

## Environment Bill briefing for Lords Committee Days 3/4 The independence of the OEP in Northern Ireland

25 June 2021

### Summary

This briefing is on behalf of the environmental coalitions [Greener UK](#) and [Wildlife and Countryside Link](#) and covers **Part 2** and **Schedule 3** on environmental governance in Northern Ireland.

Schedule 3 makes provision for the functions of the Office for Environmental Protection (OEP) in terms of its activities in Northern Ireland. **We strongly support the inclusion of Northern Ireland within the remit of the OEP.** These provisions are broadly parallel to those in Part 1 and Schedule 1 that relate to England.

Our other briefings on the environmental governance measures in Part 1 of the bill apply equally to the measures that relate to Northern Ireland. However, additional uncertainties and complexities remain.

Extensive regulatory dysfunction and unacceptable levels of disregard for environmental law has resulted in substantial degradation of the environment in Northern Ireland and significant economic and social costs.

The independence of the OEP in Northern Ireland is, therefore, of critical importance. The lack of an independent environment regulator and historically weak environmental governance means that the OEP must have a cast iron constitution and culture of independence from the outset.

The need for independent oversight is exemplified in the case of designated areas. Protected sites in Northern Ireland are in dismal state; a DAERA executive agency (the Northern Ireland Environment Agency – NIEA) is responsible for their designation and protection. The potential conflict of interest caused by the power for the DAERA minister to provide guidance that would directly affect their portfolio is a clear reason why independence of the OEP from departments will be key.

In this context, we are concerned by the appropriateness of a broad power for DAERA to issue guidance to the OEP, which it must have regard to when preparing its enforcement policy or exercising its enforcement functions in Northern Ireland. **This will affect the OEP's ability to perform its role independently and does not take sufficient account of the particular circumstances of Northern Ireland, including the power sharing nature of the Northern Ireland Executive and the political and administrative context.**

We are also concerned about the timetable for appointing the first Northern Ireland member of the OEP board. While we welcome the appointment of the first four non-executive members, who will join Chair Designate Dame Glenys Stacey on the Interim OEP Board from 1 July, there must be no further delay in appointing the Northern Ireland member and the appointment process should be progressed as quickly as possible.

## Amendments we strongly support

### **Amendment 117: guidance power for DAERA (Baroness Ritchie of Downpatrick)**

The guidance power as proposed in Paragraph 24 of Schedule 3 is inappropriate for the reasons that we set out in our briefing on the independence of the OEP, and which we expect will be reflected in the stand part debate on Clause 24.

In addition, this wide ranging power for DAERA to issue guidance to the OEP is inappropriate for the following reasons:

- In line with the ministerial code, cross-cutting and controversial matters must be brought to the Executive. Guidance from the DAERA minister to the OEP on its enforcement policy and functions would qualify as both cross-cutting and controversial. What is the procedure for bringing this guidance to the Executive before it is issued by DAERA?
- Ministerial appointments in Northern Ireland are managed through the [D'hondt system](#) in which the largest parties are allocated multiple departments. What mechanisms will be put in place to minimise the risk that a future DAERA minister could use the guidance power to advise the OEP in relation to enforcement of potential non-compliance on environmental law relating either to a department of similar affiliation, or one allocated to an opposing party? Given its wide scope and the lack of transparency in how it would be prepared, the guidance could, in theory, be used for political benefit, a risk which does not appear to have been considered by Defra or DAERA in designing this power.
- As a public authority, the NIEA will fall within the remit of the OEP. If DAERA exercised its power to issue guidance in relation to enforcement matters involving the NIEA, that would further cloud Northern Ireland's already muddy environmental governance and could result in blurred lines of accountability.

**We consider that the guidance power should therefore be removed from the bill and strongly support amendment 117 which would achieve this.**

Part of the [justification](#) for taking the power, is that other Northern Ireland departments also have powers to issue guidance to arm's length bodies. It must be noted that there is no equivalent or similar body to the OEP in Northern Ireland. Sometimes the example given is Article 7 of the Water and Sewerage Services (Northern Ireland) Order 2006 relating to the power of the Department for Infrastructure minister to give advice to the utilities regulator. However, such a comparison is misguided because, in that instance, the guidance relates to the achievement of social and environmental policy objectives and the utilities regulator is not an enforcement body.

At the very least, consideration should be given to what safeguards should be put in place to avoid and mitigate the risks identified above. For example, this could include the following:

- Requiring the guidance to be consulted on before it is issued. This could be achieved by laying it in draft form in the Assembly, enabling scrutiny from MLAs and stakeholders.
- Providing for the guidance to be formally approved by the Assembly before it is issued.
- Adjusting the terms of the guidance power, so that it could only be exercised in those circumstances where the OEP requested it.

## **Amendment 118: appointment of the Northern Ireland member of the OEP (Baroness Ritchie of Downpatrick)**

**We strongly support amendment 118 which would require the appointment of the Northern Ireland board member to be made with the consent of the Committee for Agriculture, Environment and Rural Affairs (AERA) of the Northern Ireland Assembly.**

To engender the greatest level of stakeholder trust and buy in to the OEP, Northern Ireland must be, and must be perceived to be, embedded within it from the start.

The appointment of a dedicated Northern Ireland board member will help ensure that the nuances – including geopolitical, biogeographic and societal – of Northern Ireland are properly accounted for within the OEP’s policies and activity. It will also help establish trust and credibility.

Owing to the power sharing nature of the Northern Ireland Executive, oversight from the AERA committee of this important appointment is essential, as it would allow for the necessary cross party involvement.

It would also provide the opportunity to bring to light any potential conflict of interests, as well as enabling the Assembly to assess the suitability of the recommended member, in relation to their expertise and experience on Northern Ireland matters.

**It would be helpful if the minister could ask DAERA to clarify the timescale for the appointment process, noting that the first interim OEP board meeting is expected to be on 1 July.**

**For more information, please contact:**

Ruth Chambers, senior parliamentary affairs associate, Greener UK  
e: [rchambers@green-alliance.org.uk](mailto:rchambers@green-alliance.org.uk)  
t: 020 7630 4524

**On behalf of Greener UK and Wildlife & Countryside Link**

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