



**Friends of
the Earth**
Northern Ireland

December 2017

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

About Friends of the Earth

Friends of the Earth England, Wales and Northern Ireland is committed to the protection and improvement of the environment, a good life for everyone who lives on our planet and a green economy that respects the limits of the natural world.

Our goal is that by 2030 the next generation will enjoy an environment that’s getting better: a safer climate, flourishing nature and healthy air, water and food.

Friends of the Earth Northern Ireland has been campaigning in Northern Ireland since the late 1970s on a wide variety of issues. We welcome this consultation as we believe that the problems with Northern Ireland’s environment are symptoms of wider failures with Northern Ireland’s governance and democracy.

1.0 Executive Summary

1.1 Northern Ireland's environment has faced unique challenges arising from decades of conflict and democratic deficit.

1.2 The post-Good Friday Agreement priorities for economic growth, weak regulation and foreign direct investment have hindered progress on issues of sustainability. Before 1998, it was never the right time to talk about the environment as it distracted attention from resolving the conflict. Since 1998 it seems we cannot talk about the environment in case it distracts us from the peace.

1.3 As a result of decades of neglect of environmental concerns, the new Northern Ireland Assembly inherited:

- water and sewage infrastructure not fit for purpose;
- an environmental regulator that is not independent and susceptible to political interference
- a weak planning system;
- a post-conflict society with significant opportunities for environmental crime.

1.4 That both periods of devolution – 1999 to 2002, and 2007 to 2016 – were typified by political failure to address any of these problems adequately is partly explained by weaknesses in the 1998 settlement itself – especially the limitless latitude granted to MLAs to use the Petition of Concern mechanism in the Assembly and the failure to address structural failings in environmental governance.

1.5 There has been a culture of complacency and lack of understanding around issues of sustainability and environmental justice in political debate and priorities for senior officials.

1.6 The Good Friday Agreement has ignored Northern Ireland's environment and the peacebuilding and conflict resolution opportunities offered by a sustainability agenda have been undermined. Specifically, the Petition of Concern has been deployed against the democratic will of the Assembly to act on issues of environmental protection, specifically climate change. In 2014, the Assembly voted to hold a Public Inquiry into waste crime in Northern Ireland, but the democratic will of the Assembly was ignored by the Executive.

1.7 Further to this, we call for intervention from Westminster during this period of no devolved Assembly to pass new legislation in Northern Ireland to take account of past failings and the emerging Brexit environmental governance gap. This legislation should address:

- the formation of a new, independent environmental regulator, with investigative and prosecutorial powers that are beyond political interference;
- the introduction of mandatory CO₂e emissions reduction targets - in line with the latest scientific recommendations - with any future institutions fully answerable to the Westminster Climate Change Committee;
- the introduction of Third Party Rights of Appeal (TPRA) in all local authority and strategic planning decisions;

- the establishment of an environmental court to give citizens access to affordable justice in matters of environmental crime and poor decision making by politicians and civil servants; and
- a fully-funded Aarhus Centre in Northern Ireland.

1.8 In addition to the specific gaps in environmental governance, we recommend the Civic Forum, or a comparable body such a Citizen's Assembly, be reinstated. The Civic Forum played an important role in narrowing the gap between communities and legislators.

1.9 We believe that a period of direct rule may offer an opportunity to bypass the stalemate and neglect of environmental issues on the part of the Northern Ireland Assembly and the need to take a stand for the environmental rights of Northern Ireland citizens.

1.10 Principles of environmental democracy and environmental rule-of-law must underpin any intervention by the NIO.

1.11 Rather than dealing directly with questions posed by the consultation, we will highlight our specific concerns regarding the failings of both direct rule and devolved administrations of the past few decades to address environmental regulatory failure, and our recommendations for Westminster intervention to resolve this problem.

2.0 Systemic failure

2.1 Northern Ireland's environmental regulation can best be described as one of systemic failure. For further reading on this issue and a history of reports on systemic maladministration in environmental governance: <https://www.nienvironmentlink.org/cmsfiles/Environmental-Governance-NI-Ecocentric-Final-Report-2016.pdf>

2.2 Complacency, incompetence, ignorance of the law, poor planning and a permissive culture have defined the system. This systemic failure has given us some of the worst water quality and ecosystems, and some of the biggest illegal dumps and quarries in Europe. Now the country is being targeted as an epi-centre for unsustainable factory farming (some of the biggest pig and poultry farms in Europe) and by international extractive industries (with significant new mining concessions being issued along the border). The treatment of the globally important Lough Neagh by allowing unlawful sand dredging of a monumental scale, an absence of effective management, persistently poor water quality demonstrates that these are 'wicked' problems involve systematic neglect by multiple agencies. Lough Neagh, our biggest commons, should be a flourishing ecosystem rich in economic opportunities and abundant nature.

2.3 The people of Northern Ireland suffer an environment which is defined by unacceptable high levels of pollution (air and water), the highest greenhouse gas emissions in the UK and the depletion of natural ecosystems by extractive industries. The things that unite us – land, air and water – have become the very things that divide us with unplanned resource exploitation causing the seeds of division and conflict (as evidenced by community tensions in Co. Antrim and Co Fermanagh over fossil fuel industry and Tyrone over gold and other mining).

2.4 We want to see a healthy, vibrant democracy. One where people are active citizens, not passive voters, or non-voters. The two largest parties, the Democratic Unionist Party and Sinn Féin, consistently get a combined vote smaller than the non-voters. That is a sign of an unhealthy democracy. Something has to change if we are to break the cycle of crises and collapse. The environment has paid a very heavy price, an unacknowledged victim of the democratic deficit and the peace process.

2.5 Brexit poses unique problems. The threat of infraction fines from the European Commission was often a wake-up call to government but this sanction will be absent post-Brexit. The Irish border has always become a vector for environmental crime with illegal mines, illegal dumps and the dumping of toxic fuel laundering waste. The rash of mining concessions issued by the Department for the Economy in the last year suggest these problems will be exacerbated post-Brexit. The control of DAERA by farming interests suggest environmental concerns will not have a voice post-Brexit. There will be a major post-Brexit governance gap that needs to be plugged on three levels: all – island, UK and within Northern Ireland.

2.6 The issues outlined above relating to governance deficits and the costs of failure have been developed in research by Ciara Brennan, Ray Purdy and Peter Hjerp *“Political, economic and environmental crisis in Northern Ireland: the true cost of environmental governance failures and opportunities for reform”* NILQ Vol 68 No 2 (2017). The research suggests the RHI debacle may never have happened had we had better systems of governance. The abstract states:

“Decades of systemic failure to take environmental protection seriously has brought Northern Ireland to the brink of environmental, and now political and economic disaster. This article will consider the reasons why environmental governance in this jurisdiction has continued to be so problematic and the cost of government failure in this context for the people of Northern Ireland. It will set out the environmental, economic and socio-political consequences of the epic failures of successive devolved administrations to take environmental governance seriously, to respond to critiques of the performance of the environmental regulator and to ensure the effective enforcement of environmental law. Finally, it will consider options for dealing with this ongoing problem in a turbulent political environment where collapsing political institutions at Stormont and wider constitutional issues associated with the UK’s plans to leave the EU may continue to stymie reform or present a unique opportunity to reinvent environmental governance and begin the process of remedying the damage caused by years of neglect.”

3.0. Independent Environmental Regulator

3.1 It is ten years since the Foundations for the Future report set out a vision for looking after our environment. It was either rejected or not given sufficient support by many of the main parties in the Executive. The report came out strongly in favour on an independent EPA.

3.2 Since then, failures of governance has resulted in lack of enforcement and regulation – for example, unauthorised quarries are commonplace and illegal dumping is institutionalised. No one in government is standing up to protect the environment.

3.3 The need for an independent environmental regulator is well established with responsibility for both the terrestrial and marine environments.

4.0 Climate Change Act

4.1 Climate change is the single greatest threat facing us, not just in Northern Ireland, but across the globe. The science is very clear: without immediate and ambitious efforts to reduce greenhouse gas emissions, we are facing a bleak future. The UK has signed up to the Paris Accord, agreeing to keep the global average temperature rise below 1.5°C. Northern Ireland must do its fair share in meeting the emissions reductions targets needed to stay below 1.5°C.

4.2 A Northern Ireland Climate Change Act, with legally binding greenhouse gas reduction targets, would establish a framework within which emissions reductions can be brought about in a controlled way. This law will set the framework for a new low carbon economy. Given the scale and urgency of the issue the targets must be ambitious – around an 80% cut on 1990 figures by 2030, and a 90-95% cut by 2050. As one of the world's largest per capita emitters, we have a moral duty to act decisively.

4.3 The Northern Ireland Assembly has dragged its feet on climate change for a decade, whilst the rest of the UK – including the devolved Scottish Parliament and Welsh Assembly – have set in law binding targets for continual CO₂e reductions.

4.4 The failure to legislate for making a fair contribution to lowering UK emissions can be mainly attributed to the abuse of Petition of Concern, which has had a chilling effect on the willingness of sympathetic politicians to introduce a climate change law in the Assembly.

4.5 It is now incumbent on Westminster to take charge of Northern Ireland climate policy, not just for communities around the world who are most vulnerable to extreme weather impacts arising from climate change, but also for communities at home experiencing other side effects of CO₂e releasing activity, especially the air quality crisis as a result of having the most congested city in the UK.

5.0 Third Party Right of Appeal

5.1 The right to participate in the planning system is vital to democracy. This should include the right to challenge a decision to approve development. Currently the only right of appeal in our system lies with the applicant if they have been refused. Developers have two chances to get the outcome they desire, whereas objectors only have one. Third-party Rights of Appeal were voted for by a majority of MLAs in 2011, but the DUP used its veto in the Assembly. The people want the right to challenge poor planning decisions, and we demand that the next Assembly grants them this.

6.0 Environmental Court

6.1 Under the UN's Aarhus Convention, people have the right to environmental Justice and to challenge government decisions. The only legal redress to challenge environmental decisions is through Judicial Review. Judicial Review is expensive, complex, and slow. There is limited

environmental law experience nor the political will to comply with rule of environmental law. This access route is narrow and intimidating for lay people to challenge unlawful decisions.

6.2 An environmental court would provide an experienced judiciary that can follow both complex laws as well as ecological processes. An environmental court would be a gateway to help access to environmental justice. The environmental court would be independent from agencies, accessible, and positive about challenging bad decision making.

7.0 Aarhus Centre

7.1 The UK is a signatory to the Aarhus Convention. Northern Ireland, however, does not have a good track record in maintaining the standards of openness, co-operation, and unbiased decision making expected of the Convention. Civil Servants and Council officials seem to think the public and Third Sector organisations are an inconvenience that has to be endured, rather than partners that can assist with good decision making.

7.2 Aarhus Centres play a crucial role in promoting the three pillars of the Aarhus Convention - Access to Information, Public Participation in Decision-making, and Access to Justice in environmental matters. The centres are intended to improve awareness of the Aarhus Convention among the public and statutory bodies. They strengthen environmental governance by providing a venue where members of the public can meet to discuss environmental concerns. The Centres assist the public with participating in environmental decision-making and facilitate access to justice on environmental matters sensitising the public and governments to their shared responsibility for their natural surroundings.

8.0 Conclusion

8.1 A revival of democratic principles will ensure the historical neglect of environmental issues is redressed and that we can move forward together to help plug the Brexit environmental governance gap with a fit for purpose modern and transparent regime. As we aim for regulatory alignment, it is not right that the country that could potentially bear the brunt of environmental loss remains the only part of these islands without climate legislation and an independent regulator. The problems of RHI, climate change, environmental protection and a laissez faire approach to extractive industries and industrial mega-factory problems are failures in environmental democracy.

8.2 The peace process must be predicated upon managing and sharing resources (such as our land, air water and soil) in a fair and transparent manner. For any post-conflict society to proceed on the basis of failed environmental management will only serve to sow the seeds for future conflict.