



UK Environment Bill and Northern Ireland

Written evidence to the AERA Committee from Northern Ireland Environment Link

Northern Ireland Environment Link (NIEL) is the networking and forum body for non-statutory organisations concerned with the built and natural environment of Northern Ireland. Its 65 Full Members represent over 120,000 individuals, 262 subsidiary groups, have an annual turnover of £70 million and manage over 314,000 acres of land. Members are involved in environmental issues of all types and at all levels from the local community to the global environment. NIEL brings together a wide range of knowledge, experience and expertise which can be used to help develop policy, practice and implementation across a wide range of environmental fields.

This briefing has been prepared by [Nature Matters NI](#) - our public facing campaign created to protect nature in NI and secure the best future for our environment after we leave the European Union (EU).

We welcome the opportunity to provide evidence regarding the UK Environment Bill and the associated implications for Northern Ireland to the AERA Committee.

Summary

We broadly support the Bill as there are many welcome measures. There remains both technical and substantial changes needed to ensure that it provides the much-needed stepwise change to environmental governance in Northern Ireland. We support the Northern Ireland Assembly providing legislative consent to the provisions which extend to Northern Ireland. We do, however, seek a number of changes to the Northern Ireland provisions which we outline in the following briefing.

- The Environment Bill is a vital piece of legislation, hailed as a landmark Bill¹, that must protect and enhance the natural environment.
- There are many welcome measures in the Bill. However, for the provisions to function effectively, some require technical improvements to help to set it on the right track, and for others where significant amendment will be necessary.
- Considered as a whole, the Bill does not achieve what has been promised, namely: a gold standard legislation, global leadership for responding to the environmental crisis, and a world-leading watchdog.
- We welcome the extension of the governance provisions to Northern Ireland which includes environmental improvement plans; principles; and the Office for Environmental Protection (OEP); however, improvements are needed.
- The Minister should, therefore, as a priority:
 - Develop the Environment Strategy for Northern Ireland to function as a long-term environmental improvement plan (as required within Schedule 2). The Minister

¹ Queen's Speech, 2019 (Page. 13) (Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853886/Queen_s_Speech_December_2019_-_background_briefing_notes.pdf)

should also commit to underpinning this strategy by time-bound targets that sufficiently cover terrestrial, air, water, and marine environments. Without these, the governance system in Northern Ireland will be incomplete and less effective.

- Set out a straightforward and substantive commitment to non-regression of environmental law in the Bill within the Northern Ireland provisions (Schedule 2). The duty to apply this, and other environmental principles should also be strengthened to apply to Ministers and public authorities in the development of legislation, policy, and decision-making.
- Seek clarity on i) the timeline for establishing the OEP in Northern Ireland; ii) resource availability to ensure the OEP can effectively function in Northern Ireland²; iii) clarification on interim governance arrangements for Northern Ireland in the time following the transition period but before the OEP is established; iv) seek Assembly oversight on the appointment of the Northern Ireland member of the OEP; and, v) seek clarification on the future cross-border cooperation of the OEP and counterparts in the Republic of Ireland.
- This Environment Bill provides a framework upon which the Assembly should work to ensure the protection and enhancement of the Northern Ireland environment. Going forward, the Stormont Assembly and DAERA should legislate for Northern Ireland specific environment, agriculture, climate change, and fisheries Bills that provide for the protection, enhancement of nature. Subsequent secondary legislation, policies or strategies that come from these Bill (e.g. the Environment Strategy³) should be shaped around the principle of non-regression ensuring that environmental protection is not watered down.
- Catastrophic losses highlighted by the State of the Nature⁴ report reveal the impact of insufficient resourcing has had on the natural world. The recovery of nature will not be achieved in an under-resourced and piece-meal fashion. But if this is funded and legislated for, through a strengthened Environment Bill, the dividends for the environment, our health and wellbeing, the economy and future generations will be priceless by comparison. The Northern Ireland Assembly must therefore commit and legislate for sufficient long-term funding of this Bill.

Context

- Northern Ireland's environment is culturally, economically, intrinsically, and socially valuable. We have a close historic relationship to our precious environment, which is home to species found nowhere else in the UK, supports the livelihoods of farmers and fishermen alike, and enriches our lives.
- We are facing a climate and ecological crisis and Northern Ireland's unique and iconic environment is under significant threat.
- Decades of insufficient environmental governance have led to significant environmental damage. The State of Nature Report (2019)⁵ clearly demonstrates that Northern Ireland's

² When insufficiently funded environmental regulators are unable to sufficiently monitor implementation of environmental law and deploy their enforcement powers (<https://www.unchecked.uk/the-uks-enforcement-gap/>).

³ Northern Ireland Environment Link, and its constituent eNGOs consulted on the DAERA environment strategy (<https://consultations.nidirect.gov.uk/daera-neq/esni/>).

⁴ State of Nature (2019) (Available at: <https://nbn.org.uk/wp-content/uploads/2019/09/State-of-Nature-2019-UK-full-report.pdf>)

⁵ State of Nature: Summary report for Northern Ireland (Available at: <https://nbn.org.uk/wp-content/uploads/2019/09/State-of-Nature-2019-Northern-Ireland-summary.pdf>).

terrestrial, air, water, and marine environments are suffering, with species and habitats being lost at an alarming rate.

- Loss of oversight from EU institutions (e.g. Court of Justice of the EU) risks further weakening environmental protection across Northern Ireland, where the threat of fines from the EU has long provided the greatest deterrent⁶.
- It is more important than ever that we seek to proactively protect, recover, and enhance the environment, ensuring nature is in better condition for future generations. We therefore welcome the introduction of the Environment Bill and its provisions, but strongly recommend both technical and substantive changes to the Bill to ensure it can effectively protect the environment.

The 2020 Environment Bill

1. The Environment Bill (the Bill) was laid at Westminster on the 30th January 2020. This Bill builds on the previous Environment Bill, laid on the 15th October 2019, which did not complete its passage through both Houses, subsequently falling due to the 2019 General Election. The Bill grants the UK and devolved governments powers to develop post-Brexit environmental law and governance mechanisms. Specifically, it:
 - a. Develops a target setting framework for England around four priority areas including air quality; water; biodiversity; and resource efficiency and waste reduction.
 - b. Requires that DEFRA, and DAERA develop and lay before the relevant governments long-term environmental improvement plans, and to review these on a five-yearly basis amending as necessary. For England, this relates to the 25 Year Environmental Plan⁷ that is to be underpinned by targets, and last for a period of no shorter than 15 years. **No such provisions relating to targets or timeframe extend to Northern Ireland.**
 - c. Enshrines five environmental principles including *integration, prevention, precaution, rectification and polluter pays*. The Bill places a duty on Ministers to prepare a policy statement on the need to proportionally apply these principles in the development of policy.
 - d. Requires DEFRA, in the process of introducing new environmental law regulations, to lay before Westminster a statement indicating that in the Ministers view the proposed Bill will not have the effect of reducing the level of environmental protection currently afforded by existing environmental law. **This provision does not extend to Northern Ireland** but will apply to Northern Ireland in relation reserved matters (e.g. recall of motor vehicles Clauses 72-73).
 - e. DEFRA is also required every two years to lay before Westminster, a report on developments of international environmental protection legislation. **This provision does not extend to Northern Ireland.**
 - f. Proposes the creation of a new independent statutory body, the Office for Environmental Protection (OEP), to monitor and report on environmental progress and targets; to monitor, report and advise on changes to environmental law; and to take enforcement action on potential breaches of environmental law by public authorities. **Amended functions of the OEP can be extended to Northern Ireland.**

⁶ See Northern Ireland: Challenges and opportunities for post-Brexit environmental governance (<https://www.brexitenvironment.co.uk/wp-content/uploads/2018/10/BrexitEnvNIREport.pdf>)

⁷ England's Year Plan (Available at: <https://www.gov.uk/government/publications/25-year-environment-plan>)

DAERA powers to give directions on the acceptance, treatment, disposal and delivery of waste (Clause 64); and the interpretation of terminology within this order (Clause 68).

13. Clause 59 amends section 141 of the Environmental Protection Act (1990), granting DEFRA powers to regulate waste imports, exports or transit of such waste. This clause refers to a reserved matter.
14. We welcome the fact that provisions within the Bill focus on waste reduction and resource efficiency, but overall, the measures in the Bill itself are too focused on 'end of life' solutions to waste and recycling. Much more emphasis is needed on reduction and design for resource efficiency, including through reuse, at the design stage.

Part 4 (Clause 71-73) (Air Quality and Environmental Recall)

15. Clause 71-73 gives powers to the DEFRA to recall motor vehicles, and for manufacturers to make DEFRA aware of motor vehicles that do not meet relevant environmental standards.
16. These clauses refer to reserved matters.

Part 5 (Clause 81, 83) (Water)

17. Clause 81 and 83 gives power to DEFRA and DAERA, respectively, to amend legislation relating to regulations that implement the Water Framework Directive. Regulation that can be amended relates to how water quality is measured and the different chemicals and pollutants that must be considered. These provisions provide a technical update to current water regulations i.e. gives powers to DAERA to make amendments previously carried out by the European Commission.
18. These provisions should, however, be strengthened to ensure that targets and standards cannot be weakened without thorough public consultation and independent scientific advice. Commitment to non-regression is further discussed below in paragraph 29.

Part 8 (Clause 125, 131) (Miscellaneous and General Provisions)

19. Clause 125 operates in conjunction with Schedule 19, providing powers to DEFRA to amend UK REACH (Registration, Evaluation, Authorisation and restriction of Chemical) regulations and enforcement.
20. We are concerned about this provision granting DEFRA such sweeping power to amend the main UK REACH text, as this could be used to reduce the level of protection for the public and the environment from hazardous chemicals. Similar to Clauses 81 and 83, Clause 125 should be strengthened to ensure that targets and standards cannot be weakened without thorough public consultation and scientific advice. This commitment to non-regression is further discussed below in paragraph 29.
21. Clause 131 sets out the commencement arrangements for provisions within the Bill. Sub-paragraph 6 sets out that Northern Ireland provisions must be commenced by DAERA, through laying statutory rules, and affirmative resolution from the Northern Ireland Assembly.

Schedule 2 (Improving the Natural Environment: Northern Ireland)

22. Schedule 2 includes provisions on environmental improvement plans (Part 1); a policy statement on five environmental principles (Part 2), and interpretations (Part 3).
23. Part 1 requires DAERA to prepare an environmental improvement plan that sets out steps to be taken (by DAERA and all other Northern Ireland departments) to significantly improve the

natural environment. The environmental improvement plan may also set out steps to improve people's enjoyment of the environment, although this is optional. This plan must be laid before the Northern Ireland Assembly no later than 12 months after the commencement of these clauses. DAERA must monitor the implementation of the environmental improvement plan, publish annual reports on plan implementation that must be laid before the Northern Ireland Assembly, undertake a review of the environmental improvement plan every five years, and if necessary, revise the plan. If after the five-year review DAERA determine the plan must be revised, they must lay before the Northern Ireland Assembly a report stating the changes and reason for. An equivalent report is needed in the case that no revision to the plan is determined by DAERA.

24. The Bill does not require the environmental improvement plans to be time-bound, or underpinned by targets, without which, the governance system in Northern Ireland will be incomplete and less effective⁹. We would also recommend that any review of an environmental improvement plan is undertaken by an independent regulator or statutory nature conservation body (SNCB)¹⁰.
25. Part 2 requires DAERA to prepare a policy statement on how the five environmental principles should be proportionately applied. DAERA must consult on this policy statement, and should as a priority clarify this process, particularly the timing, and what stakeholders are to be consulted. The policy statement must then be laid before the Northern Ireland Assembly.
26. The five principles - *integration, prevention, precaution, rectification and polluter pays*-enshrined within this Bill must function as important guiding principles for the Northern Ireland Assembly, and Northern Ireland Departments as it develops new policies. The integration principle should require environmental protection requirements to be built into policy development, including at early stages, leading to more holistic policy making. The precautionary principle must require policy makers to assess environmental risk through a science-based approach and to take appropriate action depending on the level of uncertainty. Rectification requires environmental damage to be addressed at source to avoid remedying its effects at a later date, while prevention requires action to avoid environmental damage before it occurs. Finally, the principle that the polluter must pay should ensure that policy makers factor pollution costs into their thinking.
27. Part 2 requires wholesale reform because it does not provide an adequate route to ensuring the principles fully function to achieve their aims. Despite listing the principles, the Bill constitutes a significant weakening of the current legal effect of the principles because there is no duty on government ministers to apply the principles, merely to have "due regard" to an, as yet, unpublished policy statement. We are concerned that the Bill is, therefore, relegating these vitally important legal principles to little more than a benign policy statement. What's more, the requirement to regard the principles does not apply to legislation, and decision making and is subject to wide ranging exemptions in Clause 8(4) and (5). These seem to absolve the UK Treasury, Department for Economy, the Ministry of Defence and, indeed, those "spending...resources within government" from regarding the principles in any event.

⁹ Clause 1-6 requires DEFRA to establish targets on four priority areas (air quality; water; biodiversity; and resource efficiency and waste reduction) for a period of no less than 15 years. While we have concerns regarding these clauses in and of themselves, we strongly advocate the need for any long-term environmental improvement plan for Northern Ireland be underpinned by time-bound targets.

¹⁰ Northern Ireland remains the only part of the UK without a SNCB/environmental protection agency. Nature Matters NI strongly supports the establishment of an independent environmental protection agency for Northern Ireland.

28. The Bill also states that the policy statement need only be applied “proportionately” when making policy. This may allow Northern Ireland departments and Ministers to trade off environmental principles against socioeconomic considerations, thus weakening environmental protections.
29. Part 2 should be amended to include a binding target on non-regression so that current standards cannot be weakened or watered down. Without such a binding commitment to maintaining standards, there is no doubt that environmental law will come under sustained deregulatory pressure (e.g. from trade deals). A non-regression provision is a key part of modern environmental law, as contained in a recent update to French Law¹¹ and the draft IUCN Global Pact for the Environment¹².
30. Aarhus rights (public access to environmental information, public participation in environmental decision making and access to justice in relation to environmental matters) have been removed from the draft Bill. DAERA should therefore use Schedule 2 as an opportunity to restate the importance of these rights and the need to ensure they are respected, protected and fulfilled.
31. Part 3 establishes the interpretation of ‘natural environment’ and ‘environmental protection’. The definition of ‘natural environment’ (Clause 9), which includes amongst others, living organisms, land, air and water, risks excluding significant elements of the natural world. The extent to which the marine environment is provided for within Schedule 2 is unclear. Similarly, the historic environment is not explicitly included. For legal clarity, the inclusion of marine, and historic environments should be specified.

Schedule 3 (The Office for Environmental Protection: Northern Ireland)

32. Schedule 3 includes provisions on the OEP’s Northern Ireland functions (Part 1); and amendments to the OEP’s general functions (Part 2).
33. Part 1 requires the OEP, as established within Part 1, and Schedule 1 of the Act, to monitor the implementation of environmental improvement plans; prepare and lay before the Northern Ireland Assembly annual reports on the environmental improvement plans; monitor the implementation of Northern Ireland environmental law and report on such matters (to which DAERA must respond); give advice to any Northern Ireland Department about proposed, and agreed changes to Northern Ireland environmental law or matters relating to the natural environment; receive and investigate complaints regarding alleged breaches of environmental law by public authorities; initiate their own investigations into failure to comply with Northern Ireland environmental law; provide information and advice surrounding potential breaches; and in the case that the breach relates to greenhouse gas emissions, the OEP must inform the Committee on Climate Change of the alleged breach.
34. Part 2 of Schedule 3 makes provisions for the functions of the OEP in Northern Ireland, by amending Act (Chapter 2; Clauses 21-28). Of note within this part is Clause 27 (2) which provides for a dedicated Northern Ireland member to be appointed to the OEP board.
35. We strongly support the extension of the OEP to Northern Ireland, replacing oversight from the EU Commission, and Court of Justice of the EU. However, we have concerns regarding the

¹¹ Law on the Recovery of Biodiversity, Nature and Landscapes (Law No. 2016-1087 of 8 August 2016 on the Recovery of Biodiversity, Nature and Landscapes, NOR: DEVL1400720L.) See also: <https://www.gouvernement.fr/en/reclaiming-biodiversity-nature-and-landscapes> .

¹² IUCN Global Pact for the Environment (Available at: <https://www.iucn.org/sites/dev/files/content/documents/draft-project-of-the-global-pact-for-the-environment.pdf>).

date by which the OEP will be operational in Northern Ireland; resourcing; enforcement power; appointment of Northern Ireland Member.

36. Schedule 3 does not make provisions relating to interim environmental governance arrangements in the time following the transition period. The OEP must be operational by 1st January 2021 within Northern Ireland to avoid a gap in environmental governance. Schedule 1 (Clause 4) gives powers to DEFRA to appoint an interim-chief executive until the OEP becomes operational. We strongly support a similar provision be included relating to an interim Northern Ireland member to.
37. The Minister should seek clarity from DEFRA that work to establish the OEP takes full account of the resourcing, staffing and expertise needed for the body to operate effectively in Northern Ireland.
38. The OEP lacks the enforcement power of the CJEU, whereby it can only provide decision notices (Part 1, Clause 10), and seek a Judicial Review (Part 1, Clause 13) in instances of serious breaches of Northern Ireland environmental law.
39. This appointment of a Northern Ireland board member lacks involvement and oversight from the Northern Ireland Assembly. We would support the inclusion of such a provision.