

SUBMISSION TO THE COMMITTEE FOR INFRASTRUCTURE

HARBOURS BILL (NIA BILL 37/22-27) — COMMITTEE STAGE

Response to the Call for Evidence, closing 2 September 2026

Submitted by John Kerr and my family, residents of Warrenpoint, County Down.

Date: 27 August 2026

Status: This submission and any response received may be published.

Summary of Position

This submission asks the Committee to:

- Recommend that the Bill be **WITHDRAWN** in its entirety. If withdrawal is not procedurally available to the Committee at this stage, in the alternative **REJECT** Clause 2 in full, and any amendment which narrows, dilutes, sunsets or repeals Article 4 of the Harbours (Northern Ireland) Order 2002 (the power of the Department for Infrastructure to direct a trust port authority in the exercise of its statutory functions);
- Call on the Minister to exercise Article 4 in relation to Warrenpoint Harbour Authority ("WHA") IMMEDIATELY, under the law as it currently stands, without waiting for the Bill's outcome — the evidence below is not a future risk to be legislated against but a present, ongoing governance failure the Department already has the power to address;
- Recommend a new statutory power allowing the Department to place a trust port authority into special measures where governance failure is demonstrated;
- Recommend a statutory duty of community engagement and transparency on trust port authorities, incapable of being discharged by sponsorship or goodwill payments¹
- Recommend a minimum, not merely a maximum, of elected-council representation on trust port boards; and
- Recommend that the Department's Code of Practice on board appointments (proposed but never implemented since 2008) be placed on a statutory footing.

The evidence in support is drawn substantially from Warrenpoint Harbour, which this submission uses as a live case study of exactly what happens when a trust port authority is left to govern itself: a documented pattern of contradicted public assurances, unauditable regulatory compliance, an unworkable complaints procedure, unfilled board seats, and a Chairman who — on the evidence set out below — has treated a serving Chief Executive's disclosure obligations, and this author's own correspondence, as things to be managed rather than answered.

¹See Andrew McMurray MLA, Second Stage, 23 June 2026 (Official Report), on the absence of any new transparency, engagement or environmental compliance duty in the Bill as introduced. Any such duty must mean representation, published information, answered complaints and independent verification, not funding goodwill.

A. Introduction

1. This submission is made in response to the Committee for Infrastructure's Call for Evidence on the Harbours Bill (NIA Bill 37/22-27), which closes on 2 September 2026.
2. It is made by myself John Kerr and my family, residents of Warrenpoint who have spent over three years documenting the operation of Warrenpoint Harbour Authority ("WHA") and its tenant Re-Gen Waste Ltd, and engaging — through Freedom of Information, Environmental Information Regulations, ICO complaints, NIPSO complaints and direct correspondence — with WHA, the Department for Infrastructure ("DfI"), the Northern Ireland Environment Agency ("NIEA"), the Health and Safety Executive for Northern Ireland ("HSENI"), the Northern Ireland Fire and Rescue Service ("NIFRS"), Newry, Mourne and Down District Council ("NMDDC") and elected representatives across every party represented at Stormont.
3. This submission is made independently of, and does not repeat in full, the wider evidence bundle and marshalled amendments already lodged with the Committee by the wider community campaign in July 2026. It draws on my family's own direct correspondence and on additional and updated evidence obtained since that submission, restates the central legal argument in its sharpest form, and sets out why the evidence from Warrenpoint — far from being a reason to remove Departmental oversight of trust ports — is the clearest possible demonstration of why that oversight must be retained, strengthened, and used.

A.1 My own standing in this matter

4. I am the individual named as complainant in Information Commissioner's Office Decision Notice IC-481979-F3M5 (24 July 2026), which upheld my complaint that WHA had unlawfully withheld its own Board minutes in their entirety. The Commissioner found that WHA's reliance on section 36 FOIA was not engaged at all, and that its blanket reliance on commercial confidentiality (section 43(2) FOIA and regulation 12(4)(e) EIR) was unlawful save for genuinely commercial content — governance, administrative, health and safety, and environmental oversight material had to be disclosed. That disclosure is what has made this submission's evidence on WHA's own Board minutes possible at all, and WHA's compliance with that Notice remains incomplete as of the date of this submission.
5. I currently have a live, unresolved complaint before the Northern Ireland Public Services Ombudsman, NIPSO reference 202501033, against the Department for Infrastructure. It concerns the conduct of DfI's Gateways Branch in handling the governance concerns I and others raised about WHA over more than a year. My submission to NIPSO is that Gateways Branch did not carry out a proper investigation of the issues I raised: its successive replies to me rested on assurances expressly bounded by its own untested knowledge ("with the information currently available to me, I am content that... the Board... are acting appropriately"), were given without engaging with the July 2025 councillor resignations or the Council's own condemnation motion (July 2025), and culminated in a warning that further correspondence on the same issues might be treated as vexatious — eight days after the Minister told the Assembly that the people of Warrenpoint were not making it up.
6. That same NIPSO complaint includes a documented instance of Gateways Branch giving me materially incorrect information about WHA itself. On 12 June 2026, DfI's **Head of Gateways** wrote to me stating: "In Northern Ireland, private companies are not legally required to hold Annual General Meetings." WHA is not a private company; it is a statutory trust port constituted under the Warrenpoint Harbour Authority Order (Northern Ireland) 1971–2002 and the Harbours Act (Northern Ireland) 1970. The Department only corrected this seven days later,

on 19 June 2026, four days before WHA's own AGM, and only after I had written directly to the Permanent Secretary and the Minister. A Department that did not, at first attempt, know or correctly state its own trust port's legal status is not a Department whose informal assurances about that trust port's governance should be taken on trust.

7. The 28 January 2025 Board minute referred to at Section C.2 above — recording that a complaint about the Chief Executive and the Board was investigated and **closed out** by the Chairman personally, with no independent element recorded. I raise this not as a personal grievance but because it is direct, dated, documentary proof of the pattern this submission describes at Section C.4: a Board whose Chairman investigates complaints about his own senior team, and about himself, with no external check of any kind.
8. John Kerr and his family are available to provide the evidence to the Committee, if that would assist its scrutiny.

B. The Central Legal Contradiction: A Power Cannot Be Relinquished If It Does Not Exist

9. Clause 2 of the Bill, headed "Limitation of power to issue directions to harbour authorities", repeals the Department's power under Article 4 of the Harbours (Northern Ireland) Order 2002 to direct a trust port authority — including WHA — in the exercise of its statutory functions.²
10. At Second Stage on 23 June 2026, the Minister told the Assembly that the power of direction "has never been used" since its introduction in 2002.³ Yet in the same debate, answering a direct question from Mark Durkan MLA about whether she could simply decline to use the power rather than legislate it away, the Minister said: "I cannot relinquish a power that I do not have; that is the key point."
11. These two statements cannot both be true. Either the power exists — in which case the Minister's own account confirms it has sat unused for 24 years while the situation at Warrenpoint has been allowed to deteriorate, and the Bill proposes to remove it at the exact moment community and Assembly pressure to use it has become sustained and public — or the power does not exist, in which case Clause 2 legislates for the repeal of nothing, and the Committee should ask DfI to explain in plain terms what Clause 2 actually does.
12. This submission's primary position is that the power does exist, that DfI's own written correspondence to a Member of the Assembly confirms this in terms, and that the Committee should treat Clause 2 as removing a real and usable check on trust port governance. The Committee is asked to go further than rejecting Clause 2 alone: the proper course, on the evidence set out below, is for the Bill to be withdrawn and for the Department to be pressed to use the power it already has, now, rather than legislate at leisure while a live governance failure continues unaddressed at Warrenpoint.

B.1 DfI's own written description of the power's scope

13. In January 2026, Andrew McMurray MLA asked the Minister in writing to clarify her interpretation of the Department's directional powers under the 2002 Order. Her reply, quoted

²Explanatory and Financial Memorandum to the Bill; Colin McGrath MLA, Second Stage, 23 June 2026 (Official Report), quoting clause 2's heading and the Memorandum's confirmation that the amendment prevents DfI from giving directions to WHA among other trust ports.

³Minister for Infrastructure, winding-up speech, Second Stage, 23 June 2026 (Official Report), verified against TheyWorkForYou (theyworkforyou.com/ni/?id=2026-06-23.7.1).

verbatim in McMurray's correspondence, states: "Legal advice, sought by my Department, confirms that these functions do not extend to managing third-party operational practices, directing a tenant's use of chemicals, environmental regulation, or responding to odour/air quality issues. The powers of direction can only be used to regulate how WHA exercises its own statutory duties, not that of a tenant."⁴

14. Read carefully, this passage is not a denial that the power exists or can be used against WHA. Every carve-out in it concerns the conduct of Re-Gen as tenant. It expressly confirms that the power CAN be used to regulate how WHA exercises its OWN statutory duties — that is, the governance and management of the port by its own Board. This submission's evidence, set out in Section D below, concerns precisely that: the Board's own record-keeping, its own complaints handling, its own public statements, its own conduct of the odour-response process, and its own management of its statutory obligations. None of it depends on directing Re-Gen. All of it falls within the scope the Minister herself has described in writing.
15. This reading is reinforced by the WHA-specific legislation. Article 3(1) of the Warrenpoint Harbour Authority Order (Northern Ireland) 2002 empowers WHA to act as it "considers necessary or expedient for the improvement, maintenance and management of the harbour" — wording that is almost identical to the Minister's own description of what Article 4 exists to check. Article 4 was self-evidently designed to sit on top of, and constrain, precisely this Article 3 discretion. It is a governance check on the Authority, not a tenant-facing power, and Article 3(3) of the same Order expressly preserves other statutory powers running alongside it — textual confirmation that Article 4 was intended to operate concurrently with WHA's general management powers, not merely to duplicate them.

B.2 The advice behind the Minister's position has not been tested

16. DfI has refused to disclose the legal advice underpinning its position on the scope of Article 4, relying on regulation 12(5)(b) of the Environmental Information Regulations (Northern Ireland) 2004 (legal professional privilege), while confirming only the dates advice was sought (20 February 2026) and received (9 March 2026).⁵
17. Legal professional privilege under regulation 12(5)(b) is not an absolute bar and remains subject to the public interest test and to severability of conclusions from privileged reasoning (*GW v Information Commissioner and London Borough of Sandwell* [2014] UKUT 130 (AAC)). The Minister has already disclosed the substance of the advice's conclusions twice on the public record — once to Mr McMurray in writing and once at the Despatch Box on 23 June 2026 — which materially weakens any claim that further disclosure would cause harm the privilege exists to prevent. The advice is also, by definition, about to become moot: it concerns the scope of a power the Bill itself proposes to abolish. The Committee should press DfI to disclose the advice, or its operative conclusions, before concluding its scrutiny of Clause 2.

C. Why Warrenpoint Is the Test Case: Governance Evidence Falling Within the Minister's Own Definition of Article 4

18. The remainder of this submission sets out, by category, the governance evidence gathered from Warrenpoint Harbour Authority over the past three years. It is presented not as a catalogue of grievances against a single tenant, but as a structured case for why Departmental

⁴Andrew McMurray MLA, email, 12 Aug 2026, quoting the Minister's written reply to his January 2026 letter.

⁵DfI EIR response, ref DFI/2026-0422, 10 Aug 2026, to Anne Blaney.

oversight of the Authority itself — the Board, its record-keeping, its public statements, and its complaints handling — cannot safely be removed.

C.1 A contradicted public assurance to the Minister and to the public

19. WHA told the Infrastructure Minister during 2025 that there was nothing wrong at the port and that all RDF (Refuse Derived Fuel) had been removed. Board member Cllr Jarlath Tinnelly told BBC News in September 2025 that WHA had gone "from 20,000 tonnes of RDF storage to zero in just over a year".⁶
20. That assurance is directly contradicted by NIEA's own CAR2 compliance report of 20 June 2025 (WML 22/59), which records both SRF and RDF bales on site, distinguished by wrapping colour, four days before the Board itself minuted a request for "a definition of differing ranges of SRF" — an internal acknowledgement that the distinction it was about to rely on publicly was not settled even within the Boardroom.⁷ Drone photography dated 21 July, 29 July, 6 August and 9 August 2026 continues to show two distinct bale wrapping colours in the stacked yard, consistent with both waste streams remaining on site well over a year after the "reduced to nil" claim.
21. A separate WHA public statement — a "latest news" item on the operator's chemical treatment methods, uploaded October 2024 — asserted that HSENI "has conducted a specific review of the use of treatment agents at Warrenpoint Port and has not instructed modification of any practices nor were any issues raised." An HSENI Principal Inspector wrote to WHA on 12 November 2024 stating that HSENI was still investigating, that issues had in fact been raised with Re-Gen during the investigation, and asking for the statement to be corrected.⁸ As of August 2026 — almost 22 months later — the statement remains published verbatim on WHA's own website.
22. This is not an isolated drafting error. It is the third documented instance of the same pattern: WHA characterising a regulator's position favourably, in public, before or contrary to that regulator's actual findings. The second instance concerns the Information Commissioner (below); the third concerns NIFRS (below).

C.2 The ICO decision and what the Board minutes then revealed

23. Before the Information Commissioner's Office issued Decision Notice IC-481979-F3M5 (24 July 2026) ordering WHA to disclose withheld Board material, WHA had publicly represented that the *"ICO was supportive of the approach it was taking"*. The Notice in fact went totally against WHA and ordered disclosure within 30 days (compliance due 23 August 2026).
24. A critical analysis of the 15 sets of Board minutes subsequently disclosed (23 May 2023 to 25 July 2025), tested against that Decision Notice, produced the following findings of direct relevance to the Committee's scrutiny of Clause 2:
 - ***An internal contradiction within a single meeting: the 29 November 2023 minute records the Chief Executive's report stating "no live complaints registered" while the Health, Safety and Environmental report to the same meeting separately records complaints received from a neighbouring site visit on the same issue.***

⁶BBC News, Sept 2025, reported statement of Cllr Jarlath Tinnelly, WHA board member.

⁷NIEA CAR2 report, ReGen, WML 22/59, 20 June 2025; WHA Board minutes, 24 June 2025.

⁸HSENI Principal Inspector to warrenpointharbour.co.uk, email, "Regen Waste Limited", 12 Nov 2024, 11:46.

- *The Board's own minutes record a formal objection from a serving Sinn Féin councillor commissioner — "no RDF should be held/stored at the port" — twice, on 25 September 2024 and again on 24 June 2025, with no Board response recorded on either occasion. That commissioner resigned in July 2025.*
- *The 25 July 2025 EGM minute records WHA's senior management team as having "already been in contact with NMDDC to see if they could informally prevent the awarding of [an] abatement notice as well as subsequently rescind it" — informal lobbying of the enforcing authority, in preference to the formal statutory appeal route available to any regulated party.*

25. This is not a marginal governance point and the Committee should not let it pass as one. A trust port authority's own senior management team went behind the back of the statutory process to try to stop an enforcement authority issuing a notice, and then to have that notice rescinded once it was issued — not by contesting it through the appeal mechanism Parliament provided, but by informal contact with the council itself. The Committee and the Minister are respectfully asked to state plainly, on the record, whether this is conduct they consider acceptable of the senior management of any trust port authority in Northern Ireland — and, if it is not, what mechanism other than Article 4 currently exists to prevent it happening again, given the NI Audit Office findings at Section C.11 below that no external assurance framework applies to trust ports at all.

- A complaint about the Chief Executive and the Board from a local community group was investigated and "**closed out**" by the Chairman personally, with no independent element recorded (28 January 2025 minute).
- No instance of engagement with NMDDC's own Planning function on the underlying land-use question — whether RDF/SRF storage has planning permission at all — appears anywhere across the 15 minute sets reviewed.
- The Board's minutes repeatedly record it asking Re-Gen for permission to let NIEA report compliance findings directly to WHA — permission the operator has never granted, and which the Board itself confirmed to a resident in August 2026 remains unresolved: WHA does not receive copies of NIEA assessment reports "unless Re-Gen shares them."

26. Applying the objective "well run... compared with other ports of a similar size and character" test set out in WHA's own 2006 Entrustment Contract with the Department (clause 6.1(c), discussed further at Section C.7 below), the analysis concludes the minutes are, on balance, not consistent with that standard.⁹

C.3 The community forum the tenant was allowed to design

27. WHA's own Board minutes contain direct, verbatim evidence that Re-Gen — the tenant whose conduct is supposedly outside Article 4's reach — was permitted to set the terms of admission to WHA's own community engagement structure. The Board minute of 31 January 2024 records, under external presentation and discussion: "Re-Gen representatives agreed... to participate in future stakeholder forum, if properly chaired, not hosted by a protest organisation, and not open to non-residents / non-stakeholders e.g. Rostrevor residents."¹⁰

28. This is not a case of Re-Gen being consulted on a forum WHA had already designed. On the document's own terms, the operator's agreement to participate was made conditional on how

⁹Critical Analysis of WHA Board Minutes (May 2023-Jul 2025) against ICO Decision Notice IC-481979-F3M5, 25 Aug 2026.

¹⁰WHA Board minutes, monthly meeting, 31 Jan 2024, item 6B (External presentation/discussion), supplied to the author 27 Aug 2026.

the forum would be chaired, on it not being hosted by what Re-Gen characterised as a protest organisation, and on its membership excluding non-residents and non-stakeholders — with Rostrevor residents given as the example of who would be excluded. Rostrevor is a neighbouring town on Carlingford Lough whose residents are, on this record, named by the tenant as unwelcome. A private commercial tenant was, in substance, given a veto over which communities could take part in the Authority's own engagement structure with the public it exists to serve.

29. The same minute set shows the Board building its wider public-engagement model in the following fortnight — proposals for printed communications "to specific local residents within certain area of port" and twice-yearly stakeholder meetings were discussed on 8 February 2024, in the same period the Re-Gen-vetted conditions on forum membership were accepted.¹¹ In parallel, the Board took direct control of the timing and framing of the **"Independent"** environmental report it had **itself** commissioned from PWS: the Chairman asked on 8 February 2024 that the incoming report "be kept within board that proper dissemination can take place", and the Board agreed on 14 February 2024 that draft recommendations "need to be complete prior to sharing" before any wider release.¹²
30. The Committee is asked to weigh this alongside its own scrutiny of what a statutory community engagement duty in this Bill would need to guard against. It is not hypothetical that a trust port authority's engagement structures can be shaped, in substance, by the very commercial interest generating the complaints that structure exists to receive. It has already happened, in writing, in this Authority's own minutes — which is precisely why this submission's recommendation at Section F.4 below requires forum membership to be free of any tenant or operator influence, formal or informal, and why the Committee and the Minister are asked to state on the record whether they consider it acceptable for any trust port authority to allow a regulated commercial tenant a role in deciding who may sit on its community engagement body.

C.4 The complaints process: a Board and executive team that manage complainants rather than complaints

31. This section deals in detail with a single, recent, still-live complaint, because it is the clearest evidence available to the Committee of how WHA's current Chairman and executive team actually behave when a member of the public tries to hold them to account. It is not presented as an isolated grievance. It is presented as a worked example of exactly the conduct Article 4 exists to correct, occurring now, at the top of the Authority, while the Bill proposes to remove the one lever capable of correcting it.
32. The complaint arose on 6 August 2026 (WHA reference 20260806-01), after odour was detectable continuously for over two hours immediately outside WHA's own Harbour Offices by myself and an international investigative journalist. WHA's Health, Safety and Environmental Manager, Thomas Rodgers, did not investigate the substance of the complaint. He responded by seeking the my consent to pass my contact details directly to Re-Gen — the operator generating the odour — so that the operator could provide "a direct response" to a complaint about itself. Consent was, correctly, refused.
33. The Chairman, Dr Gerard O'Hare, then took over the correspondence personally. His first reply attributed the odour to the NI Water pumping station on Newry Street, said to be some 100

¹¹WHA Board minutes, continuation meeting, 8 Feb 2024, item 6A.

¹²WHA Board minutes, 8 Feb 2024 and 14 Feb 2024.

metres from the Harbour Offices. NI Water's own Director of Finance, Regulation and Commercial had already, on the public record at a special Council meeting in April 2024, confidently rejected this same attribution when it was made previously.¹³ The Chairman's account of the pumping station's own location then shifted between his letters: from roughly 100 metres away, to — in a later reply — immediately adjacent to and partly within the shared boundary of the Harbour Offices themselves. When challenged that the official who gave the 2024 rebuttal, Ronan Larkin, had since left NI Water, the Chairman offered that fact as though it weakened the rebuttal, when Mr Larkin's statement was made in an official capacity, in the council chamber, on the public record, and does not lapse because the officer has since moved on.

- 34.** Rather than engage with the substance, the Chairman's correspondence adopted a dismissive and, in the my own characterisation, intimidatory tone: describing my own explanatory correspondence as "a futile exercise"; observing that I seemed "fondly attached" to the formal complaints process; suggesting it was "unfortunate and rather strange" that I — present at the Authority's own front door for over two hours — did not interrupt to engage with staff in real time, so that "now we will never really know for certain"; and copying this correspondence to four further recipients. Every substantive assertion made by the myself was characterised only as something "alleged", without WHA identifying a single one it disputed on the facts. This is not the conduct of a public body engaging in good faith with a complaint about its own environmental impact. It is the conduct of a Chairman managing a complainant, and the Committee should treat it as directly relevant evidence of the Board's culture at the most senior level.
- 35.** WHA's Complaints Procedure was examined in detail during this exchange by myself, in both its July 2018 version and a previously undisclosed May 2026 version supplied only after the complaint was already underway. Both versions share defects that go to the heart of whether this Board and this executive team can be trusted to regulate themselves absent external direction:
- The Procedure's purpose is confined to redress for "administrative failures", with the burden of proof on the complainant to identify one — it is not, and was never designed to be, a mechanism capable of abating an ongoing environmental nuisance;
 - The Complaints Officer, and any internal reviewer, are both nominated by the Chief Executive — so the person handling a complaint about senior management is appointed by that same management;
 - A complaint about the Chief Executive goes to the Chairman. There is no route of any kind for a complaint about the Chairman himself — the highest office holder in the Authority is, by the Board's own design, unaccountable within its own process;
 - A carve-out excludes disputes arising from commercial agreements with third parties — which on its face would exclude any complaint concerning the terms of WHA's own arrangement with Re-Gen, the single largest source of the complaints the Authority receives;
 - There is no binding timescale ("not normally longer than 2 months"), and records are retained for only one year after a complaint is exhausted — a retention period that would itself defeat continuity of evidence for a body such as this Committee.

¹³Armagh I / LDR, Donal McMahon, 1 May 2024, reporting NI Water's rejection of the pumping-station attribution at NMDDC Special Council, 29 April 2024 (minute SC/012/2024).

- 36.** Having already substantively investigated and responded to the complaint on its merits over several exchanges, Mr Rodgers then declined to issue any outcome unless, I first supplied a full name and a "valid postal address" — later clarified, in a further email of 26 August 2026, as required specifically "to establish that the complainant resides within the area potentially affected by the matter complained of". No such residency precondition appears anywhere in the Complaints Procedure itself, in the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011, in UK GDPR's own data-minimisation principle (Article 5(1)(c), which bars collection of data not needed for the stated purpose, not merely its insecure storage), or in any general principle of administrative fairness.

Applied literally, it would disentitle any visitor, tourist, cruise-ship passenger or non-resident business owner from having an odour complaint investigated at all — a position flatly inconsistent with WHA's own stated ambitions for tourism growth in the town it operates in. The requirement was introduced only after the complaint had already been lodged, accepted, referenced by reference number and substantively investigated without any such condition being raised — the Board's own executive team moving the goalposts once the answer looked likely to be unfavourable.

- 37.** The Committee should also note what the Board and its executives did not do at any point in this exchange. WHA's own Complaints Procedure gives the Chief Executive sole discretion over whether the Board is even notified of a complaint. There is no evidence the Board as a whole has ever considered this complaint, the Chairman's conduct in handling it, or the pattern of complaints handling it forms part of — despite the Chairman being the Authority's own most senior office holder, responding personally, over multiple letters, in terms a member of the public has formally characterised as intimidatory. A Board that does not know, and has no mechanism for finding out, how its own Chairman conducts himself towards residents is not a Board capable of the self-correction DfI's own position on Article 4 appears to assume.
- 38.** This complaint has now in the process of being escalated to NIPSO. It is also relevant to a separate, live NIPSO investigation (ref 202501033) into DfI Gateways Branch's own handling of WHA governance concerns — meaning the Department's own internal complaints-handling machinery is presently under independent scrutiny for how it has dealt with concerns about this same Board. The Committee should not treat this complaint as resolved, closed, or as an internal matter between two individuals. It is untested, current, and it is precisely the kind of conduct — by the Chairman and the executive team personally, not by the tenant — that falls squarely within the Minister's own written definition of what Article 4 exists to reach: WHA's management of its own statutory functions.
- 39.** This is not a minor administrative dispute. It is direct, current, unresolved evidence that the individuals presently at the head of this Authority — its Chairman and its Health, Safety and Environmental Manager — respond to formal complaints with deflection, shifting explanations, a dismissive tone one complainant has formally characterised as intimidatory, and the retrospective invention of conditions of entitlement to complain that appear nowhere in law. On any fair reading, this is not the conduct of individuals who should be left to mark their own homework at the exact moment the Bill proposes to remove the one Departmental power capable of directing them to do otherwise.

C.5 Regulatory oversight that cannot audit itself

- 40.** Three separate regulatory strands illustrate the same structural weakness — reliance on operator-supplied or unverifiable assurances in place of independent inspection.

Odour assessment

41. NIEA's compliance findings rest on boundary sniff testing, a method that samples the treated plume rather than the source and therefore cannot, on its own methodology, distinguish a genuinely controlled site from one that is chemically masked. Because Re-Gen keeps no record of what is applied by its misting system, no past finding can be audited either way.¹⁴ Separately, under Article 16(b) of Regulation (EC) 1013/2006 on shipments of waste (as retained in domestic law), NIEA receives advance notice of transfrontier shipment movements at least three working days before they start — giving it a standing, lawful timetable of exactly when bale-handling activity, and therefore odour, will be at its worst. There is no evidence this timetable is used to schedule inspections.

Fire safety

43. At WHA's Annual General Meeting on 23 June 2026, the Authority stated that NIFRS "has visited the Port on several occasions" and that WHA was **"not aware of NIFRS having raised concerns"**, with responsibility for fire prevention and emergency response resting with the operator.¹⁵ A subsequent Freedom of Information response from NIFRS (ref IU/FOI 59-26-27, 10 Aug 2026) confirms that ***NIFRS has never been formally consulted by WHA on RDF/SRF storage; has no record of a fire-safety visit connected to bale storage between 1 January 2022 and the date of the response; holds no fire safety advice or recommendations for the Port; and holds no risk assessment for contaminated firewater run-off into Carlingford Lough.***
44. The disclosed bundle further shows that the one familiarisation visit NIFRS did arrange, in October 2024, was scheduled for a date the site had no waste bales present, that the attending crew was called away to an emergency shortly after arrival, and that no revisit was subsequently organised. Risk Critical Information visits — the mechanism by which NIFRS builds an operational picture of a site for firefighting purposes — are recorded only at Re-Gen's Newry premises, never at Warrenpoint Port itself.
45. This matters because the site stores baled waste at a density understood by NIEA's own background documentation to run up to 20,000 tonnes at any one time, immediately adjacent to a residential town, with no independently assessed fire safety regime and no assessed firewater containment plan.

Chemical safety

46. HSENI's own EIR disclosure (EIR/15/2026) and its 12 November 2024 correspondence with WHA (above) confirm an investigation into chemical use at the Port that was ongoing, and had raised issues with the operator, at the exact time WHA was publicly stating the opposite. Drone photography from 9 August 2026 shows an industrial misting cannon in active use, its plume blowing directly across the bale stacks, with no application record kept.

C.6 Statutory nuisance: no harbour exemption, and a duty NMDDC has not enforced

47. Insects and offensive smell arising from industrial, trade or business premises are capable of amounting to a statutory nuisance under section 63(1)(d) and (g) of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011. Harbour premises are excluded from that Part

¹⁴Letter WPT/ODOUR/NIEA/01 to Richard Crowe, Interim Chief Executive NIEA, 12 Aug 2026.

¹⁵WHA AGM, 23 June 2026, audio recording transcribed and minuted.

only in relation to artificial light nuisance (section 63(7)(b)) — there is no harbour exemption for odour or insects.¹⁶

48. NMDDC has itself completed 31 odour surveys since 14 June 2024, of which 17 detected odour associated with Re-Gen, and had 11 active odour complaints at the time — yet concluded the statutory threshold for nuisance was not met. WHA's own commissioned 2024 report separately recorded 42 Environmental Health complaints about odour, flies and noise; a joint community press release of 24 July 2026 records 149 such complaints logged. Section 64(b) of the 2011 Act places a duty on the district council to take reasonably practicable steps to investigate every such complaint, and section 65(1) requires the council to serve an abatement notice once satisfied a nuisance exists or is likely to recur. Where more than one person is responsible, section 67(1) applies section 65 to each of them — meaning both operator and landowner (WHA) are properly within scope.
49. The relevant point for the Committee is not the merits of any individual nuisance complaint, but that WHA — as landowner — has never been treated as a co-responsible party in this statutory scheme, notwithstanding the volume of substantiated complaints, and that the Authority's own conduct in response to complaints (Section C.3 above) gives no confidence that it would engage constructively with an abatement process even if one were pursued.

C.7 The Entrustment Contract: an existing, contractual "well run port" test the Department has never applied

50. WHA holds public funding under a 2006 Entrustment Contract with the Department (as successor to the Department for Regional Development), made under Commission Decision 2005/842/EC, capping Compensation at an "Affordability Gap" of £14.7 million against a WHA Contribution of £5 million, and running for 25 years from the date the final tranche of Compensation was paid.¹⁷
51. Clause 6.1(c) of that Contract already gives the Department a clawback right where a review shows WHA is "not a well run organisation when compared with other ports of a similar size and character" — precisely the standard this submission invites the Committee to apply. Clause 2.4 requires WHA to demonstrate this annually or as required, and clause 3.3 gives the Department a standing right to carry out or commission checks of WHA's records for that purpose.
52. DfI's own disclosure confirms that when a clawback trigger did arise — WHA's 2017 return on capital employed exceeded the benchmark comparator by more than the contractual threshold — the Department did not initiate clawback. Instead, in a meeting on 27 January 2020, WHA's Finance Director gave his own personal, unminuted recollection of how the clawback formula should be read, which the Department accepted notwithstanding its own internal memorandum recording that "there is no record in the agreement or in any of the minutes... that the basket alone can determine if claw-back should be initiated." The same meeting recorded the Finance Director's indication that the underlying 2017 accounts might be restated in a way that would retrospectively remove the trigger.

¹⁶Clean Neighbourhoods and Environment Act (Northern Ireland) 2011, Part 7, ss.63-70, verified against legislation.gov.uk.

¹⁷Entrustment Contract of Service of General Economic Interest between WHA and DfRD, executed 14 Dec 2006; DfI EIR response DFI/2026-0474, 24 Aug 2026, confirming the final Compensation tranche was paid in 2012 — meaning the 25-year Service duration runs to approximately 2037 and is a live, not historic, instrument.

53. DfI further confirms it holds no record of ever having exercised its clause 3.3 audit right, no record of any benchmarking of the commercial rate WHA charges Re-Gen, and no successor entrustment agreement since 2006. This is the second documented instance — alongside the Article 4 legal advice sequence at Section B.2 — of the Department resolving a live accountability question about WHA informally, without contemporaneous minute, and only after external challenge by Freedom of Information. It should give the Committee no confidence that DfI, absent Article 4, has any working mechanism of its own to hold trust port governance to account.

C.8 A board the political system has stopped trying to fill

54. Two of WHA's three permitted councillor commissioner seats have been vacant since the resignations of two councillors in July 2025, one of whom left a documented, minuted objection to RDF storage unanswered by the Board on two separate occasions before he resigned. In August 2026, all five parties represented on Newry, Mourne and Down District Council confirmed to the Local Democracy Reporting Service that none of them would nominate anyone to fill either vacancy.¹⁸ Today it's confirmed that the final Councillor has resigned.
55. DfI's own public position on this is that the legislation **"does not state a minimum number"** of councillor commissioners and that the Board **"remains properly constituted and can continue to operate effectively even in the absence of any councillors"**. This is difficult to reconcile with the Minister's own words at Second Stage on 23 June 2026, when she told the Assembly that councillors are appointed to the Board so that **"the community voice is represented"** and that they play **"a very important role in oversight and in ensuring that there is proper accountability"** — nor with the Assembly's own stated policy intent when the councillor-commissioner provision was introduced in 2002. On that occasion, the responsible Minister confirmed on the record his intention to appoint the maximum permitted number of elected representatives, in terms explicitly grounded by other Members in **"public accountability"** as the key rationale for the provision.¹⁹
56. Whatever the position on the bare legal minimum, the Committee should note that the entire elected political system in the district most affected by this port's operations has, as of August 2026, collectively declined to put forward a single representative to sit on its Board. That is not evidence that Departmental oversight is unnecessary. It is evidence that the one channel of accountability the 2002 Order was designed to guarantee has been allowed to fail in practice, leaving Article 4 as the last functioning check.

C.9 The policy document behind councillor representation, and whether it still binds

57. DfI's position that the legislation "does not state a minimum number" of councillor commissioners, and that the Board can function properly with none, is not a neutral reading of a silent statute. It ignores the policy document the 2002 legislation was designed to give effect to, which explains in terms why councillor representation was retained at all. The Ports Policy Review that produced the current statutory framework was launched by DRD's June 2006 consultation, Ports Policy – Your views invited: Powers, Status and Governance of Public Trust Ports in Northern Ireland, and gave rise to a Code of Practice for Northern Ireland Trust Ports

¹⁸Local Democracy Reporting Service report by Donal McMahon, Aug 2026.

¹⁹NI Assembly, Official Report, 20 May 2002, Second Stage debate on SR 42/2002 (archive.niassembly.gov.uk); Minister for Regional Development Mr P Robinson and Mr McGrady MLA.

issued under Article 6 of the Harbours (Northern Ireland) Order 2002 — a duty separate from, and unaffected by, Clause 2's repeal of Article 4.²⁰

- 58.** The Code's own Background section states the policy rationale in explicit terms: as the 2002 reforms extended the trust ports' commercial powers and handed most board appointments to the ports themselves, "of particular importance in respect of governance is that, with the exception of the Chairmen and those Members appointed following consultation with District Councils, appointments to the trust port boards will no longer be made by Government." Councillor representation was not incidental machinery left over from an earlier scheme. It was the specific safeguard Government chose to retain, as the price of giving trust ports the freedom to appoint the rest of their own boards. If that safeguard can now sit unfilled with no consequence and no active step to fill it, the 2002 settlement's central bargain — more commercial freedom in exchange for a retained, elected, Ministerial-appointment check — has been abandoned in substance while its supporting legislation remains formally in place.
- 59.** The Committee is respectfully asked to put two questions to DfI and the Minister directly. First, whether the Department accepts that this is the policy rationale its own 2008 Code records for retaining councillor appointments under direct Ministerial control, and if not, what alternative account it gives for why that category alone was excluded from the general shift to board-made appointments. Second, whether that policy is still in force — and if DfI's position is that it has lapsed or been superseded, when that happened, by what decision, and why the Committee and the public are only now hearing of it in response to two years of unfilled seats rather than as a considered change of policy in its own right.
- 60.** The same Code undercuts two further DfI positions addressed elsewhere in this submission. It requires trust ports to "adopt a policy of holding widely and effectively advertised open Annual General Meetings", with "all trust port board members" attending — the opposite of Gateways Branch's position, recorded at Section A.1 above, that "the format of the WHA AGM is a matter for the WHA Board" alone. And its own definition of a trust port's stakeholders expressly includes "the wider community" and "specific interest groups covering environmental, conservation and transport matters" as parties whose representation in port engagement structures "should be considered" — directly at odds with the evidence at Section C.3 above of Re-Gen conditioning its own participation in WHA's community forum on excluding non-residents. A body that has not filled the board seats its own founding policy identifies as the key safeguard, has not held the open AGM its own Code requires, and has allowed a tenant to narrow stakeholder access its own Code says should be broad, is not a body whose governance can safely be left to inference and good faith.

C.10 A second unused safeguard, entirely outside the Bill: the 2003 Memorandum of Understanding

- 61.** The Code of Practice is not the only accountability instrument the Department has left unexercised. WHA and the Department (then DRD) held a Memorandum of Understanding on the Warrenpoint Harbour Estate, sealed 14 March 2002, non-binding and running for an initial 12-month term, but recording DRD's intention to legislate for a requirement that WHA seek Departmental consent before disposing of or changing the use of harbour estate land. That MoU was superseded by a new one signed 1 March 2003. Unlike the equivalent 2002 MoUs for Belfast and Foyle Ports, the 2003 Warrenpoint version drops the non-binding, fixed-term

²⁰Code of Practice for Northern Ireland Trust Ports, May 2008 (draft), Background section; issued under Article 6, Harbours (Northern Ireland) Order 2002. WHA's own website presents this document as its current, live Code of Practice.

language entirely: clause 5.1 instead runs indefinitely, "until such time as it may be terminated by the Department". Nothing in the Department's own disclosure suggests it has ever been terminated.²¹

- 62. This matters because clause 4.5 of that MoU requires Departmental consent for any change of use of harbour estate land other than "Port Activity" — a live, indefinite-term veto right that exists entirely independently of Article 4 and is not affected in any way by Clause 2 of this Bill, because it was never created by the Order that Clause 2 amends. Whatever the Committee recommends on Article 4, this separate consent right survives regardless.**
- 63.** The Department's own disclosure confirms it has never been used. No clause 4.1 notice of disposal or change of use has ever been given by WHA since 2002. No clause 4.4/4.5 consent application has ever been made, granted or refused. **The Department has never considered whether the storage of RDF or SRF at the scale and duration reported at Warrenpoint constitutes a change of use requiring that consent in the first place.** Most tellingly, the Department holds no record of whether the MoU or its consent function was considered at all during either the 2006 Ports Policy Review that produced the Code of Practice discussed at Section C.9 above, or during preparation of this Bill — meaning the Department's own Bill team appears not to have asked whether Clause 2 interacts with a separate, still-live instrument giving it a standing right to be consulted on exactly the land use at the centre of this dispute.²²
- 64.** Taken together with Article 4 (never used, on the Minister's own account), the 2003 MoU's consent right (never invoked, and apparently never even considered), and the 2008 Code of Practice (never finalised beyond draft, and ignored in substance on the evidence at Section C.9), the Committee is looking at a Department that has held at least three, and arguably four including the Entrustment Contract clawback discussed at Section C.7 above, separate accountability mechanisms over this Authority for two decades and exercised none of them. That is the true baseline against which Clause 2's removal of Article 4 should be judged. It is not a case of removing one tool while others remain in active use. It is removing the only one of the four that has ever been the subject of sustained public and Assembly scrutiny, from a Department with an unbroken record of non-enforcement across every mechanism it has held.

C.11 No external assurance framework applies to trust ports at all

- 65.** The Northern Ireland Audit Office's March 2026 report "Partnership Working: Departments and Arm's Length Bodies" shows that DfI's own return to NIAO of its Arm's Length Bodies omits all four Northern Ireland trust ports (Belfast, Coleraine, Foyle and Warrenpoint) entirely, and that a separate Department of Finance paper places all four trust ports on a list of bodies DoF does not consider to be ALBs at all.²³ The practical consequence is that the entire standard architecture of public-body assurance in Northern Ireland — Partnership Agreements, proportionate autonomy assessments, board appraisals and periodic effectiveness reviews — simply does not apply to trust ports. They are not lightly regulated within that framework; they sit outside it altogether.

²¹DfI EIR response DFI/2026-0469, 24 Aug 2026, confirming and disclosing the full text of the 1 March 2003 MoU.

²²DfI EIR response DFI/2026-0469, 24 Aug 2026, responses to items 6-11.

²³NI Audit Office, "Partnership Working: Departments and Arm's Length Bodies", March 2026, Appendices 1-2.

66. Article 4 is therefore not one of several oversight mechanisms available to the Department in respect of a trust port authority. On the evidence obtained to date, it is the only one. Removing it would not rebalance oversight — it would eliminate it.

D. Comparators: What Governed Trust Ports Look Like

67. The Committee should not read the evidence above as showing that trust port governance is inherently unworkable. Belfast Harbour and the Port of Londonderry (Foyle Port) operate a maximum five-day storage and turnaround rule for comparable waste materials, in each case at a site not situated beside a residential area, unlike Warrenpoint, where storage is reported to run to as much as twelve weeks.
68. Drogheda Port Company, across the border, licenses waste storage under an Industrial Emissions Licence in which the port operator itself — not a third-party tenant — is the licensee, subject to a 21-day maximum storage limit and a twice-daily bale inspection regime. Andrew McMurray MLA cited the Port of Dover's model at Second Stage: two board members chosen for local community knowledge, a port users' group consulted on significant developments, and two dedicated community representatives on the board — none of which the Bill, as introduced, would require of any Northern Ireland trust port.
69. These comparators show that the answer to poor governance at one trust port is not the removal of Departmental oversight from all of them, but the imposition of the operating standards, storage limits and community representation that better-run ports already apply.

E. The Bill's Own Consultation Record Supports Retention

70. DfI's Review of Trust Ports — Summary of Responses Report (May 2025) asked respondents (Question 10) whether they supported including a general power of direction in new legislation, on the express premise that "no power of direction exists for our Ports". A clear majority — 20 in favour to 7 against, with 4 unsure — supported the inclusion of such a power.²⁴
71. This is directly in tension with the Minister's own confirmation at Second Stage, two months later, that a power of direction already exists under Article 4 and has simply never been used. The Committee should ask DfI to explain how a consultation exercise underpinning this Bill proceeded on the premise that no such power existed, when the Department's own later position is that it did. Separately, Question 3 of the same consultation found that respondents who considered existing controls sufficient did so only on condition that a statutory Code of Practice governing board appointments was introduced — support for this submission's recommendation at Section F.6 below, and a Code that has been proposed, but never implemented, since 2008.

F. Recommendations

72. On the evidence set out above, the Committee is asked to recommend the following:

F.1 Withdraw the Bill; in the alternative, reject Clause 2

73. The Committee should recommend that the Bill be withdrawn in its entirety and not proceed to Consideration Stage. A Bill introduced on the stated premise that a power "has never been

²⁴DfI, Review of Trust Ports - Summary of Responses Report, May 2025, Q10.

used" and can safely be repealed, when the Department's own Minister and its own written correspondence confirm in the same breath that the power both exists and remains capable of reaching exactly the governance failures documented in this submission, is not fit to proceed as drafted. If the Committee or the Assembly takes the view that outright withdrawal is not procedurally available to it at this stage, this submission's alternative and minimum position is that Clause 2 be removed from the Bill in full, and that Article 4 of the Harbours (Northern Ireland) Order 2002 be retained in unamended and undiminished form, in respect of every trust port authority to which it currently applies.

F.2 Use Article 4 now, under the law as it stands — and use the 2003 MoU alongside it

- 74.** Whatever view the Committee takes on the Bill, this submission's most urgent recommendation does not depend on the outcome of that Bill at all. The Minister has the power to direct WHA today. The Committee should call on her to exercise it now, without waiting for Royal Assent one way or the other, in light of the evidence in this submission: the contradicted public assurances on RDF, the Board minutes evidence, the conduct of the Chairman and executive team documented at Section C.4, the unaudited fire and chemical safety position, and the unfilled board seats. The Department should, in parallel and immediately, exercise its clause 4.5 consent right under the 2003 MoU discussed at Section C.10 above — which requires no legislative change of any kind — by requiring WHA to confirm whether the storage of RDF and SRF at the port constitutes a change of use of harbour estate land, and if so, on what basis it has proceeded without the consent that clause requires. Separately, the Bill should be amended to place the Department under a continuing duty to consider exercising Article 4 within a defined period wherever a trust port authority is the subject of a Committee for Infrastructure evidence session, a published regulator finding of non-compliance, or a formal information rights decision (ICO or NIPSO) adverse to it — with reasons published if the Department declines to act.

F.3 A statutory special measures power

- 75.** A new power should be added allowing the Department to place a trust port authority into special measures — including the appointment of an independent monitor with powers to attend Board meetings and report to the Department and the Assembly — triggered by matters such as an adverse ICO or NIPSO decision, a proven pattern of contradicted public statements, or sustained failure to fill statutory board vacancies.

F.4 A real transparency and community engagement duty

- 76.** Any new statutory duty of community engagement must be defined in terms incapable of being satisfied by sponsorship, donations or goodwill funding to local organisations. It should require, as a minimum: identifiable community representation on the board itself (following the Dover model cited above); routine publication of regulator correspondence and compliance findings; a complaints process independent of the body it investigates, including in respect of complaints against the Chair; and a fixed, binding response timescale.
- 77.** For any community forum, panel or equivalent liaison body a trust port authority operates or is required to operate, the statutory duty should further require: a minimum of two resident members who do not sit on any other WHA-linked committee, board or forum and are not board or committee members of any body already engaged with the port or its tenants, so that community representation cannot be satisfied by figures already inside the Authority's own governance structures; a published, independently verifiable process for how members are selected, with the criteria and the selecting body identified by name; and a statutory bar on any tenant or commercial operator regulated by, or leasing land from, the authority having any role

— formal or informal — in nominating, approving, or removing members of that forum, or in setting conditions on how it is chaired or who it may include. This is not a theoretical safeguard: as set out at Section C.3 above, WHA's own Board minutes record Re-Gen's agreement to participate in the Authority's community forum being made conditional on it not being "hosted by a protest organisation" and not being "open to non-residents / non-stakeholders e.g. Rostrevor residents" — a private commercial tenant setting the terms of community access to the Authority's own engagement structure. On the wider evidence already before the Committee, WHA's own Community Forum has operated with no published terms of reference, no published membership list, or agendas since its inception in June 2024, and its resident members have resigned citing stonewalling and a lack of genuine engagement. A body that opaque, shaped in its own founding minutes by the very tenant generating the complaints it exists to receive, and operating in a sector this Committee has already been shown has no external assurance framework applied to it at all, cannot be relied upon as the community safeguard DfI's own position on the Bill implicitly assumes it to be.

F.5 A minimum, not only a maximum, of council representation

78. Schedule 1 to the Warrenpoint Harbour Authority Order (Northern Ireland) 2002, and the equivalent provisions for other trust ports, should be amended to require a minimum as well as a permitted maximum number of council-nominated commissioners, consistent with the Assembly's own stated 2002 policy intent and with the policy rationale set out in DfI's own 2008 Code of Practice at Section C.9 above, so that political non-nomination cannot be used, in practice, to remove the one safeguard the 2002 settlement was designed to retain.

F.6 A statutory Code of Practice on board appointments

79. The 2008 draft Code of Practice on trust port board appointments — which named local community and environmental groups as secondary stakeholders but was never implemented — should be placed on a statutory footing, consistent with the majority position identified in DfI's own May 2025 consultation.

G. Conclusion

80. The evidence gathered from Warrenpoint Harbour over more than three years does not show a community objecting to the ordinary business of a working port. It shows a trust port authority that has told the Minister, the public and its own regulators different things at different times; whose Board minutes record objections that went unanswered for years before the objecting councillor resigned; whose Chairman and executive team, on the most recent and current evidence, respond to a formal complaint with deflection, shifting explanations, a tone one complainant has formally characterised as intimidatory, and the retrospective invention of conditions of entitlement to complain that appear nowhere in law; whose fire safety and chemical safety position rests on regulator engagement that did not happen in the way the Authority told the public it had; and whose board seats the entire local political system has, as of this year, declined to fill.

81. This is not a Board or an executive team that has earned the benefit of a Bill drafted on trust. Article 4 is not, on the evidence available to this Committee, a power that has failed and should therefore be discarded. It is a power that has never been used, at a time when the evidence for using it has been mounting in plain sight — and it is, following the NI Audit Office's own findings, the only external check that currently applies to trust port governance in Northern Ireland at all. The Committee is respectfully asked to recommend that this Bill be withdrawn, or Clause 2 rejected in the alternative, and — separately and without delay — that the Minister

use the power the law already gives her, now, before this Committee's inquiry is a further entry in the list of things WHA's Board has been allowed to wait out.

John Kerr

Submitted on behalf of himself and his family, residents of Warrenpoint

27 August 2026