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Assembly

Research and Information Service Bill Paper

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Environmental Better Regulation Bill

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The following Bill paper gives a brief overview of the Environmental Better Regulation Bill as introduced to the Assembly on the 22 June 2015. It also gives a brief account of similar legislation in other jurisdictions, highlights areas of concern expressed during the consultation and makes suggestions of potential areas for further consideration.

Key Points

- The purpose of the Environmental Better Regulation Bill (the Bill) is to reduce the complexity of environmental legislation so as to lessen the regulatory burdens on businesses, while protecting the environment.
- The main purpose of the Bill gives the Department of the Environment (the Department) powers to reform the existing environmental regulatory framework through the production of new regulations. The Bill's main focus is the following two areas:
 1. The production of regulations under Part 1 to introduce a streamlined environmental permitting system, by coordinating the existing separate regimes into a single system.
 2. The Department must conduct a review of existing powers of entry legislation with the view to rationalising powers under regulations provided in Part 2.
- The rest of the Bill is concerned with making amendments to existing legislation regarding fuels and fire places, air quality assessments and drinking water regulation.
- Part 1 of the Bill is most closely aligned to the Environmental Permitting (England and Wales) Regulations 2010 and the Regulatory Reform (Scotland) Act 2014.
- The Powers of Entry (Part 2) are similar to the Protection of Freedoms England Act 2012.
- However there are a number of small differences discussed in section 8.1.4 of the paper.
- Possible considerations include:
 1. A large part of the detail of the Bill will be produced in regulations. This may make it difficult to assess the proposals until such times as the regulations are produced. Therefore it may be important to have an appreciation of the level of scrutiny afforded to the regulations. The paper provides an overview in section 4.
 2. The potential weakening of environmental protection. There has been little review of the impacts of legislation in other jurisdictions; therefore it is difficult to make any judgements beyond the Department's reassurance that environmental protection will not be compromised.

Executive Summary

The purpose of the Environmental Better Regulation Bill is to reduce complexity of environmental legislation so as to lessen the regulatory burdens on businesses while protecting the environment. The current regimes for environmental permitting and powers of entry are subject to different sets of regulatory controls. Due to this the systems have been criticised as “*being complex, inflexible, incoherent and time-consuming to understand*”.

Therefore the main purpose of the Bill is to enable the Department to coordinate the separate regimes under a single environmental permitting system, under Part 1, and a single act for powers of entry following review of existing legislation under Part 2.

The rest of the Bill is concerned with making amendments to existing legislation to simplify the authorisation process for fuels and fireplaces; to remove the requirement for councils to make further assessments of air quality; and to transfer responsibility for regulation of drinking water for public supplies from the Department of Regional Development to the Department of Environment.

Part 1 of the Bill is most closely aligned to the Environmental Permitting (England and Wales) Regulations 2010 and the Regulatory Reform (Scotland) Act 2014. The Powers of Entry (Part 2) are similar to the Protection of Freedoms England Act 2012. However there are a number of small differences discussed in section 8.1.4 of the paper.

The Bill is essentially an enabling piece of legislation for the production of supplementary regulation. Due to this, a large part of the detail will be contained in the regulations, making scrutiny of the implications difficult at this stage. Unfortunately the timeline for the production of these regulations has not been discussed in any of the accompanying documents (EFM and consultation document). Therefore it may be important to have an appreciation of the level of scrutiny of the regulations afforded to the Assembly, of which an overview is provided in section 4.

Consultation responses raised concerns that simplification and streamlining of both regimes may lead to the weakening of environmental protection. There has been little review of the impacts of legislation in other jurisdictions; therefore it is difficult to make any judgements beyond the Department’s reassurance that environmental protection will not be compromised. For further detail on considerations and issues, including those flagged by responses to the consultation, refer to section 8 of the paper.

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1. Introduction

The purpose of this paper is to consider the Environmental Better Regulation Bill (the Bill) as introduced to the Assembly on 22 June 2015. It gives an appreciation of the rationale behind the Bill's development, a brief outline of the provisions, and an overview of the type of scrutiny afforded to the production of supplementary regulations. Where possible, it provides a brief comparison with other jurisdictions and highlights possible areas for further consideration with respect to concerns expressed during the Department of the Environment's (the Department) consultation exercise.

2. Background to the Bill

The Environmental Better Regulation Bill gives powers to the Department to make subsequent regulations for protecting and improving the environment. Changes to the environmental regulatory regime in the rest of the UK have helped to inform the Bill's development, however its cause for development has been more locally driven. The Department has linked the aim of the Bill with the priority under the Executive's Programme for Government of

“growing a sustainable economy and investing in the future by having a simpler, harmonised and easier to understand regulatory framework.”¹

In fact, the Northern Ireland Economic Strategy Action Plan commits the Department to producing primary legislation to improve environmental regulation and reduce the regulatory burden on businesses by 2015.²

Better regulation has been on the government's agenda since 2001 when the Northern Ireland Better Regulation Strategy was agreed by the Executive and endorsed by all NI Departments. The strategy was aimed at reducing regulatory burdens for businesses to encourage growth and competitiveness.³

With this principle in mind, the Department developed a White Paper in 2011 which discussed the rationale for producing legislation to reform the environmental regulatory framework. This included discussion around better environmental permitting and improving provisions on powers of entry, inspection and enforcement.

The production of the Bill is identified by the Department as the main focus for 2014-2015 under its Regulatory Transformation Programme which aims to:

¹ Departmental Briefing to Environment Committee (March 2015) <http://data.niassembly.gov.uk/HansardXml/committee-12528.pdf>

² NI Executive (2012) A Comprehensive Action Plan. Available at <http://www.northernireland.gov.uk/economic-strategy>

³ consultation

put in place an intelligent, outcome-focused regulatory system, to make it easy for responsible businesses to comply and difficult for those who try to flout the law.⁴

2.1 The Overall Purpose of the Bill

This section of the paper will focus on discussions held around the need to reform environmental permitting and powers of entry in Northern Ireland.

Environmental permitting

The White Paper explained that the current environmental permitting arrangements (under the auspices of the NIEA) fall under a range of separate regulatory regimes. Governed by more than forty pieces of primary and subordinate legislation, their procedures, regulatory tools and charging schemes tend to vary considerably. This makes it particularly problematic for businesses requiring more than one permit.⁵ According to the Consultation Paper, a NIEA survey in 2011 showed that 70% of customers requiring a permit needed two or more; meaning that most customers have to deal with multiple NIEA permits and contacts.⁶

With this in mind, the Department is proposing, under the Bill, to create an integrated environmental permitting regime, with a single set of procedures covering all environmentally hazardous activity. The Department suggests that this would assist the NIEA in delivering a more efficient service by harmonising rules, guidance, procedures, forms and IT systems.

The Consultation states that the Department proposes to do this by issuing an integrated permit with a standardised application process relating to all environmental controls on activities at a site. It is proposing to integrate all of the permitting regimes currently operated by the three Directorates within NIEA: Environmental Protection (to include pollution prevention and control, waste, water and radioactivity); Natural Heritage and Built Heritage; and the Marine Division. However, the Department recognises that it may not be possible to standardise all permits due to specific EU and UK requirements for certain activities, **which the Committee may wish to seek clarity on from the Department.**⁷

The White Paper explained that to make the changeover from one regime to another, customers with permits under the current/old regime would be moved to the new one immediately without having to re-apply.⁸

⁴ NIEA Business Plan 2014-2015 p.8 <http://www.doeni.gov.uk/niea/niea-business-plan-2014-15.pdf>

⁵ DOE (March 2011) Environmental Better Regulation White Paper
http://www.doeni.gov.uk/environmental_better_regulation_white_paper.pdf

⁶ DOE Consultation Paper on proposals for an Environmental Better Regulation Bill p.13
http://www.doeni.gov.uk/better_regulation_bill_consultation_may_2013.pdf

⁷ *ibid* p.5

⁸ DOE (March 2011) Environmental Better Regulation White Paper p.7
http://www.doeni.gov.uk/environmental_better_regulation_white_paper.pdf

Powers of entry

Both the Department's White Paper and its Consultation Paper discuss the fact that under the current regulatory framework there is a plethora of legislation providing powers for investigation and inspection with respect to environmental compliance and offences. For example, the Consultation Paper states that there are over 230 pieces of environmental legislation with around 50 of these having their own suite of investigatory powers.⁹

According to a stakeholder engagement exercise reported in the White Paper, the business and farming community voiced concerns with the number of visits by different inspectors from the same Agency, who were inspecting for compliance under different regulations.

The main concerns expressed by stakeholders include:

- An administrative and compliance burden exists – for both regulator and regulated – in understanding what powers relate to which piece of legislation within the 200 environmental regulations;
- The number of inspections for businesses, carried out under different regulations is creating an administrative burden.¹⁰

The Department is therefore proposing to unify investigatory powers into a single act. The purpose is to consolidate and define the powers that officers have when carrying out inspections and investigations of noncompliance with environmental legislation. According to the White Paper, unifying investigatory powers will include consolidating and streamlining the following areas:¹¹

- Powers of entry for officers;
- Powers of examination and investigation, including risk based inspections¹²;
- The power to gather evidence;
- Introducing powers for combined inspections; and
- New powers to resolve minor environmental problems through the issue of advice and guidance, leaving the regulator to concentrate enforcement action on serious non-compliance.

⁹ DOE Consultation Paper on proposals for an Environmental Better Regulation Bill p.21

http://www.doeni.gov.uk/better_regulation_bill_consultation_may_2013.pdf

¹⁰ DOE (March 2011) Environmental Better Regulation White Paper p.10

http://www.doeni.gov.uk/environmental_better_regulation_white_paper.pdf

¹¹ *ibid* p. 11

¹² This proposes that environmental regulators prioritise inspection and monitoring of compliance. Priority for inspection would be focused on high risk operations, while most low risk activities could be removed from the monitoring regime. See p.12 of the White Paper http://www.doeni.gov.uk/environmental_better_regulation_white_paper.pdf

3. Outline of the Bill

The following section gives a brief outline of the different parts of the Bill. For a clause by clause description of the Bill, refer to the Department's Explanatory Memorandum.

3.1 Part 1- Environmental Permitting

According to the Department, the current regulatory system for environmental permitting contains duplication which not only causes confusion for industry but may discourage new businesses from applying. The responses to the consultation criticised the current system for "*being complex, inflexible, incoherent and time-consuming to understand*".¹³ The Bill intends to introduce a single set of procedures to simplify NIEA's current permitting and compliance regimes. This is to focus resources on medium to high risk activities, cut red tape for compliant businesses, and make the system more affordable.

Part 1 provides for the protection and improvement of the environment ensuring consistency with UK and EU obligations. According to the Department, the new Bill will provide a robust legislative platform for the implementation of new EU Directives.¹⁴

Further clarification from the Department on how the Bill will be more robust than previous legislation, may be of interest to the Committee.

Part 1 gives the Department powers to produce regulations, subject to public consultation, for the protection and improvement of the environment. Schedule 1 details the specific matters for which regulations are to be made. This includes, among others, replacing the current environmental permitting regime and powers of entry and investigation with a single set of procedures.

Subject to consultation, the Department must make a set of 'general environmental rules' to impose conditions and standards. These are to be produced by regulations under clause 2 and schedule 1.

Under Schedule 1, the Department may also make regulations for offences, while the detail of these has yet to be specified, the Bill states that they must not exceed:

- 6 months imprisonment or £50,000 fine for summary conviction
- 5 years imprisonment or a fine not specified for conviction on indictment

The Department may also specify by regulations:

- a daily or periodic fine for continuing offences;
- order a convicted person to take remedial action (in addition to or instead of punishment); and

¹³ DOE Environmental Better Regulation Bill Explanatory Memorandum

¹⁴ Departmental Briefing to Environment Committee (March 2015) <http://data.niassembly.gov.uk/HansardXml/committee-12528.pdf>

- order a convicted person to cover any costs to the regulator for investigation or carrying out remedial action on their behalf.

New hierarchy of permitting

The Department stated during its briefing to the Committee that the complexity of the activity and the environmental risks will determine what is required.¹⁵ While not detailed on the face of the Bill, the White Paper discussed a new hierarchy of permitting to include:

- General Binding Rules – for small risk activities.¹⁶
- Registration – for relatively simple activities with possible cumulative impacts.¹⁷
- a Standard Permit –for less complex/medium to low risk activities.¹⁸
- a Bespoke Permit – for more complex/high risk activities where conditions of the permit are tailored to the specific facility.¹⁹

Other types of permits mentioned in the consultation document , include:

- Corporate permits - These would give businesses with multiple sites an opportunity to combine their site permits into a single corporate permit.²⁰
- Accredited permits – these will recognise positive environmental performance and company compliance. Businesses could be independently audited for their suitability by an approved, qualified third party. This would mean fewer inspections and charges on businesses deemed worthy. Business prosperity commitments - these are voluntary and give businesses the opportunity of ‘going beyond compliance’ for long term business prosperity.

However, the hierarchy of permits and types of permits listed above have not been detailed on the face of the Bill itself; instead, consideration is to be given, subject to consultation, through the development of regulations under Part 1 of the Bill.

For detail of the full suite of regulations to be produced under Part 1, refer to Schedule 1 of the Bill.

¹⁵ Departmental Briefing to Environment Committee (March 2015) <http://data.niassembly.gov.uk/HansardXml/committee-12528.pdf>

¹⁶ DOE (March 2011) Environmental Better Regulation White Paper p.7
http://www.doeni.gov.uk/environmental_better_regulation_white_paper.pdf

¹⁷ ibid

¹⁸ ibid

¹⁹ Ibid and Schedule 1 of the Environmental Better Regulation Bill

²⁰ DOE Consultation Paper on proposals for an Environmental Better Regulation Bill p.19
http://www.doeni.gov.uk/better_regulation_bill_consultation_may_2013.pdf

3.2 Part 2 – Powers of Entry

The environmental regulatory process requires monitoring and inspection of activities and operations to ensure compliance. Environmental regulators require entry onto land, premises or property for the purposes of inspection, to carry out searches, to undertake collections and to retain evidence. According to the Department, the current system may be confusing for businesses as there are a range of different powers of entry and investigation across the existing regulatory framework.

Part 2 requires the Department:

- To conduct a review and to rationalise powers of entry -this involves an analysis of the existing powers to determine the extent to which these may need to be rewritten, repealed or revoked by the Department through regulations.²¹
- The Department may also set restrictions or limits on the use of powers of entry e.g. time, premises etc.²²
- It must also prepare a code of practice on the use of the powers by the Department, district councils and anyone else.²³
- The Department must conduct a consultation before any regulations are made under this part.²⁴

3.3 Parts 3, 4, 5

The final three sections of the Bill make amendments to the following pieces of legislation:

- **The Clean Air (Northern Ireland) Order 1981** – this is to simplify the authorisation of fuels and fireplaces allowing them to be approved administratively rather than through the production of regulations. The purpose is to speed up the process and reduce delays for manufacturers and suppliers getting products to market.²⁵ Similar changes are being considered to the Clean Air Act in England under its “Red tape challenge”.²⁶
- **The Environment (Northern Ireland) Order 2002** – to remove the requirement on councils to make further assessments of air quality. This is seen as a hindrance to quick preparation and implementation of local air quality action plans by councils. According to the Bill’s Explanatory Memorandum, England, Scotland and Wales are considering similar amendments. In fact England has already introduced this under Part 4 of Schedule 13 of the Deregulation Act.²⁷

²¹ Environmental Better Regulation Bill Clause 9

²² *ibid* Clause 7

²³ *Ibid* Clause 12

²⁴ *Ibid* Clause 10

²⁵ Better Environmental Regulation Bill Explanatory and Financial Memorandum

²⁶ UK Government [online] *Reviewing the Clean Air Act* <https://www.gov.uk/government/policies/protecting-and-enhancing-our-urban-and-natural-environment-to-improve-public-health-and-wellbeing/supporting-pages/reviewing-the-clean-air-act>

²⁷ Deregulation Act 2015 <http://www.legislation.gov.uk/ukpga/2015/20/contents/enacted>

- **The Water and Sewerage Services (Northern Ireland) Order 2006** - to transfer responsibility for regulation of drinking water quality for public supplies from the Department for Regional Development to the Department of the Environment; removing the need to report to two Ministers.²⁸

4. Subsequent Regulations

A large part of the detail of the Bill will be contained within the development of supplementary regulations. This may make it difficult to assess the proposals until such times as the regulations are produced. Unfortunately, the timeline for the production of regulations has not been discussed in any of the accompanying documents to the Bill, such as the EFM, or Consultation.

Some of the detail to be included in regulations has been discussed during the Consultation and in the White Paper, and where possible, these have been highlighted throughout this paper. However, the detail given may alter by the time the regulations are published for consultation.

While it is difficult to describe at this stage the detail of regulations to be produced, this section gives a summary of the type of scrutiny that the Assembly may exert, come their production.

The main regulations to be made in the Bill are in respect to the new environmental permitting regime under Part 1. The Department has informed that it expects these regulations to be very substantial and complex and will be contained in the one set of statutory rules. It is expected that these regulations will be subject to Affirmative Resolution.²⁹

Part 2 contains powers to make regulations for powers of entry. However, clause 9 requires the Department to carry out a review of existing powers of entry to determine whether or not to make regulations under this part. Therefore it is difficult to indicate the extent of subordinate legislation that may be produced under Part 2. That being said, according to the Department, any regulations made under this part will be subject to Affirmative Resolution should they amend primary legislation, create offences or increase penalties; whilst all other regulation will be subject to Negative Resolution.³⁰

However a Delegated Powers Memorandum produced by the Department will identify, in detail, the provisions which confer powers to make regulations. It will also explain the purpose of each provision and the type of resolution afforded.

²⁸ Better Environmental Regulation Bill Explanatory and Financial Memorandum

²⁹ Email correspondence with Department (May 2015)

³⁰ *ibid*

5. Responsibilities

Responsibility for the production of regulations under Parts 1 and 2 of the Bill lie with the Department. In terms of the regulating authority responsible for implementing the new permitting regime and issuing permits legislated for under Part 1, NIEA is the main responsible body, and to a lesser extent local District Councils.³¹ The rationalised powers of entry and associated powers will be available to authorised officers in the NIEA, and in certain cases, to officers in District Councils who carry out environmental inspection and investigation.³²

6. Consultation

Parts 1 and 2 – Environmental Permitting and Powers of Entry

Parts 1 and 2 were informed by both research carried out in 2011 by the Department and published in its White Paper on Better Regulation, and a consultation in May 2013 on “*Proposals for an Environmental Better Regulation Bill*”. Further detail on the consultation is provided in the last section of this paper.

Part 3 Amendments to the Clean Air (Northern Ireland) Order 1981

According to the Department a consultation was not conducted as in practice the process for the authorisation of fuels and fireplaces will remain the same, only that approval will be carried out administratively rather than through regulations.³³

Part 4 – Amendments to the Environment (Northern Ireland) Order 2002

As part of an ongoing UK review of local air quality management, the Department consulted councils on the need to undertake further assessments of air quality. Councils supported the removal of this requirement.³⁴

Part 5 – Amendments to the Water and Sewerage Services (Northern Ireland) Order 2006

A consultation was not conducted as according to the Department the process for the regulation of drinking water quality for public supplies will not be changed, only that it will be conducted by DOE instead of DRD.³⁵

³¹ DOE Consultation Paper on proposals for an Environmental Better Regulation Bill p.15
http://www.doeni.gov.uk/better_regulation_bill_consultation_may_2013.pdf and correspondence with the Department (17/08/2015)

³² DOE Consultation Paper on proposals for an Environmental Better Regulation Bill p.6
http://www.doeni.gov.uk/better_regulation_bill_consultation_may_2013.pdf

³³ Better Environmental Regulation Bill Explanatory and Financial Memorandum

³⁴ *ibid*

³⁵ *ibid*

7. Comparisons with Other Jurisdictions

While the main reason for the production of the Bill is more locally focused around the Department's Regulatory Transformation Programme, the Department has stated that the new regime will build on the experiences from other areas in the UK and bring NI in line with other UK jurisdictions.

In summary, the Environmental Permitting provisions (Part 1) of the Bill is most closely aligned to the Environmental Permitting (England and Wales) Regulations 2010 and the Regulatory Reform (Scotland) Act 2014, and the Powers of Entry to the Protection of Freedoms England Act 2012.

7.1 England

Environmental Permitting

In 2010 DEFRA and the Environment Agency introduced a single environmental permitting system under its Environmental Permitting Programme, through the Environmental Permitting (England and Wales) Regulations 2010. Similar to the proposed system under the NI Bill, this streamlined and integrated what were separate licensing regimes into a single 'Environmental Permit' so as to reduce red tape and allow more flexibility. The new English and Welsh regime covers: waste management, old pollution and prevention and control permits, discharge consents, groundwater authorisations and radioactive substances regulation.³⁶ Many of the provisions are similar to those to be produced through regulations under the NI Bill, these include:

- who needs a permit or to register an exemption;
- how to apply for, appeal against, vary, transfer, surrender and enforce against a permit; and
- the delivery through permitting of national policy and European Directives on environmental protection.³⁷

Similar to the NI Bill, a single permit can be granted for more than one regulated facility providing all the facilities are on the same site with the same regulator and operator³⁸. However, the NI consultation document discussed the possibility of allowing businesses with multiple sites to combine their site permits into a single corporate permit.³⁹ The Bill itself does not provide detail on the specific types of permits; this is to

³⁶ UK Planning Portal [online] Environmental Permitting

<http://www.planningportal.gov.uk/planning/countryside/environmental/environmentalpermitting>

³⁷ The Environmental Permitting (England and Wales) Regulations 2010 Explanatory Memorandum

http://www.legislation.gov.uk/ukdsi/2010/9780111491423/pdfs/ukdsiem_9780111491423_en.pdf

³⁸ DEFRA Environmental Permitting Guidance (2013) p.14

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211852/pb13897-ep-core-guidance-130220.pdf

³⁹ DOE Better Regulation Bill Consultation (2013) http://www.doeni.gov.uk/better_regulation_bill_consultation_may_2013.pdf p.19

be included in the supplementary regulations, subject to consultation, under Part 1 of the Bill.

Powers of Entry

Provisions in relation to powers of entry are closely in line with those provided under Part 3 Chapter 1 of the Protection of Freedoms Act 2012 in England. Similar to the NI Bill, this provides for a code of practice to cover officials' powers of entry, with these powers being subject to review and repeal.⁴⁰

Red Tape Challenge

The better regulation agenda is part of the Conservative and Liberal Democrat coalition government's *Red Tape Challenge*.⁴¹ This was introduced to give businesses and the public the opportunity to have their say in reducing burdensome regulation, so as to boost business and economic growth while protecting the environment. According to a Statement by the Prime Minister in 2014, 3000 pieces of legislation had been identified to be scrapped or improved, with 800 regulations having been abolished or simplified by the time of his statement. According to the Prime Minister, this has saved businesses £1.5bn.⁴² One of the results includes an estimated annual saving of £135 million to business due to clearer contaminated land use guidance.⁴³

7.2 Scotland

Environmental Permitting

Under its joint Better Environmental Regulation Programme, the Scottish Government and the Scottish Environment Protection Agency (SEPA) aimed to develop a simpler legislative framework to ensure more effective and efficient protection of the environment, while reducing the regulatory burden on business. This brought about the introduction of the Regulatory Reform (Scotland) Act in 2014. This enables the legislative changes needed for a new integrated regulatory framework, a broader range of enforcement tools and new statutory enforcement powers for SEPA.

Similar to Part 1 of the NI Bill, Part 3 of the Scottish Act also provides powers to make regulations for protecting and improving the environment. This includes the production of regulations to bring environmental permitting under one structure with a common set of procedures. In fact, most activities listed under Schedule 2 of the Scottish Act are similar to those listed in Schedule 1 of the NI Bill.

⁴⁰ Protection of Freedoms Act 2012 <http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted>

⁴¹ Cabinet Office *Red Tape Challenge* <http://www.redtapechallenge.cabinetoffice.gov.uk/about/>

⁴² *ibid*

⁴³ For more examples see <http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/red-tape-challenge-results/>

Powers of Entry

The Act also provides enhanced powers of entry for the regulator and the power to seize documents in relation to suspected criminal activity.⁴⁴ The Bill also contains measures to extend protection against intimidation or physical assaults to SEPA officers.⁴⁵

Under Part 1, the Scottish Act puts a duty on regulators to contribute to achieving sustainable economic growth and, similar to the NI Bill, requires Scottish Ministers to produce a code of practice for regulators and their functions.⁴⁶

7.3 Wales

While the Environmental Permitting (England and Wales) Regulations 2010 apply to Wales as they do to England, some tidying up of legislation is expected under the Welsh Environment Bill including. The aim of this is to bring another level of simplification allowing Natural Resources Wales to issue a set of standard rules (general and binding rules) for business operating in certain sectors. This means businesses able to comply with these standards will not need to apply for a permit, and will be inspected to ensure compliance.⁴⁷ The Bill was introduced in May 2015, and it is anticipated that it will receive Royal Assent by spring 2016.⁴⁸

The Welsh Government has also adopted a specific Working Smarter programme for agriculture, which looked to simplify a number of inspection, recording and licensing regimes for farmers so as to encourage growth of the sector.⁴⁹

7.4 Republic of Ireland

The situation in the Republic of Ireland is quite different to the suggested changes in Northern Ireland. To date, the Republic of Ireland has not produced a similar form of legislation to reform environmental regulation and rationalise powers of entry.⁵⁰ Under its most recent Government Legislative Programme (for Spring/Summer) there do not appear to be any plans to introduce legislation similar to the NI Bill.⁵¹

⁴⁴ Clause 46 of the Regulatory Reform (Scotland) Act 2014

http://www.legislation.gov.uk/asp/2014/3/pdfs/asp_20140003_en.pdf

⁴⁵ Schedule 3 Part 5 of the Regulatory Reform (Scotland) Act 2014

http://www.legislation.gov.uk/asp/2014/3/pdfs/asp_20140003_en.pdf

⁴⁶ *ibid* Clause 4 and 5

⁴⁷ Welsh Government Environment (Wales) Bill Explanatory Memorandum p.134/135

<http://www.senedd.assembly.wales/mglssueHistoryHome.aspx?lId=12572>

⁴⁸ Welsh Government (May 2015) Environment (Wales) Bill [online]

<http://gov.wales/topics/environmentcountryside/consmanagement/natural-resources-management/environment-bill/?lang=en>

⁴⁹ Welsh Government [online] *Working Smarter Programme*

<http://gov.wales/topics/environmentcountryside/farmingandcountryside/farming/workingsmarter/?lang=en>

⁵⁰ Information provided by Oireachtas Library and Information Service (17/08/2015)

⁵¹ Department of the Taoiseach (2015) *Government Legislation Programme Spring Summer Series 2015*

http://www.taoiseach.gov.ie/eng/Taoiseach_and_Government/Government_Legislation_Programme/

As it stands, the system remains quite disaggregated with the Environmental Protection Agency (EPA) as the main body responsible for environmental licensing and regulation under the EPA Act 1992 (as amended). In addition to the EPA, local authorities issue waste collection permits and wastewater discharge licenses in accordance with the Waste Management Act 1996 (as amended). Various Departments are responsible for issuing licenses related to wildlife, forestry and mineral, oil and gas exploration, and these come under separate pieces of legislation again.⁵²

8. Considerations/issues

The following section suggests a number of possible areas for further consideration. It also summarises issues raised and suggestions made by respondents to the Department's consultation exercise in May 2013.

8.1 Areas for further consideration

8.1.1 Impacts on protection

One of that main concerns expressed in responses to the consultation was the potential weakening of environmental protections due to a simplified process. The Department has stated that

Regulatory requirements will not be diluted as protection of the environment will be paramount⁵³

It is hard to assess at this stage the possible impacts a change in the regulatory regime will have. Other jurisdictions, such as England and Scotland that have introduced similar changes to their regulatory framework have stated that the process will not reduce regulation. For example, the Explanatory Memorandum to the English and Welsh Environmental Permitting Regulations 2010 stated that

the point of the process is to reduce the administrative burden of regulation on industry and regulators without compromising the environmental and human health standards previously delivered by the separate regimes⁵⁴

An impact assessment of the 2010 Regulations has been carried out by Defra and does not highlight any issues around reduced environmental protection. In fact it suggests quite the opposite, by proposing to further relax the framework by removing the necessity to secure planning permission before an environmental permit can be issued. It is felt that such a prerequisite is considered to be an unnecessary hurdle for

⁵² Information provided by Oireachtas Library and Information Service (17/08/2015)

⁵³ Department's Synopsis of Responses to the consultation (August 2013)

http://www.doeni.gov.uk/better_regulation_consultation_paper_synopsis_of_consultee_responses.pdf

⁵⁴ The Environmental Permitting (England and Wales) Regulations 2010 Explanatory Memorandum

http://www.legislation.gov.uk/ukdsi/2010/9780111491423/pdfs/ukdsiem_9780111491423_en.pdf

business to address. However, because detail will be provided in regulations under the NI Bill, it is not known at this stage whether a similar relaxed approach to planning will be considered.

In relation the Regulatory Reform Scotland Act 2014, which displays similar provisions to the NI Bill in terms of environmental permitting, a Strategic Environmental Assessment Pre Screening was carried out which stated

*The Environmental Regulation aspects of the Bill will not alter the level of environmental protection but are about the tools to deliver this.*⁵⁵

While the Scottish Act has not been long in force, and as yet no review has been conducted, it is difficult to know the overall environmental protection implications at this stage.

Due to the lack of review of the impacts of legislation in other jurisdictions; it is difficult to make any judgements beyond the Department's reassurance that environmental protection will not be compromised.

8.1.2 Detail in the Bill

The Bill is essentially an enabling piece of legislation giving powers to the Department to produce regulations for a new permitting system and to review and rationalise existing powers of entry legislation. However, the lack of detail on the face of the Bill makes scrutiny at this stage more difficult. For example, the new types and hierarchy of permits is to be produced through regulations, rather than being provided on the face of the Bill under Part 1. Therefore it is important to have an appreciation of the level of scrutiny the Assembly has been afforded once the supplementary regulations are available. This paper has given an overview of the general type of scrutiny given to regulations produced under Parts 1 and 2 of the Bill (see section 4 of this paper). However, members may wish to consult the Delegated Powers Memorandum for more detail.

8.1.3 EU and UK requirements

The Department recognises that it may not be possible to standardise all permits due to specific EU and UK requirements for certain activities, which the Committee may wish to seek clarity on from the Department.⁵⁶ As an example of good practice, as part of the Red Tape Challenge – Environment Theme, the UK Government produced an implementation plan for both EU and Domestic based legislation/requirements, which included environmental permitting.⁵⁷

⁵⁵ Scottish Government (2013) *Strategic Environmental Assessment Pre Screening* <http://www.gov.scot/Topics/Business-Industry/support/better-regulation/BetterRegulationBillConsultation/SEAPreScreening>

⁵⁶ *ibid* p.5

⁵⁷ Red Tape Challenge- Environment Theme Implementation Plan (2012) p. 7 <https://www.gov.uk/government/publications/red-tape-challenge-environment-theme-implementation-plan>

8.1.4 Main differences with other jurisdictions

- Under the Environmental Permitting (England and Wales) Regulations 2012, a single permit can be granted for more than one regulated facility providing all the facilities are on the same site with the same regulator and operator⁵⁸. However, the NI consultation document discussed the possibility of allowing businesses with multiple sites to combine their site permits into a single corporate permit.⁵⁹ The Bill itself does not provide detail on the specific types of permits; this is to be included in the supplementary regulations, subject to consultation, under Part 1 of the Bill.
- UK Government's Red Tape Challenge considered the sharing of common information between the Planning Portal and the Environmental permitting application form.⁶⁰ This type of detail has not been provided on the face of the NI Bill, nor discussed during the consultation.
- The Scottish Regulatory Reform Act puts a duty on regulators to contribute to achieving sustainable economic growth; however there is nothing similar to this in the NI Bill⁶¹
- The Scottish act also contains measures to extend protection against intimidation or physical assaults to SEPA officers.⁶² Whereas the NI Bill provides a less specific power allowing the Department to rewrite offences in relation to "obstructing" a person using the power of entry.⁶³

8.1.5 Agriculture

Currently the Committee for Agriculture is performing a review into Better Regulation. The purpose of this inquiry is to get the views of farmers in relation to the level of regulation experienced by the industry in Northern Ireland, and which areas they find particularly burdensome so as to try and reduce these. The survey is currently out for completion and depending on the number of responses received, may be of interest as supplementary information.⁶⁴

8.1.6 Financial Impacts

Due to the lack of detail in the Bill it is difficult at this stage to give an appreciation of the financial implications; this will need to be considered during the development and

⁵⁸ DEFRA Environmental Permitting Guidance (2013) p.14

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211852/pb13897-ep-core-guidance-130220.pdf

⁵⁹ DOE Better Regulation Bill Consultation (2013) http://www.doeni.gov.uk/better_regulation_bill_consultation_may_2013.pdf p.19

⁶⁰ Red Tape Challenge- Environment Theme Implementation Plan (2012) p. 7 <https://www.gov.uk/government/publications/red-tape-challenge-environment-theme-implementation-plan>

⁶¹ Part 1 of the Regulatory Reform Scotland Act 2014 <http://www.legislation.gov.uk/asp/2014/3/contents/enacted>

⁶² Clause 46 of the Regulatory Reform Scotland Act

⁶³ Part 2 Clause 8 of the NI Better Regulation Bill

⁶⁴ Committee for Agriculture and Rural Development Inquiry into Better Regulation <http://www.niassembly.gov.uk/assembly-business/committees/agriculture-and-rural-development/>

consultation of supplementary regulations. However, the EFM states that the main costs of the Bill are those associated with the new regulatory regime proposed under Parts 1 and 2 of the Bill e.g. development of legislation, modifications to existing IT systems, staff training and guidance to businesses.⁶⁵ According to the EFM, full appreciation of this is a matter for the Regulatory Impact Assessments which will accompany the subordinate legislation for Parts 1 and 2. One respondent to the consultation felt that it may be reasonable to expect a reduction in costs to reflect the expected reduction in associated administration.⁶⁶ The EFM expects that the likely benefits to businesses due to a more effective and efficient regulatory process, should offset any potential increase in public sector costs.

It also stated that no additional public sector costs were identified for Parts 3, 4 and 5.

8.1.7 Equality and Human Rights

According to the EFM, an Equality and Regulatory Impact Assessment carried out by the Department found no issues. The same was found in relation to Human Rights issues considered in accordance with the European Convention on Human Rights.⁶⁷

8.2 Consultation Responses

The Department's consultation ended in July 2013 with a total of 22 responses made. Of the 22, ten were from business and industry, six from local government bodies, five from non-governmental environmental organisations and one from the Human Rights Commission.⁶⁸

In summary:

- There was widespread support for the introduction of an integrated environmental permitting regime with 20/22 supporting it.
- A large majority of the respondents were in favour of rationalising the existing powers of entry and associated powers.

While there was broad support for the proposals, some respondents raised the following issues and suggestions identified in Table 1.⁶⁹

Please note that some of the areas highlighted are not detailed on the face of the Bill and are to be considered through supplementary regulations subject to further consultation. These have been identified throughout the table.

⁶⁵ Environmental Regulation Bill Explanatory and Financial Memorandum

⁶⁶ DOE (2013) Better Regulation Bill Consultation http://www.doeni.gov.uk/better_regulation_bill_consultation_may_2013.pdf

⁶⁷ Environmental Regulation Bill Explanatory and Financial Memorandum

⁶⁸ DOE (August 2013) Proposals for An Environmental Better Regulation Bill Synopsis of Responses

http://www.doeni.gov.uk/better_regulation_consultation_paper_synopsis_of_consultee_responses.pdf

⁶⁹ These have been taken from the Department's Synopsis of Responses to the consultation (August 2013)

http://www.doeni.gov.uk/better_regulation_consultation_paper_synopsis_of_consultee_responses.pdf

Table 1: Issues/suggestions

Issue/suggestion	Detail	Dept. response ⁷⁰
Weakening of environmental protection duties	Concern was expressed that the new regime may weaken the Department's duties on environmental protection and that cost savings should not be paramount.	<i>Regulatory requirements will not be diluted as protection of the environment will be paramount but the administrative burden on compliant businesses will be reduced. The Department is seeking to rationalise legislation governing environmental permitting making compliance more straightforward for businesses to understand and making it easier to hold to account those who breach the law.</i>
Introducing integrated permits across NIEA	The Department is proposing to integrate all of the permitting regimes currently operated by the three Directorates within NIEA: Environmental Protection (to include pollution prevention and control, waste, water and radioactivity) Natural Heritage and Built Heritage, and the Marine Division. Respondents questioned the feasibility of introducing integrated permits across the 3 NIEA Directorates. They also voiced concerns as to whether inspectors could inspect across a range of activities.	<i>NIEA differs from other environment agencies in that it has responsibility for environmental protection, natural heritage and built heritage. It is the Department's view that NIEA is therefore well placed to take an all-round approach to environmental management by implementing an IEPR which encompasses, as far as possible, all of the permitting regimes currently operated by NIEA and potentially those issued by Marine Division. However, it is recognised that this might not be possible in all cases due to, amongst other things, the specific requirements of some European Directives and legislation that applies at a UK level. The Department also accepts that, even if it proves to be legally possible to integrate all existing permitting regimes, it may not be desirable to do so because of practical/operational reasons. The extent of this practicality will only become apparent when further, more detailed work on developing the new regime is undertaken.</i>
Common permitting hierarchy	This is to be developed through regulations under Part 1 Schedule 1 of the Bill. The Department has stated that the complexity of the activity and the environmental risks will determine what is required. (Further detail on this proposal is available p.11 of this paper). While 19/22 responders supported the idea, comments were made regarding the classification of differences between high and low risk activities. It was suggested that the hierarchy must be easy to understand and come with guidance. Issues were raised in relation to potential cumulative impacts of low-risk processes.	<i>The Department acknowledges that clear definitions of where activities lie within the permitting hierarchy and the associated level of control that is applied to those activities will be key to the success of the new regime. Clearly defined risk classifications introduce consistency and objectivity to the process. The aim will be to devise a transparent system that accommodates the cumulative effect a number of individual low risk activities can have on sites and proximity to sensitive locations. These issues will be the subject of a future public consultation exercise.</i>

⁷⁰ *ibid*

<p>Setting of rules and thresholds</p>	<p>These are to be considered through the development of regulations in Part 1 Schedule 1.</p> <p>13 respondents supported the idea that rules and thresholds be set in guidance rather than legislation. They felt it provided greater flexibility/adaptability. However, others rejected the idea due to concerns that guidance would have less gravitas than legislation and therefore dilute any impact.</p> <p>Respondents also suggested the following should be considered during the risk assessment to determine the positioning of activities in the permitting hierarchy: the nature and scale of the operation, potential risk(s), past performance and cumulative impact of a number of activities being carried out.</p>	<p><i>Having the rules and thresholds set in guidance rather than in legislation gives more flexibility if the rules or thresholds need to be changed. The Department holds the view that it is very important to have this flexibility to allow rules and thresholds to be amended relatively quickly and easily if they are found to be inappropriate or ineffective or to take account of new technology. Any proposed changes to the guidance governing rules or thresholds would be subject to appropriate consultation. It is acknowledged, however, that any such guidance must have a firm legal basis and can be enforced when necessary. The Department will be working with its legal advisors to ensure that this is the case.</i></p> <p><i>The issues highlighted by respondents will be considered when the Department is determining the thresholds and the positioning of activities within the permitting hierarchy. The resultant draft guidance containing the proposed thresholds etc. will then be subject to consultation.</i></p>
<p>Corporate permits</p>	<p>These would give businesses with multiple sites an opportunity to combine their site permits into a single corporate permit. Details of these are to be provided in regulations under Part 1 of the Bill.</p> <p>The majority were in favour of this as it would reduce bureaucracy. However, the following reservations were raised in relation to:</p> <ul style="list-style-type: none"> • Enforcement and monitoring and whether all sites in a corporate permit would be penalised if one of them fails an inspection. • Potential trans-boundary problems. • Reduction in inspections could undermine monitoring and early detection. • That operators should be able to choose the nature of permits i.e. single site, multiple site or corporate. 	<p><i>The Department views the introduction of corporate permits as a positive step in that they would provide both NIEA and the company with a better understanding of the risks and desired outcomes across a company's sites and activities as a whole. This would inform decisions about the priority, level and timing of investment in improvement. The idea of corporate permits was generally supported by respondents and therefore it is the Department's intention to include enabling powers to allow for corporate permits in the draft Environmental Better Regulation Bill. However, some very valuable issues were raised in response to this question and these will be considered fully as the work on the detail of the integrated permitting regime develops. The details of what corporate permits might include and how non-compliance will be dealt with in connection with IEPR will be considered in due course.</i></p>
<p>Accredited permits</p>	<p>These will recognise positive environmental performance and company compliance. Businesses could be independently audited for their suitability by an approved, qualified third party. This would mean fewer inspections and charges on businesses deemed worthy. Details of these are to be provided in</p>	<p><i>Accredited permits place a lighter administrative burden on companies and have been used in other countries to recognise that a company has reached a high level of environmental management and that they have robust environmental management systems in place. The Department is keen to explore the use of accredited permits in Northern Ireland but acknowledges</i></p>

	<p>regulations under Part 1 of the Bill.</p> <p>While the majority of respondents supported this proposal, concerns were raised in relation to the competency of third party inspectors/auditors. Some felt that membership of private assurance schemes should not provide exemptions from inspections and that more research/consultation is required on this proposal.</p>	<p><i>that this would be a significant change from the current situation. There are many issues, such as those highlighted by respondents that need to be addressed to ensure that accredited permits reduce the burden on compliant businesses whilst still affording adequate protection of the environment. Further work is required on this before detailed proposals can be developed. These will be the subject of future consultations.</i></p>
Use of search powers	<p>While a majority was in favour of rationalising the existing powers of entry, it was suggested that there should not be any disproportionate use of search powers.</p>	<p><i>This proposal, whilst simplifying and harmonising powers, is not intended to weaken any existing powers of entry or associated powers. It is the intention of the Department to ensure inspectors can inspect for a full range of permitted activities when on site using a risk based approach. It is also envisaged that a comprehensive programme of training for inspectors will be undertaken in line with any new legislation and associated changes in inspections and investigations. As part of its Regulatory Reform programme the Department will ensure that robust safeguards are in place with regard to Human Rights legislation and it is also intended that there will be appropriate complaints and appeals procedures available to businesses and individuals.</i></p>