aircraft or hovercraft; and
- (c) any tent or movable property”.

43. The NIHRC notes that by its omission, the intention appears to exclude ‘residential’ premises, but recognises that some residential premises will fall under the category of “movable property”. Certain individuals, groups, and communities will be particularly vulnerable to this provision, including Travellers. As a result the benefit of changes to repealing unnecessary or inappropriate powers of entry and safeguards to powers of entry will not be extended to individuals, for example Travellers, in certain circumstances. The intended improvements should apply to individuals, for example Travellers, and the definition of premises should be amended accordingly.

44. It is a fundamental principle of human rights that they are enjoyed without discrimination (ICCPR, Article 26; ECHR, Article 14; CERD, Article 5). For example, CERD, Article 5, requires States to:

prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (d)(v) The right to own property alone as well as in association with others; [and]

(e)(iii) The right to housing.

45. The right to a private and family life provides further protection (ICCPR Article 17; ECHR, Article 8). ICCPR, Article 17(a), states that:

[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

46. Finally, ECHR, Article 1 of Protocol 1 protects the right of everyone to the “peaceful enjoyment of [his or her] possessions”. According to ECHR, Article 1 of Protocol 1:

[n]o one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

47. **The NIHRC advises the Committee that the Bill should be amended to ensure that no particular group, for example Travellers, is discriminated against.**

## **PART 6**

### Clause 23: Legislative procedure for passage of regulations

48. Clause 23(1) of the Bill provides that regulations made under the Bill will be approved by the NI Assembly by way of negative resolution. An exception is contained within Clause 23(2)(b) of the Bill which states that “regulations under section 2, 6 or 8(1) containing any provision that creates an offence or increases a penalty for an existing offence” must be subject to affirmative resolution.
49. The NIHRC notes that international human rights law contains a number of protections for the individual relating to the criminal law. For example, the ICCPR, Article 15, and ECHR, Article 7, incorporate the principle of ‘no punishment without law’, as well as the need for proportionality concerning the penalty imposed in relation to the offence committed. The right to liberty and security of person (ICCPR, Article 9; ECHR, Article 5), the right to a fair trial (ECHR, Article 6), and the right to privacy (ICCPR, Article 17; ECHR, Article 8) can all be engaged by arbitrariness in the design and implementation of the criminal law.

50. **The NIHRC welcomes the requirement for an affirmative resolution procedure contained within Clause 23(2)(b) of the Bill and advises the Committee of its importance to enable adequate legislative scrutiny of regulations which will engage a number of human rights standards.**

51. Clause 2(4)(a) of the Bill provides for 'Henry VIII powers' permitting the amendment of primary legislation by the regulations. The NIHRC notes however, that certain Henry VIII regulations, namely those enabled by "section 2, 6, 7(1) or 8(1)" will be subject to the affirmative resolution procedure under a second exception to the general rule contained within Clause 23(2)(c) of the Bill.

52. The NIHRC notes that under Clause 2 (and Schedule 1) of the Bill, the Department has the power of "further defining environmental activities". The NIHRC also notes that the definition of "environmental activities" is contained within the Bill itself (Clause 5), an instrument of primary legislation, and as such, any amendment to this definition must follow the affirmative resolution procedure as per Clause 23(2)(c).

53. The UK Parliament Joint Committee on Human Rights has warned, with regard to Henry VIII clauses, that:

the power they purport to confer is so wide that it could be used to reduce legal protection for human rights without full parliamentary scrutiny.<sup>33</sup>

54. The UK House of Lords Delegated Powers and Regulatory Reform Committee developed guidance on the use of Henry VIII powers in 2005, which states that:

All Henry VIII powers should be clearly identified. Although the Committee recognises that the appropriate level of parliamentary scrutiny for such powers will not be the affirmative procedure in all cases, where a Henry VIII power is subject to a scrutiny procedure

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<http://www.publications.parliament.uk/pa/jt201314/jtselect/jtdraftdereg/101/10114.htm>

other than affirmative, a full explanation giving the reasons for choosing that procedure should be provided in the memorandum.<sup>34</sup>

55. **The NIHRC welcomes the requirement for an affirmative resolution procedure contained within Clause 23(2)(c) of the Bill and advises the Committee of its importance to enable adequate legislative scrutiny of regulations which amend significant provisions relating to the boundaries of environmental protection within the proposed legislation.**

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<sup>34</sup> <http://www.parliament.uk/documents/upload/DPRRguide.pdf>



## **Appendix I**

### **What is environmentally “significant”?**<sup>35</sup>

Paragraph 1 of appendix III to the Espoo Convention on Environmental Impact Assessment in a Transboundary Context stipulates that:

“In considering proposed activities . . . , the concerned Parties may consider whether the activity is likely to have a significant adverse transboundary impact in particular by virtue of one or more of the following criteria:

“(a) Size: proposed activities which are large for the type of the activity;

“(b) Location: proposed activities which are located in or close to an area of special environmental sensitivity or importance (such as wetlands designated under the Ramsar Convention, national parks, nature reserves, sites of special scientific interest, or sites of archaeological, cultural or historical importance); also, proposed activities in locations where the characteristics of proposed development would be likely to have significant effects on the population;

“(c) Effects: proposed activities with particularly complex and potentially adverse effects, including those giving rise to serious effects on humans or on valued species or organisms, those which threaten the existing or potential use of an affected area and those causing additional loading which cannot be sustained by the carrying capacity of the environment.”

EC Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, includes an annex (annex III) on selection criteria for determining whether a particular project should be subject to EIA. The criteria include:

- Characteristics of projects, such as the size, the cumulation with other projects, the use of natural resources, the production of waste, pollution and nuisances, and the risk of accidents;

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<sup>35</sup> UN, Economic Commission for Europe, *The Aarhus Convention: An Implementation Guide* (2000), p94, available at, <<http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf>>.

- Location of projects, such as the environmental sensitivity of geographical areas likely to be affected by projects, including for example, wetlands, coastal zones, mountains, forest areas, nature reserves and parks, landscapes of historical or cultural significance, or densely populated areas;
- Characteristics of the potential impact, including the extent of the impact in terms of geographical area and affected population, the transfrontier nature of the impact, the magnitude and complexity of the impact, the probability of the impact, and the duration, frequency and reversibility of the impact.

Some countries may have developed substantial guidelines for determining “significance” that may be of use to Parties in implementing the Convention. The United Kingdom’s Circular from the Department of the Environment (Circular 2/99) on Environmental Impact Assessment is one example. Romania also has criteria for establishing significance.