

LEGISLATIVE CONSENT MEMORANDUM

ENVIRONMENT BILL

Draft legislative Consent Motion

1. The draft motion, which I propose to table, is:

“That this Assembly endorses the principle of the extension to Northern Ireland of the provisions of the Environment Bill, as introduced on 30 January 2020, dealing with: Environmental Governance: Northern Ireland in clauses 45 and 46 and Schedules 2 and 3; Waste and Resource Efficiency in clauses 47 – 53, 56, 58, 62, 64 and 68 and Schedules 4 - 9; Water Quality in clauses 81 and 83; and Amendment of REACH legislation in clause 125 and Schedule 19”

Background

2. I have laid this memorandum before the Assembly under Standing Order 42A(2). The Environment Bill was introduced in the House of Commons on 30 January 2020. The latest version of the Bill can be found at:

<https://publications.parliament.uk/pa/bills/cbill/58-01/0009/20009.pdf>

Summary of the Bill and its policy objectives

3. The Environment Bill has two main themes:
 - It provides a legal framework for environmental governance and accountability and addresses the environmental governance gaps that will be created as a result of the UK’s exit from the EU. These include environmental principles enacted in the EU treaties not being translated into UK law and the loss of the EU Commission’s role in holding government to account for not taking appropriate measures to protect the environment. Although not directly related to EU withdrawal, a statutory requirement to prepare and publish Environmental Improvement Plans has also been included.

- It takes account of post-Brexit legislative issues or provides for environmental improvement in respect of a number of specific environmental areas namely waste and resource efficiency, air, water, nature and biodiversity, and conservation covenants.

Provisions which deal with a Devolution Matter

4. Northern Ireland is not participating in all aspects of the Bill. In addition, not all of the Bill's provisions which extend to Northern Ireland deal with devolution matters - for example clause 59 contains powers in relation to transfrontier shipment of waste (a reserved matter).
5. The provisions which relate to transferred matters and therefore require an LCM are set out in **Annex A**.
6. Each devolved administration has taken a different approach to the Environment Bill. Neither Scotland nor Wales is participating in the principles and governance aspects of the Bill; they are making their own separate arrangements to put the required legal frameworks in place.
7. In respect of the broader environmental measures included in the Bill, each devolved administration is participating in only a selected number. However several of the waste management provisions - producer responsibility schemes, waste tracking and resource efficiency measures - are included on a UK-wide basis.

Reasons for making the Provisions

8. **Annex A** sets out, in detail, the reasons why, in my judgement, each of the listed provisions should be made in relation to Northern Ireland.
9. To summarise, participation was motivated, in the main, by these key considerations:
 - The desire to avoid a “environmental governance gap” in Northern Ireland after the UK’s exit from the EU. The Bill embeds a number of core environmental principles into domestic law along with a requirement to integrate these principles into policymaking, and establishes an Office for Environmental Protection (OEP).
 - The desire to demonstrate my Department’s ongoing commitment to improving the natural environment by placing environmental improvement plans on a statutory footing.

- The wish to maintain systems for waste management which are based on consistency and parity across the UK's jurisdictions. This includes extension of producer responsibility schemes, waste tracking and resource efficiency measures.
- The need for post-Brexit legislative amendments – this applies to the water quality and chemicals (REACH) provisions.

Reasons for utilizing the Bill rather than an Act of the Assembly

10. It would be possible to enact the provisions as set out in **Annex A** by means of an Act of the Assembly however it would obviously take longer to enact Northern Ireland primary legislation. In the interim there is the potential for an environmental governance gap in Northern Ireland and regulatory divergence, particularly in relation to waste management.
11. Agreement to Northern Ireland's participation in the Bill was given on the understanding that implementation would be for elected representatives. Accordingly, with the exception of a limited provision concerning chemicals, none of the Bill's Northern Ireland provisions can be commenced without the affirmative consent of the Assembly. (For technical reasons the chemicals provisions must commence at the same time throughout the UK but implementation still requires the consent of DAERA).
12. On this basis, enacting the provisions by means of the Environment Bill rather than by an Act of the Assembly appears the most appropriate way forward.

Consultation

13. There has been no formal public consultation in Northern Ireland on the environmental plans, principles and governance elements of the Bill although there has been engagement with key stakeholders and with other Northern Ireland departments. Stakeholder focus to date has been mainly on the OEP and, in particular, the need to ensure that arrangements for an extended OEP are appropriate in a local context. Other departments were broadly content that the Bill be introduced, particularly given the position regarding commencement as outlined in paragraph 11. A discussion document on plans, principles and governance will issue for public consultation during the Environment Bill's passage through Parliament. This will provide stakeholders with the opportunity to give their views on how governance arrangements might be introduced in a local context in the future.

14. There has been UK-wide public consultation on the producer responsibility/deposit and return aspects of the Bill. There was overwhelming support from the public for the deposit and return measures in Northern Ireland.
15. Consultation on other elements of the Bill will take place prior to implementation of the relevant provisions.

Human Rights and Equality

16. No adverse equality or human rights implications have been identified.

Financial Implications

17. There will be public expenditure implications for the Northern Ireland devolved administration if the provisions in the Bill are implemented. These will be assessed as they arise.

Summary of Regulatory Impact

18. The regulatory impact of each of the Bill's provisions will be considered in detail if a decision is taken that the provision should be implemented in Northern Ireland.

Engagement to date with the Committee for Agriculture, Environment and Rural Affairs

19. The Committee for Agriculture, Environment and Rural Affairs has been made aware of the need for a Legislative Consent Motion and provided with a draft of the memorandum. The Committee was briefed on the Environment Bill and on the need for a Legislative Consent Motion on 27 February.

Conclusion

20. It is my view is that in the interests of ensuring that:
 - (a) Measures are taken to retain independent environmental oversight and environmental principles in Northern Ireland and avoid a gap in such governance arrangements when the UK leaves the EU;
 - (b) Measures which have been addressed consistently across UK jurisdictions for a number of years are maintained; and

(c) an ongoing commitment to improving the natural environment is demonstrated;

in so far as the provisions of the Bill deal with a devolution matter, they should be considered by the UK Parliament.

Minister of Agriculture, Environment and Rural Affairs

19 March 2020

ANNEX A

ENVIRONMENT BILL: PROVISIONS DEALING WITH A DEVOLUTION MATTER (BILL AS INTRODUCED)

Clause and Heading	1. Description of provision including policy aim; 2. Reason for making the provision via the Environment Bill
Part 2: Environmental Governance: Northern Ireland	
Clause 45 – Improving the natural environment: Northern Ireland	Clause 45 gives effect to Schedule 2. Details at Schedule 2.
Clause 46 – The Office for Environmental Protection: Northern Ireland	Clause 46 gives effect to Schedule 3. Details at Schedule 3.
Part 3: Waste and Resource Efficiency	
Clause 47 – Producer responsibility obligations	Clause 47 repeals the Producer Responsibility Obligations (Northern Ireland) Order 1998 and gives effect to Schedule 4. Details at Schedule 4.
Clause 48 – Producer responsibility for disposal costs	Clause 48 gives effect to Schedule 5. Details at Schedule 5.
Clause 49 – Resource efficiency information	Clause 49 gives effect to Schedule 6. Details at Schedule 6.
Clause 50 – Resource efficiency requirements	Clause 50 gives effect to Schedule 7. Details at Schedule 7.

Clause and Heading	1. Description of provision including policy aim; 2. Reason for making the provision via the Environment Bill
Clause 51 – Deposit schemes	Clause 51 gives effect to Schedule 8. Details at Schedule 8.
Clause 52– Charges for single use plastic items	Clause 52 gives effect to Schedule 9. Details at Schedule 9.
Clause 53 – Charges for carrier bags	<p>1. Clause 53 amends Schedule 6 of the Climate Change Act 2008 to make provision for regulations made by the Secretary of State for Environment, Food and Rural Affairs in relation to England, and DAERA in relation to Northern Ireland, to require sellers of single use carrier bags to register with an administrator. The regulations may also make provision about applications for registration, the period of registration, the cancellation of registration, and the payment of registration fees, including the amount.</p> <p>2. To provide DAERA with equivalent powers to England.</p>
Clause 56 – Electronic waste tracking: Northern Ireland	<p>1. Clause 56 amends Article 5 of the Waste and Contaminated Land (Northern Ireland) Order 1997 by creating new powers to establish a mandatory electronic system to record and monitor the movement of waste. The clause also includes powers to impose fees and charges and to create associated criminal offences (punishable by a fine) and civil penalties for breaches of any regulations made under the powers.</p> <p>This provision aims to improve the management and tracking of waste therefore assisting the detection and reduction of waste crime in Northern Ireland.</p> <p>2. To ensure that such arrangements can be operated consistently on a UK-wide basis.</p>

Clause and Heading	1. Description of provision including policy aim; 2. Reason for making the provision via the Environment Bill
Clause 58 – Hazardous waste: Northern Ireland	<p>1. Clause 58 amends Article 30 of the Waste and Contaminated Land (Northern Ireland) Order 1997 to update the powers available to DAERA in respect of the regulation of hazardous waste. This includes the incorporation of a power which will enable DAERA to make provision for the imposition of civil sanctions in respect of contraventions of regulations relating to hazardous waste which can be made under that Article. This will allow for post-Brexit legislative amendments to be made, in the absence of powers under section 2(2) of the European Communities Act 1972, to the current enforcement provisions relating to hazardous waste, including updating of the fixed penalty amounts which can be applied in relation to offences.</p> <p>2. To allow post-Brexit legislative amendments as required and to update powers around the regulation of hazardous waste in line with other UK jurisdictions.</p>
Clause 62 – Waste charging: Northern Ireland	<p>1. Clause 62 amends the Waste and Contaminated Land (Northern Ireland) Order 1997 and the Waste Management Licensing Regulations (Northern Ireland) 2003 to supplement existing charging powers available to DAERA. This includes new powers to allow for fees to be charged to recover costs incurred through interventions at unlicensed waste sites or those in breach of a licence, the levying of fees in relation to prescribed requirements in existing and future producer responsibility schemes and fees for waste management licensing exemptions. The powers will enable the fees and charges to be updated by way of a charging scheme.</p> <p>2. Charging for regulatory activities carried out reduces the burden on general taxation. This clause aims to ensure that costs associated with enforcement activity in Northern Ireland are appropriately recovered.</p>

Clause and Heading	1. Description of provision including policy aim; 2. Reason for making the provision via the Environment Bill
Clause 64 – Enforcement powers: Northern Ireland	<p>1. Clause 64 amends Article 27 of the Waste and Contaminated Land (Northern Ireland) Order 1997 which makes provision for DAERA to give directions around the acceptance, treatment, disposal or delivery of waste. The clauses therefore ensures that the Department will have powers to direct a registered carrier to collect specified waste and to deliver it to a specified site.</p> <p>This addresses a gap in the current legislation with respect to the removal of harmful waste from a site and its safe treatment or disposal thus protecting local people and the environment.</p> <p>2. To maintain parity with the rest of the UK as the same amendment to address a gap in the equivalent provisions in the Environmental Protection Act 1990 is also being taken forward within the Bill.</p>
Clause 68 – Waste regulation: amendment of Northern Ireland Order	<p>Clause 68 amends Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997 which relates to interpretation and covers definitions for terms used within that Order. This is a technical amendment to ensure that amendments to the Waste and Contaminated Land (Northern Ireland) Order 1997 by the Environment Bill will confer functions on DAERA rather than the Department of the Environment which was dissolved in 2016.</p> <p>2. To ensure that amendments made by the Environment Bill take effect.</p>

Clause and Heading	1. Description of provision including policy aim; 2. Reason for making the provision via the Environment Bill
Part 5: Water	
Clause 81 – Water Quality: powers of Secretary of State	<p>1. Clause 81 provides a regulation-making power for the Secretary of State for Environment, Food and Rural Affairs (Defra) to make provision about the substances to be taken into account in assessing the chemical status of surface water or groundwater, and to specify standards for those substances, or in relation to the chemical status of water bodies. This will ensure that post-EU exit, the UK’s ability to update the list of priority and priority hazardous substances and specify standards which is currently achieved under section 2(2) of the European Communities Act 1972 will not be lost.</p> <p>The Defra Secretary of State can only exercise the powers in this section to make provision that could be made by DAERA under its own powers in clause 83 with DAERA’s consent.</p> <p>2. To allow post-Brexit legislative amendments as required.</p>
Clause 83 – Water Quality: powers of Northern Ireland department	<p>1. Clause 83 confers the same regulation making power (as clause 81) on DAERA in relation to Northern Ireland – to make provision about the substances to be taken into account in assessing the chemical status of surface water or groundwater, and to specify standards for those substances, or in relation to the chemical status of water bodies.</p> <p>2. As for clause 81. This will ensure that post-EU exit, Northern Ireland’s ability to update the list of priority and priority hazardous substances and specify standards which is currently achieved under section 2(2) of the European Communities Act 1972, will not be lost.</p>

Part 8: Miscellaneous and General Provisions

Clause 125 – Amendment of REACH legislation	Clause 125 gives effect to Schedule 19. Details at Schedule 19.
Clause 131 - Commencement	<p>1. Clause 131 sets out the commencement arrangements for all provisions of the Bill. With the exception of a limited provision concerning chemicals, none of the Bill's Northern Ireland provisions can be commenced without the affirmative consent of the Assembly. (For technical reasons the chemicals provisions must commence at the same time throughout the UK but implementation still requires the consent of DAERA).</p> <p>2. Drafting requirement.</p>

Schedule and Heading	1. Description of provision including policy aim; 2. Reason for making the provision via the Environment Bill
Schedules	
Schedule 2 – Improving the natural environment: Northern Ireland	<p>1. Schedule 2 provides a means by which arrangements for the development and management of environmental improvement plans, and the environmental principles which are currently a basis for policy making across the UK, can be incorporated into Northern Ireland legislation. The Schedule provides for the:</p> <ul style="list-style-type: none"> • preparation, review, revision and renewal of environmental improvement plans; • collection of data to assist with monitoring progress on environmental improvement plans; and • preparation and publication of a statement on the interpretation and application of relevant environmental principles to which Northern Ireland departments and Ministers of the Crown must have regard when making policy with respect to Northern Ireland. <p>2. Part 1 – to enable plans to improve the natural environment to be placed on a statutory footing.</p> <p>Part 2 – to address the gaps in arrangements relating to environmental principles as a result of the UK’s departure from the EU.</p>

Schedule and Heading	1. Description of provision including policy aim; 2. Reason for making the provision via the Environment Bill
Schedule 3 – The Office for Environmental Protection: Northern Ireland	<p>1. Schedule 3 allows the Office for Environmental Protection (OEP) - established by Part 1 of the Bill for England - to be extended to Northern Ireland. The OEP will replace the oversight role of the European Commission in holding government to account in relation to its implementation of environmental law. The Schedule provides the OEP with broadly equivalent powers as the powers in Part 1 provide for the OEP in England i.e. it:</p> <ul style="list-style-type: none"> • allows the OEP to monitor the implementation of environmental law and progress in improving the natural environment in accordance with any environmental improvement plans put in place by DAERA; • enables the OEP to provide Northern Ireland Departments with advice - for example on any proposed changes to environmental law; and • gives the OEP powers to investigate alleged failures by public authorities in Northern Ireland to comply with environmental law and take appropriate enforcement action. <p>Commencement of Schedule 3 would amend Schedule 1 to include Northern Ireland in arrangements for funding, appointments etc.</p> <p>2. To address the gap in arrangements relating to environmental governance as a result of the UK's departure from the EU.</p>

Schedule and Heading	1. Description of provision including policy aim; 2. Reason for making the provision via the Environment Bill
Schedule 4 – Producer responsibility obligations	<p>1. Producer responsibility is a means by which businesses which place certain specified products or materials on the market are obliged to take greater responsibility for those products or materials once they have become waste. The Environment Bill provides the means through which existing UK-wide producer responsibility schemes can be replaced and updated and new obligations can be placed on producers in relation to the re-use, redistribution, recovery and recycling of products.</p> <p>Specifically Schedule 4 confers powers on relevant national authorities (including DAERA) to make new regulations under which producer responsibility obligations can be imposed on specified persons and in relation to specified products and materials. It also provides for the enforcement of those regulations.</p> <p>Regulations for Northern Ireland may also be made by the Secretary of State for Environment, Food and Rural Affairs but only with DAERA’s consent.</p> <p>2. To ensure that a DAERA Minister can keep producer responsibility schemes operable and/or reformed or introduce new schemes alongside the rest of the UK.</p>
Schedule 5 – Producer responsibility for disposal costs	<p>1. Schedule 5 confers powers on relevant national authorities (including DAERA) to make regulations under which those involved in the manufacture, processing, distribution or supply of products or materials may be required to pay for, or contribute to the costs of, disposing of those items when they become waste. It also provides for the enforcement of those regulations. This is designed to incentivise producers to design their products with sustainability in mind, with the aim of ultimately reducing consumption of raw materials.</p> <p>Regulations for Northern Ireland may also be made by the Secretary of State for Environment, Food and Rural Affairs but only with DAERA’s consent.</p> <p>2. To allow such arrangements to be operated on a UK-wide basis.</p>

Schedule and Heading	1. Description of provision including policy aim; 2. Reason for making the provision via the Environment Bill
Schedule 6 – Resource efficiency information	<p>1. Schedule 6 confers powers on relevant national authorities (including DAERA) to make product-specific regulations setting requirements to provide information about a product’s resource efficiency. It also provides for enforcement of those regulations. This is designed to require clear labelling on products to enable consumers to identify those which are more durable, repairable and recyclable.</p> <p>Regulations for Northern Ireland may also be made by the Secretary of State for Environment, Food and Rural Affairs but only with DAERA’s consent.</p> <p>2. To allow such arrangements to be operated on a UK-wide basis.</p>
Schedule 7 – Resource efficiency requirements	<p>Schedule 7 confers powers on relevant national authorities (including DAERA) to make product-specific regulations setting requirements relating to a product’s resource efficiency i.e. its impact on the natural environment. It also provides for enforcement of those regulations. Together with the Schedule 6 provisions, these provisions aim to encourage a more sustainable and efficient use of materials.</p> <p>Regulations for Northern Ireland may also be made by the Secretary of State for Environment, Food and Rural Affairs but only with DAERA’s consent.</p> <p>2. To allow such arrangements to be operated on a UK-wide basis.</p>

Schedule and Heading	1. Description of provision including policy aim; 2. Reason for making the provision via the Environment Bill
Schedule 8 – Deposit schemes	<p>1. Schedule 8 enables relevant national authorities (including DAERA) to make regulations establishing deposit schemes i.e. schemes where consumers pay an up-front deposit when they buy an item (e.g. a drink in a bottle or can) which is then redeemed on return of the used item. It also provides for enforcement of those regulations. These schemes can increase recycling and reuse and reduce littering.</p> <p>Regulations for Northern Ireland may also be made by the Secretary of State for Environment, Food and Rural Affairs but only with DAERA’s consent.</p> <p>2. To allow such arrangements to be operated consistently across jurisdictions.</p>
Schedule 9 – Charges for single use plastic items	<p>Schedule 9 provides a general power for relevant national authorities (including DAERA) to make regulations about charging by sellers of goods or services for single use plastic items. It also provides for enforcement of those regulations. This follows on from - and is designed to build on the success of - the imposition of a charge for single use carrier bags.</p> <p>2. To provide DAERA with equivalent powers to England and Wales.</p>

Schedule and Heading	1. Description of provision including policy aim; 2. Reason for making the provision via the Environment Bill
Schedule 19 – Amendment of REACH legislation	<p>1. Schedule 19 confers powers on the Secretary of State for Environment, Food and Rural Affairs to make regulations to amend two pieces of retained European Union law relating to the regulation of chemicals. The devolved administrations (including DAERA) 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 making of regulations.</p> <p>The Schedule contains an additional power for DAERA and/or the Department for the Economy to amend the REACH Enforcement Regulations 2008 - currently done using the powers in section 2(2) of the European Communities Act 1972.</p> <p>2. To allow post-Brexit legislative amendments as required.</p>