

From the Permanent Secretary
Dr Denis McMahon



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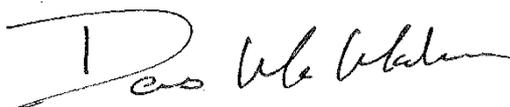
Dear Mary

Thank you for your letter of 4 February in relation to the Environmental Audit Committee's inquiry into the UK Government's draft Environment (Principles and Governance) Bill.

You have indicated that you would welcome a submission from the Northern Ireland Civil Service setting out its position on any matters in the draft Bill which it considers relevant. In particular how a new system of environmental governance should interact with the institutions in Northern Ireland and whether further discussions have taken place with the UK Government.

The attached paper sets out DAERA's current position. I trust this is helpful.

Yours sincerely



DR DENIS McMAHON
Permanent Secretary

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DAERA Response to the Environmental Audit Committee's Inquiry on the UK Government's draft Environment (Principles and Governance) Bill

1. The draft Environment (Principles and Governance) Bill applies only to England and to reserved matters across the rest of the UK. However, the gaps in environmental governance which the Bill seeks to address when the UK leaves the EU will also need to be considered in Northern Ireland. These include the role of –
 - Environmental principles enacted in the EU treaties;
 - EU procedures which play a part in holding UK public bodies to account on the environment;
 - The European Court of Justice on environmental matters; and
 - Existing mechanisms for individuals and organisations to make complaints, free of charge, regarding environmental activities.
2. Northern Ireland Department of Agriculture, Environment and Rural Affairs (DAERA) officials therefore welcomed the offer made by the UK Government to co-design the proposals for environmental principles and a new environmental body to ensure they work more widely across the UK. DAERA has engaged with Defra officials and officials from the other Devolved Administrations (DAs) through the Defra/DAs Environment Bill Group. The Group has met on a weekly basis since November 2018 to discuss the proposed measures in the Bill with the aim of maximising information sharing, seeking DA input on the proposed measures and determining whether DAs would be interested in joining in on policy particularly where it has been identified that co-operation would benefit all parties.
3. Northern Ireland hasn't had a sitting Assembly since March 2017. This means that it would not be possible to address gaps in environmental governance by taking primary legislation through the Northern Ireland Assembly. Even if the Assembly was sitting and NI Ministers were in post it may have been the case that NI Ministers would have decided that extending provisions of the Bill would be the best way forward for NI. Legislating for a devolved matter such as the environment through a UK Government Bill would, by convention, normally be the subject of agreement with the DA via a legislative consent motion. This is not possible in current circumstances. However, the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 ("the 2018 Act") clarifies that a senior officer of a Northern Ireland Department can take a decision in the absence of Northern Ireland Ministers if the officer is satisfied that it is in the public interest to do so. Officials have undertaken the considerations required by the 2018 Act and the Secretary of State for Northern Ireland's Guidance issued under the Act and concluded that it is in the public interest to ask for the Bill's extension to NI. In reaching this conclusion we have noted the Committee's own recommendation that the Office of Environmental Protection should have a UK-wide remit and concerns that the inability to address gaps in environmental governance will result in Northern Ireland having less effective environmental protection after leaving the EU. In determining the public interest we have also taken into account (in accordance with the Secretary of State's Guidance) of the opportunity to work towards the Executive's twelve priorities, as published in the 2018/19 Outcomes Delivery Plan, which include the outcome that, "We live and work sustainably – protecting the environment". Accordingly, DAERA wrote to

the Secretary of State for Environment, Food and Rural Affairs requesting that the scope of the draft Environment Bill be extended to include Northern Ireland. The Secretary of State responded signalling his agreement.

4. As a result, officials from this Department are now working with Defra officials to draft provisions that will extend the principles and governance measures in the Bill to Northern Ireland. This work is at an early stage but consideration is being given to the drafting of the new provisions to ensure that they will work effectively in the Northern Ireland context. We are focussing, in particular, on the following issues:

(a) The applicability of the principles set out in the Bill to Northern Ireland

This includes consideration of the requirement for any policy statement on principles in Northern Ireland.

(b) The remit of the OEP in Northern Ireland

The intention is that the OEP will have jurisdiction in Northern Ireland and will have the same or comparable functions in Northern Ireland as it does in England. It is, therefore, important to ensure that the OEP's remit includes an understanding of environmental issues in Northern Ireland.

(c) Role of the OEP

It is intended that the OEP is independent from Government and able to scrutinise policy, investigate complaints and take enforcement action. The appropriateness of these roles need to be assessed in a Northern Ireland context where, for example, the Northern Ireland Environment Agency is an Executive Agency within the Department for Agriculture, Environment and Rural Affairs (DAERA) and not an independent body as is the case in the other UK administrations.

(d) Trans-boundary issues

Northern Ireland is the only part of the UK to share a land border with another EU Member State. This raises issues in respect of environmental standards for areas such as air and water pollution which don't respect borders. There are also a number of cross-border protected sites and shared management of Lough Foyle and Carlingford Lough through the Loughs Agency to be taken into account. We therefore need to examine the impact of these issues on the OEP's jurisdiction.

(e) Environmental Improvement Plans

We need to consider the appropriateness of these provisions for Northern Ireland. Northern Ireland has not published a long-term environment strategy.

(f) Commencement in Northern Ireland

Consideration will be given to any specific requirements regarding commencement of the Bill's provisions in Northern Ireland to take account of the absence of a sitting Assembly if this continues to be the situation as the drafting of the Bill progresses. Any decisions will be taken in light of the requirements of the 2018 Act and the Secretary of State's Guidance under the Act if there continues to be no sitting Assembly.

5. DAERA officials will continue to work with Defra colleagues prior to the Bill's introduction to Parliament to ensure that Northern Ireland has appropriate environmental governance arrangements going forward. The Secretary of State has said that the environmental governance and principles will be part of a wider Environment Bill. DAERA will work with Defra on any additional measures proposed for the Bill and, if appropriate, consider

the public interest in extending those measures to Northern Ireland. Any outcomes arrived at will be without prejudice to the views of incoming Ministers.