



Northern Ireland  
Assembly

## Research and Information Service Research Paper

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**Suzie Cave**

# Environment Bill 2019-20

**NIAR 56-2020**

The following paper provides a description of the Environment Bill as it applies to NI.



## Key Points

- The Environment Bill was introduced to Parliament on the 30 January 2020, with 133 provisions and 19 schedules, of which approximately 57 provisions and 9 schedules extend to Northern Ireland (NI).
- Specific provisions on environmental governance, managing waste and water quality apply to NI only.
- Provisions on waste, including producer responsibility, resource efficiency and exporting waste, environmental recall of motor vehicles, and the regulation of chemicals, extend and apply to the whole of the UK (these are shown in the tables in s.3: Summary of the Bill).
- There are also a number of provisions that apply to other parts of the UK, but not NI. However, in many cases these have been identified as areas where corresponding provisions would be within the competence of the NI Assembly (see s.3).
- Section 4 presents some high level general observations; these include:
  - The fact that the Bill is essentially an enabling piece of legislation for further regulations- and whether sufficient scrutiny has been given at the NI level;
  - Whether the Bill was drafted with consideration of the Ireland/NI Protocol; and
  - Funding and enforcement procedures of the Office for Environmental Protection (OEP); this asks mainly whether an OEP in NI will have sufficient resources and powers to perform its functions effectively.
- Section 5 of the paper takes a more detailed view of the provisions that apply to NI where an LCM will be sought. It provides a description of the provisions, and where possible, makes some more specific observation points. Some of the main provisions highlighted in this section include:
  - Schedule 2 on the development of an Environmental Improvement Plan and Policy Statement for NI (s.5.1);
  - Schedule 3 in relation to the establishment, functions and remit of an OEP in NI (s.5.2);
  - Schedules 4 and 5 on producer responsibility measures for specified products and materials (s.5.3);
  - Schedules 6 and 7 on resource efficiency product standards and labelling (s. 5.3.2);
  - Schedule 8 and 9 on deposit return schemes for products and charges on single use plastics (s.5.4);
  - Clause 56- electronic waste tracking, clause 58- hazardous waste, clause 59- shipments of waste (s.5.5);
  - Clauses 83 and 85 on water quality standards (s.5.6);
  - Schedule 19 in relation to transferring EU chemicals regulations (REACH) to the UK and NI (s.5.7).



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## 1 Introduction

This briefing paper provides an overview of the key elements of the UK Environment Bill 2020. The paper focusses on the Northern Ireland (NI) specific components of the Bill, some of which are unique to here, but also covers those wider UK elements which require legislative consent from the Northern Ireland Assembly.

Due to both the complexity of the Bill and the limited time for scrutiny, this briefing paper is not as comprehensive a product as RaISe would normally produce, but the emphasis is on seeking to highlight the potential impacts for Northern Ireland.

It is also recommended that this paper should also be considered in conjunction with the [House of Commons Library Briefing Paper](#) on the Bill, which was published on the 18 February 2020.

It should also be noted that this briefing paper covers the Bill as introduced on 30th January 2020 and as such does not cover any potential amendments that may be made to the Bill as it transits the legislative process within the Houses of Parliament.

## 2 Background to the Bill

The Environment Bill 2019-20 was announced in the previous Queen's Speech on 14 October 2019 and received Second Reading on 28 October 2019 but fell when Parliament was dissolved ahead of the general election. The latest Bill was introduced 30 January 2020. The Bill contains 133 clauses and 19 schedules. The scope of the Bill is far-reaching with the first half providing the legal framework for new environmental governance in the form of an Office for Environmental Protection. The second half focuses on more specific areas for the improvement of the environment. This includes measures on waste and resource efficiency, air quality, water, nature and biodiversity and conservation.

The Bill has not undergone a specific consultation process; therefore, it relies on a number of previously conducted consultations. One of the most contentious parts of the Bill, in relation to the establishment of an OEP, relies on scrutiny performed by the last government on the Draft Environmental (Principles and Governance) Bill 2018. This includes a pre-legislative scrutiny [report](#) by the Environment, Food and Rural Affairs Select Committee and Environmental Audit Committee in the previous parliament, published April 2019. In summary, the scrutiny report concluded:

*The overwhelming narrative from the evidence to our inquiry is that the draft Bill's provisions for principles and governance are not equivalent to the current environmental protections provided by membership of the EU. In some areas they mark a significant regression on current standards.*

*Although the Government has made a real attempt to establish a robust framework for our future environmental governance, it still has some way to go to match its ambition “to ensure the environment is even better protected in future”.<sup>1</sup>*

Further details on the recommendations made can be found from p.52 of the [report](#).

According to the [Delegated Powers Memorandum](#), the development of the policy of the Bill has been based upon a number of previous consultations conducted between 2018-2019. These consultations include:

- [Environmental Principles and Governance after EU \(10 May – 2 August 2018\)](#)
- [Draft Clean Air Strategy \(22 May – 14 August 2018\)](#)
- [Biodiversity Net Gain \(2 December 2018 – 10 Feb 2019\)](#)
- [Protecting and enhancing England’s trees and woodlands \(30 December 2018 – 28 February 2019\)](#)
- [Conservation Covenants \(22 February – 22 March 2019\)](#)
- [Consultation on reforming the UK packaging producer responsibility system \(18 February -13 May 2019\)](#)
- [Consultation on consistency in Household and business recycling collections in England \(18 February -13 May 2019\)](#)
- [Introducing a Deposit Return Scheme \(DRS\) in England, Wales and Northern Ireland \(18 February -13 May 2019\)](#)
- [Single use plastic: banning the distribution and/or sale of plastic straws, stirrers and plastic-stemmed cotton buds in England.](#)

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<sup>1</sup> Environment, Food and Rural Affairs Select Committee and Environmental Audit Committee  
<https://www.parliament.uk/business/committees/committees-a-z/commons-select/environment-food-and-rural-affairs-committee/inquiries/parliament-2017/scrutiny-of-the-draft-environment-bill-17-19/>



### 3 Summary of the Bill

The Bill extends to Northern Ireland (NI) in respect of principles, governance, environmental improvement plans, extended producer responsibility, resource efficiency standards and labelling, recycling, waste crime (including waste tracking), chemicals, and water environment regulatory change.

A significant number of the 133 provisions of the Bill extend to NI (approximately 57); this includes those that extend across the UK to include NI, or as they apply to NI alone. For example, specific provisions on environmental governance, managing waste and water quality apply to NI only. Provisions on waste including producer responsibility, resource efficiency and exporting waste, environmental recall of motor vehicles, and the regulation of chemicals extend and apply to the whole of the UK. The following table highlights these provisions that extend to NI (red), and identifies whether an LCM will be sought. It should be worth noting that there are a number of provisions that extend across the UK to include NI where a LCM will not be sought (eg clause 59-transfrontier shipment of waste, clauses 71-74 on the environmental recall of vehicles).

There are also a number of provisions that apply to other parts of the UK, but not NI. However, in many cases these have been identified in the [explanatory memorandum](#) as areas where corresponding provisions would be within the competence of the NI Assembly. These provisions include:

- Clauses 1-6: environmental targets
- Clauses 7-14: environmental improvement plans
- Clause 15: environmental monitoring
- Clauses 16-18: policy statement on environmental principles
- Clause 20: reports on international environmental protection legislation
- Clause 54: separation of waste
- Clause 57: hazardous waste: England and Wales
- Clause 63 and Schedule 10: enforcement powers
- Clause 65: littering enforcement
- Clause 66: fixed penalty notices
- Clause 67: regulation of polluting activities
- Clause 75: water resources management plans, drought plans and joint proposals
- Clause 76: drainage and sewerage management plans
- Clause 77: authority's power to require information
- Clause 79: electronic service of documents
- Clause 80: water abstraction: no compensation for certain licence conditions
- Clause 86: valuation of other land in drainage
- Clause 88: valuation of agricultural land in drainage district: England and Wales
- Clauses 90-92 and Schedule 14: biodiversity gain in planning

- Clauses 93-94: biodiversity objective and reporting
- Clauses 95-99: local nature recovery strategies
- Clauses 100-101 and Schedule 15: tree felling and planting
- Clauses 102-124 and Schedule 16: conservation covenants
- Schedule 17: application of Part 7 to Crown land
- Schedule 18: consequential amendments relating to Part 7

The following section provides a brief summary of the provisions of the Bill and identifies whether they extend to NI (in red) and whether a LCM is to be sought. Provisions highlighted red are discussed in more detail in Section 5.

### 3.1 Part 1: Environmental Governance

Most of Part 1 of the Bill does not apply to NI (apart from Clause 19). The explanatory memorandum does state that some of these provisions, while they don't extend to NI, would be within the competence of the NI Assembly – these are marked with a \*.

#### Part 1: Environmental Governance

Provision	Description	Extend to NI?	LCM sought here?
Clauses 1-6	Environmental targets: The setting of set long-term targets (of at least 15 years duration) in relation to the natural environment and people's enjoyment of the natural environment; <ul style="list-style-type: none"> <li>▪ require government to set, by October 2022, at least one long-term target in each of the priority areas air quality (including fine particulate matter), water, biodiversity, and resource efficiency and waste reduction.</li> <li>▪ require government to set and meet an air quality target for fine particulate matter in ambient air (PM2.5)</li> </ul>	No - England & Wales only. *	No
Clauses 7-14	Environmental improvement plans: Require the government to have, and maintain, an Environmental Improvement Plan (EIP)	No - England & Wales only*	No
Clause 15	Environmental monitoring: Establishment of measurements for environmental improvement to measure outcomes of the EIP	No - England & Wales only*	No
Clause 16 - 18	Policy Statement on Bills: Require the publication of a policy statement on environmental principles.	No - England & Wales only*	No
Clause 19	Statement about Bills containing new environmental law: requires Ministers to make statements about Bills containing new environmental law to ensure it does not reduce level of protection provided by existing law.	Yes – and across the UK	No

Provision	Description	Extend to NI?	LCM sought here?
Clause 20	Reports on international environmental protection legislation: require the government to undertake a report on environmental legislation across the world on a two yearly basis. This covers significant development in environmental protection legislation of particular countries/territories outside the UK or international organisations. Scope and content to be determined by the Secretary of State.	No – England only	No
Clause 21-40	The Office for Environmental Protection (OEP) <ul style="list-style-type: none"> <li>create a new, statutory and independent environmental body to hold government to account on environmental law and its EIP once the UK leaves the EU.</li> <li>define the scrutiny, complaints and enforcement functions of the OEP and their scope;</li> <li>establish an OEP enforcement process of environmental review in the Upper Tribunal.</li> <li>provision of information to the OEP and its disclosure of information.</li> </ul>	Yes – and across the UK	No
Clause 41-44	Interpretation of Part 1 –defines meaning of “natural environment”, “environmental protection” and “environmental law” in order to determine the remit of the OEP.	Yes - and across the UK	No

### 3.2 Part 2: Environmental Governance NI

Part 2 of the Bill applies to NI only - these are discussed in more detail in S.4

Provision	Description	Extend to NI?	LCM sought here?
Clause 45	Improving the natural environment: NI Gives effect to Schedule 2 and extends provisions for Environmental Improvement Plans (EIPs) and statements on environmental principles to NI.	Yes, NI only	Yes
Clause 46	The Office for Environmental Protection: NI Gives effect to Schedule 3 and extends the application of the OEP to NI.	Yes - and across the UK	Yes

### 3.3 Part 3: Waste and Resource Efficiency

Part 3 is in relation to waste and resource efficiency. Most of it applies to NI.

Provision	Description	Extend to NI?	LCM sought here?
Clause 47 - 48	<p>Producer responsibility obligations.</p> <p>These repeal Producer Responsibility Obligations (NI) Order 1998 and give effect to Schedule 4 and 5.</p> <p>They allow a relevant national authority (DAERA or Secretary of State (SoS)) to make regulations about producer responsibility and enforcement;</p> <p>Making of regulations requiring producers to pay the full net cost of managing their products at end of life</p> <p>Regulations for NI may also be made by the SoS but only with DAERA's consent.</p>	Yes – and across the UK	Yes
Clause 49 – 50	<p>Resource efficiency</p> <p>Gives effect to Schedule 6 and 7</p> <p>Enables a relevant national authority (DAERA or SoS) to set resource efficient product standards and information and labelling requirements, and the enforcement of these requirements.</p>	Yes – and across the UK	Yes
Clause 51	<p>Deposit schemes</p> <p>Gives effect to Schedule 8</p> <p>Allows deposit return schemes to be established by “relevant national authority” (DAERA or SoS), whereby a deposit is included in the price of an in-scope item (such as a drink in a bottle or can) which is redeemed when the item is returned to a designated point.</p>	Yes – and across the UK (not Scotland)	Yes
Clause 52	<p>Charges for single use plastic items</p> <p>Gives effect to Schedule 9</p> <p>Enables DAERA or SoS to set charges to be applied to specified single-use plastic items by sellers of goods or services.</p>	Yes – across UK (not Scotland)	Yes
Clause 53	<p>Charges for carrier bags</p> <p>Allows DAERA to require sellers of single use carrier bags to register with an administrator, applications for registration, amount and payment of registration fees.</p>	Yes – and England only	Yes
Clause 54	<p>Separation of waste</p> <p>Ensure households have a weekly separate food waste collection and that businesses and public bodies present</p>	No- England only*	No

Provision	Description	Extend to NI?	LCM sought here?
	recyclable materials for separate collection and arrange for its separate collection.		
Clause 55	Electronic waste tracking Provides for the electronic tracking of waste in England, Wales and Scotland.	No – rest of the UK	No
Clause 56	Electronic waste tracking: NI Amends the Waste and Contaminated Land (Northern Ireland) Order 1997 Improves the management of waste by enabling DAERA to make regulations in relation to electronic waste tracking.	Yes - NI only	Yes
Clause 57	Hazardous waste: England and Wales	No – England and Wales*	No
Clause 58	Hazardous waste: NI Amends Article 30 of the Waste and Contaminated Land (Northern Ireland) Order 1997 Expands existing powers of DAERA to make regulations in relation to hazardous waste, including introducing civil sanctions.	Yes - NI only	Yes
Clause 59	Transfrontier shipment of waste Allows Defra Secretary of State to regulate the import, export or transit of waste.	Yes – across the UK	No
Clause 60	Regulations under the Environmental Protection Act 1990	Yes – across the UK	No – but yes for Wales and Scotland.
Clause 61	Powers to make charging schemes	No - but applies to rest of UK	No
Clause 62	Waste charging: NI New powers for waste charging schemes for DAERA to recover costs of performing functions including in relation to producer responsibility regimes, fees for exemption applications to waste licensing etc.	Yes – NI only	Yes
Clause 63	Enforcement powers	No – but rest of UK	No
Clause 64	Enforcement powers: NI Amends Waste and Contaminated Land (NI) Order 1997 in relation to improving enforcement powers. Includes new power to allow the Department to ensure that waste can be collected and disposed of when normal processes fail	Yes - NI only	Yes
Clause 65	Littering enforcement Improve the proportionality and fairness of litter enforcement, by issuing statutory guidance on the use of enforcement powers and extending an existing power to set out conditions to be met by all those carrying out enforcement activity.	No – England and Wales only*	No

Provision	Description	Extend to NI?	LCM sought here?
Clause 66	Fixed penalty notices Enable the Secretary of State to make regulations to amend the permitted range of penalties for existing Fixed Penalty Notices	No – England and Wales only*	No
Clause 67	Regulation of polluting activities Allow the Secretary of State to make new powers in relation to polluting activities including prohibiting activities that don't meet criteria determined by the Environment Agency and/or Natural Resources Wales	No - England and Wales only*	No
Clause 68	Waste regulation: amendment of NI Order Amends legislation to allow for the transfer of waste regulation powers from the old Department of Environment to DAERA.	Yes – NI only	Yes

### 3.4 Part 4: Air Quality and Environmental Recall

Part 4 relates to air quality and environmental recall of motor vehicles. Provisions include:

Provision	Description	Extends to NI?	LCM sought here?
Clause 69	Local air quality management framework Strengthening requirements of National Air Quality Strategy and Local Air Quality Management Framework	No - to England and parts to Wales and Scotland	No
Clause 70	Smoke control areas: amendments of Clean Air Act 1993. Amending Part 3 of the Clean Air Act 1993 to enable quicker, simpler and more proportionate enforcement of Smoke Control Areas, a key means by which local authorities can control pollution from domestic solid fuel burning.	No – England and parts to Wales	No
Clauses 71-74	Environmental recall of motor vehicles etc. Providing Secretary of State with powers for mandatory recall, "compulsory recall notices", for vehicles and equipment that do not comply with relevant environmental standards. Puts responsibility on manufacturers and distributors, Also provides for fines to be issued when a minimum recall rate is not met.	Yes - and across the UK	No

### 3.5 Part 5: Water

This section mainly deals with water quality standards in relation to NI.

Provision	Description	Extends to NI?	LCM sought here?
Clauses 75-77	Gives powers to Secretary of State or Welsh Ministers in relation to water resources management plans, drought plans and joint proposals. New duty on sewerage undertakers in England and Wales in relation to drainage and sewerage plans. Gives Water Services Regulation Authority strengthened powers for information gathering when reviewing licences.	No – England and Wales*	No
Clause 78	Provisions for the modification of appointment conditions of water and sewerage undertakers.	No - England Only	No
Clause 79-80	Enabling provisions allowing for the use of electronic service of documents under and no compensation for certain water abstraction license conditions.	No – England and Wales*	No
Clause 81	<b>Water Quality: powers of Secretary of State.</b> Through regulation - DEFRA Secretary of State can make provision about the substances to be taken into account in the assessment of chemical status of water bodies This will allow updates to domestic legislation implementing the Environmental Quality Standards Directive and relates to the Water Framework Directive too. DEFRA can only exercise these powers with consent from DAERA.	Yes – across UK	Yes
Clause 82	Gives same powers in clause 81 to Welsh Ministers.	No - Wales only	No
Clause 83	<b>Gives the same powers in clause 81 to DAERA for NI.</b>	Yes - NI only	Yes
Clause 84	Solway Tweed river basin district: power to transfer functions.	No – England and Scotland only.	No
Clause 85	<b>Water quality: interpretation</b> Definitions used in clauses in this Part.	Yes - across UK	Yes
Clauses 86-89	Land drainage Valuation of other land and agricultural land in a drainage district in England and or Wales by Secretary of State or Welsh Ministers.	No - England and Wales - Clause 87 Wales only (clauses 86 and 88*)	No

### 3.6 Part 6: Nature and Biodiversity

This part of the Bill does not extend to NI. However, the Explanatory Memorandum (EM) states that the provisions are within the competence of the NI Assembly (marked with a \*).

Provision	Description	Extend to NI?	LCM sought here?
Clause 90-92	Biodiversity gain in planning These clauses give effect to Schedule 14 Amends the Town and Country Planning Act 1990 in England to make it a condition for the grant of planning permission, in certain cases, that the development will deliver a 10% gain in biodiversity.  Provisions for a public biodiversity gains sites register.  Allows the Secretary of State to set up a system to sell biodiversity credits to the habitat compensation market.	No - England & Wales only*	No
Clause 93-94	Biodiversity objective planning Strengthens requirement of public authorities to assess how they conserve and enhance biodiversity and to make reports on their actions.	No – England & Wales only*	No
95 -99	Local nature recovery strategies Requires regulations for the preparation, and content of local nature recovery strategies by a “responsible authority” appointed by the Secretary of State. Secretary of State must provide required information to the authority for the production of such strategies.	No – England & Wales only*	No
100-101	Tree felling and planting Allows for the creation of a local land charge where illegal tree felling taken place or a licence not complied with. Also requires local highway authorities to consult the public before felling trees	No - England & Wales only*	No

### 3.7 Part 7: Conservation Covenants

Provision	Description	Extend to NI?	LCM sought here?
Clause 102-124	Conservation Covenants This provides for the production of conservation covenants: an agreement between a landowner and a “responsible body” (clause 104), in writing signed by the parties. It must be of a “qualifying kind”, have “conservation purpose” and is intended to be for the public good. It also provides for the enforcement for the breach of any obligation under a conservation covenant.	No - England & Wales only*	No



### 3.8 Part 8: Miscellaneous and General Provisions

Provision	Description	Extend to NI?	LCM sought here?
Clause 125	Amendment of REACH Gives effect to Schedule 19: DEFRA Secretary of State to make regulations to amend two pieces of retained European Union law relating to the regulation of chemicals. The devolved administrations must grant their consent before any such regulations are made and the Secretary of State must consider any request by a relevant devolved authority for the SoS to make regulations under this schedule.	Yes – across UK	Yes
Clause 126	Consequential provision Allows the Secretary of State and DAERA to make regulations for further consequential amendments, which arise from this Bill, or regulations made under it. Regulations may amend, repeal or revoke an enactment. Any regulations that amend or repeal primary legislation are subject to the affirmative procedure. Any other regulations under this clause are subject to the negative procedure.	Yes	No
Clause 127	Regulations Regulations may make supplementary, incidental, transitional or saving provision. They may make different provision for different purposes or places. Regulations to be made by statutory instrument or statutory rule (Northern Ireland only). Regulations to be subject to negative or affirmative resolution.	Yes	No
Clause 128	Crown application	Yes	No
Clause 129	Financial provisions E.g., OEP set up and resourcing.	Yes	No
Clause 130	Extent Annex A provides more detail in relation to extent	Yes	No
Clause 131	Commencement Part 8 comes into force on day the Bill is passed. Sections 48 -53 on producer responsibility, resource efficiency, deposit schemes, single use plastic, carrier bags – come into force 2 months from the day the Act comes into force. This applies to England, Wales and Scotland only. Sections 55 (electronic tracking of waste), 63 (enforcement powers), 67 (regulation of polluting powers), 80-82, 84, 85 (water abstraction and water quality), and 89 (disclosure of HMRC information) – come into force 2 months from the day the Act comes into force.	Yes	No

Provision	Description	Extend to NI?	LCM sought here?
	<p>The following provisions come into force on a date appointed by DAERA:</p> <p>Part 2 (environmental governance:NI); section 47-sch 4 and 48-sch 5 (producer responsibility); 49 -sch 6 and 50 -sch 7 (resource efficiency); 51- Sch 8 (deposit schemes); 52- sch 9 (charges for single use plastic items); 53 (carrier bag charge); 56 (electronic waste tracking: NI); 58 (hazardous waste: NI); 62 (waste charging: NI); 64 (enforcement powers: NI) 68, 81 and 83 (water quality: powers of SoS and NI Department); 125 – sch19 para 2.</p> <p>The following provisions are to come into force on a date appointed by SoS:</p> <p>Part 1 (environmental governance), Part 6 (nature and biodiversity). Part 7 (Conservation Covenants) section 54 (separate collection of waste), 59 (transfrontier shipments of waste), 66 (fixed penalty notices), 69 and sch 11 (local air quality management framework), 70 and parts 1 and 3 of sch 12 (smoke control areas), 71-74 (recall of motor vehicles).</p>		
Clause 132	<p>Transitional or saving provision</p> <p>DAERA may make transitional or saving provision to parts under clause 131 that it can appoint their enforcement date .</p> <p>Provides DAERA with powers to make provision under 131 by regulations or an order.</p>	Yes	No
Clause 133	Short title	Yes	No

## 4 General observation points

### Primary legislation V regulation

The Bill is essentially a piece of enabling legislation for the production of regulations, some of which are to amend primary legislation. According to the Delegated Powers Memorandum, the Bill contains 17 powers to amend primary legislation through secondary legislation. For example, with respect to NI, a large part of the waste section requires amendments to the Waste and Contaminated Land Order and the introduction of new powers for waste tracking, deposit return schemes, and single use plastics. These are all subject to the affirmative procedure. However, in some cases it is not clear whether DAERA or the Secretary of State (SoS) is responsible for making the regulations, e.g. for producer responsibility (Schedules 4-5), resource efficiency (Schedules 6- 7) and charges for single use plastics (Schedule 9). See S.4 of this paper for more detail.

Many of the policy principles forming the Bill were consulted on at the UK level while NI was without an Executive e.g. deposit return scheme, producer responsibility.

Some parts of the Bill apply across the UK to include NI where regulations are to be produced by the Secretary of State, and a LCM will not be sought. These include transfrontier shipment of waste -clause 59 (where it has been suggested a ban on plastic exports could be introduced), and the recall of vehicles not compliant with environmental standards (clause 71-74). Having NI specific legislation in these areas that undergoes the normal consultation and scrutiny process may be worth considering.

**Consideration/observation points:**

- **Does affirmative resolution give sufficient scrutiny, especially for amendments to primary legislation and the introduction of new charging schemes such as single use plastics?**
- **In general, where would affirmative resolution take place - Westminster or the NI Assembly? In some of the clauses this is not clear.**
- **Is the Department satisfied with the fact that some of the provisions extend to NI but a LCM will not be sought?**
- **Some of the provisions don't extend to NI, but have been identified as being within the competence of the NI Assembly (listed at the start of this Section and marked with a \* in the tables above ) e.g. environmental targets, separate collection of waste, biodiversity gain in planning considerations, conservation covenants. Is the Minister planning to bring legislation forward in these areas down the line and by what means?**
- **The setting of new environmental targets in relation to the natural environment under Part 1 will include targets for priority areas: air quality (including fine particulate matter), water, biodiversity, and resource efficiency and waste reduction. However, these provisions also do not extend to NI, but are within the Assembly's competence. Is the Minister consider bringing forward similar provisions, including ones for climate change and ones in line with [DEFRA's latest statement](#) on the ban on household burning of coal and wet wood?**
- **Reports on international law (clause 20) do not extend to NI – however, will such reports have a statutory nature and require the UK to keep up to date with developments outside the UK – such as EU developments?**
- **Would some of the provisions in the Bill be best placed in primary legislation, similar to the approach taken with the Agriculture Bill in Scotland and Wales?**
- **In fact, it would appear that the governments in Wales and Scotland are considering taking their own arrangements for the governance aspects of the Bill.**

### **Ireland/Northern Ireland Protocol**

The Ireland/Northern Ireland [Protocol](#) is a key component of the [Withdrawal Agreement](#) negotiated between the UK and EU in October 2019. In effect the Ireland/Northern Ireland Protocol is the means by which the free movement of goods on the island of Ireland has been secured regardless of whether the UK and EU successfully negotiate a free trade deal.

Amongst other things, the Protocol effectively binds Northern Ireland to a series of EU regulations as they relate to a range of environmental standards surrounding, for example, products, goods and substances, waste and packaging etc. Adherence to these regulations is how Northern Ireland will be able to access the EU single market, and Annex 2 of the Protocol, which is substantial, lists all of the requirements. It is useful to note here that Northern Ireland is also required to automatically adopt any changes to the EU regulations listed in Annex 2.

In addition, any new EU regulations as they relate to environmental standards, can be added to Annex 2, provided this is agreed by the Joint Committee which will oversee the operation of the Ireland/Northern Ireland Protocol. The Joint Committee will be made up of representatives from the EU and UK but it remains unclear at this time how it will function.

Whilst the Joint Committee will have a key role to play in the operation of the Protocol, the European Commission and European Court of Justice (CJEU) will ultimately have responsibility and powers to ensure that Northern Ireland adheres to the rules it is required to.

### **Consideration/observation points:**

- **Many of the areas under the Bill have been identified by the Cabinet Office in the [Revised Framework Analysis](#) (April 2019) as areas for a “common framework” e.g. natural environment and biodiversity, waste management, air quality. However, consideration may be needed on how the Ireland/NI Protocol might affect the ability to create “common frameworks” post transition (also see s.5.7 in relation to REACH provisions within the Bill).**
- **Have the proposed provisions within the Environment Bill, whether they are UK wide or Northern Ireland specific, been tested to see if they are compliant with the Ireland/Northern Ireland Protocol?**
- **If the Protocol limits or restricts some of the proposed provisions within the Bill does this enhance the argument for a Northern Ireland Environment Bill?**
- **Has any consideration been given to the potential impacts of regulatory divergence between GB and the EU, with regards to the provisions within the Bill? Northern Ireland could be particularly vulnerable here, particularly if the**

scope of Annex 2 of the Protocol expanded or if GB environmental legislation changed.

- **What concerns does DAERA have in relation to an ability to influence any potential changes to Annex 2 of the Protocol?**
- **In terms of enforcement, will NI be subject to the powers of the European Commission and CJEU for Annex 2 of the Protocol, and the OEP for anything under UK and NI environmental law?**
- **Is the OEP Protocol compliant in relation to NI? In addition, who takes precedence should NI find itself non-compliant with the Protocol by implementing UK law that has maybe been subject to divergence post transition?**
- **In light if this there is no mention of the Protocol in clause 19 on the non-regression Statement – how will this apply to NI?**
- **How will the OEP interact with the European Commission and CJEU?**
- **Reports on international law (clause 20) do not extend to NI. However, will the Secretary of State consider in these reports, EU legislation that applies to NI under the Ireland/NI protocol? This is particularly the case for legislation listed under the Protocol that is tied to international agreements such as shipments of waste under the [Basel Convention](#) and OECD Decisions rules<sup>2</sup>. Would the Minister adopt a similar reporting approach in NI?**

### **Funding**

The Bill states that costs associated with the Bill include, and are not limited to:

- The establishment and running of the OEP.
- Additional activities for public bodies, such as local authorities; arms-length bodies (for example, Environment Agency and Natural England); other government departments (additional costs for the justice system and additional responsibilities for policymakers across government); and DEFRA.
- Additional resources to support the delivery of activities, such as enforcement officers and policymakers.
- Infrastructure and other assets, such as estates costs for the OEP, and enhanced IT systems to deliver certain measures.

The UK Government has stated:

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<sup>2</sup> For more detail see HM Government, [Independent review into serious and organised crime in the waste sector](#), November 2018, p. 9

*The Bill provides for the OEP to be established as a non-Crown body corporate funded through grant in aid, giving it flexibility as to how it expands its resources within broad parameters agreed with Defra. In order to ensure its financial independence, the OEP will be provided with a five year indicative budget which is formally ring fenced by HM Treasury within any given Spending Review period.*

*This safeguard provides the OEP with longer term certainty of resources and mitigate risks of Defra restricting funding due to other financial pressures because HMT approval would be required in order to redistribute any agreed funding away from the OEP. Funding delivery will follow usual administrative practice and be made public through a separate line in Defra's Estimate, with further detail in the OEP's own annual financial report, enabling Parliamentary scrutiny.*

*We recognise that during the initial set-up phase additional costs are likely to be incurred, and we intend to facilitate adequate funding during this phase. We also intend to review the first five year indicative budget during the first two years of operation in order help assess what will be a more 'steady-state' annual operational cost of the OEP.<sup>3</sup>*

For more information on funding, refer to the [HoC Library Briefing paper on the Draft Bill](#) p. 53-54.

#### **Consideration/observation points:**

- **How much of the funding will go towards the OEP's operation in NI?**
- **Will any funding come from the block grant?**
- **Will NI have to contribute to the funding of the OEP?**
- **Will the OEP have a branch based in NI?**
- **Who will be responsible for the resources for the set up and running of the OEP in NI?**
- **Will the OEP have revenue-generating abilities in NI?**
- **Does the Department have the resources for all the registrations, administrations, and compliance schemes etc. to be set up under the Bill?**

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<sup>3</sup> EFRA Committee, Pre-legislative scrutiny of the Draft Environment (Principles and Governance) Bill: [Government Response to the Committee's Fourteenth Report of Session 2017–19](#), 17 Oct 2019, p6-7

**E.g. administration and registration of carrier bags, set up and monitoring of the electronic tracking system for waste etc.**

- **Since DAERA's 2015/16 consultation on environmental governance, has the Department run a more recent analysis of costs associated with the set-up of an IEPA or an OEP in NI?**
- **Should an OEP not extend to NI – can some of this funding be allocated to NIEA/IEPA?**

### **Enforcement**

Post-transition, the role of the European Commission and the Court of Justice ([CJEU](#)) of the European Union in holding the UK Government to account will instead be played by the OEP. However, it appears that the only means of enforcement by the OEP is through domestic judicial review (JR). It does not appear to have any fine/infraction powers. The domestic JR process has been described as a lengthy and costly process, with concerns expressed, in a [House of Lords Select Committee report](#) (2017), regarding its ability to replace the [CJEU](#).

According to the [House of Commons Library briefing](#) on the draft 2019 Bill, some stakeholders expressed concern about the lack of the OEP's ability to issue fines. However, the Government's response was that it did not intend to grant such powers for the following reason:

*We do not propose that the OEP should have the power to issue fines against the government on the basis that public authorities have a duty to comply with court judgments under the Rule of Law. This forms part of the UK constitution and is made explicit in the Ministerial Code. Failure to comply with a court order can also lead to the responsible person being held to be in contempt of court, as noted by UKELA: 'Failure to comply with a court order following action by the OEP would be contempt of court (as would a failure to comply with an order or undertaking in a judicial review) and the court would have inherent powers to fine, sequester or imprison if need be.'*

*Fines could be counterproductive if they were to significantly reduce a department's / authority's budget and resources, and so further limited their capacity to fully implement environmental law due to resource limitations. Fines collected in domestic courts are also typically directed to the consolidated fund, which would amount to a recycling of public funds. It is also worth noting that although the power to impose fines is available to the*

*CJEU, it is very rarely used in practice and has never been used in relation to the UK.<sup>4</sup>*

### **Consideration/observation points:**

- **Is enforcement by JR is an efficient and cost effective way to hold government to account in NI? While DEFRA have indicated that the CJEU rarely used its powers to issue fines, was it more the threat of them that made the system more effective?**
- **Will an OEP run alongside NIEA?**
- **Could NI potentially face enforcement from a number of bodies e.g. : the OEP in relation to complying with “relevant environmental law”; and the CJEU in relation to complying with legislation listed in the EU Ireland/NI Protocol?**
- **Should the Minister decide to introduce an Independent Environmental Protection Agency (IEPA) in NI – what would happen to the OEP? Would it run alongside an OEP or would the IEPA take over the roles of the OEP?**
- **What about potential overlap with the NI Public Service Ombudsman who also deals with complaints about public authorities in NI? How would this be addressed?**

**See 5.2.6 of this paper for more detail.**

## **5 Overview of NI Provisions**

The following section focuses on the provisions that apply to NI where an LCM will be sought (these have also been highlighted in the tables in s.3 of this paper. This section provides a description of the provisions, and where possible, consideration/observation points have been made.

### **5.1 Improving the natural environment NI**

The following information box provides detail on NI’s biodiversity as it relates to the definition of “natural environment” under the proposed Environment Bill (the Bill) Sch 2 Part 3:

*In this Part the “natural environment” means—*  
*(a) plants, wild animals and other living organisms,*  
*(b) their habitats,*

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<sup>4</sup> DEFRA, [Environmental Principles and Governance after the UK leaves the EU, Summary of responses and government response](#), 19 December 2018, p27



*(c) land (except buildings or other structures), air and water, and the natural systems, cycles and processes through which they interact.*

### **State of our natural environment**

According to DAERA's briefing to the Committee (6 February 2020):

*The fourth UK Habitats Directive report (Article 17 report) (2019) indicates that the majority of Northern Ireland habitats continue to be in 'unfavourable-bad' conservation status, with only 1 out of the 49 priority habitats at favourable status. Northern Ireland priority species are faring better at this stage, with 12 out of 28 deemed to at favourable conservation status.*

*The latest UK Birds Directive report (2019) indicated that 34% of species' population sizes are increasing, 20% stable, while 41% are declining. Fewer species are increasing in the short-term, indicating recent overall negative trends.*

*The report demonstrated that the abundance and distribution of NI's species has declined since 1970, and that this decline has continued to present.*

#### **Key points:**

- Bird populations are considered to be a good indicator of the broad state of the wildlife and the countryside. Between 1994 and 2017, the wild bird population has increased by 49%. However, it should be noted that the underlying bird populations are not all increasing.
- Between 1994/95 and 2016/17 the total wetland bird population is estimated to have decreased by 12%.
- The Green Flag Award is a national bench marking standard for parks and green spaces. In 2018/19, 71 parks and green spaces achieved Green Flag Award status, compared with 60 in 2017/18.

For more detail see: [NI Environmental Statistics Report 2019](#)

## **Clause 45 and Schedule 2**

Clause 45 introduces Schedule 2, which includes provision for environmental improvement plans and policy statements on environmental principles in Northern Ireland.

### 5.1.1 Schedule 2 Part 1: Environmental Improvement Plan for NI

This requires the Department to produce an “environmental improvement plan” to “significantly improve the natural environment” (see s. 2.1 of this paper for a definition). It must include the steps the Department and any other NI department will take to ensure this. The Department has 12 months from the Bill coming into force to lay this plan before the NI Assembly. The Department must also prepare an annual report on the Improvement Plan – this must consider whether the natural environment has improved during the 12 month period of the plan being published. A review of the Improvement Plan must be completed within five years of it being published. Any revised Plan must be laid before the Assembly.

The new Environment Strategy for Northern Ireland (consultation closed at the beginning of February) has been suggested as the first one of these plans for NI. The UK’s 25 Year Environment Plan has been suggested as the first one for England.

The Department must have in place the arrangement it sees necessary for obtaining data in order to monitor whether the natural environment is improving in accordance with the Improvement Plan.

*“While we have a good deal of environmental information in the Environmental Statistics Report and other published data, we know there are significant gaps in our understanding of the state of the environment and need to look critically at the available data and consider whether we are measuring the right things and using the appropriate metrics to do so.”*

DAERA: Environment Strategy Consultation document

#### **Consideration/observation points:**

- **Will an Improvement Plan be target or outcomes based? Will it be in line with the PfG?**
- **Does the Department know, will this require any new arrangements for obtaining the required data under this section?**
- **Does the Department have the necessary resources, personnel, expertise and equipment to collect, monitor, analyse and share findings of required data?**

- Did the new Environment strategy [consultation](#) take the requirements of an environmental improvement plan under the Bill into consideration?
- If not, will the Department produce a new draft Strategy for public consultation, as part of the requirements under this Bill?
- What about the biodiversity strategy to 2020 (published back in 2015) – will this bring an update under the Strategy?

### 5.1.2 Schedule 2 Part 2: Policy Statement on environmental principles

The Department must prepare a policy statement on “environmental principles”.

<b>“Environmental principles”</b>
<p><i>(a) the principle that environmental protection should be integrated into the making of policies,</i></p> <p><i>(b) the principle of preventative action to avert environmental damage,</i></p> <p><i>(c) the precautionary principle, so far as relating to the environment,</i></p> <p><i>(d) the principle that environmental damage should as a priority be rectified at source, and</i></p> <p><i>(e) the polluter pays principle.</i></p> <p style="text-align: center;">(Sch 2 Part 2)</p>

The statement must explain how the environmental principles should be interpreted and applied by NI departments or Ministers of the Crown in making policy for NI. The Department must ensure the statement will contribute to environmental protection and sustainable development.

<b>Definition of environmental protection</b>
<p>Under Schedule 2 Part 3 it means any of the following—</p> <p><i>(a) protection of the natural environment from the effects of human activity;</i></p> <p><i>(b) protection of people from the effects of human activity on the natural environment;</i></p> <p><i>(c) maintenance, restoration or enhancement of the natural environment;</i></p> <p><i>(d) monitoring, assessing, considering or reporting on anything in paragraphs (a) to (c).</i></p>

The Department must consult other NI departments, Secretary of State and other persons as it considers appropriate, and lay a draft version of the Statement before the NI Assembly for 21 sitting days. After this, a final form may be laid before the Assembly again and come into force.

Paragraph 8 of Sch 2 states:

*(1) A Northern Ireland department must, when making policy, have due regard to the policy statement on environmental principles currently in effect.*

*(2) A Minister of the Crown must, when making policy so far as relating to Northern Ireland, have due regard to the policy statement on environmental principles currently in effect.*

**Consideration/observation points:**

- **Will consultation on the draft Statement include public consultation under the requirements of para 7 (2) of Sch2: “such other persons the Department considers appropriate”?**
- **As this overarching statement forms policy in NI, will the Department need to ensure that it (or a Minister of the Crown) takes “environmental principles” that relate to EU requirements (particularly under Annex 2 of the Ireland/NI Protocol) into consideration?**

## 5.2 OEP: (Office for Environmental Protection: Northern Ireland)

### Environmental Governance in NI

The issue of environmental governance in NI has been under discussion for a number of years with an initial consultation in 2011, and again in 2015/16. In the latest [2015/16 consultation](#) four options were presented:

- Option A: Retain status quo
- Option B: NIEA functions transferred to independent agency
- Option C: Full reorganisation
- Option D: A regulation orientated independent agency

The most recent discussion document was distributed to around 70 stakeholders - 37 provided a response. 70% of respondents were supportive of an independent environment agency. In general, Option C (full re-organisation) was the most popular. Some suggested Option D (a regulation-orientated organisation) as an interim measure. Those against an independent agency suggested Option A, the status quo.

Clause 46 and Schedule 3 states the functions of the OEP in NI. These include the following:

### 5.2.1 Monitoring and reporting on the Department's environmental improvement plans (Sch 3 para 1).

Reports on progress must be laid before the Assembly and published. Any progress report must be laid within 6 months of the Department's annual report on its environmental improvement plan (under Sch 2). The Department must respond to the OEP's progress report (within 12 months of it being laid) and lay the response before the Assembly.

### 5.2.2 Monitoring and reporting on environmental law (Sch 3 para 2).

The OEP must monitor the implementation of NI environmental law, and report on any concern. Reports must be laid before the Assembly and published. Within three months of this report being laid, the Department must respond and lay its response before the Assembly and publish it.

### 5.2.3 Advising on changes to NI law (Sch 3 para 3).

The OEP must give advice to any NI department about proposed changes to NI environmental law, or any other matter relating to the natural environment. The NI department may specify matters that the OEP is to take account of in giving its advice. This advice may be laid before the Assembly at the discretion of the relevant NI department.

#### **Environmental law**

Essentially, the scope of the OEPs scrutiny, advice, complaints and enforcement functions in NI is determined by the definition of environmental law.

**UK environmental law** – this means any legislative provision under UK law that is mainly concerned with environmental protection (as defined above) and is not a devolved legislative provision (a legislative provision contained in, or an instrument made under, NI legislation or contained in an Act of NI Assembly.) According to the explanatory memorandum:

*the OEP will not have a statutory function to assess compliance with purely international environmental law. Rather, its remit will be limited to enforcing UK legislation that falls under the definition of environmental law, including legislation that implements international commitments. (EM p.57)*

**NI environmental law** – this means any legislative provision contained in, or an instrument under, NI legislation including any Acts of the Assembly. It does not include excepted matters (disclosure of or access to information, the armed forces/national security, taxation, spending, government allocation of resources).

The definition applies to a whole or any element of an Act or regulation that is considered to be “mainly concerned” with environmental protection. According to the explanatory memorandum, this may include elements of planning legislation in relation to environmental impact assessment and strategic environmental assessment.

It will be for the OEP to decide whether it considers a provision to fall under the definition on a case-by-case basis.

However, the Department may, by regulation, specify whether a legislative provision is, or is not, within the definition of “NI environmental law”. It must seek consultation with the OEP and must be laid before the Assembly.

**“Relevant environmental law”**

For NI public authorities it means **UK environmental law** or **NI environmental law**.

For a person or body carrying out a devolved function it means **NI environmental law**. (Sch3 para 5)

**Climate Change**

According to the [House of Commons Library Briefing](#), the explanatory notes to the previous draft Bill explained that climate change had been excluded from the enforcement role of the OEP. It was not included in the definition of “environmental law” which provided the enforcement scope and remit of the OEP. The reason for its exclusion was that by already being covered in the Climate Change Act 2008, it therefore would overlap with the remit of the Committee on Climate Change (CCC). However, stakeholders (including the House of Commons EFRA Committee) raised concerns with this and felt the CCC did not have the necessary enforcement powers.<sup>5</sup> In light of this, the UK Government removed climate change’s exclusion from the definition, therefore including it in the remit of the OEP. The [policy statement accompanying the Bill](#) stated:

*To ensure the UK continues to drive forward ambitious action to deal with climate change as we leave the EU, we are bringing all climate change legislation (including carbon budgets) within the enforcement remit of the Office for Environmental Protection. This will ensure there is no governance gap in relation to climate change legislation. The Office for Environmental Protection will work closely alongside our world-leading Committee on Climate Change on these issues, ensuring that their individual roles complement and reinforce each other.<sup>6</sup>*

<sup>5</sup> House of Commons Library Briefing on Environment Bill 2019-20 (p.28)  
<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8824>

<sup>6</sup> Gov.uk policy paper: [Environment Bill 2020 policy statement](#), 30 January 2020

**Consideration/observation points:**

- **What exactly is UK law and NI law and are they the same or different?**
- **Does environmental law include EU law that NI must adhere to, particularly EU law listed under Annex 2 to the Ireland/NI Protocol?**
- **Does environmental law include climate change i.e. will the OEP have a role over the enforcement of climate change legislation?**
- **Why is anything in relation to disclosure of or access to information excluded from the definition of NI environmental law?**
- **If the Department may specify through regulation what falls within the definition of “environmental law”, does this give the Department the power to exclude or include certain provisions under the OEP’s remit as it may wish albeit through draft affirmative scrutiny?**
- **Would the definition of “NI environmental law” mean the OEP’s remit could extend to other remits, such as planning legislation under DfI should it be considered to be “mainly concerned” with environmental protection?**
- **Will there be a definition for “mainly concerned” to ensure it is applied consistently?**
- **Have other NI Departments been consulted on the Bill, especially in relation to the role of the OEP?**
- **Could NI potentially face enforcement from a number of bodies e.g.: the OEP in relation to complying with “relevant environmental law”; the CCC with climate change under the Climate Change Act 2008; and the CJEU in relation to complying with legislation listed in the EU Ireland/NI Protocol?**
- **Does this give reason for consideration of NI specific climate change legislation and a NI Independent Environmental Protection Agency (IEPA) so that enforcement could potentially be done under the one body?**

**5.2.4 Complaints about relevant public authorities (Sch 3 para 6).**

A person may complain to the OEP if they believe that a public authority has failed to comply with relevant environmental law.



**Northern Ireland public authority means....**

(a) a Northern Ireland department, or  
 (b) a person carrying out a Northern Ireland devolved function (including an implementation body carrying out such a function) that is not a function in connection with proceedings in the Northern Ireland Assembly or a function of any of the following persons—

- (i) the OEP;
  - (ii) a court or tribunal;
  - (iii) the Northern Ireland Assembly.
- (Sch 3 para 6)

**Failing to comply means..**

(a) unlawfully failing to take proper account of relevant environmental law when exercising its functions;  
 (b) unlawfully exercising, or failing to exercise, any function it has under relevant environmental law.

(Sch 3 para 4)

If the alleged authority has an internal complaints procedure, this should be utilised first before using the OEP. This is to allow a matter to be resolved informally in the first instance if possible.

**Consideration/observation points:**

- **Do all authorities have an internal complaints procedure?**
- **Does this put those authorities with an internal complaints procedure at an advantage with the option for informal resolve?**
- **Has consideration been given as to how objective an authority's internal complaints process would be over one conducted by an independent OEP?**
- **Does the definition of "relevant environment law" mean NI public authorities will need to comply with UK environmental law?**
- **Parts of this Bill do not extend to NI. Does this mean NI must comply with these areas as they apply to UK law? E.g. biodiversity gain in planning (clauses 93-94).**

**5.2.5 Investigations (sch3 para 7)**

The OEP may investigate complaints if it feels a public authority has failed to comply with relevant environmental law, and if it considers it to be a serious failure. However, an authority may carry out an investigation even if it hasn't received a complaint, but has information indicating a serious failure of compliance.

The OEP must notify the relevant authority of the start of the investigation and the relevant NI department (if the complaint is not against a NI department). It must produce a report, unless it decides to take no further steps, or apply for judicial review.

The report must set out the OEPs conclusion and reasons for it and any recommendations.

**Consideration/observation point:**

**The Bill does not appear to define what a “serious failure” is. Will this be subjective or defined by the OEP down the line?**

The OEP may give:

- An **information notice** to a public authority – if it has grounds to suspect the authority has failed to comply with relevant environmental law. This notice describes an alleged failure and requests the authority to provide specified information relating to the failure.
- A **decision notice** – if it is satisfied that the authority has failed to comply with relevant environmental law. This notice describes the failure of the authority and sets out steps the authority should take to include remedying, mitigating or preventing reoccurrence of the failure.
- An information notice must be given before a decision notice can be issued.

### **5.2.6 Review application or Judicial Review (sch3 para 12 -14)**

The OEP may apply for judicial review (JR) against a public authority in relation to a decision notice and the authority’s failure to comply with environmental law. An application for review may be made to the High Court.

Where the High Court finds that a public authority has failed to comply with environmental law (and has not been overturned by appeal), the public authority must publish a statement setting out its future actions, within 2 months of the proceeding’s conclusions.

However, the OEP may short circuit the JR application process regardless of whether or not it has issued an information or decision notice to a public authority. This may happen if the OEP feels a serious failure to comply with environmental legislation has occurred and it is needed to prevent or mitigate serious damage to the natural environment or human health. Again, if found to have failed to be compliant, the public authority must publish a statement in line with the above. The OEP may also intervene in an application for a JR brought by a third person or body against a public authority.

The OEP must provide a copy of an application for JR to the relevant department, or invite the department to participate if it is not already party to it.

### Domestic JR

The House of Lords EU sub-committee on Energy and the Environment concluded in its [Report: Brexit: environment and climate change](#) (p.27) that:

*“The evidence we have heard strongly suggests that an effective and independent domestic enforcement mechanism will be necessary, in order to fill the vacuum left by the European Commission in ensuring the compliance of the Government and public authorities with environmental obligations. Such enforcement will need to be underpinned by effective judicial oversight, and we note the concerns of witnesses that existing domestic judicial review procedures may be inadequate and costly”.*

### **Environmental review**

As mentioned in the House of Commons Library briefing, in response to concerns about the OEP’s lack of ability to compel legal action against breaches of environmental law, the UK Government introduced “environmental review” to the Bill. This gives the OEP powers (Clause 35) to bring legal proceedings against a public authority through a mechanism in the Upper Tribunal known as “environmental review”. In the Government’s response to the scrutiny of the 2019 draft Bill, it stated:

*We agree, however, with a number of points raised by the Committee in this area and have made changes to the Bill, notably regarding giving the OEP recourse to a new environmental review mechanism in the Upper Tribunal (rather than the First Tier Tribunal, the Upper Tribunal being more senior). The approach will have a number of benefits compared to that of a traditional judicial review in the High Court. In particular, taking cases to the Upper Tribunal is expected to facilitate greater use of specialist environmental expertise.<sup>7</sup>*

That being said, it is not clear from the Bill if and how this mechanism will be applied in NI. The operation of the OEP and its enforcement powers in NI are explicitly detailed in Schedule 3. However, there is no mention of environmental review in it.

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<sup>7</sup> EFRA Committee, Pre-legislative scrutiny of the Draft Environment (Principles and Governance) Bill: [Government Response to the Committee's Fourteenth Report of Session 2017–19](#), First Special Report of Session 2019–20, p13

**Consideration/observation points:**

- Is the only means of enforcement by the OEP through JR? Does the OEP not have any fine/infraction powers?
- The domestic JR process has been described as a lengthy and costly process, with concerns expressed in a [House of Lords Select Committee report](#) (2017) in its ability to replace the Court of Justice of the European Union (CJEU) – will it be an efficient and cost effective way to hold government to account?
- Will the OEP take EU legislation into consideration under its enforcement functions?
- Can an application to High Court be made in relation to breaches of EU law?
- How will the OEP ensure a “level playing field” in the operation of its enforcement functions if NI is bound by EU restrictions, and the rest of the UK is not, post transition period?
- Will the OEP have a role in ensuring alignment with international/global agreements that have been signed up to by both the UK and the EU, on behalf of NI?
- Does environmental review apply to NI? If not, will NI be at a disadvantage by not an upper tier Tribunal mechanism compared to England?
- In the absence of an Independent Environmental Protection Agency (IEPA), would NIEA still maintain its role alongside an OEP?
- Should the Minister decide to introduce an IEPA in NI – what would happen to the OEP? Would it run alongside an OEP or would the IEPA take over the roles of the OEP?
- Would an OEP in NI come into operation at the same time as the OEP in England? Would this be post transition 2021? If not, will there be any interim arrangements needed?

## 5.3 Producer responsibility and resource efficiency

### 5.3.1 Clause 47 and Schedule 4 (producer responsibility obligations)

#### Part 1

Clause 47 refers to Schedule 4. Schedule 4 makes provision for DAERA to make regulations under which producer responsibility obligations and enforcement can be imposed on specified persons and in relation to specified products or materials. The Secretary of State may make regulations on behalf of DAERA if it gives consent.

#### **Producer Responsibility**

Producer responsibility is defined under the explanatory memorandum of the Bill as:

*a means by which businesses who place in-scope products or materials on the market are obligated to take greater responsibility for those products or materials, including once they have become waste*

It is an extension of the ‘polluter pays’ principle (see [WMPNI consultation](#) for more detail) where the costs of waste management should be borne by the original waste producer or by the current or previous waste holders. Producer responsibility aims to ensure businesses who place products on the market take responsibility for those products once they have reached the end of their life.<sup>1</sup>

Producer responsibility is underpinned by a number of European directives on [Packaging and Packaging Waste](#), Waste Electrical and Electronic Equipment and the Restriction on the use of Hazardous Substances in electronic and electrical equipment, Batteries and End of Life Vehicles.

The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007 and amendments implement EU producer responsibility requirements for packaging waste in NI.

In 2019, NI joined other UK jurisdictions in [consulting on extending producer responsibility for packaging](#). This would extend producer responsibility for a product to the post-use stage. This incentivises producers to design their products to make it easier for them to be re-used, dismantled and/or recycled at end of life.

Under this Schedule, “**producer responsibility obligations**” means steps required to prevent a product or material (or reduce the amount of it) becoming waste.

It specifies that regulations may make provision about:

- Who and what product/materials the obligations will apply to.

- Targets on the proportion of products or materials to be re-used, redistributed, recovered or recycled- may be done by weight, volume etc.
- The use of compliance fees
- The registration of persons subject to the obligation (or compliance fee) – may include the set-up of a mandatory or optional compliance scheme where those subject to obligations become a member.

DAERA or the Secretary of State must consult with those likely to be affected by regulations made under this Schedule.

**Consideration/observation points:**

- **Will this require much change to the existing scheme under the Department?**
- **How will this fit in with streamlined licensing systems under the [Environmental Better Regulation Act 2016](#)?**
- **Does the Department have resources for this?**
- **Would a compliance scheme be mandatory or voluntary?**
- **In line with the [UK wide consultation](#), will there be another round of consultations and will this inform the development of regulations under this section?**

**Part 2 (Enforcement)**

This part allows DAERA to produce regulations for the enforcement of producer responsibility obligation regulations. Functions includes the exercise of discretion, monitoring compliance, and the production of guidance in relation to functions. Regulations must require the keeping of records by those subject to obligations, and provide these to the enforcement authority. The enforcement authority must provide a report to DAERA or the Secretary of State.

Regulations may also provide powers of entry etc., sanctions and recovery of costs by the enforcement authority. Regulations under this Schedule are to be subject to affirmative resolution procedure; unless regulations contain only provisions for varying targets, then they are subject to negative resolution.

**5.3.2 Clause 48 and Schedule 5 (producer responsibility for disposal costs)**

Clause 48 and Schedule 5 make provision for regulations for those involved in the manufacture, processing, distribution, or supply of products/materials to pay for or contribute to the disposal costs of those products/materials. DAERA is the responsible authority for making the regulations; however, the Secretary of State may make regulations on behalf of DAERA if it gives consent.

“Disposal” includes the re-use, redistribution, recovery or recycling of materials/products.

The regulations may also specify how disposal costs are to be calculated based on design/composition of product/materials, e.g. a producer of easily recycled products might pay less than those of unrecyclable ones.

Administrators may recover costs in performing their functions through a charge. DAERA, or the Secretary of State must consult these regulations with stakeholders it considers relevant. Regulations under this Schedule are subject to affirmative resolution.

**Consideration/observation points:**

- **What about cross- border fly-tipping - how will associated costs be dealt with and by what authority?**
- **Will the Department ensure consistency with any associated costs across the border so as to ensure one side of the border doesn't become more attractive for unlawful disposal?**

**5.3.3 Clauses 49-50 and Schedule 6 and 7(resource efficiency)**

**Resource efficiency** is about tackling overuse of resources and waste during the creation of products and services. The NI Waste Management Strategy (2013) defines resource efficiency as:

*...using resources in the most efficient way while minimising the impact of their use on the environment*

**Circular Economy**

A mutual concept to that of resource efficiency is the idea of a circular economy. According to the [European Commission](#), a circular economy means re-using, repairing, refurbishing and recycling existing materials and products so that what used to be classed as waste is turned into a resource to be used again. This is in an effort to move the economy away from the current linear system, so that resources are not thrown away once they are used, but put back in the production loop and used for longer.

Provisions enable a relevant national authority (DAERA or SoS) to set resource efficient product standards and information and labelling requirements, and the enforcement of these requirements.

Schedule 6 sets out the requirements for manufacturers and producers to provide information about the resource efficiency of their products.

Regulations are subject to affirmative resolution may be made by DAERA or SoS. The SoS must get consent from DAERA before making regulations that fall under the competence of DAERA.

Schedule 7 gives DAERA or SoS power to set resource efficiency requirements/standards by regulation. Requirements may relate to durability, reparability, recyclability and the recycled content of products/materials.

This section also allows for regulations on the enforcement of these standards.

#### **Consideration/observation points:**

- **Regulation under Schedules 4 and 5 repeal primary legislation that deals with producer responsibility – does this provide adequate scrutiny?**
- **Who is the enforcement authority for this in NI- OEP?**
- **Who will make the regulations under Schedules 5-7, DAERA or Secretary of State? On this basis where will affirmative resolution be sought?**
- **A UK wide consultation was held in 2019 on reforming producer responsibility for packaging - will DAERA run a further consultation on how to take measures forward, as suggested in the recent Waste Management Plan NI (WMPNI) consultation?**
- **Will regulation under Schedules 6 and 7 (resource efficiency) be made by DAERA and take into consideration EU labelling and packaging requirements listed under the Ireland/NI Protocol?**

## 5.4 Plastics and deposit schemes:

The following section explores the introduction of new provisions in NI for deposit schemes, charges for single use plastic and new provisions to the already established carrier bag charge.

### 5.4.1 Clause 51 and Schedule 8 (deposit schemes)

The UK consulted on the introduction of a UK wide deposit return scheme in February 2019. Since the consultation, the UK Government has [stated](#):

*We will be seeking to introduce a deposit return scheme for drinks containers in England and Wales into law via the Environment Bill.*

*We expect to consult on the proposed scope and model of the deposit return scheme in 2020. We intend to start the scheme no later than 2023.*



This allows a deposit return scheme to be established by “relevant national authority” (DAERA or SoS who can make regulations on behalf of DAERA subject to consent). A deposit is included in the price of a deposit item by a scheme supplier (e.g. producer, retailer or distributor). The deposit may be redeemed by a person when the item is returned to a designated point (may be a retailer or other return point e.g. in some countries through a reverse vending machine<sup>8</sup>). The Bill does not define what materials will be included within such a scheme, nor the price of a deposit.

Regulations for the initial set up of the scheme, enforcement, and creation of a criminal offence, civil sanctions, fines or penalties are subject to affirmative resolution initially. After which, they are subject to negative resolution.

**Consideration/observation points:**

- **Would a DRS entail changes in labelling and significant set-up costs, particularly for small businesses?**
- **How would a DRS impact existing household recycling systems?**
- **Could the existence of a land border with a country that currently does not operate a DRS increase the potential for leakage of materials and subsequent fraudulent activity?<sup>9</sup>**

#### **5.4.2 Clause 52 and Schedule 9 (charges for single use plastic items)**

UK Government performed a UK wide [consultation on single use plastic](#). Since the consultation, the UK Government has stated that it will be introducing a ban for:

- plastic drinking straws (with some exceptions)
- plastic-stemmed cotton buds (with some exceptions)
- plastic drink stirrers

The ban on plastic drinking straws is planned to come into force in England in April 2020.

On 11 March 2019 a ban on the manufacture and sale of rinse off personal care products containing microbeads became effective in Northern Ireland. The ban was introduced through the [Environmental Protection \(Microbeads\) Regulations \(Northern Ireland\) 2019](#).

<sup>8</sup> See UK Gov Our Waste, or resources Waste Strategy for England (2018) (p.61).

<https://www.gov.uk/government/publications/resources-and-waste-strategy-for-england>

<sup>9</sup> The Republic of Ireland have not introduced a DRS yet, however, the consideration of one has been mentioned in the latest [consultation on a new Waste Strategy for Ireland \(Waste Action Plan for a circular economy\)](#).

Provisions enable DAERA or SoS to set charges to be applied to specified single-use plastic items by sellers of goods or services.

Similar to the deposit scheme –the first set of regulations setting up the charging scheme, imposing new civil sanctions, or increases/changes to monetary penalties – are to be subject to affirmative resolution. After this negative resolution is applied.

#### 5.4.3 Clause 53 (charges for carrier bags)

##### NI's current carrier bag levy

Under the UK Climate Change Act 2008, [The Single Use Carrier Bags Charge Regulations \(Northern Ireland\) 2013](#) required all sellers of goods in NI to charge their customers at least 5p for each single use carrier bag supplied new.

However, from 19 January 2015, under the [Carrier Bags Act \(Northern Ireland\) 2014](#), the levy was extended to all carrier bags with a retail price of less than 20p, whether they are considered single use or reusable.

This provision provides for an additional requirement to the carrier bag levy. It requires DAERA to produce regulations to: require sellers of single use carrier bags to register with an administrator, applications for registration, amount and payment of registration fees.

##### **Observation/consideration points:**

- **The detail surrounding the operation and charges of a deposit return scheme, single use plastic and carrier bags is to be set out in subsequent regulations.**
- **The provisions appear to apply for charges for single use plastic items. However, could the regulations provide for a ban on single use plastic items in line with the UK wide consultation that provides for a ban and the [ban proposed by the EU](#) ?**
- **Under the EU's ban is a proposed 90% collection target for plastic bottles by 2029. Will this be taken into consideration in the regulations?**
- **When do provisions in relation to producer responsibility, resource efficiency, deposit schemes, single use plastic, carrier bags etc. come into force in NI? Does the 2 month time frame suggested for England, Scotland and Wales, apply to NI?**

## 5.5 Waste

The following section looks at the provisions that apply to NI in relation to electronic waste tracking, hazardous waste, waste charging, regulation and enforcement.

### Current state of play:

- In 2018/19, 50% of household waste was sent for preparing for reuse, dry recycling and composting. This is the highest rate ever recorded for NI. It is the first time NI has met the 50% by 2020 Waste Framework Directive (WFD) and current NI Waste Management Strategy target.
- There were 990,233 tonnes of LAC municipal waste collected in NI in 2018/19, an increase on 2017/18 (874,257).
- A fifth (20%) of LAC municipal waste arisings were sent for energy recovery in 2018/19, compared to 18% in 2017/18 and zero 10 years ago.
- The landfill rate for household waste recorded a new low of 28.4% in 2018/19, a fall from 32% in 2017/18 and 72% in 2006/07.
- The quantity of LAC municipal waste sent to landfill in 2017/18 was 319,212 tonnes, a landfill rate of 33%. The landfill rate for household waste was 32%. Both landfill rates are the lowest ever recorded for Northern Ireland.

For more information, see [NI Environmental Statistics Annual Reports for 2018/19 and 2017/18](#).

### Waste Strategies NI

It is Northern Ireland's intention to revise its current Strategy "[Delivering Resource Efficiency](#)". A [consultation](#) on a new waste management plan (WMPNI) was held at the end of 2019. Its core aim is to bring current waste management policies under the umbrella of one national plan. This will also incorporate planning policies for determining suitable waste facility sites e.g. the SPPS, RDS, PPS11 and PPS 18 – the first time for any waste management plan in NI.

### **EU Circular Economy Package**

The [Circular Economy Waste Package](#) has challenging new targets, notably:

- A new 65% binding target for recycling of household waste by 2035
- On recycling of packaging materials, 70% of packaging waste should be prepared for reuse and recycling
- Cap landfilling of waste to 10% by 2035

There are also recycling targets for specific packaging materials:  
Paper and cardboard: 85 % ; Ferrous metals: 80 % ; Aluminium: 60 % ;  
Glass: 75 % ; Plastic: 55 % ; Wood: 30 %.

#### **5.5.1 Clause 56 (electronic waste tracking: Northern Ireland)**

This clause amends the Waste and Contaminated Land (Northern Ireland) Order 1997 to enable DAERA to make regulations to introduce and establish an electronic (digital) waste tracking system for “relevant waste” (controlled or extractive waste) in NI.

They impose requirements on “relevant waste controllers”<sup>10</sup> or the Department to ensure the following information is entered into the system:

- the processing or transfer of waste to another person;
- persons to whom the waste has been transferred;
- record of waste controllers and their activity.

Regulations may provide for fees or charges may be imposed on those subject to the requirements; exemptions to regulations e.g. those who are “digitally excluded”;<sup>11</sup> creation of criminal offences/civil sanctions.

The first set of regulations establishing the above in relation to criminal offences, penalties, civil sanctions etc. – must be subject to affirmative resolution. After which, negative resolution applies.

#### **Consideration/observation points:**

- **Will NIEA make regulation under this provision?**
- **Who would be the designated person?**

<sup>10</sup> person with duty of care for, or who exports, controlled waste; who imports, exports, produces, carries, keeps, treats, manages, disposes extractive waste

<sup>11</sup> a person who cannot use electronic forms of communications/records due to religious belief, age, disability or location

- **Has the Department the funding and resources to support this in terms of the technology requires, loans/grants etc.?**
- **How does this fit in with the new Waste Management Plan for NI- have these proposals been taken into consideration during its preparation?**
- **Makes reference to provisions in retained direct principal EU legislation – does this include waste legislation under the Ireland/NI Protocol?**
- The separate collection of waste provisions in this Bill do not extend to NI. However, they have been identified as being under NI Assembly’s competence. In the Department’s briefing to the Committee (6 February 2020), officials suggested that stricter requirements for the separate collection of waste is needed. **Would the Minister consider introducing similar provisions in order to meet these targets?**

### 5.5.2 Clause 58 (hazardous waste: Northern Ireland)

#### **Hazardous waste NI**

The majority of hazardous waste disposal and treatment does not take place in Northern Ireland. Hazardous waste in NI has decreased since 2014 (82,000 tonnes) to 2017 (64,300 tonnes). The five largest fractions of hazardous waste are: oily wastes, clinical wastes, construction and demolition waste, waste lead acid (automotive) batteries and waste electrical and electronic equipment.

For more information, see [NI Waste Management Plan consultation](#)

This provision amends Article 30 of the Waste and Contaminated Land (Northern Ireland) Order 1997 and expands existing powers of DAERA for making regulations in relation to prohibit, restrict the treatment, keeping or disposal of hazardous waste (described in the EM as controlled waste that is or may be dangerous or difficult to treat).

It also provides for introducing civil sanctions. This includes the awarding of civil sanctions even if the conduct is not considered an offence, or the person imposing them is not a “regulator” as defined under the [Part 3 of the Regulatory Enforcement and Sanctions Act 2008](#).

Regulations under this provisions are subject to affirmative procedure by the Assembly.

#### **Consideration/observation points:**

- **Clause 57 relates to hazardous waste in England and Wales. It provides a new definition of hazardous waste – does this extend to NI?**

### 5.5.3 Clause 59: Transfrontier shipment of waste

**A LCM will not be sought on this clause.** It allows the DEFRA Secretary of State to regulate the import, export or transit of waste for export. This includes banning or restricting waste import and exports, the landing and loading of waste in the UK, loading or transit of waste for export. The regulations are to confer functions on waste regulations authorities (DAERA) in relation to waste imports, exports and transit for export. Regulations may allow DAERA to recover costs via the charging of fees on persons involved in the import/export/transit of waste. Civil sanctions may also be imposed for offences under the regulations. Regulations are to be made subject to affirmative procedure.

#### Plastic exports

The Queen's speech referred to the introduction of a ban on plastic exports to OECD countries under the Environment Bill:

*It will also ban the export of polluting plastic waste to countries outside the Organisation for Economic Co-operation and Development, and establish a new, world-leading independent regulator in statute.*

In January 2020 a [written ministerial statement](#) on the Bill mentioned:

*The Environment Bill also contains powers which will enable the government to ban the export of polluting plastic waste to non-OECD countries, consulting with industry, NGOs, and local councils on the date by which this should be achieved.*

#### **Consideration/observation points:**

- **A LCM will not be sought on this clause; however, it has been covered here due to the potential impact on exports of plastic.**
- **The detail of the regulation and functions to be performed by DAERA are to be made by the SoS and subject to affirmative procedure – where will this take place, Westminster or NI Assembly?**
- **There does not appear to be any mention of consultation with DAERA, or devolved legislatures in the drafting of regulations - what level of say will NI have in the drafting of any regulations?**
- **The Queens' Speech and a Ministerial statement stated that a ban on plastic exports to OECD countries would be introduced through the Bill, yet there is**

**no mention of this on the face of the Bill. Will this come in regulations and what level of consultation will take place?**

- **NI is bound to EU legislation on shipments of waste under the Protocol, however the UK is not post transition. Could any differences in processes or costs result in NI becoming main thoroughfare for international shipments into EU? What impacts have been considered in light of this? What checks and balances will there be? Will there be enough resources to deal with this?**

#### **5.5.4 Clause 62 (waste charging: Northern Ireland)**

New powers for waste charging schemes for DAERA to:

- Recover costs of preventing unauthorised or harmful deposit, treatment or disposal of waste;
- Recover costs for interventions at unlicensed waste sites;
- Recover costs of existing and future producer responsibility regime; and
- Charge fees for exemption applications to waste licensing etc.

DAERA must conduct appropriate consultation before making a charging scheme and lay a copy of any scheme before the Assembly.

#### **Reasons for change:**

According to [House of Commons Library Briefing](#) (24, October 2019), the [independent Review of Waste Crime](#) (November 2018) identified environmental permit fees as a priority area for potential reform:

*Treasury rules on spending public money require that income received by regulators from the sale of permits is spent on the regulation of those being billed. As such, the charges for permits and licences are set at the level required to secure 'compliance'. This does not include 'enforcement' activities, such as investigation or prosecution. Enforcement at illegal sites, exempt sites and for illegal waste carriers, brokers and dealers – who do not pay an annual subsistence fee – depends entirely on government funding.*

#### **Consideration/observation points:**

- **What form of “appropriate consultation” would be conducted?**
- **What happens with the recovery of costs at cross border locations, or cross border waste deposit?**

### 5.5.5 Clause 64 (enforcement powers: Northern Ireland)

This clause amends Waste and Contaminated Land (NI) Order 1997 in relation to improving enforcement powers. This includes a new power to allow the Department to ensure that waste can be collected and disposed of when normal processes fail.

In these cases, DAERA may direct a registered carrier of waste to collect waste and deliver the waste and require the keeper of the waste or owner/occupier of land it is on to bear the costs. However, the Department may choose to pay these costs.

#### **Consideration/observation point:**

**What happens with cross border cases - who takes responsibility for direction and costs?**

## 5.6 Water quality

### **State of NI's water quality**

DAERA monitors and reports on the quality of NI's inland water bodies (rivers, lakes, ground water) drinking water and bathing water in line with the EU's [Water Framework Directive](#) (WFD) (implemented by [Water Environment \(Water Framework Directive\) Regulations \(Northern Ireland\) 2017](#)). The overall aim of the WFD is for member states to achieve 'good' status of all water bodies (inland and coastal) using standards by certain deadlines.

- NI objective: 70% of water bodies at good status by 2021.
- According to DAERA (briefing to Committee 6 February 2020) – NI has 37% of water bodies at good ecological status or better.
- Levels of phosphorous are rising with agriculture and wastewater related sources as the main contributor to this.
- Drinking water quality compliance remains at over 99%.
- Between 2015 and 2018, 15 of the 26 beaches (58%) monitored in NI were 'excellent', seven beaches (27%) were 'good'. Four beaches (15%) were 'sufficient' and none 'poor'.
- Ten of the 25 marine water bodies (40%) around NI's shores are classified as 'high' or 'good', the rest as 'moderate' (56%) or 'poor' (4%).
- Water pollution incidents are investigated by NIEA. In 2017 there were 1,902 incidents reported to NIEA or discovered by NIEA during inspections, of which 1,028 (54%) were substantiated (confirmed) as having an impact on the water quality of the receiving waterway. Of these, 13% were considered to be of High or Medium Severity.
- In 2017/18, an average of 6,250 items of litter was observed per kilometre (items/km). This is higher than the 4,370 items/km observed in 2016/17.

For more detail see: <https://www.daera-ni.gov.uk/publications/northern-ireland-environmental-statistics-report-2019>



### River Basin Management Plans

The WFD, through the Water Environment (Water Framework Directive) Regulations (NI) 2017 requires the production and implementation of [River Basin Management Plans](#) (RBMP) every six years. These plans set objectives and measures for water bodies over a six-year cycle to help achieve 'good' ecological status. There are three RBMPs in NI: The [North Eastern](#), [Neagh Bann](#) and [North Western](#) (the latter 2, which cross the border).

DAERA is currently consulting (until June 2020) on [Significant Water Management Issues](#). This will inform the development of the next cycle of RBMPs for 2021-2027 – to be published for consultation December 2020.

#### 5.6.1 Clause 83 and 85 (water quality: powers of Northern Ireland department)

This provision gives DAERA the power to amend or modify the substances and/or standards by which the chemical status of surface water or groundwater in NI is assessed under water quality legislation that implements the EU Water Framework Directive (WFD). DEFRA can exercise these powers with consent from DAERA.

##### Consideration/Observation points:

- There does not appear to be any requirements or conditions laid down for the reviewing process of any changes made. There are no timescales for when substances lists should be reviewed either. **How will this fit in with changes made to the EU WFD?** For example, the [Delegated Powers Memorandum](#) informs that the next review of priority substances at the EU level is in 2019/2020: the Environmental Quality Standards Directive and the Ground Water Directive is scheduled for 2019-2020.
- These regulations are subject to negative resolution. The Delegated Powers Memorandum states that the power is circumscribed, meaning it cannot be used to make wider changes beyond updating the chemical substances and Environmental Quality Standards<sup>12</sup>. **However, does this provide a high enough level of scrutiny?**

<sup>12</sup> Delegated Powers Memorandum para 370-372 <https://services.parliament.uk/Bills/2019-20/environment/documents.html>

## 5.7 REACH

### 5.7.1 Clause 125 and Schedule 19(amendment of REACH legislation)

This gives DEFRA Secretary of State the power to make regulations to ensure the transfer of the EU regulation of chemicals to the UK and allow for future changes. It also allows for the SoS and the devolved administrations to amend the REACH Enforcement Regulations 2008. The devolved administrations must grant their consent before any regulations are made by the SoS. The SoS must consult the UK REACH Agency, people it (or DAERA) considers appropriate.

#### **Consideration/observation points:**

**Common Frameworks and non-regression** – there are areas in the Bill that mention provisions for the implementation of certain EU legislation across the UK. e.g. the WFD under Clause 81 and REACH under clause 125. The Delegated Powers Memorandum states that:

*Existing environmental targets are largely derived from EU law and when the UK leaves the EU it may wish to set its own targets that differ and go beyond those of the EU that will have been retained for the time being in domestic law.<sup>13</sup>*

REACH is listed under Annex 2 of the Ireland/Ni Protocol – **does this mean post transition period, the UK may make further amendments to diverge, whereas NI is bound by the Protocol. Could this potentially make common frameworks difficult? How will this fit in with the non -regression statement (clause 19).**

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<sup>13</sup> Delegated Powers Memorandum p.2). Available at <https://services.parliament.uk/Bills/2019-20/environment/documents.html>