

EXPLANATORY MEMORANDUM TO
The Environment (2021 Act) (Commencement and Saving Provision) Order
(Northern Ireland) 2022

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture, Environment and Rural Affairs ("the Department") to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 147(6) of the Environment Act 2021 (the Act") and is subject to the draft affirmative resolution procedure.

2. Purpose

- 2.1. The purpose of the Environment (2021 Act) (Commencement and Saving Provision) Order (Northern Ireland) 2022 ("the Order") is to commence a number of provisions of the Act, which received Royal Assent on 9th November 2021, that deal with Northern Ireland devolved matters. These provisions will commence on the dates specified within the Order.
- 2.2. Section 50 and Schedule 4, provide powers for the Department and the Department of Environment, Food and Rural Affairs ("Defra") Secretary of State (with the Department's consent) to make regulations in relation to producer responsibility obligations and the enforcement of those regulations in NI. In most cases Regulations made under this power will be subject to the affirmative resolution procedure. This section also repeals the Producer Responsibility Obligations (Northern Ireland) Order 1998 ("the 1998 Order"). However, a saving provision within the Order allows the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007, made under the 1998 Order, to continue in force, as if made under Schedule 4 and 6 to the Act.
- 2.3. Section 51 and Schedule 5 enable the making of regulations by the Department and the Defra Secretary of State (with the Department's consent) for extended producer responsibility for packaging. This will require those involved in manufacturing, processing, distributing or supplying products or materials to meet, or contribute to, the disposal costs of those products. Regulations made under this power will be subject to the affirmative resolution procedure.
- 2.4. Section 52 and Schedule 6 enable the Department and the Defra Secretary of State (with the Department's consent) to introduce subordinate legislation requiring the provision of resource efficiency of their products. This will provide consumers with more information about products' durability, life cycle and reparability. This will drive more sustainable consumption. Regulations under Schedule 6 are subject to the affirmative resolution procedure.

- 2.5. Section 53 and Schedule 7 enable the making of regulations by the Department and the Defra Secretary of State (with the Department's consent) that set resource efficiency requirements for products that have a significant impact on natural resources at any stage of their lifecycle. The purpose of these powers is to reduce that impact. Regulations under Schedule 7 are subject to the affirmative resolution procedure.
- 2.6. Section 54 and Schedule 8 provide enabling powers for the Department and the Defra Secretary of State (with the Department's consent) to make regulations establishing deposit schemes. Regulations are subject to the negative resolution procedure, with the following exceptions, which are subject to the affirmative resolution procedure: establishing a deposit scheme for the first time; first regulations to provide for enforcement of a deposit scheme; creation of a criminal offence; provision for new civil sanctions; or changes relating to an increase in the amount or the maximum amount of a fine or monetary penalty.
- 2.7. Section 55 and Schedule 9 gives the Department powers to make regulations about charges for single use plastic items. Regulations under the Schedule are generally subject to the negative resolution procedure, with the following exceptions, which are subject to affirmative resolution: the first set of regulations; regulations containing provisions about charging for a new item; regulations containing provisions imposing or providing for the imposition of new civil sanctions; or regulations to increase the maximum amount of a monetary penalty or change the basis on which it is to be determined.
- 2.8. Section 56 amends Schedule 6 to the Climate Change Act 2008 to provide a power for the Department to make regulations requiring sellers of carrier bags in Northern Ireland to register with an administrator. The regulations may also make provision about applications for registration, the period of registration, the cancellation of registration, and the payment of registration fees, including the amount.
- 2.9. Section 59 amends the Waste and Contaminated Land (Northern Ireland) Order 1997 to create powers for the Department to introduce electronic (digital) waste tracking in Northern Ireland, and to create associated criminal offences (punishable by a fine) and civil penalties. The amendment also provides that regulations of specified types should be subject to the draft affirmative resolution procedure.
- 2.10. Section 61 gives the Department increased domestic powers around the regulation of hazardous waste. This will enable the current hazardous waste legislation in Northern Ireland, including provisions relating to fixed penalty notices, to be updated and strengthened in the future.
- 2.11. Section 65 gives the Department powers to make charging schemes relating to functions it performs under legislation covering waste licensing, waste licensing exemptions and producer responsibility, and UK-wide legislation (as it pertains to Northern Ireland) covering end-of-life vehicles, waste batteries and accumulators and waste electrical and electronic equipment.

- 2.12. Section 67 amends Article 27 of the Waste and Contaminated Land (Northern Ireland) Order 1997 to provide the Department with powers to give direction in specified circumstances to: registered carriers of controlled waste; keepers of controlled waste; or the owner or occupier of the land on which waste is being kept, in circumstances in which waste might be taken to an appropriate storage site in the first instance, or otherwise not directly treated or disposed of.
- 2.13. Section 71 amends Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997 to reflect the transfer of functions from the Department of the Environment to the Department.
- 2.14. Section 89 gives powers to the Defra Secretary of State (with the Department's consent) to make regulations about the substances to be taken into account in assessing the chemical status of surface water or groundwater, and to specify standards for those substances, or in relation to the chemical status of water bodies. This will enable updates to the substances and standards currently used in that process - for example, those set out in the list of priority substances and priority hazardous substances for surface waters in the domestic legislation which implements the Environmental Quality Standards Directive. The Defra Secretary of State cannot make regulations that could be made by the Department under its section 87 powers without the consent of the Department. Any regulations made under this provision are subject to the negative resolution procedure.
- 2.15. Section 91 gives similar powers to the Department as those within Section 89 give to the Defra Secretary of State - to make regulations about the substances to be taken into account in assessing the chemical status of surface water or groundwater, and to specify standards for those substances, or in relation to the chemical status of water bodies. When making relevant regulations the Department must consult any persons or bodies that appear to represent the interests of those likely to be affected by the regulations. Any regulations made under this provision are subject to the negative resolution procedure.
- 2.16. Section 140 gives effect to Schedule 21, which gives the Defra Secretary of State the power to amend the Articles of the REACH Regulation, as it applies in the UK (REACH = Registration, Evaluation, Authorisation and Restriction of Chemicals etc.), allowing the Secretary of State to ensure an effective regulatory transfer of the REACH Regulation into UK law, and facilitate future changes. Section 140 and schedule 21 (so far as relating to powers of a Northern Ireland department to make regulations under paragraph 2 of that Schedule) provide powers allowing, in specified circumstances, the Department or the Department for the Economy to make regulations (within the legislative competence of the NI Assembly) amending the REACH Enforcement Regulations 2008.
- 2.17. Section 48(a) and Part 1 of Schedule 2 to the Act requires that the Department prepares and publishes an Environmental Improvement Plan. It also requires that the Department lay before the NI Assembly and publish a statement on the kinds of data that is to be used to monitor whether the natural environment is improving under the plan.

- 2.18. Section 49 and Schedule 3 set out the functions, duties and powers of the Office for Environmental Protection (“the OEP”) in Northern Ireland, and amend its general functions to reflect its extended operational remit. The OEP will perform an environmental oversight role, holding to account NI departments and other public authorities for the proper implementation of environmental law.
- 2.19. Section 48 and Part 2 of Schedule 2 require the Department to prepare, lay and publish a policy statement on environmental principles, embedding 5 principles in domestic law. Paragraph 8 of the Schedule also imposes a statutory duty on NI departments and UK Ministers, when making policy for NI, to have due regard to the policy statement.

3. Background

- 3.1. Work initially began on the Environment Bill by Defra in 2019. At that time the NI Assembly was suspended and the Department was offered the option of including a number of parallel provisions relating to NI devolved matters. The Department agreed that such provisions should be included on the understanding that it would be for NI Ministers, with the approval of the Assembly to decide if the provisions should be implemented in Northern Ireland. With two exceptions, due to technical reasons, all of the provisions of the Act relating to NI devolved matters require the commencement legislation to be made under the draft affirmative resolution procedure.
- 3.2. Much of the Bill's content was driven by the need to establish new structures and controls now that the UK was no longer part of the EU and therefore no longer subject to scrutiny by the European Commission.
- 3.3. Royal Assent was achieved on 9th November 2021.
- 3.4. In so far as it relates to NI devolved matters, the Act has two main themes. The first provides a legal framework for environmental governance and accountability now that the UK has left the EU, while the other provides for changes to environmental legislation on: producer responsibility; waste; resource efficiency; water; charges for single use plastic items and carrier bags; chemicals; and forest risk commodities.
- 3.5. Provisions in the Act relating to Northern Ireland devolved matters sit in two distinct groups – the first covers environmental plans, principles and governance, including the extension of a new Office for Environmental Protection to Northern Ireland. These provisions are complete on the face of the Act and require only commencement to implement
- 3.6. The second group of provisions grants enabling powers to Northern Ireland Departments or amends existing Northern Ireland legislation in respect of a range of environmental measures.

4. Consultation

- 4.1. No consultation has been carried out specifically for this Order. All of the relevant provisions in the Act have either been consulted upon (locally or UK-wide) or will be consulted upon before implementation.

5. Equality Impact

- 5.1. No differential impacts on any section 75 group have been identified as a result of commencing the NI devolved provisions of the Act.

6. Regulatory Impact

- 6.1. This Order will not, in itself, have any impact on business, charities, social economy enterprises or voluntary bodies. No specific Northern Ireland Regulatory Impact Assessment has been carried out in respect of the provisions of the Act but Defra has completed an overall assessment, which indicates that benefits significantly outweigh the relatively modest costs. Any changes in future legislation as a result of enabling powers created by this Order will include appropriate consideration of Regulatory Impact.

7. Financial Implications

- 7.1. No specific financial implications arise as a result of commencing the provisions although implementation will attract some additional funding requirements. A small budget for implementation of the OEP has been secured from DAERA's existing budget for financial year 2021/22 and a business case is being prepared in respect of ongoing funding, which is estimated at between £600k and £800k for financial year 2022/23.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. This Statutory Rule is compliant with Section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. Some provisions relating to England and other parts of the UK came into operation automatically upon Royal Assent, with others scheduled to commence two months later. Defra made its first Commencement Regulations on 17 November 2021, which focused on the creation of the Office for Environmental Protection as a legal entity. Defra's second Commencement Regulations were made on 17 January 2022, which provided for the commencement of most of the remaining provisions of the Act (for England and reserved matters) across a number of dates throughout 2022. Certain provisions relating to Wales and Scotland will be made using Commencement Orders with relevant dates to be determined by their respective Ministers. With the exception of some technical provisions, all of the provisions of the Act relating to NI devolved matters replicate provisions for England and/or reserved matters, creating parity in many policy areas.

11. Additional Information

- 11.1. There are no EU implications in regards to this Statutory Rule.