

Environmental Better Regulation Bill

[AS AMENDED AT CONSIDERATION STAGE]

CONTENTS

PART 1

GENERAL ENVIRONMENTAL REGULATION

1. General purpose: protecting and improving the environment
2. Regulations relating to protecting and improving the environment
3. Regulations relating to protecting and improving the environment: consultation
4. Regulations relating to protecting and improving the environment: objective
5. General environmental rules
6. Interpretation

PART 2

POWERS OF ENTRY AND ASSOCIATED POWERS

7. Repealing, etc. unnecessary or inappropriate powers of entry, etc.
8. Adding safeguards to powers of entry
9. Rewriting powers of entry
10. Review of powers of entry
11. Consultation requirements
12. Regulations
13. Code of practice in relation to powers of entry
14. Interpretation

PART 3

AMENDMENTS TO THE CLEAN AIR (NORTHERN IRELAND) ORDER 1981

15. Authorised fuel
16. Exempt fireplaces

PART 4

AMENDMENTS TO THE ENVIRONMENT (NORTHERN IRELAND) ORDER 2002

17. Removal of assessments under Article 13
18. Amendments consequential on the amendments to Article 13

PART 5

AMENDMENTS TO THE WATER AND SEWERAGE SERVICES (NORTHERN IRELAND) ORDER 2006

19. Enforcement authorities

Environmental Better Regulation

- 20. Regulations relating to wholesomeness of water
- 21. Appointment and powers of inspectors
- 22. Publication of certain information and advice
- 23. Transitional provisions

PART 6

MISCELLANEOUS AND SUPPLEMENTARY

- 24. Regulations and orders
- 25. Interpretation
- 26. Repeals and revocations
- 27. Commencement
- 28. Short title

SCHEDULES:

- Schedule 1 Matters for, or in connection with, which regulations may be made under section 2
- Schedule 2 Repeals
- Schedule 3 Revocations

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B I L L

TO

Enable provision to be made for protecting and improving the environment; to provide for an integrated environmental permitting system; to provide for a review of powers of entry and associated powers and for the repeal or rewriting of such powers and for safeguards in relation to them; to provide for the repeal or rewriting of offences connected with the exercise of any such powers and for the preparation of a code of practice in connection with such exercise; to amend the Clean Air (Northern Ireland) Order 1981 to provide for a new method for authorising fuels for use in a smoke control area and for exempting fireplaces from the provisions of Article 17 of that Order; to amend the Environment (Northern Ireland) Order 2002 to remove the requirement on district councils to make an assessment of air quality under Article 13 of that Order; to amend the Water and Sewerage Services (Northern Ireland) Order 2006 to transfer certain functions to the Department of the Environment from the Department for Regional Development; and for connected purposes.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

PART 1

GENERAL ENVIRONMENTAL REGULATION

General purpose: protecting and improving the environment

5 **1.**—(1) The purpose of this Part is to enable provision to be made for or in connection with protecting and improving the environment, including (but not limited to) the following—

- (a) regulating environmental activities;
- (b) implementing EU obligations of the United Kingdom relating to protecting and improving the environment;
- 10 (c) implementing international obligations of the United Kingdom relating to protecting and improving the environment.

(2) In subsection (1) “international obligations” has the same meaning as in the Northern Ireland Act 1998.

Regulations relating to protecting and improving the environment

2.—(1) The Department, by regulations, may make provision for, or in connection with, any of the matters specified in Schedule 1.

(2) In accordance with section 1, the provision that may be made by regulations under this section is provision for or in connection with protecting and improving the environment, including (but not limited to) any of the matters mentioned in paragraphs (a) to (c) of subsection (1) of that section.

(3) The regulations may provide for specified provisions of the regulations to have effect in relation only to—

- (a) specified regulated activities;
- (b) the carrying on of regulated activities in specified circumstances; or
- (c) the carrying on of regulated activities by specified persons or classes of person.

(4) The regulations may—

- (a) modify any statutory provision or document;
- (b) in making different provision for different purposes, make different provision for different cases, persons, circumstances or areas;
- (c) provide for the delegation of functions; or
- (d) impose requirements in relation to any standards or other matters set out in such documents as may be specified in the regulations.

(5) The regulations may contain such consequential, incidental, supplementary, transitional or saving provisions (including provisions modifying statutory provisions) as the Department considers necessary or expedient.

Regulations relating to protecting and improving the environment: consultation

3.—(1) Before making any regulations under section 2, the Department must consult—

- (a) any regulator on whom the proposed regulations would confer functions; and
- (b) such other persons, including persons appearing to it to be representative of the interests of district councils, industry, agriculture, fisheries or small businesses, as it considers appropriate.

(2) Consultation undertaken before the coming into operation of this section is as effective compliance with subsection (1) as if undertaken after its coming into operation.

Regulations relating to protecting and improving the environment: objective

4. The Department must, in making regulations under section 2, have as an objective reducing the regulatory and administrative burden on persons carrying on regulated activities to the greatest extent possible consistent with protecting and improving the environment.

General environmental rules

5.—(1) General environmental rules specified in, or made under, the regulations under section 2 pursuant to paragraph 4(3)(c) of Schedule 1 may—

- (a) impose conditions or requirements;
- 5 (b) prescribe standards or objectives to be complied with or achieved; or
- (c) require standards or objectives specified in or under other statutory provisions to be complied with or achieved.

(2) Before making any general environmental rules in accordance with a procedure specified under paragraph 4(5) of Schedule 1, the Department must—

- 10 (a) publish a draft of the proposed rules;
- (b) publicise the opportunity to make representations about the proposed rules under subsection (3) in such manner as the Department thinks fit; and
- (c) make copies of the proposed rules available for public inspection for such period, which must be at least 28 days, as the Department may determine.

15 (3) Any person who wishes to make a representation about the proposed rules to the Department may do so within the period determined under subsection (2)(c).

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

Interpretation

20 6. In this Part—

“activities” means activities of any nature, whether industrial, commercial or otherwise and whether carried on in particular premises or otherwise and includes (with or without other activities) the production, treatment, keeping, transportation, depositing or disposal of any substance;

25 “archaeological object” has the same meaning as in the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995;

“energy efficiency” means the ratio of output of performance, service, goods or energy, to input of energy;

“environmental activities” means—

- 30 (a) activities that are capable of causing, or liable to cause, environmental harm; or
- (b) activities connected with such activities;

“environmental harm” means—

- (a) harm to the health of human beings or other living organisms;
- 35 (b) harm to the quality of the environment, including—
 - (i) harm to the quality of the environment taken as a whole;
 - (ii) harm to the quality of air, water or land; and
 - (iii) other impairment of, or interference with, ecosystems, biodiversity, geodiversity, habitats, species, historic monuments, archaeological objects or protected landscapes;
- 40 (c) offence to the senses of human beings;
- (d) damage to property; or

(e) impairment of, or interference with, amenities or other legitimate uses of the environment;

“historic monuments” has the same meaning as in the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995;

5 “protecting and improving the environment” includes—

(a) preventing deterioration (or further deterioration) of, and protecting and enhancing, the status of ecosystems, biodiversity, geodiversity, habitats, species, historic monuments, archaeological objects or protected landscapes;

10 (b) promoting the sustainable use of natural resources based on the long-term protection of available natural resources; and

(c) promoting and enhancing the energy efficiency of regulated activities;

“regulated activities” means any environmental activities in respect of which provision may be made by regulations under section 2;

15 “regulator” means any person by whom functions conferred by the regulations for, or in connection with, regulating regulated activities are, or are to be, exercisable.

PART 2

POWERS OF ENTRY AND ASSOCIATED POWERS

20 **Repealing, etc. unnecessary or inappropriate powers of entry, etc.**

7. The Department, by regulations, may amend, repeal or revoke any statutory provision under which it has any function to the extent necessary to remove from it any of the following that it considers to be unnecessary or inappropriate—

(a) a power of entry or associated power;

25 (b) an offence connected with the exercise of such a power of a kind mentioned in section 9(1)(b).

Adding safeguards to powers of entry

30 **8.**—(1) The Department, by regulations, may provide for safeguards in relation to any power of entry or associated power contained in any statutory provision under which it has any function.

(2) Such safeguards may include, in particular—

(a) restrictions as to the premises over which the power may be exercised;

(b) restrictions as to the times at which the power may be exercised;

35 (c) restrictions as to the number or description of persons who may exercise the power;

(d) a requirement for a judicial or other authorisation before the power may be exercised;

(e) a requirement to give notice within a particular period before the power may be exercised;

40 (f) other conditions which must be met before the power may be exercised;

- (g) modifications of existing conditions which must be met before the power may be exercised;
- (h) other restrictions on the circumstances in which the power may be exercised;
- 5 (i) new obligations on the person exercising the power which must be met before, during or after its exercise;
- (j) modifications of existing obligations on the person exercising the power which must be met before, during or after its exercise; and
- 10 (k) restrictions on any power to use force, or any other power, which may be exercised in connection with the power of entry or associated power.

Rewriting powers of entry

9.—(1) The Department, by regulations, may rewrite (with or without modifications)—

- 15 (a) powers of entry or associated powers contained in any statutory provision under which it has any function or any aspects of any such powers;
- (b) offences connected with the exercise of any such powers, including (but not limited to) offences of—
 - (i) obstructing a person in the exercise of a power of entry or associated power;
 - 20 (ii) failing or refusing to provide facilities, assistance or information to a person exercising a power of entry or associated power; and
 - (iii) falsely pretending to be a person authorised to exercise a power of entry or associated power; or
- 25 (c) statutory provisions relating to, or connected with, any such powers or aspects.

(2) The power under subsection (1) to rewrite a power of entry or associated power includes—

- (a) the power to remove an aspect of such a power without replacing it; and
- 30 (b) the power to attach an offence of a kind mentioned in subsection (1)(b) to the exercise of such a power even if such an offence did not exist in relation to that power immediately before the changes made by the regulations.

(3) The power under subsection (1) to rewrite an offence connected with the exercise of a power of entry or associated power includes the power to provide for the offence to be—

- 35 (a) triable only summarily or either summarily or on indictment;
- (b) punishable on summary conviction by—
 - (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 3 months);
 - 40 (ii) a fine not exceeding such amount as is specified (which must not exceed level 5 on the standard scale for an offence that is triable only summarily or the statutory maximum for an offence that is triable summarily or on indictment); or
 - (iii) both; or

- (c) punishable on conviction on indictment by—
 - (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 2 years); or
 - (ii) a fine; or
 - 5 (iii) both.

(4) Subsection (3) applies irrespective of whether the mode of trial provided for the offence is different to the mode of trial, or the penalty provided for the offence is greater or lesser than the penalty, applicable to the offence immediately before the changes made by the regulations.

10 (5) But regulations under this section may not alter the effect of—

- (a) a power of entry or associated power; or
- (b) any safeguard relating to, but not forming part of, such a power—

unless, on or after the changes made by the regulations, the safeguards in relation to the power, taken together, provide a greater level of protection than any
15 safeguards applicable immediately before the changes.

Review of powers of entry

10.—(1) The Department must, within the period of two years beginning with the day on which this section comes into operation—

- 20 (a) review powers of entry and associated powers contained in any statutory provision under which it has any function with a view to deciding whether to make regulations under section 7, 8(1) or 9(1) in relation to any of them;
- (b) prepare a report of that review; and
- (c) lay a copy of the report before the Assembly.

25 (2) A failure by the Department to comply with a duty under subsection (1) in relation to a power of entry or associated power does not affect the validity of the power.

Consultation requirements

11. Before making any regulations under section 7, 8(1) or 9(1) in relation to a power of entry or associated power or an offence connected with the exercise of
30 any such power, the Department must consult—

- (a) such persons appearing to the Department to be representative of the views of persons entitled to exercise the power of entry or associated power as it considers appropriate; and
- (b) such other persons as the Department considers appropriate.

35 **Regulations**

12. Regulations under section 7, 8(1) or 9(1) may—

- (a) modify any statutory provision; or
- (b) contain such consequential, incidental, supplementary, transitional or
40 saving provisions (including provisions modifying statutory provisions) as the Department considers necessary or expedient.

Code of practice in relation to powers of entry

5 **13.**—(1) The Department must prepare a code of practice in connection with the exercise by the Department, a district council or any other person of a power of entry or associated power contained in any statutory provision under which the Department has any function.

(2) After preparing a draft of the code the Department—

(a) must publish the draft in any manner that it considers appropriate and invite representations regarding the draft;

(b) must consider any representations made to it regarding the draft; and

10 (c) may amend the draft accordingly.

(3) After the Department has proceeded under subsection (2) it must cause a draft of the code to be laid before the Assembly.

15 (4) If within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further steps may be taken in relation to the draft.

(5) Nothing in subsection (4) prevents a new draft being prepared and dealt with in accordance with this section, including subsection (3).

(6) If the Assembly does not resolve as mentioned in subsection (4), the Department must publish the code in any manner that it considers appropriate.

20 (7) The Department must from time to time review the code and, if it considers it appropriate to do so, revise the code.

(8) Subsections (1) to (7) apply to a revision of the code in the same way as they apply to its preparation.

25 (9) A person who exercises a power of entry or associated power of a kind mentioned in subsection (1) must have regard to a code of practice published and in force under this section that relates to the exercise of that power.

(10) A failure on the part of any person to have regard to a code of practice in exercising a power of entry or associated power of a kind mentioned in subsection (1) does not of itself make that person liable to criminal or civil proceedings.

30 (11) A code of practice is admissible in evidence in any such proceedings.

(12) A court or tribunal may, in particular, take into account a failure by a person to have regard to a code of practice in determining a question in any such proceedings.

Interpretation

35 **14.**—(1) In this Part—

“associated power” means any power which—

(a) is contained in a statutory provision;

(b) is connected with a power of entry; and

(c) is a power—

40 (i) to do anything on, or in relation to, the land or other premises entered under the power of entry;

(ii) to do anything in relation to any person, or anything, found on the land or other premises entered under the power of entry; or
(iii) otherwise to do anything in connection with the power of entry—
and includes any safeguard that forms part of the associated power;

5 “power of entry” means a power (however expressed) in any statutory provision to enter land or other premises, and includes any safeguard that forms part of the power;

“premises” includes—

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

(2) A reference in this Part to a function of the Department under a statutory provision is a reference to a function that is related to environmental activities, or to protecting and improving the environment, within the meaning of Part 1 and
15 includes—

- (a) a function of the Department of such a kind that is exercisable by a district council or any other person; and
- (b) a function of such a kind that a district council or any other person has under any statutory provision.

20

PART 3

AMENDMENTS TO THE CLEAN AIR (NORTHERN IRELAND) ORDER 1981

Authorised fuel

15.—(1) In Article 2(2) of the Clean Air (Northern Ireland) Order 1981 (interpretation), for the definition of “authorised fuel” substitute—

25 ““authorised fuel” means a fuel that is included on a list of authorised fuels kept by the Department under Article 17(3A);”.

(2) After Article 17(3) of the Clean Air (Northern Ireland) Order 1981 (smoke control areas) insert—

30 “(3A) The Department must keep a list of authorised fuels for the purposes of this Article.

(3B) The Department, having regard (among other things) to the sulphur content of a fuel, may include the fuel on the list of authorised fuels.

(3C) The Department must publish in such manner as it considers appropriate—

- 35 (a) the list of authorised fuels; and
- (b) a revised copy of the list as soon as is reasonably practicable after any change is made to it.”.

Exempt fireplaces

40 **16.** For Article 17(7) of the Clean Air (Northern Ireland) Order 1981 (smoke control areas) substitute—

“(7) The Department may exempt any class of fireplace from the provisions of this Article if it is satisfied that such class of fireplace can be used for burning fuel, other than authorised fuels, without producing any smoke or a substantial quantity of smoke.

5 (7A) An exemption under paragraph (7) may be made subject to such conditions as the Department considers appropriate.

(7B) The Department must publish in such manner as it considers appropriate—

10 (a) a list of those classes of fireplace that are exempt under paragraph (7), including details of any conditions to which an exemption is subject; and

(b) a revised copy of the list as soon as is reasonably practicable after any change is made to the classes of fireplace that are so exempt or to the conditions to which an exemption is subject.”.

15 PART 4

AMENDMENTS TO THE ENVIRONMENT (NORTHERN IRELAND) ORDER 2002

Removal of assessments under Article 13

20 17.—(1) Article 13 of the Environment (Northern Ireland) Order 2002 (further provisions in relation to designated areas) is amended as follows.

(2) Paragraph (1) ceases to have effect.

(3) In paragraph (2) for the expression beginning “A district council” and ending “(b)” substitute “Where an order under Article 12 comes into operation, the district council which made the order shall”.

25 (4) After paragraph (3)(a) insert “and”.

(5) Paragraphs (3)(b) and (c) cease to have effect.

(6) In paragraph (5), for “paragraph (2)(b)” substitute “paragraph (2)”.

Amendments consequential on the amendments to Article 13

30 18.—(1) The Environment (Northern Ireland) Order 2002 is amended as follows.

(2) In Article 16(1)(b) (recommendations and guidance) omit the words “or 13”.

(3) In Article 18(1)(b) (financial assistance) omit the words “or 13”.

(4) In Article 27(1) (interpretation of this Part), in the definition of “action plan”, for “Article 13(2)(b)” substitute “Article 13(2)”.

35 (5) In paragraphs 1(1)(b) and 4(2)(b) of Schedule 2 (air quality: supplemental provisions) omit the words “or 13”.

Environmental Better Regulation

PART 5

AMENDMENTS TO THE WATER AND SEWERAGE SERVICES (NORTHERN IRELAND) ORDER 2006

Enforcement authorities

5 **19.**—(1) The Water and Sewerage Services (Northern Ireland) Order 2006 is amended as follows.

(2) After Article 30(6)(c)(i) (orders for securing compliance with certain provisions) insert—

“(ia) DOE;”.

10 (3) In Article 30(6)(c)(iii) for “either” substitute “any”.

(4) In Article 30(7), in the definition of “enforcement authority”, for paragraph (a) substitute—

“(a) the Department;

(ab) DOE; or”.

15 (5) In Article 31(2)(a) and (b) after “Department” insert “or DOE”.

(6) In Article 108(5) (duties of water undertakers with respect to water quality), for “the Department” substitute “DOE”.

(7) In Article 110(4) (offence of supplying water unfit for human consumption), for “the Department” substitute “DOE”.

20 (8) In Article 124(1) (rights of entry) omit the words “the Department or”.

(9) In Article 267(3)(a) (provision of false information), for “of any provision” substitute “provision in Articles 107 to 112 or”.

(10) In Article 300(2)(a) (regulations) for “or by the Authority, or by either” substitute “or by DOE or by the Authority, or by any”.

25 (11) In Article 300(2)(e)(iii) (regulations) after “the Department,” insert “DOE;”.

Regulations relating to wholesomeness of water

20.—(1) The Water and Sewerage Services (Northern Ireland) Order 2006 is amended as follows.

30 (2) In Article 107(1) (standards of wholesomeness)—

(a) for “The Department” substitute “DOE”; and

(b) after “water undertaker” insert “or by means of a private supply”.

(3) Article 107(2) ceases to have effect.

(4) In Article 107(3)—

35 (a) for “paragraphs (1) and (2)” substitute “paragraph (1)”;

(b) in sub-paragraph (e), for “the Department (in the case of regulations under paragraph (1)) or DOE (in the case of regulations under paragraph (2))” substitute “DOE”.

(5) In Article 109(1) (regulations for preserving water quality), for “The Department” substitute “DOE”.

(6) In Article 109(3) for “the Department” substitute “DOE”.

(7) In Article 109(5) for “The Department” substitute “DOE”.

5 (8) Article 117 (functions of the Department where piped supplies insufficient or unwholesome) ceases to have effect.

Appointment and powers of inspectors

21.—(1) Article 125 of the Water and Sewerage Services (Northern Ireland) Order 2006 (assessors for the enforcement of water quality) is amended as follows.

10 (2) In paragraph (1) for “The Department” substitute “DOE”.

(3) In paragraph (1)(a) omit the words “and 117”.

(4) In paragraphs (1)(a) and (b) omit the words “and sufficiency”.

(5) In paragraph (1)(b) for “the Department” substitute “DOE”.

15 (6) In paragraph (3) for “the Department and DOE (acting jointly)” substitute “DOE”.

(7) In paragraph (4) for “the Department” (wherever occurring) substitute “DOE”.

(8) In paragraph (4)(a)(i) omit the words “or Article 117”.

(9) In paragraph (4)(a)(ii) omit the words “and 117”.

20 (10) In paragraph (7)—

(a) after “paragraph (1)” insert “or (2)”;

(b) for “the Department” substitute “DOE”;

(c) in sub-paragraph (a), after “paragraph (4)” insert “or (5)”;

(d) in sub-paragraph (c), omit the words “or Article 117”.

25 (11) Paragraph (8) ceases to have effect.

(12) In paragraph (9) omit the words “or (8)”.

(13) In paragraph (11) omit the words “and sufficiency”.

Publication of certain information and advice

30 **22.**—(1) The Water and Sewerage Services (Northern Ireland) Order 2006 is amended as follows.

(2) In Article 259(2) and (7) (publication of certain information and advice), for “its private supply functions” substitute “its functions relating to the supply of water for domestic or food production purposes”.

(3) For Article 259(8) substitute—

35 “(8) References in this Article to the functions of DOE relating to the supply of water for domestic or food production purposes are to its functions under Articles 107 to 112 and 118 to 125.”.

Transitional provisions

23. After Article 302 of the Water and Sewerage Services (Northern Ireland) Order 2006 insert—

5 **“Transitional provisions (Environmental Better Regulation Act (Northern Ireland) 2016)**

302A.—(1) The amendment of any provision of this Order made by section 19 of the 2016 Act does not affect anything done by the Department before the commencement of that section that, on or after that commencement, could only have been done by DOE and any such thing has the same effect as if it had been done by DOE.

10 (2) The amendments of Articles 107 and 109 made by section 20 of, and Schedule 2 to, the 2016 Act do not affect any regulations made by the Department under those Articles and in force immediately before the commencement of that section and Schedule and any such regulations have the same effect as if they had been made by DOE and as if any reference in them to the Department were a reference to DOE.

15 (3) The amendment of Article 124(1) made by Schedule 2 to the 2016 Act does not affect a designation made by the Department for the purpose of Article 124(1) and in force under that Article immediately before the commencement of that Schedule and any such designation has the same effect as if it had been made by DOE.

20 (4) The amendments of Article 125 made by section 21 of, and Schedule 2 to, the 2016 Act do not affect an appointment of an inspector made by the Department, or an appointment of a person as the Chief Inspector of Drinking Water made jointly by the Department and DOE, under that Article and in force under that Article immediately before the commencement of that section and Schedule and any such appointment has the same effect as if it had been made by DOE.

25 (5) This Article is additional to, and does not take away from, the Interpretation Act (Northern Ireland) 1954.

30 (6) In this Article “the 2016 Act” means the Environmental Better Regulation Act (Northern Ireland) 2016.”.

PART 6

MISCELLANEOUS AND SUPPLEMENTARY

35 **Regulations and orders**

24.—(1) Except as provided by subsection (2), regulations made by the Department under this Act are subject to negative resolution.

(2) The following regulations may not be made unless a draft of them has been laid before, and approved by a resolution of, the Assembly—

- 40 (a) the first regulations to be made under section 2;
- (b) regulations under section 2, 7 or 9(1) containing any provision that creates an offence or increases a penalty for an existing offence;

(c) regulations under section 2, 7, 8(1) or 9(1) containing any provision that amends or repeals any Northern Ireland legislation.

(3) An order may not be made by the Department under section 27(2) that contains any provision that modifies any Northern Ireland legislation unless a draft of it has been laid before, and approved by a resolution of, the Assembly.

Interpretation

25. In this Act—

“Department” means Department of the Environment;

“modify”, in relation to a statutory provision, includes amend, repeal and revoke;

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954.

Repeals and revocations

26.—(1) The statutory provisions set out in Schedule 2 are repealed to the extent specified in the second column of that Schedule.

(2) The statutory provisions set out in Schedule 3 are revoked to the extent specified in the second column of that Schedule.

Commencement

27.—(1) This Act, except Parts 1, 2 and 3 and section 26(2), comes into operation on the day after Royal Assent.

(2) The provisions of Parts 1, 2 and 3 and section 26(2) come into operation on such day or days as the Department may by order appoint.

(3) An order under subsection (2) may contain such consequential, incidental, supplementary, transitional or saving provisions (including provisions modifying statutory provisions) as the Department considers necessary or expedient.

Short title

28. This Act may be cited as the Environmental Better Regulation Act (Northern Ireland) 2016.

SCHEDULES

SCHEDULE 1

Section 2.

5 MATTERS FOR, OR IN CONNECTION WITH, WHICH REGULATIONS
 MAY BE MADE UNDER SECTION 2

Emissions

1.—(1) Establishing standards, objectives or requirements in relation to emissions.

(2) In relation to emissions, authorising the making of plans for—

- 10 (a) the setting of overall limits;
 (b) the allocation of quotas; or
 (c) the progressive improvement of standards or objectives.

Emissions trading scheme

15 2.—(1) Authorising the making of schemes for the trading or other transfer of
quotas allocated as mentioned in paragraph 1(2)(b).

(2) Authorising the inclusion in a scheme under sub-paragraph (1) of—

- (a) provision for penalties in respect of contraventions of provisions of the
 scheme; or
20 (b) provision for the amount of any penalty under the scheme to be such as
 may be set out in, or calculated in accordance with—
 (i) the scheme; or
 (ii) the regulations (including regulations made after the scheme).

Regulators

25 3.—(1) Enabling the Department to exercise functions conferred by the
regulations for or in connection with regulating regulated activities.

(2) Determining other persons by whom any such functions are to be exercisable.

(3) Specifying any purposes for which any such functions are to be exercisable by regulators.

30 (4) Enabling the Department to give directions (whether general or specific)
with which regulators are to comply, or guidance to which regulators are to have
regard, in exercising functions under the regulations, including—

- (a) directions providing for any functions exercisable by one regulator to be
 exercisable instead by another;

- (b) directions given for the purposes of the implementation of any obligations of the United Kingdom under the EU Treaties or under any international agreement to which the United Kingdom is a party;
 - (c) directions relating to the exercise of any function in a particular case or class of case; and
 - (d) directions providing for any matter to which the directions relate to be determined, in such manner (if any) as the directions may specify, by a person other than the Department.
- (5) Authorising regulators to appoint suitable persons to exercise functions or powers conferred on regulators by the regulations (including functions and powers with respect to compliance with, and enforcement of, the regulations) and conferring powers on persons so appointed.

Regulation of activities

- 4.—(1) Prohibiting persons from carrying on, or from causing or permitting others to carry on, any regulated activity.
- (2) Prohibiting persons from carrying on any regulated activity except so far as it is—
- (a) authorised by or under the regulations; and
 - (b) carried on in accordance with the regulations.
- (3) Enabling the carrying on of regulated activities to be authorised by providing that they are to be carried on—
- (a) in accordance with a permit granted by a regulator under the regulations;
 - (b) subject to a requirement to register the carrying on of the activity with a regulator; or
 - (c) subject to compliance with rules specified in, or made under, the regulations (“general environmental rules”).
- (4) Enabling the carrying on of regulated activities to be authorised by grant of a permit or by registration whether or not the carrying on of those activities is also subject to general environmental rules.
- (5) Specifying a procedure under which the Department may make general environmental rules.
- (6) Treating as authorised the carrying on of regulated activities that are subject to general environmental rules.
- (7) Specifying the subsistence of an authorisation to carry on regulated activities which are subject to general environmental rules.

Permits

- 5.—(1) Prescribing the form and content of applications for permits.
- (2) Regulating the procedure to be followed in connection with—
- (a) applications for permits;
 - (b) the determination of such applications; or
 - (c) the grant of permits.
- (3) Prescribing the form and content of permits.

(4) Authorising permits to be granted subject to conditions imposed by regulators.

(5) Securing that permits have effect subject to specified conditions.

5 (6) Requiring permits, or the conditions to which permits are subject, to be reviewed by regulators (whether periodically or in specified circumstances).

(7) Authorising or requiring the variation of permits or such conditions by regulators (whether on an application made by the holder of the permit or otherwise).

10 (8) Regulating the making of changes in the carrying on of the activities to which permits relate.

(9) Regulating the transfer or surrender of permits.

(10) Authorising the suspension of permits by regulators.

(11) Authorising the revocation of permits by regulators.

Registration

15 6.—(1) Prescribing the form and content of—

(a) applications for registration; or

(b) registration.

(2) Regulating the procedure for registration including the procedure to be followed in connection with—

20 (a) applications for registration;

(b) the determination of such applications;

(c) the grant of registration; or

(d) the variation, transfer, surrender, suspension or revocation of registration.

25 (3) Authorising registration to be granted subject to conditions imposed by regulators.

(4) Securing that registrations have effect subject to specified conditions.

(5) Specifying restrictions or other requirements in connection with registration, including—

(a) circumstances in which registration may be refused; and

30 (b) the subsistence of registration.

Provisions common to permits and registration

7.—(1) Enabling the granting of permits, or the registration of activities, authorising the carrying on of—

(a) one or more regulated activities; or

35 (b) a regulated activity at one, or more than one, place.

(2) Securing that permits and registrations have effect subject to standard rules specified in, or made under, the regulations.

(3) Specifying a procedure under which the Department may make such rules.

(4) Specifying conditions subject to which a permit or registration has effect including a condition that the person authorised to carry on the regulated activities by grant of a permit or by registration must—

- 5 (a) carry out specified works or do other specified things on, or in relation to, any land despite not being entitled to do so without a right being granted in relation to the land by a person whose consent would be required; or
- (b) remain a fit and proper person within the meaning of the regulations.

(5) Specifying restrictions or other requirements in connection with—

- 10 (a) applications for permits or registration;
- (b) the grant of permits (including provisions for restricting the grant of permits to those who are fit and proper persons within the meaning of the regulations); or
- 15 (c) the registration of regulated activities (including provisions for restricting registration to the carrying on of such activities by those who are fit and proper persons within the meaning of the regulations).

(6) Requiring persons carrying on regulated activities the carrying on of which is authorised by grant of a permit or by registration to submit to regulators, in respect of specified periods and at specified intervals, such information as may be specified relating to the carrying on of the activities and compliance with any 20 conditions subject to which the permit or registration was granted.

(7) Specifying the circumstances in which, and conditions subject to which, persons or classes of persons may be treated as—

- 25 (a) having control over activities the carrying on of which is authorised by grant of a permit or by registration (including complying with any conditions or requirements of the permit or registration);
- (b) carrying on a regulated activity for the purposes of notices that may be served by regulators under paragraph 12(4); or
- (c) authorised to carry on a regulated activity without having applied for a permit or registration in respect of that activity.

30 (8) Enabling the granting of a permit to, or registration of the carrying on of regulated activities by, more than one person.

(9) Enabling permits and registrations—

- 35 (a) to be varied, transferred, surrendered, suspended or revoked wholly or in part;
- (b) to be varied, suspended or revoked wholly or in part in consequence of the person to whom the permit was granted, or (as the case may be) who is authorised to carry on the regulated activities to which the registration relates, ceasing to be a fit and proper person within the meaning of the regulations; or
- 40 (c) to be consolidated.

(10) Providing for the transfer of a permit or registration to be refused if the person to whom it is proposed to be transferred is not a fit and proper person within the meaning of the regulations.

45 (11) Authorising the imposition by regulators of requirements with respect to the taking of preventative or remedial action (by holders of permits or other persons)

in connection with the surrender, suspension or revocation of permits or registrations, including a requirement to carry out specified works or do other specified things on, or in relation to, any land despite not being entitled to do so without a right being granted in relation to the land by a person whose consent would be required.

(12) Requiring a person whose consent would be required to the carrying out of works or the doing of other things on, or in relation to, any land under a condition of a permit or registration or by a requirement under sub-paragraph (11) to grant, or join in granting, such rights in relation to the land as will enable a person required to carry out those works or do those things to carry out those works or do those things.

Determination of matters by regulators

8. Providing for anything which, by virtue of paragraphs 5 to 7, could be provided for by the regulations to be instead determined under the regulations by regulators.

Making of rules and imposition of conditions

9. Providing—

(a) for the Department to have regard to any general principles specified under the regulations—

(i) in making any general environmental rules; or

(ii) in making any standard rules as mentioned in paragraph 7(2);

(b) for regulators to have regard to any general principles specified, and to any directions or guidance given, under the regulations in imposing any conditions as mentioned in paragraph 5(4) or 6(3);

(c) for such guidance to include the sanctioning of reliance by a regulator on any arrangements referred to in the guidance to operate to secure a particular result as an alternative to imposing any such conditions; or

(d) for such conditions to be imposed by reference to agreements, between or among persons authorised to carry on regulated activities, as to the carrying on by them of the activities.

Charging schemes

10.—(1) Authorising, or authorising the Department to make, vary or revoke schemes for, the charging by the Department or public bodies of fees or other charges in respect of—

(a) the testing, sampling or analysis of substances in cases mentioned in sub-paragraph (2);

(b) the validating of, or of the results of, any testing, sampling or analysis of substances in such cases; or

(c) assessing how the environment might be affected by the release into it of any substances in such cases.

(2) The cases are those where the testing, sampling, analysis, validating or assessing is carried out—

(a) in anticipation of, or otherwise in connection with, the making of applications for permits or registration;

- (b) under any conditions subject to which a permit or registration was granted; or
 - (c) in connection with the assessing of compliance with any such conditions.
- (3) Authorising, or authorising the Department to make, vary or revoke schemes for, the charging by the Department or public bodies of fees or other charges—
- (a) in respect of, or in respect of applications for—
 - (i) the grant of a permit;
 - (ii) the variation of a permit or of the conditions to which it is subject;
 - (iii) the transfer, surrender or revocation of a permit;
 - (iv) registration; or
 - (v) the variation, transfer, surrender or revocation of registration;
 - (b) in respect of the subsistence of a permit or registration;
 - (c) in respect of consolidation of permits and registrations; or
 - (d) in respect of other specified matters.
- (4) Regulating the procedure for making, varying or revoking schemes referred to in sub-paragraph (1) or (3).
- (5) Requiring any scheme referred to in sub-paragraph (1) or (3) to be so framed that the fees and charges payable under it—
- (a) are determined in the light of any general principles specified under the regulations;
 - (b) are sufficient, taking one year with another, to cover such expenditure (incurred by the regulator to whom the fees and charges are so payable) as is specified.
- (6) Authorising any scheme referred to in sub-paragraph (1) or (3) to make different provision for different cases (and to specify particular kinds of such cases).

Information, publicity and consultation

- 11.—(1) Enabling persons of any specified description (whether or not they are holders of permits or carrying on activities that are subject to registration or general environmental rules) to be required—
- (a) to provide such information in such manner as is specified in the regulations; or
 - (b) to compile information on—
 - (i) emissions;
 - (ii) energy consumption and the efficiency with which energy is used; or
 - (iii) waste and the origin, nature, quantity, treatment, storage, transportation and destination of waste.
- (2) Securing that—
- (a) publicity is given to specified matters;
 - (b) regulators maintain registers of specified matters (but excepting information which under the regulations is, or is determined to be, commercially confidential and subject to any other exceptions specified in the regulations) that are open to public inspection free of charge;

- (c) regulators publish, in a manner specified in the regulations, such registers; or
 - (d) copies of entries in such registers, or of specified documents, may be obtained by members of the public on payment of reasonable charges.
- 5 (3) Requiring or authorising regulators to carry out consultation in connection with the exercise of any of their functions (including consultation on any guidance they propose to issue in connection with the exercise of those functions), and providing for them to take into account representations made to them on consultation.
- 10 (4) Requiring or authorising regulators to hold, in specified circumstances and in a specified manner, a public local inquiry of a specified kind in connection with the exercise of any of their functions and providing for them to take into account representations made to them at that inquiry.

Enforcement and offences

- 15 12.—(1) Conferring functions on regulators with respect to compliance with, and enforcement of, the regulations.
- (2) Conferring power on regulators—
- (a) to arrange for preventative or remedial action to be taken at the expense of persons carrying on regulated activities;
 - 20 (b) to require such persons to provide such financial security as the regulators making the arrangements consider appropriate pending the taking of the preventative or remedial action; or
 - (c) to take samples or to make copies of information.
- (3) Regulating the procedure under which regulators may make arrangements, 25 or impose requirements, such as are mentioned in sub-paragraph (2)(a) and (b).
- (4) Authorising regulators to serve on any persons carrying on regulated activities (whether or not the carrying on of those activities is authorised by or under the regulations) notices, including notices requiring such persons—
- (a) to notify the regulated activities being carried on by them;
 - 30 (b) to take preventative or remedial action at their own expense, including such action in respect of contraventions (actual or potential) of authorisations, or of conditions of authorisations, relating to the regulated activities, and to provide such financial security as the regulators serving the notices consider appropriate pending the taking of such action;
 - 35 (c) to take steps to remove risks of environmental harm (whether or not arising from any contraventions (actual or potential) of authorisations, or of conditions of authorisations, relating to the regulated activities); and
 - (d) to stop the carrying on of regulated activities (whether or not the notice also requires the person to take such preventative or remedial action as 40 may be specified in the notice).
- (5) Authorising regulators who serve such notices to require the person on whom the notice is served to pay the costs incurred by the regulators in relation to the service of the notice up to the time of its service.

(6) Authorising regulators, if such notices are not complied with by persons on whom they are served, to take, or arrange for the taking of, preventative or remedial action at the expense of those persons.

(7) Providing for the enforcement of such notices in the High Court.

5 (8) Creating offences and dealing with matters relating to such offences, including—

(a) the provision of defences; and

(b) evidentiary matters.

(9) Providing for such an offence to be triable—

10 (a) only summarily; or

(b) either summarily or on indictment.

(10) Providing for such an offence to be punishable—

(a) on summary conviction by—

15 (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 6 months);

(ii) a fine not exceeding such amount as is specified (which must not exceed £50,000); or

(iii) both; or

(b) on conviction on indictment by—

20 (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 5 years);

(ii) a fine; or

(iii) both.

25 (11) Providing for continuing offences and for any such offences to be punishable by a daily or other periodic fine of such amount as is specified (in addition to any punishment provided for under sub-paragraph (10)).

(12) Enabling, where a person has been convicted of an offence under the regulations—

30 (a) a court dealing with that person for the offence to order the taking of remedial action (in addition to or instead of imposing any punishment);

(b) regulators to arrange for such action to be taken at that person's expense; or

35 (c) a court dealing with that person for the offence to order that person to pay to a regulator an amount in respect of, but not exceeding, the costs incurred by the regulator in relation to its investigation of the conduct constituting the offence (in addition to or instead of imposing any punishment).

Appeals

13.—(1) Conferring rights of appeal in respect of decisions made, notices served or other things done (or omitted to be done) under the regulations.

40 (2) Making provision for (or for the determination of) matters relating to the making, considering or determination of such appeals (including provision for or in connection with the holding of inquiries or hearings).

(3) Making provision for—

- (a) the payment of fees or costs in connection with such appeals; and
- (b) the determination of the amount of any such fees or costs.

Compensation

14.—(1) Requiring the payment of compensation in specified circumstances by a regulator to any person in respect of any loss or damage sustained by that person as a result of action of a specified kind taken by the regulator.

(2) Requiring the payment of compensation in specified circumstances by a person who is authorised to carry on regulated activities by grant of a permit or by registration and who is required to carry out works or do other things on or in relation to any land under a condition of that permit or registration or by a requirement under paragraph 7(11) (“the authorised person”) to a person who has granted, or joined in granting, rights of a specified kind in relation to the land to enable the authorised person to carry out those works or do those other things.

(3) Without limiting sub-paragraph (2), making provision for—

- (a) the basis on which any amount to be paid by way of compensation as mentioned in that sub-paragraph is to be assessed;
- (b) compensation to be payable in respect of—
 - (i) any effect of any rights being granted; or
 - (ii) any consequence of the exercise of any rights which have been granted;
- (c) the persons by whom, and the manner in which, any dispute—
 - (i) as to whether any, and (if so) how much and when, compensation is payable; or
 - (ii) as to the person to or by whom it is to be paid—
is to be determined;
- (d) when or how applications may be made for compensation;
- (e) when or how applications may be made for the determination of any such disputes as are mentioned in head (c);
- (f) the form in which any such applications as are mentioned in heads (d) and (e) are to be made.

Service of notices and other documents

15. Providing for, or in connection with, the service of any notice or other document required under the regulations to be served on, or given to, any person.

Application to the Crown

16. Providing for the application of the regulations to the Crown.

Interpretation

17. In this Schedule—

“authorise”, in relation to regulated activities, means authorise the carrying on of the activities in accordance with a permit or subject to registration or compliance with general environmental rules;

“environmental activities” has the meaning given in section 6;

“functions” includes powers and duties;

“general environmental rules” means rules specified in, or made under, the regulations pursuant to paragraph 4(3)(c);

“permit” means a permit granted under any provision made in the regulations pursuant to paragraph 4(3)(a);

5 “public body” means a body established or constituted by or under a statutory provision;

“registration” means registration under any provision made in the regulations pursuant to paragraph 4(3)(b);

“the regulations” means regulations under section 2;

10 “regulated activities” has the meaning given in section 6;

“regulator” has the meaning given in section 6;

“specified” means specified in the regulations.

SCHEDULE 2

Section 26(1).

15 REPEALS

Short Title	Extent of Repeal
The Environment (Northern Ireland) Order 2002	Article 13(1). Article 13(3)(b) and (c). In Article 16(1)(b) the words “or 13”. In Article 18(1)(b) the words “or 13”. In paragraphs 1(1)(b) and 4(2)(b) of Schedule 2 the words “or 13”.
The Water and Sewerage Services (Northern Ireland) Order 2006	Article 107(2). Article 117. In Article 124(1) the words “the Department or”. In Article 125(1)(a) the words “and 117”. In Article 125(1)(a) and (b) the words “and sufficiency”. In Article 125(4)(a)(i) the words “or Article 117”. In Article 125(4)(a)(ii) the words “and 117”. In Article 125(7)(c) the words “or Article 117”. Article 125(8). In Article 125(9) the words “or (8)”. In Article 125(11) the words “and sufficiency”.

Environmental Better Regulation

SCHEDULE 3

Section 26(2).

REVOCATIONS

	Short Title	Extent of Revocation
5	The Smoke Control Areas (Authorised Fuels) Regulations (Northern Ireland) 2013 (S.R. 2013 No. 205)	The whole Regulations.
10	The Smoke Control Areas (Exempted Fireplaces) (No 2) Regulations (Northern Ireland) 2013 (S.R. 2013 No. 292)	The whole Regulations.
15	The Smoke Control Areas (Exempted Fireplaces) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014 No. 166)	The whole Regulations.
20	The Smoke Control Areas (Authorised Fuels) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014 No. 249)	The whole Regulations.
25	The Smoke Control Areas (Exempted Fireplaces) (Amendment No. 2) Regulations (Northern Ireland) 2014	The whole Regulations.
30	(S.R. 2014 No. 294)	