

# **Submission to the Northern Ireland Affairs Committee Inquiry ‘Devolution and democracy in Northern Ireland: dealing with the deficit’**

*Comments by*

**Northern Ireland Environment Link**

**29<sup>th</sup> December 2017**

Northern Ireland Environment Link (NIEL) is the networking and forum body for non-statutory organisations concerned with the environment of Northern Ireland. Its 70+ Full Members represent over 90,000 individuals, 262 subsidiary groups, have an annual turnover of £70 million and manage over 314,000 acres of land. Members are involved in environmental issues of all types and at all levels from the local community to the global environment. NIEL brings together a wide range of knowledge, experience and expertise which can be used to help develop policy, practice and implementation across a wide range of environmental fields.

These comments are made on behalf of Members, but some members may be providing independent comments as well. If you would like to discuss these comments further we would be delighted to do so.

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NIEL welcomes the opportunity to contribute to the NI Affairs Committee Inquiry into Democracy and Devolution in Northern Ireland.

NIEL is principally concerned with working to deliver a healthy and resilient environment in Northern Ireland.

Northern Ireland has outstanding natural beauty and possesses a remarkable array of special landscape, marine, terrestrial, natural and built features. It has vast stretches of idyllic countryside, beautiful loughs and stunning coastal landscapes providing panoramic views. It also has a rich cultural and archaeological heritage, with spectacular attractions like the world renowned Giant's Causeway. This special built and natural heritage is one of Northern Ireland's (NI) most important assets given the array of benefits it provides to society. For example, the environment can deliver for health and well-being by providing the conditions for a healthy population, in terms of creating places and spaces that people want to be active in; it can deliver for the economy through tourism, cultural heritage and creating a clean, green image that facilitates inward investment and it can deliver for education through encouraging engagement with the natural world and applied sciences. This special resource requires investment and protection to ensure it continues to provide multiple benefits for society in Northern Ireland.

The quality and condition of our environment is directly affected by the way in which our democracy functions. This link between the environment and democracy is demonstrated through the Aarhus Convention, to which the UK is a signatory. Accordingly, Northern Ireland is expected to uphold the three pillars of the Convention - Access to Environmental Information, Public Participation in Decision-making, and Access to Justice in environmental matters.

Northern Ireland has experienced a number of challenges around environmental regulation and governance. For example, discovery of illegal dumping on a massive scale has thrown environmental governance into the public spotlight. Meanwhile, RHI has demonstrated the difficulties that can arise around the administration of a green energy scheme. These issues have contributed to political instability. The institutions have since collapsed and the very existence of devolved government in Northern Ireland is under threat. Therefore, addressing the challenges around devolution and democracy cannot be resolved without creating new and robust arrangements for environmental governance.

Devolution of political powers back to Northern Ireland represented a watershed moment that was intended to bring about democratic renewal, through more responsive and proximate governing. However, the NI Executive has suffered from political paralysis and struggled to pass meaningful legislation. Any new governing arrangements must enable more legislation to be passed and incorporate greater levels of accountability.

The most important aspect of improving environmental governance in Northern Ireland is creating a separation between environmental regulation and policy responsibilities. Northern Ireland is the only part of the UK that does not have an independent Environmental Protection Agency (EPA). Indeed, regulatory failures in Northern Ireland have been attributed to the lack of an independent regulator:

*Although the presence of an IEPA is not necessarily a prerequisite for effective environmental protection, many of the regulatory failures that have occurred over the past 30 years have been attributed to this feature [lack of an independent regulator] of Northern Ireland's environmental governance arrangements (Brennan et al., 2017, p128).*

The financial costs of weak environmental regulation, perhaps offers the strongest argument politically for urgent action. For example, the clean-up of illegal landfill sites could cost upwards of £400million. Weak enforcement of environmental law has also contributed to considerable loss in tax revenue. For

example, fuel laundering between 2009 and 2014 is estimated to have cost £400 million in lost revenue<sup>1</sup>, while illegal landfilling is estimated to have cost over £100 million in lost landfill taxes and charges<sup>2</sup>. These criminal activities, which have been linked to paramilitary gangs<sup>3</sup> also undermine democracy and attempts to create a more normal and peaceful society. Not only is weak environmental regulation jeopardising the integrity of Northern Ireland's vitally important environmental asset, but it is threatening the economic viability and political stability of the region.

An independent regulator would transfer regulatory responsibility away from the political arena and Government Departmental responsibility and begin the process of strengthening environmental governance and restoring public trust and confidence. Brennan et al. (2017) outline both the gravity of the situation and potential opportunity that now exists:

*A unique moment in time may have been created where there are opportunities to reform environmental governance structures, remould political attitudes to the environment and set in place a plan for full-scale renovation of Northern Ireland's approach to environmental protection. On the other hand, continued sidelining of these issues will have serious implications for decades to come (p125)*

The impact of Brexit has the potential to be felt more acutely in Northern Ireland than other parts of the UK. EU legislation has been the primary driver of legislative modernisation in Northern Ireland. Post-Brexit there is a danger of legislative and policy stagnation. This could be compounded by the lack of a NI Assembly to pass legislation. In the absence of an Executive, Direct rule intervention from Westminster will be required to provide much needed updating of legislation in Northern Ireland. The [NIEL Brexit Coalition](#) has identified a number of key asks around environmental governance that have been submitted in a separate response.

In the context of the political vacuum, there is considerable conjecture around political leadership and the scope of civil servants' decision-making powers. While the vacuum and lack of Ministerial direction has prevented policy progression and decisions being made in certain areas, other decisions have been taken due to the overriding 'public interest imperative'. To ensure accountability and transparency, there is need for greater clarification around how the public interest is understood and defined, the extent of decision making powers available to civil servants in the absence of devolved Ministers, and the avenues open to citizens to influence these decisions.

The Department of Finance (2017) reported<sup>4</sup> the stark budget scenarios facing Northern Ireland government Departments. DAERA has already suffered disproportionate cuts and there are concerns in the environmental sector about the devastating impact that any further cuts could have on the ability of the Department to carry out its key functions in relation to the environment. Government and the eNGO sector have an impressive track record of working together to deliver environmental outcomes. This is a critical moment in time that requires investment not disinvestment to strengthen the partnership between government and the eNGO sector to deliver win-win outcomes for the environment and society.

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<sup>1</sup> HL Deb 15 July 2014, vol 755, col 501, Question: Northern Ireland: Illegal Petrol and Diesel' [www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140715-0001.htm#14071553000425](http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140715-0001.htm#14071553000425).

<sup>2</sup> 'It is impossible to evaluate the exact landfill tax that has been lost with any accuracy as the precise tonnage of waste dumped is unclear and not all the waste that has been buried would have been subject to landfill tax. A crude estimation, if closer to one-and-a-half million tonnes has been buried at Mobuoy Road, is that the lost tax revenue could be over £100 million. Adding the further 561,000 tonnes of waste that has been discovered at the other 89 NIEA enforcement cases at various stages in the investigative/legal process, then this could potentially add another £35 million to the total figure of tax evaded' (Brennan et al. 2017).

<sup>3</sup> <https://publications.parliament.uk/pa/cm201012/cmselect/cmniaf/1504/1504.pdf>

<sup>4</sup> <https://www.finance-ni.gov.uk/news/department-finance-publishes-briefing-paper-northern-ireland-budgetary-outlook-2018-2020>

### **Concluding Comments**

Fundamental reforms are necessary to revive environmental democracy in Northern Ireland. Reforms must deliver increased levels of public accountability, provide regulatory independence, enable key pieces of legislation to be passed and improve citizen's access to environmental information. Reform of environmental governance is essential to delivering democratic renewal and helping to build a peaceful, prosperous and politically stable society. Better environmental governance will help safeguard Northern Ireland's environment which in turn will strengthen the economy and contribute to enhanced societal well-being.