

Proposed amendments to The Groundwater Regulations (Northern Ireland) 2009; The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 and The Pollution Prevention and Control Regulations (Northern Ireland) 2003

A combined consultation Paper

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February 2011



Department of the
Environment
www.doeni.gov.uk

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1. Introduction

1.1 Need for Regulations

The Department of the Environment (“the Department”) is consulting on draft amendments to existing Regulations to transpose Articles 32, 34 and 37 of Directive 2009/31/EC on the geological storage of carbon dioxide, commonly known as the Carbon Capture and Storage (CCS) Directive.

A legal framework for carbon dioxide storage in the UK was established in the Energy Act 2008. Whilst it has been proposed that the CCS Directive is largely implemented at a UK-level by the amendment of this Act, the CCS Directive also amends a number of other European Directives which are already implemented through local legislation.

In particular:-

- Article 32 of the CCS Directive amends the Water Framework Directive 2000/60/EC (WFD) by an insertion to Article 11(3)(j);
- Article 34 of the CCS Directive amends the Environmental Liability Directive 2004/35/EC by adding a new paragraph 1.4 to Annex III; and
- Article 37 of the CCS Directive amends the Integrated Pollution Prevention and Control (IPPC) Directive 2008/1/EC (which codified 96/61/EC) by adding a new point 6.9 to Annex I.

This consultation paper seeks views on amendments to the following existing legislation:

- Groundwater Regulations (Northern Ireland) 2009 (*Article 32*);
- Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 (*Article 34*); and

- Pollution Prevention and Control Regulations (Northern Ireland) 2003 (*Article 37*).

The Department is also making some other minor amendments to the Pollution Prevention and Control (Northern Ireland) 2003.

1.2 Equality/Human Rights/Rural Proofing Issues

Equality Impact Assessment

Under Section 75 of the Northern Ireland Act 1998, public authorities have a statutory duty to promote equality of opportunity. Preliminary screening exercises have been undertaken and there is no evidence that the proposed measures will have any impact on any of the groups specified in Section 75. Therefore, the Department does not consider a full Equality Impact Assessment to be necessary. Copies of all screened policies are available from the website at

http://www.doeni.gov.uk/index/information/equality_unit.htm

The Equality Commission will receive copies of this consultation document as part of the consultation exercise. Any comments that the Commission might have will be taken into account.

Human Rights Issues

The Human Rights Act 1998 implements the European Convention on Human Rights which makes it unlawful for any public authority to act in a way that is incompatible with these rights. All proposed legislation must be assessed to ensure compliance.

Screening exercises have been completed which concluded that the proposed amendments to the Regulations mentioned above are compatible with the Human Rights Act.

Rural Proofing

Rural proofing is a process to ensure that all relevant Government policies are examined carefully and objectively to determine whether or not they have a different impact in rural areas from that elsewhere.

The Department considers that the measures contained within the proposed amending legislation are unlikely to have any different

impact in rural areas to that within any other sector of the community.

1.3 Regulatory Impact Statement

The Department has not carried out a Regulatory Impact Assessment on the policy implications for the proposed amendments to the Groundwater Regulations (Northern Ireland) 2009, the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 and the Pollution Prevention and Control Regulations (Northern Ireland) 2003. We are currently not aware of any individual or organisation planning to undertake carbon capture storage in Northern Ireland. As the proposals relating to the capture and storage are in their early stages there is no immediate impact on businesses or the voluntary sector. The Department for Environment, Food and Rural Affairs carried out an Impact Assessment and concluded that no obligations or costs would be incurred.

The changes to the above Regulations to prepare for CCS are simply adjustments in the Regulations to provide absolute clarity for the purposes of satisfying the Directive.

The minor amendments to the 2003 PPC Regulations are as a result of the better regulation review process, to reduce the burden of regulation.

1.4 Freedom of Information

Confidentiality of Consultation Responses

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. **Before** you submit your response, please read the paragraphs below on the confidentiality of consultations as they will give you guidance on the legal position about any information given by you in response to this consultation.

The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation.

The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:-

- the Department should only accept information from third parties in confidence if it is necessary to obtain information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified by the Information Commissioner.

For further information about confidentiality of responses, please contact the Information Commissioner's Office, or see the web-site at:-

<http://www.ico.gov.uk>

1.5 How to respond to this consultation

Responses are invited to this consultation paper by **22nd April 2011** and should be sent to the address below. Early responses would be most welcome and a summary of the responses will be published on the Department's website. All comments and representations received during the consultation will be considered in finalising the draft Regulations.

Before you submit your response, please read the notes regarding the confidentiality of consultations, which provides guidance on the legal position of any information given by you in response to this consultation. If you are responding on behalf of a group or

organisation, please indicate this on your response. Please reply using one of the following options:

By post:

Beth Hodgett
Environmental Policy Division
Department of the Environment
Goodwood House
44-58 May Street
Belfast
BT1 4NN

By e-mail: beth.hodgett@doeni.gov.uk

By fax: (028) 90254732

Enquiries regarding the content of this consultation document should be made to Beth Hodgett in the first instance, your enquiry will then be passed to the relevant section for a response. Requests for further copies should also be made to Beth Hodgett (028) 90254796 at the above address.

Should you require a copy of this document in an alternative format, it can be made available on request in large print, disc, Braille and in audiocassette or telephone for the hearing impaired.

The document may be available on request in minority languages for those who are not proficient in English. The Department will translate executive summaries of key publications into Irish or Ulster-Scots upon request. Information and additional copies of the document can be requested by textphone on (029) 90540642.

Hard copies of the consultation document are available from the address above. The consultation document is available to view at: <http://www.doeni.gov.uk/> (click on “environmental issues” and on either “environmental liability” or “industrial pollution” or on “water”).

A list of consultees that have been contacted directly in relation to this consultation is attached at Annex 4. However, views from anyone interested in these proposals are very welcome.

2. Consultation

2.1 Groundwater Regulations (Northern Ireland) 2009 (Article 32)

Article 32 of the CCS Directive amends the WFD by inserting a new indent in Article 11(3)(j) of the WFD which requires a 'prohibition of direct discharges of pollutants into groundwater' subject to certain exceptions (such as discharges from certain mining or civil engineering operations). The new indent adds to those exceptions the injection of carbon dioxide streams into geological formations which for natural reasons are permanently unsuitable for other purposes. This is an important amendment without which carbon dioxide storage in geological formations would be prohibited. It removes what would otherwise be a fatal regulatory obstacle to most carbon capture storage schemes.

The exceptions referred to above are transposed through Regulation 16 of the Groundwater Regulations (Northern Ireland) 2009. The Department therefore proposes an amendment under Section 2(2) of the European Communities Act 1972 which would make the necessary insertion within Regulation 16 using the wording inserted into article 11(3)(j) of the WFD which is:

'injection of carbon dioxide streams for storage purposes into geological formations which for natural reasons are permanently unsuitable for other purposes, provided that such injection is made in accordance with Directive 2009/31/EC of the European Parliament and of the council of 23 April 2009 on the geological storage of carbon dioxide or excluded from the scope of that Directive pursuant to its Article 2(2)'.

2.2 Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 (Article 34)

Article 34 of the CCS Directive amends the Environmental Liability Directive by including the operation of storage sites for the geological storage of carbon dioxide as an occupational activity covered within the scope of the Directive.

The Environmental Liability Directive has the objective of making operators of activities which cause environmental damage financially liable for that damage (the 'polluter pays' principle). It imposes duties on operators of economic activities to take immediate steps to prevent damage if there is an imminent threat, and to control damage which is occurring so as to limit its effects.

The Environmental Liability Directive applies to activities listed in its Annex III. The activities referred to are transposed through the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 and are listed in Schedule 2 (Activities causing damage).

The Department therefore proposes an amendment to the 2009 Environmental Liability Regulations under Section 2(2) of the European Communities Act 1972 which would insert a new paragraph 10 within Schedule 2 which is:

"The operation of storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide".

2.3 Pollution Prevention and Control Regulations (Northern Ireland) 2003 (Article 37)

Article 37 of the CCS Directive amends the IPPC Directive by requiring the capture of carbon dioxide for the purposes of storage to be regulated by the IPPC Directive as an Annex 1 activity in its own right.

The Department proposes to make the amendment legislation under Article 4 of the Environment (Northern Ireland) Order 2002.

The IPPC Directive applies to industrial activities listed in its Annex I and these activities are incorporated in Part 1 of Schedule 1 to the Pollution Prevention and Control Regulations (PPC) (Northern Ireland) 2003. The IPPC Directive requires any installation where one or more of the listed activities is carried out to have a permit containing emission limit values and other conditions based upon the application of best available techniques (BAT). However, it

also applies to any other activity, whether listed in Annex I or not, which is directly associated with a listed activity and which could have an effect on emissions and pollution. Such activities are often referred to as “directly associated activities” (DAAs).

The CCS Directive activities could have an effect on emissions and pollution in various ways, particularly if the carbon capture process, whether pre or post combustion, is poorly designed or operated so that materials used in the process are emitted. In practice, it would be expected that nearly all CCS activities would be directly associated with combustion plants which are already subject to IPPC, with the result that the carbon capture activity would itself be subject to IPPC as a DAA. However, Article 37 of the CCS Directive requires the carbon capture activity to be added to Annex 1 of the IPPC Directive.

We therefore propose an amendment to the 2003 PPC Regulations which would insert a new section 6.10 ‘Carbon capture and storage’ into Part 1 of Schedule 1 which is:

“Capture of CO₂ streams from installations covered by this Directive for the purposes of geological storage pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide”.

2.4 Other minor amendments

The Department is also taking this opportunity to make some minor amendments to the 2003 PPC Regulations as follows:

Schedule 1 Part 1

Combustion of waste-derived fuel that has ceased to be waste before being burned as a fuel.

Developments in case law mean that it is now possible for a waste derived fuel to be processed so as to cease to be waste before being burned as a fuel.

As currently drafted Schedule 1, Part 1 Chapter1 Section 1.1 of the 2003 PPC Regulations require a Part A permit applying IPPC

Directive requirements to waste-derived fuel where it is burned in a combustion plant with a rated thermal input of 3 MW or more. Burning a virgin fuel in a combustion plant is regulated under Section 1.1 only at or above 20MW (and at or above 50MW as a Part A activity). This means that non-waste fuels are regulated differently, according to whether they were once waste, for no environmental benefit.

The decision on whether a waste has been fully recovered and ceased to be a waste is one that will be taken on the facts of each case. In January 2010 the Department and the Northern Ireland Environment Agency (NIEA), in conjunction with the Department for Environment, Food and Rural Affairs, the Welsh Assembly Government and the Environment Agency, jointly issued draft guidance for consultation on the legal definition of waste and its application. Formal guidance will be issued later this year by the Department but already 'end of waste protocols' have been developed for some waste streams including fuel produced from waste lubricating oils.

The NIEA are accepting applications for end-of-waste tests. In certain circumstances a waste can be processed and the resulting product will no longer be considered to be a waste.

The current wording in the 2003 PPC Regulations applies more onerous regulation on fuels which are manufactured from a waste as compared to virgin fuels. This amendment will mean that fuels manufactured from a waste which pass an end of waste test will be regulated in the same way as virgin fuels.

The Department proposes to amend Chapter 1, Section 1.1, Part A and Part C to reduce the burden of regulation on waste-derived fuel where it has ceased to be waste before being burned as a fuel.

The Department will do this by amending the *Interpretation of Part A* to Section 1.1 Part A to remove from the scope of Part A(b)(iii), fuels manufactured from a waste which have ceased to be a waste before being burned. The Department proposes to make a similar amendment to the *Interpretation of Part C* for Part C(b)(iii) and (c).

Deregulation of manufacture of powder coating materials

In line with better regulation principles, a 2-part consultation review process, carried out by Defra, in consultation with the devolved administrations, looked for opportunities to reduce administrative burdens on business without compromising the policy purpose of the local air pollution prevention and control regime.

As a result of the better regulation review process, the decision was taken to exclude the manufacture of powder coating from permitting requirements.

However, a small number of powder coating manufacturers use lead chromate and triglycidyl isocyanurate (TGIC) and the Department proposes therefore to continue to regulate such installations.

The Department considers that solvent use in powder coating manufacture generally, has declined to levels which do not warrant regulation. It is also in the interests of manufacturers to minimise particulate matter emissions because any emissions constitute a loss of product.

The Department will amend Chapter 6, Section 6.5 Part B(a)(ii) and Part C(a)(ii).

Deregulate the drying of the following green crops: grass, alfalfa (Lucerne), hay, straw, perennial ryegrass and tall fescue;

As a result of the above mentioned review process a decision was taken to remove vegetable drying from the permitting requirements.

The Department considers that the drying of 'green crops' does not have the potential of offensive odour or significant dust nuisance and therefore proposes to remove it from the scope of PPC regulation.

This amendment would place the drying of the above mentioned green crops in the list of exempt activities under 'Interpretation of section 6.8' in Chapter 6, Section 6.8.

Schedule 4 Part 2

Amendment of “Health and Social Services Board” to “The Regional Agency for Public Health and Social Well-being”

The Regional Agency for Public Health and Social Well-being was established in 2009 under a major reform of health structures in Northern Ireland. There are references to the Health and Social Services Board in Part 2 of Schedule 4 and these amendments reflect the name of the new body with responsibility for health. The amendments will be made to paragraph 9(1)(a) and (2).

3. ANNEXES

ANNEX I The Environmental Liability (Amendment) Regulations

STATUTORY RULES OF NORTHERN IRELAND

2011 No. 000

ENVIRONMENTAL PROTECTION

The Environmental Liability (Prevention and Remediation) (Amendment) Regulations (Northern Ireland) 2011

Made - - - - ***

Coming into operation - ***

The Department of the Environment, being a Department designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to matters relating to the environment, acting in exercise of the powers conferred upon it by that section, makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Environmental Liability (Prevention and Remediation) (Amendment) Regulations (Northern Ireland) 2011 and come into operation on [].

(2) The Interpretation Act (Northern Ireland) 1954(3) applies to these Regulations as it applies to an Act of the Assembly.

Amendment of the Principal Regulations

2.—(1) The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009(4) are amended as follows:—

(2) In Schedule 2, after paragraph 9 insert—

“Geological storage of carbon dioxide

10. The operation of storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide.
”

Sealed with the Official Seal of the Department of the Environment on ***

(1) S.I. 2008 No. 301

(2) 1972 c.68

(3) 1954 c.33 (N.I.)

(4) S.R. 2009 No. 252, amended by S.R. 2009 No. 361



A senior officer of the Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 (the “Principal Regulations”), implementing an amendment to Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (the Environmental Liability Directive). This amendment includes the operation of storage sites for the geological storage of carbon dioxide as a prescribed activity.

ANNEX II The Groundwater (Amendment) Regulations

STATUTORY RULES OF NORTHERN IRELAND

2011 No.

EUROPEAN COMMUNITIES

ENVIRONMENTAL PROTECTION

Groundwater (Amendment) Regulations (Northern Ireland) 2011

Made - - - - *xx June 2011*
Coming into operation - *xx June 2011*

The Department of the Environment, being a department designated(5) for the purposes of section 2(2) of the European Communities Act 1972(6) in relation to the environment, in exercise of the powers conferred upon it by that section, makes the following Regulations:

Citation, commencement and interpretation

3.—(1) These Regulations may be cited as the Groundwater (Amendment) Regulations (Northern Ireland) 2011 and shall come into operation on xx June 2011.

(2) The Interpretation Act (Northern Ireland) 1954(7) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Groundwater Regulations (Northern Ireland) 2009

4.—(1) The Groundwater Regulations (Northern Ireland) 2009 shall be amended in accordance with paragraph (2).

(2) In Regulation 16 (Discharges that may be authorised) after sub paragraph (h) insert—

“ (i) the injection of carbon dioxide streams for storage purposes into geological formations which for natural reasons are permanently unsuitable for other purposes, provided that such injection is made in accordance with Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide or excluded from the scope of that Directive pursuant to its Article 2(2)”.

(5) S.I. 2008/ 301
(6) 1972 c.68
(7) 1954 c. 33 (N.I.)

Sealed with the Official Seal of the Department of the Environment on xx June 2011



Denis McMahon
A senior officer of the Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend regulation 16 of the Groundwater Regulations (Northern Ireland) 2009 to allow the storage of carbon dioxide in geological formations.

ANNEX III The Pollution Prevention and Control (Amendment) Regulations

DRAFT STATUTORY RULES OF NORTHERN IRELAND

2011 No. 000

ENVIRONMENTAL PROTECTION

The Pollution Prevention and Control (Amendment) Regulations (Northern Ireland) 2011

Made - - - - xxxx 2011

Coming into operation - xxxx 2011

The Department of the Environment makes the following Regulations in exercise of the powers conferred by Article 4 of the Environment (Northern Ireland) Order 2002⁽⁸⁾.

In accordance with Article 4(4) of that Order, the Department has consulted district councils and such bodies or persons appearing to it to be representative of the interests of district councils as it considers appropriate, such bodies or persons appearing to it to be representative of the interests of industry, agriculture and business as it considers appropriate and such other bodies and persons as it considers appropriate.

Citation, commencement and interpretation

5.—(1) These Regulations may be cited as the Pollution Prevention and Control (Amendment) Regulations (Northern Ireland) 2011 and shall come into operation on xxxx 2011.

(2) In these Regulations “the Principal Regulations” means the Pollution Prevention and Control Regulations (Northern Ireland) 2003⁽⁹⁾.

Amendment to the Principal Regulations

6.—(1) Part A of Section 1.1 (Combustion Activities) of Part 1 of Schedule 1 to the Principal Regulations is amended as follows:

- (a) in paragraph (b)(iii) delete “subject to the conditions of paragraph (c)”;
- (b) delete paragraphs (c) and (d);
- (c) delete the section entitled Interpretation of Part A and insert-

“*Interpretation of Part A*

1. For the purpose of paragraph (a), where two or more appliances with an aggregate rated thermal input of 50 megawatts or more are operated on the same site by the same operator those

⁽⁸⁾ S.I.2002 No. 3153 (N.I.7)

⁽⁹⁾ S.R. 2003 No. 46

appliances shall be treated as a single appliance with a rated thermal input of 50 megawatts or more.

2. For the purpose of paragraph (b)(iii) “fuel” does not include fuel manufactured from waste which ceased to be a waste before being burned as a fuel.”

(2) In the Interpretation of Part C of Section 1.1 (Combustion Activities) of Part 1 of Schedule 1 to the Principal Regulations after “2. In paragraph (c), “fuel” does not include gas produced by biological degradation of waste.” insert “3. For the purposes of paragraph (b)(iii) and (c) “fuel” does not include fuel manufactured from waste which ceased to be waste before being burned as a fuel.”.

(3) In Section 6.5 (Manufacture of dyestuffs, printing ink and coating materials), of Part 1 of Schedule 1 to the Principal Regulations, in paragraph (a)(ii) of Part B and in paragraph (a)(ii) of Part C after “coating material” insert “where the process uses lead chromate or triglycidyl isocyanurate and”.

(4) In Section 6.8 (Treatment of animal and vegetable matter and food industries) of Part 1 of Schedule 1 to the Principal Regulations in the *Interpretation of Section 6.8* amend as follows:

- (a) after paragraph (xiv) in the definition of “exempt activity” insert “(xv) the drying of green crops”;
- (b) after the definition of “food” insert “green crops” means alfalfa (Lucerne), clover, grass, perennial ryegrass, tall fescue and other similar crops;”.

(5) After Section 6.9 (Intensive Farming) of Part 1 of Schedule 1 to the Principal Regulations insert –

“Section 6.10 Carbon capture and storage

Part A

Capture of carbon dioxide streams from an installation for the purposes of geological storage pursuant to Directive 2009/31/EC of the European Parliament and of the council of 23rd April 2009 on the geological storage of carbon dioxide.

Part B

NIL

Part C

NIL.”.

7.—(1) Part 2 of Schedule 4 (Determination of Applications) to the Principal Regulations is amended as follows:

- (a) In paragraph 9(1)(a) delete “Health and Social Services Board” and insert “Regional Agency for Public Health and Social Well-being”.
- (b) In paragraph 9(2) delete ““Health and Social Services Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972(e)” and insert ““Regional Agency for Public Health and Social Well-being” means the Regional Agency for Public Health and Social Well-being established under Article 12 of the Health and Social Care (Reform) Act (Northern Ireland) 2009.”.

Sealed with the Official Seal of the Department of the Environment on xxxx 2011.



Denis McMahon
A senior officer of the Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Pollution Prevention and Control Regulations (Northern Ireland) 2003.

Regulations 2(1) and (2) amend Section 1.1 by amending the Interpretation of Part A to remove from the scope of Part A (b)(iii), fuels manufactured from a waste which have ceased to be a waste before being burned. A similar amendment is made to the Interpretation of Part C for Part C (b)(iii) and (c).

Regulation 2(3) excludes the manufacture of powder coating in Section 6.5 unless the process uses lead chromate or triglycidyl isocyanurate.

Regulation 2(4) places the drying of green crops in the list of exempt activities in Section 6.8.

Regulation 2(5) inserts a new Section 6.10 in respect of carbon capture and storage.

Regulation 3 amends Part 2 of Schedule 4 by replacing Health and Social Services Board with Regional Agency for Public Health and Social Well-being.

ANNEX IV List of Consultees

Executive Ministers and Junior Ministers
Leaders of Parties in the Assembly
Other Northern Ireland Parties not in the Assembly
MPs/MEPs who are not Party Leaders or MLAs
Members of the NI Assembly
Assembly Business Office

AES

Belfast Harbour

British Ports

Chartered Institute of Environmental Health

Confederation of British Industry

Construction Employers Federation

District Councils

The Environment Committee of the Northern Ireland Assembly

Farming and Wildlife Advisory Group

Friends of the Earth

General Consumer Council NI

HMG Powder Coatings

Lafarge Cement PLC

Londonderry Port

NI Chamber of Commerce and Industry

NI Environment Agency

NI Environment Link

NI Food and Drink Association

NI Local Government Association

NI Public Health Agency

NI Tourist Board

NI Water

Port of Larne
Quarry Products Association NI
Quinn Group
RSPB
Ulster Angling Federation
Ulster Farmers Union
Ulster Wildlife Trust
Warrenpoint Harbour
WWF