Northern Ireland Assembly

# Research and Library Service Briefing Note

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# Ireland/ Northern Ireland Protocol and Net Zero

This briefing note is a follow up to the RaISe paper *Northern Ireland and Net Zero (NIAR 47-21).* It provides examples of some of the potential impacts of the Ireland/Northern Ireland Protocol in achieving Net Zero, and should not be considered as a comprehensive analysis or assessment.

## 1 Introduction

The Ireland/Northern Ireland Protocol (the Protocol) is a key component of the Withdrawal Agreement negotiated between the UK and EU in October 2019. It effectively binds Northern Ireland to a series of EU regulations as they relate to a range of standards including human rights, movement of people and goods and trade etc. Adherence to these regulations is how Northern Ireland will be able to access the EU single market.

The Annexes to the Protocol list all the EU legislation that NI must stay compliant with post transition. For example, Annexes 2 and 4 list all of the required pieces of EU legislation to protect the movement of goods and the single electricity market. It is useful to note here that new legislation can be added to the annexes subject to Joint

Committee approval, and Northern Ireland is also required to automatically adopt any changes made.[1]

# 2 Potential impact on Net Zero

The main consideration is the impact of contributing to an overall UK target, while having to comply with EU legislation and standards that may affect NI's ability to decarbonise certain sectors and transition to Net Zero. The Protocol may also create difficulties and complexities down the line, especially if the UK and EU have regulatory divergence in certain areas.

The following section explores examples of some of the areas listed under the Protocol that may, directly and indirectly, affect NI's contribution to Net Zero:

## 2.1 Emissions Trading

Emissions trading has an impact on net greenhouse gas (GHG) emissions. In the EU, it is the cornerstone of the EU's policy to mitigate climate change and the fundamental tool for reducing its greenhouse gas emissions across power, industrial and aviation sectors.

It is the world's first and largest emissions trading system, covering around 45% of the EU's greenhouse gas emissions.[2] It was expected that sectors covered by the EU ETS, would account for over 50% of the emissions reductions needed to meet UK targets between 2013 and 2020.[3]

However, Annex 4 of the Protocol allows power generators in NI to continue to participate in the EU ETS post transition under Directive 2003/87/EC (NI has five large power generators). While the UK ETS provides that all other installations (>20 MWs) will be under the new UK ETS. See RaISe paper *Common framework background paper: Emissions Trading (NIAR 244-20)* section 2.2.for more detail.

This is an example where NI is bound in part to EU legislation, yet contributing to a UK overall target. It is already an example of policy divergence with the UK ETS cap on the number of allowances set 5% below what is required by the UK for Phase IV (2021-2030) of the EU ETS. Therefore, large power installations in the UK will adhere to a lower cap compared to large power installations in NI.

[1] Further detail is provided in RaISe paper The Ireland/Northern Ireland Protocol – overview and potential issues (18/06/2020)http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2017-2022/2020/aera/3320.pdf

[2] European Commission [online] EU Emissions Trading System (EU ETS). https://ec.europa.eu/clima/policies/ets_en

[3] Gov.uk (2015) 2010 to 2015 government policy: greenhouse gas emissions https://www.gov.uk/government/publications/2010-to-2015-government-policy-greenhouse-gas-emissions/2010-to-2015-government-policy-greenhouse-gas-emissions#appendix-2-eu-emissions-trading-system-eu-ets

***Exactly what impact this may have on NI's ability to decarbonise its power sector, with its five large generators contributing to a higher cap, may need to be taken into consideration. Particularly if there is continued divergence down the line.***

## 2.2 Fluorinated greenhouse gases and Ozone depleting substances

According to DAERA:

> *Legislation on fluorinated greenhouse gases ("F-gases") and Ozone Depleting Substances ("ODS") helps to limit Northern Ireland's gaseous emissions and enables us to play our part in minimising the effects of global warming and ozone layer eradication*[4]

**Fluorinated gases (F-gas)**

These are man-made gases that can stay in the atmosphere for centuries. F-gases have a very high Greenhouse Warming Potential ("GWP"), much higher than carbon dioxide, and contribute to rising global temperatures. Their emissions account for around 3% of total UK GHG emissions. Major emissions sources are: refrigerants, aerosols, solvents, insulating gases, or blowing agents for foams and medical equipment. They can also arise as fugitive emissions from other manufacturing processes. NI implements EU legislation (EU Regulation No 517/2014) through NI Regulations.

See DAERA: *Fluorinated Greenhouse Gases and Ozone Depleting Substances* and CCC Sixth Carbon Budget (p.194)

**Ozone depleting substances**

The ozone layer is part of the earth's upper atmosphere and protects all life from ultra-violet radiation. The Montreal Protocol was signed in 1987 to control and phase out chemicals which damage the ozone layer, referred to as Ozone Depleting Substances ("ODS"). Types of ODS include: chlorofluorocarbons ("CFCs"); halons; Hydrochlorofluorocarbons (HCFCs). ODS sources include: refrigeration and air-conditioning systems; heat pump equipment; fire protection equipment. NI implements the EU legislation (EC Regulation No 1005/2009) through NI Regulations[1].

See DAERA: Ozone depleting substances.

The rest of the UK will adopt a GB wide Common Framework on implementing international law regulating trade, use and emissions of F-gas and ODS products. While NI will continue to align with EU rules under Annex 2 of the Protocol. Under the

[4] DAERA [online] *Fluorinated Greenhouse Gases and Ozone Depleting Substances*. *https://www.daera-ni.gov.uk/topics/protect-environment/fluorinated-greenhouse-gases-and-ozone-depleting-substances*

GB Framework, the UK Government, Scottish and Welsh Ministers establish and operate a single GB wide F-gas and ODS systems to be administered by the UK Environment Agency.

Initially, there may be no real difference as the GB legislation has taken the form of retained EU law for regulating ODS and F-gas Regulations (Regulation (EC) No 1005/2009 on substances that deplete the ozone layer and Regulation (EU) No 517/2014 on fluorinated greenhouse gases). However, issues may potentially arise should there be any divergence by the UK down the line.

Essentially, the rest of the UK and NI will be under a different administrative and governance regime in relation to trade, use and emissions of F-gases and ODS products. That being said, a Working Group is to be established under the Common Framework for the four governments (including NI) to convene and develop recommendations, discuss differences and share information etc. A Governance Group, made up of senior officials from all four governments, will take key operational decisions and review any issues brought to them by the Working Group for dispute resolution.[5]

However, the Common Framework explains that whilst DAERA and the Environment Agency (UK) will be members of both groups, they will have a different status in the decision-making and dispute resolution processes for matters relating to GB systems or provisions of the GB ODS and F-gas legislation.[6]

This raises potential questions around:

- **Potential issues of divergence over time, and the impacts this may have on NI's ability to meet a UK wide target if there is potentially different standards for trade, use and emissions of F-gas and ODS products;**
- **What status and say NI has in the Working Group and Governance Group to discuss and remedy potential issues of divergence; what effects might this have on NI's ability to contribute to the UK net target?**
- **Should further dispute resolution be needed, a process is provided under a concordat. The concordat sets out agreements including principles for working together, the decision-making fora, the decision-making and dispute resolution process, and the relevant international obligations[7]. <u>However, the concordat is a non-legislative arrangement, which raises questions over NI's ability to raise and dispute issues under the Common Framework in the future</u>.**

[5] DAERA Letter to AERA Committee (16 Nov 2020) and accompanying Summary of Provisional Common Framework for F-gas and ODS

[6] ibid

[7] ibid

## 2.3 Best Available Techniques (BAT) Industrial Emissions

According to DAERA, industrial production processes account for a considerable share of the overall pollution in Europe, for emissions of greenhouse gases and acidifying substances, wastewater emissions and waste. To reduce emissions from such installations, the European Commission adopted Directive 2010/75/EU, known as 'the Industrial Emissions Directive'. This has been brought into effect by the Pollution Prevention and Control Regulations (Northern Ireland) 2013 [8]

The UK Common Framework implements a UK wide policy regime for regulation of industrial emissions in line with Best Available Techniques (BAT) previously set out in the EU Directive.

However, under Annex 4 of the Protocol certain industrial sites will continue to follow EU law to remain in line with the all-island single electricity market. According to DAERA, most large-scale generators (approx. four) will remain under the Protocol. However, the exact number of smaller scale generators is not yet known, and is to be confirmed by the European Commission[9]. For all other industrial sites within scope of BAT, the new UK framework will apply.

According to DAERA, the intention of the UK Framework is to maintain existing standards of industrial emissions regulation throughout the UK and no changes to the system of enforcement, inspections or charges are anticipated[10].

A consultation on the development of BAT in the UK post EU exit is currently underway until the 12 April 2021. It was produced jointly by the UK Government and devolved jurisdictions (including NI). The consultation explains that existing BATs already determined under the EU BATs process will continue to apply in the UK. However, the European Union (Withdrawal) Act 2018 provides powers for the Secretary of State to determine BATs within the UK, which may include Devolved Administrations if their Ministers give consent. The consultation already identities an area for potential long-term change in relation to the implementation of BATs in the UK, compared to the existing process[11].

**In addition, the consultation makes light reference to the Protocol once[12], and does not offer further consideration of the impacts of the Protocol on implementing this UK wide framework in NI.**

[8] DAERA [online] *The Industrial Emissions Directive and the Pollution Prevention and Control (Industrial Emissions) Regulations* https://www.daera-ni.gov.uk/articles/industrial-emissions-directive

[9] DAERA (Jan 2021) AERA Committee Briefing Common Frameworks January 2021 Background.

[10] ibid

[11] DEFRA Consultation*: 'Best Available Techniques'– A future regime within the UK* (p.16 para.35) https://consult.defra.gov.uk/airquality/industrial_emissions_bat/

[12] Ibid p.6

Potential complications may arise should there be:

- **Divergence between the EU and UK down the line, ultimately meaning that some power generators in NI are following different limits, techniques and implementation processes;**
- **Any issue with changes and recommendations should the process for dispute resolution be non- legislative;**
- **Limited opportunity for NI to address issues at Working Group level due to having a different level of status from other members of the Groups.**

## 2.4 Potential indirect impacts and considerations

Increased forestation in the UK and NI has been suggested by the Climate Change Committee (CCC) as a key approach to Net Zero. We have already seen the impacts of the Protocol in relation to the import of trees and plants from the UK due to soil requirements. However, unilateral agreement has recently been given to relax Protocol requirements in relation to soil, subject to passport requirements. Bulbs and vegetables have been mentioned, and further clarity may be needed on whether this includes trees.[13]

Other areas that may need further consideration, in relation to indirectly affecting NI's ability to reach emission targets include:

- **Eco design in energy-related products and energy labelling** is an area listed under Annex 2 of the Protocol, requiring NI to continue to adhere to EU legislation. Eco design and energy labelling policies aim to reduce carbon emissions and make products more energy and resource efficient. These requirements could affect NI's ability to decarbonise some of its main emitting sectors, such as agriculture, power generation, housing and heating, and business. Complications may develop should there be any differences between a UK wide framework and the EU from the outset, or down the line with potential to diverge. Particularly if there are differences in:
  - Standards affecting the use of more energy efficient or green technology;
  - What may or may not enter into the Single European Market and essentially be available to NI, particularly in terms of affordability.

- **Compliance and oversight complexities in keeping NI in line with contributing to a UK target while complying with related EU requirements.** Complexities may

[13] See BBC Brexit: Further trade rules relaxed between GB and NI https://www.bbc.co.uk/news/uk-northern-ireland-56294309 and ITV https://www.itv.com/news/utv/2021-03-05/uk-government-announces-further-unilateral-northern-ireland-protocol-relaxations-on-plants

arise with the European Commission having an oversight, monitoring and enforcement role over implementing Protocol related legislation in NI; a potential independent Office for Environmental Protection (OEP), to replace the EU Commission on areas not covered by the Protocol; and the NIEA remaining as the principle environmental regulator in NI:

- **Could public authorities in NI essentially have two oversight and infraction bodies to answer to in relation to the implementation of environmental law?**
- **With respect to climate change and Net Zero, this may create complications for public authorities, businesses and NIEA, in its capacity as environmental regulator, should there be divergence between the UK and EU in any of the areas discussed above.**
- **The pace of change could create difficulties, particularly if changes can be made quicker at the UK level compared to the EU.**
- **Has NIEA the resources, staff and expertise to essentially work to two different bodies moving at different paces, and potentially in different directions in some areas?**
- **Issues could be exacerbated if NI has a different status, or limited ability (compared to other members) for addressing potential divergence issues at both the EU (through the joint committee[14]) and UK level (through the Joint Ministerial Committee and common framework Working and Governance Groups).**
- **Has the Department performed any risk and impact analysis on the impacts of regulatory divergence on NI's ability to meet Net Zero contributions?**

In conclusion, it appears that one of the key underlying impacts of the Protocol is the fact that NI is essentially caught in the middle between two bodies with the potential to diverge in any direction, and NI appears to have limited right of reply or say in the matter.

[14] RaISe paper The Ireland/Northern Ireland Protocol – overview and potential issues (18/06/2020)http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2017-2022/2020/aera/3320.pdf