

## Northern Ireland Protocol Bill: second reading briefing

7 October 2022

### The Protocol and the environment

The natural environment is our greatest shared asset, but it is in crisis. Across Northern Ireland, [no waters are in good condition](#), around 25 per cent of bird species are at [risk](#) of extinction, and research shows that Northern Ireland ranks [12th worst](#) in the world for biodiversity loss. Tackling and reversing these losses requires consistency across the island of Ireland's single biogeographic unit. Divergence in the ambition of environmental law through the Northern Ireland Protocol Bill is therefore of significant concern.

While the Northern Ireland Protocol is largely focused on matters of trade, it does have [implications](#) for environmental regulation and governance mechanisms in Northern Ireland. For example, while it does not include key nature conservation legislation such as the Habitats Regulations or Water Framework Directive, it does include regulations from across eight environmental areas. These include chemicals (REACH) and pesticides that have a largely [negative impact](#) on wildlife and public health. We are already seeing positive dynamic alignment of environmental matters such as [lead shot bans on wetlands](#). Likewise, the Protocol creates a dual-oversight framework whereby for those laws contained within the Northern Ireland Protocol responsibility falls on the European Commission and Court of Justice, and for all other environmental law on the Office for Environmental Protection. The interaction of these frameworks, and transboundary environmental issues more broadly is subject to [ongoing cooperation](#).

### Risks to the environment

The bill is [extremely broad](#) in scope and creates significant risk to the natural environment across the single biogeographic unit of the island of Ireland through:

- the extensive powers granted to UK government ministers to disapply most substantive parts of the Protocol, with no controls on these powers by Parliament, or the Northern Ireland Assembly in matters of devolved competency, including the environment (Clause 13).
- the removal of European Court of Justice jurisdiction from the Protocol (Clause 13).
- the uncertainties and burden caused by the replacement of environmental laws disapplying, with no limits on direction of travel for subsequent standards and regulations, creating a significant potential for non-regression.

The loss of valuable consistency provided by regulatory alignment provided by the Protocol and potential deregulation through powers created by the bill raises several questions:

- Clarity is needed on how the UK government will ensure that divergence or disapplication of environmental regulation (Clause 13) does not breach:
  - Article 11 of the Protocol in which North-South cooperation on areas including the environment and agriculture is safeguarded, which is itself safeguarded by Clause 15 (3) of the Bill.
  - North-South co-operation on the environment as established within the 1998 Good Friday (Belfast) Agreement.
  - The Trade and Cooperation agreement commitment to non-regression of levels of protection.

- Recognising that the bill removes the jurisdiction of the Court of Justice (Clause 13), but provides for ministers to, by regulation, enable courts or tribunals to refer matters to the European Court (Clause 20). **What effect will these powers, and the disapplication of Annex 2, have on the implementation and enforcement of relevant environmental laws?**
- Cross border cooperation, such as that required under the Good Friday (Belfast) Agreement, is founded on effective processes of cooperation between administrations and institutions. **How will the UK government ensure use of powers created by the bill does not negatively impact cooperation on matters of the environment?**
- Owing the clear implications for environmental law, **how has the UK government determined that this bill does not require a statement under Section 20 of the Environment Act 2021?**

### Insufficient protections for the natural environment within the NI Protocol

Ultimately, the bill provides insufficient protection for the natural environment. This is an enabling bill, granting extensive powers to UK government ministers to effect significant change to environmental law, a matter of devolved competency. While North-South cooperation on matters including the environment is specifically protected (Clause 15(3)), the disapplication of relevant regulations laid out in Annex 2 is inherently contradictory to this vital cooperation. Moreover, while proper implementation of Clause 15(1), wherein ‘safeguarding biosecurity or the environment’ should require the continued application and dynamic alignment of Northern Ireland with relevant regulations and standards included in Annex 2, such purposes – and implementation of the bill as a whole – are subject to ministerial discretion. This is [concerning](#), particularly in light of recent announcements made by the UK government which reflect a clear [deregulatory agenda](#).

The integrity of the single biogeographic unit of the island of Ireland necessitates ambitious and concerted cooperation, as such the bill should, at a minimum, not provide for the regression of environmental standards and regulations.

#### Case study 1: Lead shots on wetlands – a case of dynamic alignment for now

The Protocol requires Northern Ireland to align with developments in relation to regulations and standards. An early example of this alignment is the new Regulation relating to [lead shots on wetlands](#), adopted to protect [wild birds against lead poisoning](#) which amends an Annex of REACH. This positive alignment is threatened by the powers to disapply substantive parts of the Protocol created through the bill.

Should a minister choose to disapply REACH regulations in Northern Ireland, the wetlands of Lough Foyle and Carlingford Lough will be subject to fragmented protection and oversight. In the instance of such North-South divergence, lead shot ammunition use in Northern Ireland will undermine the effectiveness of action by the Republic of Ireland, thus continuing to harm wild birds.

#### Case study 2: Production and export of agri-food products

Chemical and pesticide legislation has been harmonised at the EU level which has succeeded in significantly reducing citizens’ exposure to harmful chemicals by banning or restricting the use of certain substances. The Protocol includes regulations that affect environmental impacts of agriculture including on fertilisers, chemicals, and Persistent Organic Pollutants.

Any divergence or disapplication of these regulations creates uncertainty and risk given the movement of crops, feed, animals, and products. The Irish, Northern Irish and Great British livestock industries and markets are tightly integrated, with much cross border movement of raw product and processed goods in both directions. Northern Ireland is a net exporter of agri-food products (around 75 per cent), and heavily reliant upon imported feed (for example, 300-500k tonnes agri-feed ingredients [imported](#) from GB to Northern Ireland per annum). If relevant regulations are disappplied and/or replaced with lower standards there is a real risk of greater [harm to the natural environment](#) and socio-economic disruption wherein products cannot cross the border due to discrepancies in, for example, [maximum residue levels](#).

**For more information, please contact:**

Dr. Jane Clarke, Nature Protection Policy Officer, RSPB NI  
e: [jane.clarke@rspb.org.uk](mailto:jane.clarke@rspb.org.uk)

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