

Northern Ireland  
**NEWSLETTER**  
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Northern Ireland's

**lost  
decades**



**Friends of  
the Earth**  
Northern Ireland

# Catastrophic environmental regulation failure

Efforts to protect Northern Ireland's environment have been completely undermined by spectacular regulatory failures and a system of environmental governance wholly unfit to fulfil its purpose. While media attention has focused on the particularly visible issue of waste management, serious problems with regulation span all areas of the environment, including illegal quarrying and mineral extraction, planning, water pollution from agriculture and sewage, and the protection of designated nature conservation sites.

In addition, despite the Good Friday Agreement's express provision for cross-border cooperation on environmental concerns, joined-up thinking and collaboration on issues such as illegal waste disposal remain underdeveloped. Recent scandals including the discovery of one of the biggest illegal dumps in Europe and the almost inconceivable maladministration emerging via witness testimony at the inquiry into the Renewable Heat Incentive scheme have thrust environmental policy failures into the public eye. However, to some extent these well-publicised incidents detract from the more insidious and alarming problem of a growing crisis in environmental quality brought about by decades of failing and unaccountable environmental regulation.

An issue considered central to the creation of a weakened approach to environmental regulation over the last decade has been the failure of the devolved government to establish an independent environmental protection agency

The presence of an environmental protection agency operating at arms-length from government is not necessarily a prerequisite for effective environmental protection. However, many of the regulatory failures that have occurred over the past 30 years have been attributed to this feature of Northern Ireland's environmental governance arrangements.

Particularly problematic issues have been the creation of 'poacher-gamekeeper' scenarios within environmental regulation, allegations of political interference in regulatory decision-making and inconsistent environmental policy-making dependant on the political allegiance of successive environment ministers. The result has been a complete collapse in public confidence in the environmental regulator, despite valiant efforts on the part of its civil servant employees to improve the delivery of regulation in practice.

For over a decade environmental NGOs in Northern Ireland have campaigned for reform of the highly problematic governance structures that exist in this jurisdiction. Investigations into systemic regulatory failure undertaken by numerous public scrutiny bodies have concluded that wide ranging reform is required and that an independent environmental protection agency would enhance the quality of regulation delivered. Academic analysis has agreed.

Even within the Assembly there has been widespread political support for reform. However, the DUP has disagreed with

the need for externalisation of environmental regulation and has continued to reject demands for reform of environmental governance structures. Coupled with the political relegation of environmental concerns in the face of issues associated with security, the economy, and now governance post-Brexit, the status quo has persisted.

Whether future decision-making powers lie with a devolved government, direct rule ministers, or in some form of all island authority, there is an urgent need to address this core governance failure which cannot wait until Brexit is resolved. Continued denial of the inherent need for an environmental regulator that can operate solely with environmental protection as its core mission rather than to further other political objectives will serve only to undermine public trust in government.

It also demonstrates not only rejection of evidence based research, public opinion, and the findings of numerous external scrutiny reports, but also an alarming level of antipathy towards environmental protection and effective environmental governance. Until meaningful reform occurs, the consequences of the regulatory dysfunction that has characterised environmental protection efforts to date have been, and will continue to be, catastrophic for Northern Ireland's environment, economy and ultimately for its fragile political institutions.

**Dr Ciara Brennan is Lecturer in Law at Newcastle University.**

# Missed green opportunities

As its 20th anniversary passes, it would be a safe bet to conclude that the 71 per cent support for the Belfast Agreement in the subsequent referendum would have been elevated to 90 or 95 per cent among those of a cosmopolitan, ecological disposition—in sharp contrast to those wedded to inward-looking sectarian protagonism. Yet the outworking of the agreement elevated the latter, as time went on, to untrammelled power.

A DUP MLA once confided at Stormont his concern that his colleagues would 'trash' the place—and they did. We are all too aware of the consequences, of which three stand out. The first, and most obvious, was a failure to give any kind of priority to environmental issues during the two periods of post-agreement devolution. Not only was this because of the dominance of Orange and (the other kind of) Green politics, sustained by its own inertia well past the decades of violent conflict like a detached flywheel. It was also because, insofar as the parties focused politically anywhere else, it was on economic growth, as conventionally conceived. Hence it was only under the 'democratic deficit' of direct rule that in 2006 Northern Ireland's first sustainable-development strategy emerged, modestly entitled 'First Steps Towards Sustainability'. It went back on the shelf when devolution was restored the following year.

The second consequence of the ascent to power in Northern Ireland of parties seen elsewhere in Europe as now constituting a major populist threat was a taken-for-granted social conservatism perfectly expressed in the planning-policy statement PPS21, issued in 2010.

Immodestly entitled 'Sustainable Development in the Countryside', in fact it allowed of a continued pattern of dispersed rural housing, when genuine environmental considerations should favour compact urban and village settlement, associated with public transport, walking, and cycling.

The third, and most egregious, was the failure to establish an independent environmental protection agency for the region. As we know from the 'Brexit' campaign, populists have no wish that 'experts' should dislodge their prejudices and, as environment minister, Arlene Foster of the DUP rejected the well-argued report of an independent commission on environmental governance, arguing for just such an independent agency, published in 2007 in the month after devolution was restored. As Sharon Turner and Ciara Brenna of Queen's School of Law demonstrated in an acerbic analysis of the episode, this perverse outcome came about even though serious issues of water pollution in particular were going unaddressed—and the Ulster Farmers' Union was the only social interest defending the status quo, while the DUP did not even command an assembly majority on the issue.

There is now growing recognition in hindsight that the agreement unwittingly embedded the sectarian mindsets and vetoes which have proved the seeds of its own destruction, of which the ambition of reconciliation has been a victim. So too has the region's stressed environmental fabric.

**Robin Wilson is author of *The Northern Ireland Experience of Conflict and Agreement: A Model for Export?* (Manchester University Press)**

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Photo courtesy of Northern Ireland Assembly

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# Championing the right to a healthy environment

Everyone has the right to live in a healthy environment. But the reality is far different. Every day on our way to school or work or just being out and about we will all experience some form of pollution. And our most special places are under threat from destructive development.

Twenty years ago, a group of European countries, including the UK, signed the Aarhus Convention, agreeing that:

“In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.”

Each country (the ‘Party’) has to make sure that we have a right to know about environmental issues, a right to be involved in decisions on the environment, and be able to challenge decisions when things go wrong. Without these rights, we would be in the dark about what was going on. We would be more powerless to do something about it.

We wouldn't have access to information on the chemicals used by companies who want to frack; we wouldn't be able to object or have our voice heard on planning applications for power stations, waste incinerators or coal mining; and we wouldn't be able to challenge unlawful activities by companies, such as the Lough Neagh sand



Photo courtesy of Friends of the Earth

dredgers, the Tyrone gold miners, or the industrial pig farmers.

People from Spain to Kazakhstan use their rights under the Convention to question decisions on damaging development, including major dams, roads, airports, and GMO crops.

The Convention is an important touchstone to which we can return to remind ourselves and those in power of our rights and the responsibilities that exist so that we can shape a healthy environment for our communities.

In celebrating twenty years since the Convention was first signed, its impact is in our freedom of information laws, planning laws, and ability to bring legal challenge through judicial review – but in the face of impending Brexit and the possible loss of environmental protections, these rights are more important and need to be protected more than ever.

**Naomi Luhde-Thompson is a Planner with Friends of the Earth.**

for every citizen. Very quickly huge infrastructure projects that would normally take years in the planning were foisted upon a system ill-equipped to deal with the environmental impacts of such proposals. From the biggest road project ever, the Department of the Environment was overwhelmed as disaster after disaster emerged.

To make matters worse, Arlene Foster and Martin McGuinness were touring the globe selling Northern Ireland as a place where Government Ministers controlled environmental regulations. That particular honey pot was alluring to Dalradian, an international mining company. They relocated to Co Tyrone with financial assistance from another arm of the Northern Ireland Executive, Invest NI. Had an independent Environmental Protection Agency been in place, Dalradian's plan to develop a 25 year mining camp in the heart of the Sperrins would have been still born at birth. Had politicians not had unfettered powers over Departments they were responsible for, something other than a monetary value may have been placed on our most prized places.

Looking back 10 years on what could have been, I despair at the actions of successive Northern Ireland Executives. The openness, transparency and assurances to do the right thing by Northern Ireland were never lived up to. Private deals at the highest levels of Government broke down. I believe none of this would have come to pass had an independent EPA been in place.

**Ciaran McClean is a veteran extractivism campaigner and local activist.**

# Digging up our precious places

Ten years ago, on a bright afternoon, I, along with Niall Bakewell from Friends of the Earth, was campaigning on the streets of Omagh for an independent Environmental Protection Agency (EPA). We believed an EPA was vital for the good governance of Northern Ireland, as well as the environment itself. Arlene Foster was Minister for the Environment at that time. She deemed an independent EPA would be better kept “in-house”, thus our efforts came to naught. Up until

then, abuse of the planning system in Northern Ireland was on a smaller scale compared to what would follow. Around the same time I had begun campaigning against unauthorised quarrying in West Tyrone and was finding out first hand why an independent EPA was vital.

The St. Andrew's Agreement of 2007 was something no-one in Northern Ireland voted on. It would, however, have far reaching consequences



Photo courtesy of Declan Allison/Friends of the Earth

# Agri-business has had its cake and eaten it

When thinking about farming, I'm immediately taken to a place of lush green grassy fields rich with produce, the hum of tractors, the sounds of animals grazing in the fields, and of a bustling rural community. In recent decades agriculture has changed though. Huge industrial units are popping up like mushrooms with the animals hidden from sight. Intensive factory farming has propelled agri-food up the political agenda with the icing on the cake being the implementation of the strategy Going for Growth (GfG).

The strategy's objective is to make Northern Ireland a leader in the global agri-food market, putting many smaller family farms at risk from being gobbled up by the big boys. Intensive livestock applications are being fast tracked through planning with political support all the way. This is not sustainable.

The GfG strategy directly impacts on acres of land, lakes and rivers, SACs, ASSIs, protected habitats, and communities of people who all live, work and breathe the air where these intensive factories operate. Yet no Strategic Environmental Assessment (SEA) was ever carried out. Failure to impose a thorough and robust SEA on a strategy that significantly impacts on our natural environment is more than just another symptom of systemic failure. It's looking a lot like wilful negligence.

Intensification of farming brings with it massive industrial units, increases in vehicle movements, noxious odours, tonnes of imported feed, the din of machinery, and risk of water pollution. We're seeing proposals for some of the biggest units in the UK here. Let's not forget that with every animal that's grown there is waste, but there is nowhere for the waste to go. Northern Ireland is in breach of ammonia emissions with 91% coming from agriculture. The vast majority of our special places: our protected habitats; our Special Areas of Conservation; and our Special Protection Areas have already exceeded critical loads for nitrogen deposition.

The cherry on the top of the systemic failure cake is the Memorandum of Understanding produced by the Northern Ireland Environment Agency and the Ulster Farmers' Union. This agreement relaxes regulation for an already under regulated industry, by the regulator itself! It's practically a green light for poor environmental management on the ground because the penalties for low level polluting are insufficient to act as a deterrent.

Due to reckless incompetence, lack of independence, poor scrutiny, political interference, wilful negligence, or blatant disregard for putting our precious environment first, we must stop all new applications for intensive livestock production at once.

**Colette Stewart is the Campaign Co-ordinator for Friends of the Earth Northern Ireland.**



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# The sorry tale of Mobuoy Road

## Extracting from land and democracy

Photo courtesy of Declan Allison/Friends of the Earth



Thirty years ago Lough Neagh and Lough Beg were designated a Special Protection Area. Recognised as a special place, it needed strict protection, being part of a European network of prestige nature reserves.

We should have celebrated this international attention to help look after our drinking water, bird populations, and rare fish, all located in an ancient and mythological landscape. Instead it was business as usual.

In those thirty years sand extraction has intensified and I have counted at least ten times when the regulatory authorities had a legal obligation to do something about the suction dredging of the bed of the Lough. I will mention two.

The Department that was meant to be protecting Lough Neagh awarded sand dredging companies millions of pounds of tax relief under the failed Aggregates Levy Credit Scheme. Like RHI, this was

a scheme that was meant to be rewarding good environmental practice yet subsidised, at Lough Neagh and elsewhere, unlawful activity without any consents or environmental assessments.

Secondly, when the Lough was designated an Area of Mineral Constraint, with a presumption against extraction, nothing was done. Only legal action triggered a semblance of regulation, yet decades of missed opportunities have mounted up and cumulative impacts went unassessed.

Some observers have reflected on this *non-feasance* as a form of incompetence. Others describe it as a carefully choreographed collusion by government with the powerful extraction industry that could signal gross *malfeasance*. Either way, we do not live in a responsible state when it comes to protecting our special places.

Sand is finite and necessary. The sand extractors themselves require the resource to be

managed in a planned, long-term fashion if they want to avoid boom and bust. However, hardly a word is spoken about helping the legitimate businesses that are undermined by the unlawfulness of others.

At a recent conference on extractive industries we learned that when mega extraction projects come to a community the first strategy is often not to start mining the land, but to mine out a community's unity and resolve.

Another pre-emptive strategy is also evident: to mine the very concept of environmental governance and the rule of law. Extractive industries of the scale we are seeing are simply incompatible with clever and effective regulation in a designated nature reserve. It seems the precautionary approach to protecting health and nature is being sacrificed for the ecological carve-up of our very country itself.

This sand mining story is certainly a tragedy for the health of Lough Neagh. We have never established an ecological baseline nor fully understand the impacts of extraction of 1.5 million tonnes a year. It's a tragedy, of and for, our biggest commons.

Lough Neagh is also about something that goes much deeper. So deep that extractive industries, probably the most environmentally damaging of all industries, may be hollowing the very concept of our democracy which is meant to be founded on the rule of law. A modern day planetary parable about the politics of all take and very little give.

**James Orr is the Director of Friends of the Earth Northern Ireland.**

On 30 November 2015 the then Minister of the Environment, Mark H Durkan, launched a public consultation on the important issue of whether Northern Ireland should have an independent Environmental Protection Agency. In the past, political resistance from the Democratic Unionist Party (DUP) had vetoed the externalisation of the EPA, instead relying on a poorly performing Department of the Environment, thus ensuring the regulatory authority remained "politically captured" under the control and influence of the Minister.

The decision in March 2008 by the then DUP Environment Minister, Arlene Foster, not to create an independent watchdog has proven catastrophic for Northern Ireland. Nowhere has this been demonstrated more forcefully than the unprecedented environmental disaster at Mobuoy Road, Derry, where recent estimates of the volume of waste dumped illegally adjacent to a protected European site, the River Faughan Special Area of Conservation, is now in the region of 1.5 million tonnes. This is up threefold from the initial official estimate of 516,000 tonnes of illegal waste in February 2014 and is expected to rise further.

It is widely accepted that inadequate planning enforcement against unauthorised sand extraction at the Mobuoy Road super dump, because of concerns over adverse, but never quantified economic impacts, played a pivotal role in leading to serious

environmental harm, facilitated eco-crime on an unprecedented scale, and has given rise to the real risk of infraction proceedings.

Yet, in failing to enforce adequately against the unauthorised sand extraction from Lough Neagh SPA, it seems the then Minister, and now the Permanent Secretary of the Department for Agriculture, Environment, and Rural Affairs (DAERA), was prepared to repeat the mistakes of Mobuoy Road, with all the risks that come with intentional failure adequately to perform a required duty or obligation whilst in public office.

With the environment now subsumed into a new governmental structure along with agriculture and rural affairs in DAERA, it is becoming evident that agricultural interests will eclipse those of the environment. For example, the Memorandum of Understanding with the Ulster Farmers' Union is a de facto licence to pollute.

Arlene Foster's decision of March 2008 was premised on her stated belief that environmental governance was too serious a matter to entrust to an independent EPA. Subsequent events have exposed the fallacy of this position as the inadequate regulatory structures that she put in place as the alternative to independent regulation have systemically failed.

**Dean Blackwood is a planning activist and River Faughan angler.**

## House of Cards built on wet foundations

What to do when a £160 million development will have a significant adverse impact on an internationally important wetland but it turns out the development does not require planning permission because the developer played the 'The Trunk Road' card. This is the case with the A6 Randalstown to Castledawson dualling scheme.

The developer produced a report describing the anticipated adverse impact on the wintering grounds of wild swans; at the same time the developer also promoted and approved the scheme in one fell

swoop. All aces were in the hand of one government department, the Department for Infrastructure as policy maker, promoter, developer and approver rolled into one. Are there independent environmental checks and balances in such a situation? The timid voice of its poor departmental cousin, the Northern Ireland Environment Agency, pointing out wetland truths was ignored.

The Northern Ireland Environment Agency had a strong card to play, namely the EU Habitats Directive. It was laid on the table at the right time of the process but brushed

aside by the bigger player at the table. An independent agency could have brought that card into play with more weight and conviction. The Environment Agency's concurrent five-year site fidelity study for important Northern Ireland sites for swans and geese would have been acted upon instead of languishing on a shelf.

At a time when Northern Ireland's governance is in limbo, it might be of interest that it was a Direct Rule Minister who announced the preferred route for the A6 between Toome and Castledawson, well before any public inquiry or Habitats Directive compliant reports had been prepared.



Photo courtesy of Declan Allison/Friends of the Earth

The A6 is a vital infrastructure project, connecting Northern Ireland's two major cities. The routing of a 4km long section through a wetland unrivalled in its importance for the Irish population of Whooper Swan has been the subject of a legal challenge since September 2016.

The case is giving the Habitats Directive and its transposition into domestic law a public voice. It has been pursued through the UK courts by a litigant in person within the framework of the Aarhus Convention. Having proceeded

through the High Court, Court of Appeal and Supreme Court, the matter has now been raised with the European Commission.

The wet foundations of this route should be cherished and not fragmented and degraded. The last card may well be played at the table of the European Court of Justice.

**Doris Noe is a wetland bird specialist and has studied the Lough Neagh and Lough Beg SPA.**