



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

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# Northern Ireland's environment- background and potential 'Brexit' considerations

This paper considers some of the areas under environment that may be impacted by leaving the European Union. It does this by identifying some of the main EU legislation in each area and briefly outlining how the legislation is transposed in Northern Ireland. **It also notes possible questions for DAERA and the UK Government in light of the considerations raised. It should be stated that the full ramifications of the decision to exit will not be known until such time as the UK has formally negotiated the terms of its exit from the EU, and as such some or all of the information in this paper will undoubtedly be subject to change.**

# 1 Background

The environment could be considered to be one of Northern Ireland's (NI) richest assets in terms of the benefits we receive from it from health and wellbeing aspects, to tourism and employment opportunities. The environment is made up of marine and terrestrial natural and built features, species and habitats. Some of the characteristics of Northern Ireland's environment include:

- 20,000 different species of flora and fauna found on and in land, water and air.<sup>1</sup>
- 50% of NI's biodiversity found in its seas.<sup>2</sup>
- 15,000km of rivers and streams, of which approximately one third are monitored annually.<sup>3</sup>
- NI has more than 1600 lakes, including the largest freshwater lake in the UK.<sup>4</sup>
- 7% of NI is covered by wetlands (lakes, fens, flooded grassland).<sup>5</sup>
- 8% of land is covered by forest and woodland (111,000 hectares).<sup>6</sup>
- Peatlands cover 15% of NI's land (206,400 hectares).<sup>7</sup>
- Agricultural activities make use of 70% of NI's land.<sup>8</sup>

The sustainability of the environment through protection and conservation measures has been one of the drivers for the development of environmental legislation at both the EU and NI level. Due to EU requirements, international agreements and subsequent UK and NI legislation, NI commits to the protection of biodiversity and the environment through approaches such as the designation of protected sites, for example in NI there are:

- 9 AONBs<sup>9</sup>
- 420 ASSIs<sup>10</sup>
- 57 SACs<sup>11</sup> and 16 SPAs
- 21 Ramsar sites in Northern Ireland<sup>12</sup>
- Around 48 Nature Reserves<sup>13</sup>

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<sup>1</sup> DOE (2015) *Valuing Nature: A Biodiversity Strategy for NI to 2020* <https://www.daera-ni.gov.uk/publications/biodiversity-strategy-northern-ireland-2020-0>

<sup>2</sup> *ibid*

<sup>3</sup> NIEA and DOE, *NI Water Management: Water Facts and Figures* (2014) <https://www.daera-ni.gov.uk/publications/northern-ireland-water-management-facts-and-figures-2014>

<sup>4</sup> *ibid*

<sup>5</sup> DOE (2015) *Valuing Nature: A Biodiversity Strategy for NI to 2020* <https://www.daera-ni.gov.uk/publications/biodiversity-strategy-northern-ireland-2020-0>

<sup>6</sup> *ibid*

<sup>7</sup> *ibid*

<sup>8</sup> *ibid*

<sup>9</sup> <https://www.daera-ni.gov.uk/topics/land-and-landscapes/areas-outstanding-natural-beauty>

<sup>10</sup> <https://www.daera-ni.gov.uk/topics/land-and-landscapes/areas-special-scientific-interest>

<sup>11</sup> <https://www.daera-ni.gov.uk/articles/special-areas-conservation>

<sup>12</sup> <https://www.daera-ni.gov.uk/topics/land-and-landscapes/ramsar-sites>

<sup>13</sup> <https://www.daera-ni.gov.uk/topics/land-and-landscapes/nature-reserves>

- 1 World Heritage Site<sup>14</sup>
- 34% of forest and woodland designated as Natura 2000<sup>15</sup>
- 37% of water bodies meet good status as required under WFD

Planning regulation, environmental impact assessments, environmental permitting and licensing, and quality standards for water and air, are some further examples of cross cutting regulatory measures used to protect and conserve the environment to comply with all levels of commitments and requirements.

## 2 Overview

The main impacts of 'Brexit' on the environment are mostly legislative, with funding being an important factor for environmental businesses and projects that have availed of EU programmes for innovation, research and development. The vast majority of environmental policy and legislation in NI, and the UK as a whole, is governed by legal frameworks and regulations set at the European Union level.

The EU currently has in force over 650 pieces of legislation to protect the environment, covering a range of policy areas such as water and air pollution, waste and flora and fauna conservation<sup>16</sup>. EU legislation was formed around the concept that environmental issues are often cross border related and therefore need cooperative action.

### 2.1 Legislative change

It is not yet clear what the UK's relationship with the EU will be following withdrawal. Whether it mirrors any existing models or sees the development of a bespoke model unique to the UK is not known at this stage. However, looking at existing models may give an indication of the types of agreements available to date. Alternative models have been considered in a previous research paper *Possible models for the UK-EU relationship post 'Brexit'* (NIAR 223-16).

In very general terms, membership of the European Economic Area (EEA), for example, may mean that most EU environmental law affecting access to the single market may continue to apply, but the UK would not be included in future negotiations or the development of legislation.<sup>17</sup>

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<sup>14</sup> <https://www.daera-ni.gov.uk/topics/land-and-landscapes/world-heritage-site>

<sup>15</sup> DOE (2015) *Valuing Nature: A Biodiversity Strategy for NI to 2020* <https://www.daera-ni.gov.uk/publications/biodiversity-strategy-northern-ireland-2020-0>

<sup>16</sup> [http://eurlex.europa.eu/browse/directories/legislation.html?root\\_default=CC\\_1\\_CODED%3D15,CC\\_2\\_CODED%3D1510&displayProfile=allRelAllConsDocProfile&classification=in-force#arrow\\_1510](http://eurlex.europa.eu/browse/directories/legislation.html?root_default=CC_1_CODED%3D15,CC_2_CODED%3D1510&displayProfile=allRelAllConsDocProfile&classification=in-force#arrow_1510)

<sup>17</sup> IEEP Paper p.8

A complete departure from the EU may give the UK Government more scope and control over environmental objectives. Whether this would involve a relaxation, tightening, or continuation of environmental standards remains to be seen depending on requirements to be retained by international/global agreements and priorities and negotiations between the EU and UK.

During evidence given to the UK Environmental Audit Committee, stakeholders were of the view that the EU has provided a necessary enforcement mechanism which has incentivised the UK Government to take action in areas it may not otherwise have.<sup>18</sup> For example, the EU has driven action in areas the UK has struggled to attain<sup>19</sup>, such as the Air Quality Standards Directive which the UK, including NI, has been in breach of NO2 limits in the past<sup>20</sup>.

With this in mind, concerns have been raised by stakeholders to the Environmental Audit Committee in relation to the potential reduction of environmental protection post 'Brexit' stating,

*if the UK were free to set its own environmental standards, it would set them at a less stringent level than has been imposed by the EU.*<sup>21</sup>

That being said, during an Opposition Day debate on the 12 July 2016, a number of MPs asked for guarantees from the Government that environmental standards made in the EU to date would not change following 'Brexit'<sup>22</sup>.

In some cases, a departure away from EU requirements may be difficult, for example:

- If the UK remains in the EEA, it may need to comply with elements of EU environmental law in order to gain access to the single market, and the UK would have less influence over the determination of these standards.<sup>23</sup>
- Many environmental measures pre-date EU legislative arrangements, for example the Birds and Habitats Directives introduced requirements that were in fact influenced by long established domestic legislation in the UK<sup>24</sup>.
- The UK is a signatory to a number of international agreements that it may still be obliged to meet following 'Brexit'.

<sup>18</sup> Environmental Audit Committee, EU and UK Environmental Policy, 23 March 2016, HC 537, 2015–16 as cited in HoC (August 2016) *Brexit: impact across policy areas*. <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7213#fullreport>

<sup>19</sup> IEEP Paper p.9/10

<sup>20</sup> <https://www.gov.uk/government/publications/air-quality-in-the-uk-plan-to-reduce-nitrogen-dioxide-emissions>

<sup>21</sup> *ibid*

<sup>22</sup> HC Deb 12 July 2016 vol 613, c 177. As cited in HoC (updated paper August 2016) *Brexit: impact across policy areas*. <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7213#fullreport> p.71/72

<sup>23</sup> For more detail see Research Paper NIAR 223-16 *Possible models for the UK-EU relationship post 'Brexit'* <http://www.niassembly.gov.uk/assembly-business/committees/agriculture-environment-and-rural-affairs/research-papers-2016/possible-models-for-the-uk-eu-relationship-post-brexit/>

<sup>24</sup> HoC (updated paper August 2016) *Brexit: impact across policy areas*. <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7213#fullreport>

As such, certain standards may not change, in fact Lord Bourne, Minister of DECC commented that

*a lot of what we do we would probably need to do if we were not part of the EU, the agreement we have just signed up to in Paris and so on.*<sup>25</sup>

Some international agreements have been ratified by the EU and written into UK legislation. However, it is not known whether the UK legislation would still stand or whether new mechanisms would be required post Brexit should the UK want to continue as a signatory in its own right.

How an exit would impact NI may not only depend on NI's involvement and influence over negotiations, but also the level of control over policy areas retained by the UK or devolved to NI. Should an exit present further environmental legislative development opportunities for NI, cross border impacts of policy changes would need to be given consideration, for example the management of river basins. This is particularly the case for NI which will continue to border an EU Member State where EU environmental standards will remain. With this in mind, particular consideration may be needed regarding the requirements for NI producers to trade with the Republic of Ireland and other EU Member States.

### 2.3 Funding

The NI Executive, universities, businesses and other stakeholders, including the environmental Non-Governmental Organisations (ENGOS), have availed of EU environmental funding to support projects, initiatives, research and development, mainly under Horizon 2020, LIFE+ and INTERREG. Historically the Department of the Environment has acted as a facilitator to stakeholders in making applications. However, participation in these different funding streams may be affected in the long term by leaving the EU, and may be dependent on any negotiations and the ability of the UK and NI governments to meet any shortfall.

The Minister has confirmed that funding for the new Environmental Farming Scheme (EFS), which is to be opened in 2017, is not covered by the recent commitment by Chancellor Phillip Hammond<sup>26</sup> which guarantees full funding for agri-environmental schemes signed before the Autumn Statement.

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<sup>25</sup> HC Report EU and UK Environmental Policy p.26 <https://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/inquiries/parliament-2015/assessment-of-eu-uk-environmental-policy/>

<sup>26</sup> <http://www.farming.co.uk/news/article/12844>

## 2.4 Questions

Subject to negotiations the following general questions could be applied to each area identified in the table provided in section 3.1:

- Has a scoping exercise of the environmental legislation and associated regulations from the EU been conducted?
- Has a scoping exercise of EU legislation that derives from international/global agreements been made, and consideration given as to how these will be implemented at a UK and NI level?
- Which of the affected policy areas, legislation and programmes will be retained by UK Government and which will be devolved to NI?
- What will the procedure be for affected legislation – is it a case of repeal and redraft?
- How many of the existing EU environmental requirements would the EU insist on for making trade agreements with non EU countries i.e. for getting access to the single market?
- What will happen to the main streams of funding and how will the Department meet any short fall?

## 3 Environment ‘Brexit’ Considerations

The following table considers some of the areas that may be impacted by leaving the EU. It is not intended to be conclusive and does not seek to suggest a hierarchy of importance. It considers some of the environmental areas where law is largely derived from the EU. There are currently over 650 pieces of EU legislation covering the area of environment alone<sup>27</sup>. On that basis, this table does not attempt to list all, but highlights some of the directives and programmes associated with each area. It also sets the context by relating how each area is transposed and implemented in NI, before finally noting some considerations and questions. However, please note that the table does not attempt to consider all impacts as these will continue to surface over time and as more detail becomes available, particularly in relation to any deal agreed between the UK and EU.

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<sup>27</sup> Aquis Communautaire

[http://eurlex.europa.eu/browse/directories/legislation.html?root\\_default=CC\\_1\\_CODED%3D15,CC\\_2\\_CODED%3D1510&displayProfile=allRelAllConsDocProfile&classification=in-force#arrow\\_1510](http://eurlex.europa.eu/browse/directories/legislation.html?root_default=CC_1_CODED%3D15,CC_2_CODED%3D1510&displayProfile=allRelAllConsDocProfile&classification=in-force#arrow_1510)

### 3.1 Environment Considerations

Area	EU Relevance	Considerations	Questions
<b>Waste and Recycling</b>	<p>The EU influences the implementation and delivery of waste management and legislation. In NI responsibilities are split as follows:</p> <ul style="list-style-type: none"> <li>• Department of Agriculture Environment and Rural Affairs (DAERA) - for the development of legislation and policy;</li> <li>• Northern Ireland Environment Agency(NIEA) -for the regulation of waste transfer and disposal and granting of licences;</li> <li>• Local councils – statutory responsibility for the collection and disposal of municipal waste; and</li> <li>• Waste management groups – responsible for drawing up Waste Management Plans on behalf of their constituent District Councils.</li> </ul> <p>Local targets are set under the NI Waste Management Strategy (2013)<sup>28</sup>. These reflect the overarching Waste Framework Directive 2008 which includes definitions of waste, sets a hierarchy for waste management, introduces the “polluter pays” principle and “extended producer responsibility” and sets recycling targets.</p>	<p>Both the NI Strategy and PFG (2011-2015)<sup>29</sup> proposed a target of 45% recycling rate for household waste by 2015, so as to help contribute towards the EU statutory target of 50% by 2020. NI’s household waste recycling rate was 40.3% by December 2015.<sup>30</sup></p> <p>A DEFRA study identified up to £22 billion in saving available to UK businesses from more efficient use of raw materials and avoiding waste.<sup>31</sup></p> <p>Commitments under international agreements, such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes will still apply.<sup>32</sup> These are currently written in consistency with the EU Regulations for Shipment of Waste<sup>33</sup> and transposed nationally through the Transfrontier Shipment of Waste Regulations 2007 as amended<sup>34</sup> However, consideration will be needed in relation to the status of the domestic regulations post ‘Brexit’, and whether new legislation will be required.</p>	<ul style="list-style-type: none"> <li>• What would be devolved to NI –would NI have to adhere to targets set by the UK?</li> <li>• NI to date has fallen short of its own interim recycling targets for 2015 and as a result the NI Executive proposed an ambitious target of 60% by 2020 in the last PFG. Would an exit see a change in targets?</li> <li>• However, would the savings identified by DEFRA mean there may not be a substantial change in approach?</li> <li>• Have international agreements been identified as to whether the UK or the EU was the signatory?</li> <li>• Will there be a need for revised or new UK or NI legislation in order to ensure compliance, particularly where the EU is the signatory of the convention?</li> <li>• What say will NI have in the discussion of the requirements and development of new legislation to be adopted by the UK?</li> </ul>

<sup>28</sup> <https://www.daera-ni.gov.uk/publications/delivering-resource-efficiency-northern-ireland-waste-management-strategy>

<sup>29</sup> PFG 2011-2015 <https://www.northernireland.gov.uk/publications/programme-government-2011-2015>

<sup>30</sup> Northern Ireland local authority collected municipal waste management statistics October to December 2015 quarterly report p.8 <https://www.daera-ni.gov.uk/publications/northern-ireland-local-authority-collected-municipal-waste-management-statistics-october-to-december-2015>

<sup>31</sup> DEFRA The Economics of Waste and Waste policy (2011) <https://www.gov.uk/government/publications/the-economics-of-waste-and-waste-policy>

<sup>32</sup> <http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx>

<sup>33</sup> <http://ec.europa.eu/environment/waste/shipments/index.htm>

<sup>34</sup> <http://www.legislation.gov.uk/uksi/2007/1711/contents/made>

Area	EU Relevance	Considerations	Questions
	<p>To reflect the WFD, the NI strategy was revised in 2013 with a strategic shift in focus away from resource management, to a renewed focus on resource efficiency.</p> <p>Examples of EU legislation include, and are not limited to: the Waste Framework Directive, Hazardous Waste Directive, Shipment of Waste Directive, Landfill Directive, Mining Waste Directive, Waste from Electronic and Electrical Equipment Directive, Packaging and Packaging Waste Directive, Circular Economy Package</p>		
<p><b>Water quality</b></p>	<p>Water quality legislation and policy are largely driven by EU law. The primary piece of water quality legislation is the Water Framework Directive (WFD). The WFD requires Member States to have an integrated approach to managing inland and coastal waters. It applies to surface waters (lakes and rivers), transitional waters (estuaries), coastal waters (up to one nautical mile from land), and to ground waters (water below the surface of the ground).<sup>35</sup></p> <p>The WFD is complemented by measures contained in a series of subsequent laws – the so-called ‘daughter directives’.<sup>36</sup> These provide further operational guidance and additional criteria on how to achieve good chemical status: the Groundwater Directive; the Environmental Quality Standards Directive; and the Floods Directive. Other directives which are mutually</p>	<p>In NI, 37% of water bodies met good status as required under WFD. This is better than England (17%), comparable to Wales (39%) and behind Scotland (65%). Ireland is at 52% (rivers only).<sup>37</sup></p> <p>According to the Department of Environment in 2015, the extent of NI’s progress of water quality status is masked due to the ‘one out all out’ rule for classification as required by the WFD. This means that an individual water body can fail for not being up to standard in just one of up to 40 elements assessed. For example, 19% of Northern Ireland’s water bodies are currently failing on one element, meaning that 56% (37% +19%)of water bodies are either at good status, or failing one assessment.<sup>38</sup> The UK</p>	<ul style="list-style-type: none"> <li>• What level of control would be given to NI with regards to water quality management?</li> <li>• Would there be a change of approach to water quality, given that the UK has highlighted problems with the “one out all out” rule<sup>40</sup>?</li> <li>• Has there been any dialogue between the Department and ROI in relation to the continued management of shared river basins?</li> </ul>

<sup>35</sup> <http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx> (Articles 1&2).

<sup>36</sup> European Commission (2010) Water is for life: How the Water Framework Directive helps safeguard Europe’s resources

<sup>37</sup> Information provided by DOE (13/11/2015)

<sup>38</sup> Information provided by DOE (13/11/2015)

<sup>40</sup> Information provided by DOE (13/11/2015)

Area	EU Relevance	Considerations	Questions
	<p>supportive of the WFD are the Urban Waste Water Treatment Directive, and the Nitrates Directive. These address key sources of pollution – waste water, agriculture and major industries.</p> <p>The WFD was transposed into Northern Ireland law through the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2003 (Statutory Rule 2003 No. 544). These require the production of River Basin Management Plans for each River Basin District. Northern Ireland has four River Basin Districts, three of which cross the border and are managed in close co-operation with the Republic of Ireland.</p>	<p>Government also expressed the view that it does not provide a true reflection of water quality improvement.<sup>39</sup> However, it is not known whether an exit would give opportunity for a new approach to be adopted by the UK, and how this would in turn impact NI would depend on the level of devolution.</p> <p>NI currently works in co-operation with the ROI for the management of the three cross border River Basin Management Districts under the WFD. Continued management of river basins will be needed regardless of an exit. However, it is not known whether the approach could be continued or a new agreement needed.</p>	
<p><b>Nature conservation</b></p>	<p>Key pieces of EU legislation relating to nature conservation include the Habitats Directive and Birds Directive. These provide for the designation of conservation areas known as Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) respectively, and form part of a larger European network called Natura 2000. The requirements associated with these can have a major bearing on decisions for small and large development projects that affect such designated sites.</p> <p>The Directive is transposed in NI through the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995. There are currently 57 SACs<sup>41</sup> and 16 SPAs<sup>42</sup> in NI, which include sites in the marine environment.</p>	<p>While an exit may mean the UK would not be bound to continue EU requirements, such as the Birds and Habitats Directives, in the areas where the UK will have full control, an exit from the EU may not mean a complete withdrawal from nature conservation requirements, for example:</p> <ul style="list-style-type: none"> <li>• Requirements may very much depend on any UK trade deal with the EU.</li> <li>• As part of the EU review of the Habitats and Birds Directive, the UK Government at that time conducted a review in 2011/12. The UK expressed strong support for the EU's requirements, therefore it is not known how far the UK would withdraw from EU requirements should it exit.</li> <li>• Many requirements pre-date EU legislative arrangements. For example the Birds and Habitats Directives introduced requirements that were in fact</li> </ul>	<ul style="list-style-type: none"> <li>• Could continuation of requirements under the Habitats and Birds Directives be expected, especially in relation to any potential trade deal between the UK and EU?</li> <li>• What level of control would NI have?</li> <li>• What international conventions will the UK be subject to in relation to nature conservation and protection post 'Brexit'?</li> <li>• Will there be a need for revised or new UK or NI legislation in order to ensure compliance, particularly where the EU is the signatory of the convention?</li> <li>• For example, will ASSIs and AONBs (under the Environment NI Order 2001), nature and marine nature reserves (under the Nature Conservation and Amenity Lands NI Order</li> </ul>

<sup>39</sup> The Lords Select Committee also highlighted this to the Commission report on the implementation of the WFD. See paragraph 45 <http://www.publications.parliament.uk/pa/ld201012/ldselect/ldcom/296/29605.htm>

<sup>41</sup> <https://www.daera-ni.gov.uk/articles/special-areas-conservation>

<sup>42</sup> <https://www.daera-ni.gov.uk/topics/land-and-landscapes/special-protection-areas>

Area	EU Relevance	Considerations	Questions
	<p>In addition, NI, as part of the UK block, contributes to global networks of protected sites created under Ramsar<sup>43</sup>, World Heritage<sup>44</sup> and OSPAR<sup>45</sup> Conventions.</p> <p>Within NI, Areas of Special Scientific Interest (ASSI) and Areas of Outstanding Natural Beauty (AONBs) are designated for plants, animals, geological or physical features of national importance. These provide the protection for all sites, including those of international importance.</p> <p>The new Invasive Alien Species Regulation entered into force on 1 January 2015.<sup>46</sup> Species identified as invasive are banned and Member States must draw up management plans aimed at their eradication, population control or containment.<sup>47</sup></p> <p>A study estimated the current annual cost of invasive species to the Northern Ireland economy to be £46.5m<sup>48</sup>.</p>	<p>influenced by long established domestic legislation in the UK<sup>49</sup>.</p> <p>Not all habitat and conservation requirements come from the EU but are written into UK systems such as the UK's Sites for Special Scientific Interest (SSSIs).<sup>50</sup></p> <ul style="list-style-type: none"> <li>Requirements will still exist under international agreements and conventions. This includes Ramsar<sup>51</sup>, Bern<sup>52</sup>, CITES<sup>53</sup>, OSPAR,<sup>54</sup> etc. For example, the Aichi Targets from the Convention on Biological Diversity (CBD) form the basis of the implementation of NI's Biodiversity Strategy.<sup>55</sup></li> </ul> <p>Some international agreements/conventions have been ratified by the EU on behalf of Member States and may require new mechanisms to be drawn up by the UK post Brexit. However, those that have been ratified through UK law may remain unchanged.</p> <p>International agreements may not provide the same level and type of protection as EU legislation such as the Birds and Habitats Directives, therefore consideration will need to be given to potential gaps.</p>	<p>1985) and the general protection of plants, animals and birds under the Wildlife Order and the Nature Conservation Amenity Lands Order 1985 as amended by the Wildlife and Natural Environment Act 2011, remain unchanged?</p> <ul style="list-style-type: none"> <li>Would the UK give NI the power to deal with nuisance invasive species to reflect the scale of the problems at a local level?</li> <li>Due to the cross border implications of control and spread of invasive species, how will there be harmonisation of approaches between NI and RoI, where requirements may differ post exit?</li> </ul>

<sup>43</sup> <https://www.daera-ni.gov.uk/topics/land-and-landscapes/ramsar-sites>

<sup>44</sup> <https://www.daera-ni.gov.uk/topics/biodiversity-land-and-landscapes/protected-areas>

<sup>45</sup> <http://jncc.defra.gov.uk/page-1370>

<sup>46</sup> EC (November 2014) Brochure on LIFE and Invasive Alien Species p.6. Available from [http://ec.europa.eu/environment/nature/invasivealien/index\\_en.htm](http://ec.europa.eu/environment/nature/invasivealien/index_en.htm)

<sup>47</sup> Article 19 of the Regulation

<sup>48</sup> DOE (2015) *Valuing Nature: A Biodiversity Strategy for NI to 2020* <https://www.daera-ni.gov.uk/publications/biodiversity-strategy-northern-ireland-2020-0> p.22

<sup>49</sup> HoC (updated paper August 2016) *Brexit: impact across policy areas*. <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7213#fullreport>

<sup>50</sup> ibid

<sup>51</sup> Ramsar Convention on Wetlands of International Importance. <http://www.ramsar.org/>

<sup>52</sup> Convention on the Conservation of European Wildlife and Natural Habitats <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/104>

<sup>53</sup> CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. <https://www.cites.org/eng/disc/what.php>

<sup>54</sup> Convention for the Protection of the Marine Environment of the North-east Atlantic

<sup>55</sup> DOE (2015) *Valuing Nature: A Biodiversity Strategy for NI to 2020* <https://www.daera-ni.gov.uk/publications/biodiversity-strategy-northern-ireland-2020-0>

Area	EU Relevance	Considerations	Questions
		<p>The EU Commission is responsible for drawing up a list of invasive alien species to which the requirements of the Invasive Alien Species Regulation must apply. However, Japanese knotweed, identified as a problem in NI, has not been included on the list.<sup>56</sup></p> <p>Due to the consistency of approaches to be used by EU Member States, advice on the management of invasive species is given by a joint venture between the Northern Ireland Environment Agency and the National Parks and Wildlife Agency in the ROI, known as Invasive Species Ireland.<sup>57</sup></p>	
<p><b>Marine</b></p>	<p>The Marine Strategy Framework requires Member States to take action to protect the marine environment and to use marine resources sustainably. Implementation of this is at the UK level through the Marine Strategy Regulations 2010 and Marine Strategy to which Northern Ireland must comply.</p> <p>The Marine Spatial Planning Directive requires marine plans to be completed by 2021. These requirements have been transposed in Northern Ireland through the Marine Act 2013, which provides for marine planning; marine licensing; and further provision in relation to certain electricity works in the inshore region.</p> <p>DAERA is currently preparing a marine plan for NI.<sup>58</sup> There are currently 7 SAC and 8 SPA sites with marine components in NI.<sup>59</sup></p>	<p>It will be for the UK Government to decide whether to continue the approaches as they stand through new national requirements or to make adjustments by lowering or increasing requirements. However, cross border consideration will be needed to ensure a holistic approach is used for transboundary marine based industries and activities as the ROI continues EU compliance.</p> <p>As discussed under the conservation section, an exit may not mean complete removal of marine protected and conservation sites as some sites will have continued protection under international conventions such as Ramsar sites and OSPAR MPAs<sup>61</sup>.</p> <p>However, consideration will be needed for those sites afforded protection by EU law that are not also protected by international treaties or national legislation.</p>	<ul style="list-style-type: none"> <li>• Will the NI Executive seek to continue these areas of regulation following a withdrawal from the EU?</li> <li>• What international conventions will the UK be subject to in relation to the management of the marine environment post 'Brexit'?</li> <li>• Will there be a need for revised or new UK or Northern Ireland legislation in order to ensure compliance, particularly where the EU is the signatory of the convention?</li> <li>• Has there been identification and consideration of gaps where sites afforded protection by EU law are not also protected by international treaties or national legislation?</li> <li>• What will happen to sites designated under national legislation e.g. ASSIs and AONBs (under the Environment NI Order 2001),</li> </ul>

<sup>56</sup> The list and further information can be found at [http://ec.europa.eu/environment/nature/invasivealien/index\\_en.htm](http://ec.europa.eu/environment/nature/invasivealien/index_en.htm)

<sup>57</sup> <http://invasivespeciesireland.com/background/about/>

<sup>58</sup> <https://www.daera-ni.gov.uk/articles/marine-plan-northern-ireland>

<sup>59</sup> <https://www.daera-ni.gov.uk/articles/marine-protected-areas#toc-0>

<sup>61</sup> <https://www.daera-ni.gov.uk/articles/marine-protected-areas>

Area	EU Relevance	Considerations	Questions
	<p>A consultation closed March 2016 on the designation of 4 possible MCZs in NI: Carlingford, Outer Belfast Lough, Rathlin, and Waterfoot. Further detail on their designation is still awaited.<sup>60</sup></p>		<p>marine nature reserves (under the Nature Conservation and Amenity Lands NI Order 1985)?</p> <ul style="list-style-type: none"> <li>• Will cross border discussions and considerations be made to ensure a holistic approach is used for transboundary marine based industries and activities?</li> </ul>
<p><b>Air Quality</b></p>	<p>EU requirements under the Air Quality Directive, Ambient Air Quality Directive, and Cleaner Air for Europe (CAFÉ) Directive, for example, are incorporated into Northern Ireland’s domestic law by the Air Quality Standards Regulations (Northern Ireland), and the Air Quality Strategy for England, Scotland, Wales and Northern Ireland (2007). These transpose the EU limit values and non-mandatory target values for ambient concentrations of pollutants. They set out the duties of Northern Ireland’s Departments in relation to achieving these values, inform the public about air quality in the region, particularly when information and alert thresholds are exceeded.</p>	<p>The UK, including some sites in Belfast, failed to meet NO2 limits by 2010 and 2015. The UK Government was required to produce an action plan to resolve the problems, including measures for NI. This was submitted to the European Commission in 2015.<sup>62</sup></p> <p>The UK and NI have been subject to EU infringement proceedings; therefore, an exit may remove any future threat of fines.</p> <p>The UK would also be able to set its own limits and deadlines, whether this would involve a relaxation or not is unknown at this stage. However, any change would need to be weighed against the health effects resulting from air pollution exposure.</p>	<ul style="list-style-type: none"> <li>• What level of control would be given to NI?</li> <li>• Would there be a relaxation, increase or continuation of targets considering the UK has struggled to meet EU targets for NO2 in the past?</li> <li>• With EU infringement process no longer applicable, what enforcement mechanism would replace it to ensure high standards of air quality are kept?</li> </ul>
<p><b>Climate Change</b></p>	<p>2020 and 2030 Climate and Energy Framework, and the 2050 Low Carbon Economy Roadmap have set the following national emission targets:</p> <ul style="list-style-type: none"> <li>• 20% cut in greenhouse gas (GHG) emissions compared with 1990 levels by 2020<sup>63</sup></li> </ul>	<p>An EU exit would not necessarily remove all climate change requirements, for example:</p> <ul style="list-style-type: none"> <li>• The UK Climate Change Act 2008, while adhering to EU targets, also works towards reaching global commitments set by the United Nations Framework</li> </ul>	<ul style="list-style-type: none"> <li>• Would commitments under the UNFCCC remain unchanged such as: <ul style="list-style-type: none"> <li>- The UK Climate Change Act targets<sup>74</sup>; and</li> <li>- The Emissions Trading Scheme (ETS)?</li> </ul> </li> </ul>

<sup>60</sup> <https://www.daera-ni.gov.uk/consultations/marine-conservation-zones-consultation>

<sup>62</sup> <https://www.gov.uk/government/publications/air-quality-in-the-uk-plan-to-reduce-nitrogen-dioxide-emissions>

<sup>63</sup> EU 2020 Climate and Energy Framework [http://ec.europa.eu/clima/policies/strategies/2020/index\\_en.htm](http://ec.europa.eu/clima/policies/strategies/2020/index_en.htm)

<sup>74</sup> <https://www.theccc.org.uk/tackling-climate-change/reducing-carbon-emissions/carbon-budgets-and-targets/>

Area	EU Relevance	Considerations	Questions
	<ul style="list-style-type: none"> <li>At least 40% cuts in GHG emissions from 1990 levels by 2030<sup>64</sup></li> <li>Cut GHG emissions by 80-95% compared to 1990 levels by 2050<sup>65</sup></li> </ul> <p>The Climate and Energy Framework also sets emission reductions from large scale facilities in the power and industry sector through the Emissions Trading System (ETS)<sup>66</sup></p> <p>From the EU wide targets, Member States developed their own targets. The UK Government has set a UK wide target under the UK Climate Change Act 2008 of reducing emissions by at least 80% in 2050 from 1990 levels, to which NI must contribute.</p> <p>The previous Environment Minister published a consultation on proposals for a Climate Change Bill in NI in December 2015.<sup>67</sup> It will be for the new Minister to decide whether to bring specific climate change legislation for NI forward in the new mandate.</p> <p>The UK as a whole, reduced emissions by 36% between the base year (1990) and 2014. England and Scotland reduced emissions by 38% and 41%. Wales and Northern Ireland reduced emissions by 18% and 17%.</p>	<p>Convention on Climate Change (UNFCCC).<sup>69</sup> This includes limiting global temperature rise to less than 2°C above pre industrial levels.<sup>70</sup></p> <ul style="list-style-type: none"> <li>The ETS is established under the UNFCCC. Therefore, leaving the EU does not necessarily mean the UK would not have to comply with the ETS</li> </ul> <p>The UK signed up to the Paris Agreement in April 2016. However, it has not been formally ratified as yet. The only commitment made to the ratification has been suggested by the Department for Energy and Climate Change (DECC) which stated “<i>We remain committed to ratifying as soon as possible</i>”.<sup>71</sup></p> <p>Currently the UK’s participation in the UNFCCC is negotiated as a member of the European Union and sets UK targets to contribute to the overall EU target. An exit would mean the UK would be a single voice, and it needs to be considered whether this would give NI opportunity to have more direct access to negotiations, or whether more weight is given as part of a larger body.<sup>72</sup></p>	<ul style="list-style-type: none"> <li>Has clarification been sought on whether ‘Brexit’ would affect the ratification of the Paris Agreement which has been signed up to by the UK but not ratified as yet?</li> <li>Currently the UK and NI’s participation in these agreements is negotiated as a member of the EU. What impact would a single voice at these negotiations have on the UK and NI?</li> <li>Could non-EU members make agreements? For example, Switzerland is in negotiations to join the EU ETS to be part of a bigger market.<sup>75</sup></li> </ul>

<sup>64</sup>EU 20130 Climate and Energy Framework [http://ec.europa.eu/clima/policies/strategies/2030/index\\_en.htm](http://ec.europa.eu/clima/policies/strategies/2030/index_en.htm)

<sup>65</sup>EU 2050 Low Carbon Economy Roadmap [http://ec.europa.eu/clima/policies/strategies/2050/index\\_en.htm](http://ec.europa.eu/clima/policies/strategies/2050/index_en.htm)

<sup>66</sup> The ETS aims to reduce industrial emissions through a cap and trade system and is a reserved matter. The 2015 budget detailed a revenue of £0.3 billion in 2014-15 rising to an expected £0.6 billion by 2019-20 due to receipts from the scheme. HM Treasury Budget 2015 as sited in HOC, 2016, *Exiting the EU: impact in key UK policy areas*. <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7213>

<sup>67</sup> DOE (2015) Proposals for taking forward NI climate change legislation -discussion paper <https://www.daera-ni.gov.uk/consultations/proposals-taking-forward-ni-climate-change-legislation>

<sup>69</sup> <https://www.theccc.org.uk/tackling-climate-change/reducing-carbon-emissions/carbon-budgets-and-targets/>

<sup>70</sup> [http://unfccc.int/essential\\_background/items/6031.php](http://unfccc.int/essential_background/items/6031.php)

<sup>71</sup> <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7213>

<sup>72</sup> HM Government, Review of Balance of Competences on Environment and Climate Change, February 2014 <https://www.gov.uk/government/consultations/eu-and-uk-action-on-environment-and-climate-change-review>

<sup>75</sup> HOC Paper

Area	EU Relevance	Considerations	Questions
	<p>Latest figures from 2014 show that for NI, the largest sources of emissions were from agriculture (28%), transport (21%), and energy supply (19%).<sup>68</sup></p>	<p>Agreements with non-EU countries may be made. For example, Switzerland is in negotiations to join the EU ETS to be part of a bigger market.<sup>73</sup></p>	
<p><b>Industry</b></p>	<p>The EU seeks to regulate industry in a number of areas that impact on the environment from the design and use of energy efficient products, to the use of chemicals and the carrying out of dangerous activities. For example:</p> <ul style="list-style-type: none"> <li>• The Eco Labelling Directive requires Member States to set minimum criteria for the procurement of energy related products.<sup>76</sup></li> <li>• The Eco Design Directive provides EU-wide rules for the design of energy-related products.<sup>77</sup></li> <li>• The REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) regulations require that substances imported or manufactured in the EU are tested and also registered with the European Chemicals Agency.<sup>78</sup></li> <li>• The Environmental Liability Directive (ELD) as transposed in NI through the Environmental Liability (Prevention and Remediation) Regulations 2009, as amended. It seeks to</li> </ul>	<p>While the admin, testing and registering burdens applied to industries might be reduced with an exit, some form of safety testing would need to be applied.</p> <p>For industries having already invested to comply with the EU system, further changes or any reversal may not be seen positively. Norway and Iceland have in fact adopted the EU REACH legislation independently so as to keep more consistency for industries and businesses.</p> <p>The use of the ELD is substantially higher in England and Wales than in NI.<sup>80</sup> In a report on the effectiveness of the ELD, which fed into the EU's REFIT Programme<sup>81</sup>, the UK listed a number of strengths to the ELD such as increased implementation of polluter pays principle, compensatory remediation, damage remediation and increased powers for cost recovery.</p>	<ul style="list-style-type: none"> <li>• What approach would be used to replace REACH?</li> <li>• Will consideration be given to industries who have invested in systems to complement the EU approach?</li> <li>• Does the Department have the same opinion to the ELD as the UK?</li> <li>• Will it be able to adopt its own approach should its opinion differ?</li> </ul>

<sup>68</sup> DAERA (2016) *Northern Ireland greenhouse gas inventory 1990-2014 statistical bulletin* <https://www.daera-ni.gov.uk/articles/northern-ireland-greenhouse-gas-inventory>

<sup>73</sup> HOC Paper

<sup>76</sup> [http://ec.europa.eu/environment/gpp/eu\\_related\\_en.htm](http://ec.europa.eu/environment/gpp/eu_related_en.htm)

<sup>77</sup> Ibid

<sup>78</sup> [http://ec.europa.eu/environment/chemicals/reach/reach\\_en.htm](http://ec.europa.eu/environment/chemicals/reach/reach_en.htm)

<sup>80</sup> Latest data shows that from 2009- 2012 19 cases have been reported: eight in England, eight in Wales, two in Scotland and one in Northern Ireland. See UK Report on experience gained on the application of the Directive [http://ec.europa.eu/environment/legal/liability/pdf/eld\\_ms\\_reports/UK.pdf](http://ec.europa.eu/environment/legal/liability/pdf/eld_ms_reports/UK.pdf)

<sup>81</sup> For more detail see EU Commission Report 2014 <http://ec.europa.eu/environment/legal/liability/>

Area	EU Relevance	Considerations	Questions
	<p>prevent and remedy environmental damage to protected species, habitats, water and soil by holding responsible operators liable.<sup>79</sup></p>		
<b>SEA and EIA</b>	<p>The environmental considerations involved in the planning and development process are currently driven by EU legislation. For example, the Strategic Environmental Assessment Directive and the Environmental Impact Assessment Directive set out environmental assessment requirements for plans and projects.<sup>82</sup></p> <p>EIA puts responsibility on developers to produce an environmental assessment (Environmental Statement) if it is considered that a proposed development may have significant environmental impact.<sup>83</sup></p> <p>The SEA was ratified in NI through the Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004 legislation.<sup>84</sup> The EIA was transposed through the Planning (Environmental Impact Assessment) Regulations 2015.</p>	<p>Responsibility for planning is a devolved issue and lies with the NI Executive. However, the purpose of both the UK and NI planning systems is to provide for the sustainable development of land by ensuring a balance between development and environmental protection in the public interest.</p> <p>While the environmental considerations of development is currently controlled by the EU, it will be for negotiations between the UK and NI Governments to reveal the level of control given to NI and whether there should be any relaxation, tightening or retention of requirements.</p>	<p>Will there be consideration around:</p> <ul style="list-style-type: none"> <li>• the level of control afforded to NI by the UK; and</li> <li>• whether there will be any relaxation, tightening or retention of requirements?</li> </ul>
<b>Funding</b>	<p>Historically the Department of the Environment acted mainly as a facilitator to stakeholders in making applications for funding, getting information on call deadlines, partner searches and general advice.</p>	<p>Non- EU membership does not mean complete exemption from all EU funding programmes. For example, Canada is involved in Horizon 2020 which encourages international co-operation.<sup>88</sup></p>	<ul style="list-style-type: none"> <li>• What will happen to the main streams of funding and how will the Department meet any short fall?</li> </ul>

<sup>79</sup> <http://ec.europa.eu/environment/legal/liability/>

<sup>82</sup> <https://www.daera-ni.gov.uk/topics/land-and-landscapes/strategic-environmental-assessment>

<sup>83</sup> <https://www.daera-ni.gov.uk/articles/environmental-impact-assessment-eia>

<sup>84</sup> More information is available at <https://www.daera-ni.gov.uk/topics/land-and-landscapes/strategic-environmental-assessment>

<sup>88</sup> <http://www.era-can.net/eu/canadian-participation-in-h2020/>

Area	EU Relevance	Considerations	Questions
	<p>The NI Executive, universities, businesses and other stakeholders, including the environmental Non-Governmental Organisations (ENGOS), have availed of EU environmental funding to support projects, initiatives, research and development, mainly under Horizon 2020, LIFE+ and INTERREG. For example:</p> <ul style="list-style-type: none"> <li>• 6m per year over the 3-year period to 2019/20 is projected to be drawn down through INTERREG VA funding for approved projects to protect and restore biodiversity<sup>85</sup></li> <li>• AFBI is projected to receive £8.2m from new Horizon 2020 and INTERREG VA over the 4-year period to 2020.<sup>86</sup></li> <li>• Under LIFE, the level of funding drawn down by the Department has been relatively low at £130K over the past 5 years. This has been used to fund projects including the RSPB Farmland Birds and Futurescapes<sup>87</sup>.</li> </ul>	<p>The Minister has confirmed that funding for the new Environmental Farming Scheme (EFS), which is to be opened in 2017, is not covered by the recent commitment by Chancellor Phillip Hammond<sup>89</sup> which guarantees full funding for agri-environmental schemes signed before the Autumn Statement. However, concerns could be raised around the £100m allocated to EFS, of which £60m is EU financed, with £40m covered by national funding<sup>90</sup>. Also, changes in exchange rate may affect future funding value. Some environmental stakeholder organisations such as the RSPB have also raised concerns in relation to the impacts that a removal or reduction of funding will have on projects that have benefitted various habitats and their ability to support and sustain various animal species.<sup>91</sup></p>	<ul style="list-style-type: none"> <li>• What will happen to EFS and will the Department be able to meet a potential £60m shortfall from EU funding?</li> <li>• What considerations have been given to post 2020?</li> <li>• Would there be need for a phase out period to allow businesses/projects time to prepare for post 2020?</li> <li>• How will relationships of established and ongoing projects be affected, particularly cross border projects which is a main focus of INTERREG?</li> </ul>
<b>Judicial Review</b>	<p>Judicial review is a process by which the courts review the lawfulness of a decision or action/procedure used by a public body. It provides a mechanism to challenge the process used to make a decision, not to challenge the decision itself.<sup>92</sup></p>	<p>EU withdrawal may remove the EU environmental grounds for challenge by JR. This would mean a less far-reaching judicial process to enforce the implementation of environment policy and challenge its interpretation. There is a three-month time limit to apply for leave for JR, starting on the date the decision being challenged is made. However, there is no time limit for challenge by EU law</p>	<ul style="list-style-type: none"> <li>• Would EU withdrawal remove the EU environmental grounds for challenge by JR?</li> <li>• If so, what would be the impacts, for example: <ul style="list-style-type: none"> <li>- Would this mean a less far-reaching judicial process to enforce the implementation of</li> </ul> </li> </ul>

<sup>85</sup> Information received through correspondence with DAERA 15/09/2016

<sup>86</sup> *ibid*

<sup>87</sup> *ibid*

<sup>89</sup> <http://www.farming.co.uk/news/article/12844>

<sup>90</sup> Briefing from DAERA on *Rural Development Programme 2014-2020 Update on Implementation* and Table 10.3.6 (p.938) *United Kingdom –Rural Development Programme (Regional)- Northern Ireland* <https://www.daera-ni.gov.uk/sites/default/files/publications/dard/2014-2020%20RDP%20Version%202.pdf>

<sup>91</sup> <http://www.rspb.org.uk/community/ourwork/b/martinharper/archive/2016/07/17/brexit-implications-for-wildlife-friendly-farming-long-term-opportunity-short-term-jeopardy.aspx>

<sup>92</sup> <https://www.judiciary.gov.uk/you-and-the-judiciary/judicial-review/>

Area	EU Relevance	Considerations	Questions
	<p>In the area of environment, the procedure used to make a decision may be challenged on the basis of a breach of:</p> <ul style="list-style-type: none"> <li>• domestic planning and environmental law or policy; and</li> <li>• EU environmental law.</li> </ul> <p>Due to this, in NI the planning system could be regarded as litigious with planning decisions challenged by JR in some instances. However, the actual number of JRs taken against planning decisions remains relatively small in comparison to the number of planning applications made<sup>93</sup>. That being said they can be costly and resource intensive.</p>	<p>meaning many applications falling outside the time limit for domestic law could apply on this basis.<sup>94</sup></p> <p>Therefore removal of EU grounds for challenge could impact the number of successful JR applications due to less flexible time limits.</p>	<p>environment policy and challenge its interpretation?</p> <ul style="list-style-type: none"> <li>- Would this mean grounds could only be made in relation to domestic law, and as such a timeframe applied to all applications?</li> </ul>

<sup>93</sup> Information provided at McKelvey Associates *Judicial Review, Planning and the Environment Seminar* (Monday 6 June 2016)

<sup>94</sup> Information provided at McKelvey Associates *Judicial Review, Planning and the Environment Seminar* (Monday 6 June 2016)