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ENVIRONMENT · CARBON · PUBLIC AFFAIRS
NORTHERN IRELAND

ANNEX TO THE THOUGHT PIECE · NOVEMBER 2026

The register and the draft Bill

Annex to "The law on the books is not the law on the ground". Part A is the register of uncommenced, unworking, bypassed and court-overtaken law. Part B is a working draft (edition 2) of a Code of Engagement Bill in Parliamentary Counsel style. The review panels referred to were simulated. Not legal advice.

PART A · REGISTER OF SLEEPING LAW

Tests: Uncommenced (enacted, never brought into force); In force, not working; Bypassed or overlapping; Courts (the text alone no longer tells a reader what the law requires). Checked 21 November 2026.

#	Law	Where	Test	What happens	Treatment	Source
1	**Waste and Contaminated Land (NI) Order 1997, Part III**	NI	Uncommenced	Never commenced; councils rely on planning conditions and nuisance law	Commence a revised Part III, or replace it	legislation.gov.uk (Part III, prospective)
2	**Reservoirs Act (NI) 2015**	NI	Uncommenced (part)	Royal Assent 24 July 2015; remaining provisions still need commencement	Duty to commence	DfI, Reservoirs Act (NI) 2015 page
3	**Flood and Water Management Act 2010, Sch 3 (sustainable drainage)**	England	Uncommenced	In force in Wales since 2019 for specified purposes; not commenced in England, and no date given (HL11809, 24 November 2025)	Commence, or repeal for England	legislation.gov.uk
4	**Levelling-up and Regeneration Act 2023, Part 4 (Infrastructure Levy)**	England	Partly commenced	In force since 31 January 2024 for regulation-making only (SI 2024/92); no regulations made; Community Infrastructure Levy still operates	Commence within five years of s16 of the draft Bill, or repeal	legislation.gov.uk
5	**Levelling-up and Regeneration Act 2023, s106 (street votes)**	England	Partly commenced	In force since 31 January 2024 for regulation-making only (SI 2024/92); consulted on December 2023; no regulations made	Commence within five years of s16 of the draft Bill, or repeal	GOV.UK
6	**Justice (NI) Act 2002, s50 (NI Law Commission)**	NI	In force, not working	Non-operational since April 2015; no commissioners, staff or budget besides the Chair	Revive, or joint reference	NILC
7	**Climate Change Act (NI) 2022, s50 (Climate Commissioner)**	NI	In force, not working	Draft regulations to be laid within two years; in operation 9 April 2025, late; no appointment announced in the latest Assembly answer found (March 2026)	Appoint; report to the Assembly	Belfast Gazette

8	**Water and Sewerage Services (NI) Order 2006, Part VII (financial provisions)**	NI	Bypassed	Household charges planned from April 2007; Department grants under Art 213 equal to discounts on charges, for the period ending 31 March 2027	State the real funding model in law before March 2027	Art 213
9	**Public Health (Ireland) Act 1878**	NI	Bypassed	Statutory nuisance moved to Part 7 (ss63 to 71) of the Clean Neighbourhoods and Environment Act (NI) 2011; residual sections remain	Restate live sections; repeal the rest	2011 Act
10	**Climate Change Act (NI) 2022, ss29 and 51**	NI	Overlapping	Two plan duties; the Explanatory Notes say one document can satisfy both	Merge into one duty	Explanatory Notes
11	**Conservation of Habitats and Species Regulations 2017 (site-by-site mitigation)**	England	Bypassed	Environmental Delivery Plans and the nature restoration levy (ss72 to 81) under the Planning and Infrastructure Act 2025 offer an alternative route	State which route applies when	2025 Act
12	**Northern Ireland Act 1998 (decisions with no minister)**	NI	Courts	Re Buick [2018] NICA 26; temporary fixes since (the 2018 Act, repealed 2022; now ss3 to 5 of the NI (Executive Formation etc) Act 2022)	Standing continuity rule (Bill s14)	judgment
13	**Town and Country Planning (EIA) Regulations 2017**	England	Courts	R (Finch) v Surrey CC [2024] UKSC 20: downstream combustion emissions of extracted oil must be assessed	State the rule (Bill s15)	judgment
14	**Climate Change Act 2008, ss13 and 14**	UK	Courts	Friends of the Earth [2022] EWHC 1841 (Admin); [2024] EWHC 995 (Admin): plans unlawful on vague, unquantified evidence	State the evidential standard	judgment
15	**Town and Country Planning Act 1990 (overlapping permissions)**	E&W	Courts	Hillside Parks v Snowdonia NPA [2022] UKSC 30: a later permission can make an earlier one impossible to complete	State the rule; clean route to vary large schemes	judgment

PART B · ENVIRONMENT, CLIMATE, INFRASTRUCTURE AND PUBLIC REALM (CODE OF ENGAGEMENT) BILL

Working draft, edition 2, 21 November 2026. A Bill to establish a code of engagement for decisions about the environment, climate change, infrastructure and the public realm; to require ministers to commence or explain uncommenced enactments; to provide for the continuity of decisions; and for connected purposes.

PART 1 · OVERVIEW AND INTERPRETATION

1 Overview

(1) This Act sets out a code of engagement for relevant decisions taken by relevant authorities.

(2) Part 2 sets out the code. Part 3 makes provision about continuity of decisions, the effect of judicial decisions, and commencement.

2 Relevant authorities and relevant decisions

(1) "Relevant authority" means a person listed in Schedule 1; "relevant decision" means a decision under an enactment listed in Schedule 2.
(2) The appropriate national authority may by regulations amend Schedules 1 and 2.

3 Interpretation

In this Act: "adopted plan" means a development plan document adopted or approved under the planning legislation of the part of the United Kingdom concerned; "appropriate national authority" means the Secretary of State, the Welsh Ministers, the Scottish Ministers or the relevant Northern Ireland department; "enactment within the code" means an enactment listed in Schedule 2; "minister" includes a Northern Ireland Minister; "prescribed" means prescribed by regulations; "relevant legislature" means Parliament, Senedd Cymru, the Scottish Parliament or the Northern Ireland Assembly, as the case requires; "senior officer" means a civil servant of the senior civil service designated under section 14; "strategic" has the meaning given by regulations under section 7; and "place" means any land, water or structure to which a relevant decision relates.

PART 2 · THE CODE OF ENGAGEMENT

4 Register of responsibility

(1) The appropriate national authority (in Northern Ireland, the relevant Northern Ireland department) must keep and publish a register naming the decision-maker for each description of relevant decision, and the lead authority where functions are shared.
(2) The register must be updated within 28 days of any change of functions.
(3) An error in the register does not invalidate a decision, but a court or tribunal may take it into account in extending time or awarding costs.

5 Single point of entry

(1) A person may send an application, representation, objection or complaint about a relevant decision to any relevant authority.
(2) An authority which is not the decision-maker must, within 10 working days, send it on and tell the sender where it went.
(3) Any time limit runs from receipt by the decision-maker.
(4) This section does not apply to statutory notices, representations or appeals in enforcement or criminal proceedings, or to fixed penalties.

6 Notice of proposals

Before taking a relevant decision affecting a place, the decision-maker must publish a plain notice of what is proposed, where, why, the closing date and where the papers are.

7 Consultation

(1) The period for representations from the public is at least 28 days, or 42 days for decisions prescribed as strategic.
(2) Where an enactment within the code provides a longer period, that period applies; a shorter period is extended to the period in subsection (1).
(3) Periods for statutory consultees set by an enactment within the code are not affected.

8 District councils

(1) A district council is a statutory consultee on relevant decisions of a description prescribed under this section that affect its district.
(2) Regulations must prescribe strategic, network-changing and district-wide decisions, and may allow a council to opt out by class.
(3) Schedule 3 includes model provision for the Northern Ireland Assembly to extend the duty in section 75 of the Local Government Act (Northern Ireland) 2014, so that it includes a duty to give reasons for any material departure from a community plan or adopted plan, and applies to Northern Ireland Water Limited, the Northern Ireland Housing Executive and the Northern Ireland Transport Holding Company as well as departments.
(4) Nothing in this section transfers any function to a district council.
(5) Regulations under this section must be accompanied by a statement of their cost to councils and how it is to be met.

9 Reasons

The decision-maker must publish each relevant decision with reasons, including how the main issues raised were dealt with and why any adopted plan was departed from.

10 Information from applicants

Applicants must provide the information the decision-maker reasonably requires, in any prescribed standard format.

11 Decision periods

Where a statutory decision period expires, the applicant may require the decision-maker to publish within 10 working days a date for decision and reasons for the delay.

12 Environmental information

Relevant authorities must publish environmental, climate and infrastructure information about relevant decisions by default, subject to the exceptions in the applicable environmental information regulations and data protection law, and excluding enforcement intelligence and live investigations.

13 Internal review

(1) A person aggrieved by a relevant decision may ask for an internal review within 28 days; the outcome must be published within 28 days.

(2) Review is optional. The time it takes does not count towards any statutory time limit for appeal, and rules of court may make similar provision for judicial review.

(3) This section does not apply to criminal proceedings or fixed penalties.

PART 3 · CONTINUITY AND THE STATUTE BOOK

14 Continuity of decisions

(1) Where no minister holds office who may take or approve a relevant decision, a senior officer designated by regulations may take it if satisfied that it is in the public interest to do so before a minister is in office.

(2) The power may not be used for decisions that are cross-cutting, significant or controversial within the meaning of section 20 of the Northern Ireland Act 1998 and the Northern Ireland Ministerial Code, or of a description reserved to a minister by regulations.

(3) Guidance on its use must be published first, and each decision published with reasons.

(4) The power ceases to be exercisable 24 months after the start of the period in which no minister holds office.

(5) This section extends to Northern Ireland only if the Northern Ireland Assembly adopts it under section 18; it follows the model of sections 3 to 5 of the Northern Ireland (Executive Formation etc) Act 2022.

15 Judicial decisions

(1) This section applies where a final judgment of a court in the United Kingdom, not subject to further appeal, holds that an enactment within the code has a materially different meaning or effect from that previously understood.

(2) Within 12 months the appropriate national authority must lay before the relevant legislature a proposal to amend the enactment, a statement that no amendment is needed, or an official annotation of the text.

(3) Nothing in this section affects the power of any legislature to make law.

16 Duty to commence

(1) Where a provision of an enactment within the code comes into force on a day appointed by regulations or order, the person with the power to appoint that day must, within five years of the enactment being passed or made (or, for existing enactments, of this section coming into force), either (a) bring the provision into force, or (b) lay before the relevant legislature a statement of reasons and a date for commencement, or a proposal for repeal.

(2) A statement under subsection (1)(b) must be repeated every 12 months until the provision is in force or repealed.

(3) Nothing in this section causes a provision to lapse. A provision lapses only where an enactment expressly so provides.

PART 4 · GENERAL

17 Savings

Nothing in this Act (a) reduces any right of notice, participation, information or challenge under an enactment within the code; (b) affects EU law that applies in Northern Ireland by virtue of the Windsor Framework, or section 7A of the European Union (Withdrawal) Act 2018; or (c) diminishes any right protected by Article 2 of the Windsor Framework.

18 Devolved legislatures

(1) Part 2 and sections 15 and 16 do not apply to devolved or transferred matters. Senedd Cymru, the Scottish Parliament and the Northern Ireland Assembly may enact equivalent provision, for which Schedule 3 sets out model provisions.

(2) It is recognised that Parliament will not normally legislate with regard to devolved or transferred matters without consent.

19 Review of this Act

The appropriate national authority must review this Act every five years and lay a report on how often each section was used, whether decisions were quicker, and how many were overturned.

20 Regulations

Regulations under section 2 (which may amend Schedules to this Act) and section 14 are subject to the affirmative procedure; others to the negative procedure.

21 Extent, commencement and short title

Extends to the whole United Kingdom. Sections 1 to 3, 16 and 18 to 21 come into force on Royal Assent; the rest on appointed days, which must fall within five years of Royal Assent. Short title: the Environment, Climate, Infrastructure and Public Realm (Code of Engagement) Act 2027.

SCHEDULES (OUTLINE)

Schedule 1, Relevant authorities

UK and devolved ministers and departments; planning, district and strategic authorities; environment agencies and the Office for Environmental Protection; development corporations; water and sewerage undertakers including NI Water; National Highways and DfI as roads authority; Great British Railways (once designated), Network Rail, NITHC and subsidiaries; the Housing Executive and Homes England; harbour authorities and statutory ferry operators.

Schedule 2, Relevant decisions

Decisions affecting a place under the main planning, pollution, climate, roads, water and drainage, bathing water, public realm and new towns enactments of each nation. A starting list; extents to be confirmed instrument by instrument.

Schedule 3, Model provisions

Adoption by reference with modifications; numbering kept so that sections correspond across the UK; in Northern Ireland, section 8 applies to central delivery bodies without transfer of functions.

Notes on the draft

Changes after review by simulated expert panels (edition 2). Section 5 no longer deems receipt by the wrong body and excludes enforcement matters. Section 8 is limited to prescribed classes and builds on the existing community planning duty in Northern Ireland. Section 13 makes review optional and stops the appeal clock; it no longer links review to judicial review discretion. Section 14 follows the 2018 Act model with exclusions and a time limit, and extends to Northern Ireland with consent. Section 15 has a defined trigger and three options. Section 17 replaces a general "greater rights prevail" rule with specific savings.

Points for further work. Edition 2 also: commences section 16 on Royal Assent; recasts section 16 as a duty to commence or explain; widens section 15 to final judgments of any UK court; defines its terms in section 3; and leaves devolved matters to each legislature's own Act, using Schedule 3 models. The power in section 2 to amend Schedules is a Henry VIII power and will attract scrutiny. A Government Bill needs a money resolution for sections 4, 8 and 19; a Private Member's Bill can reach second reading without one but stalls before committee unless the Government moves the money resolution. Section 14's application to Northern Ireland raises the competence questions considered when the 2018 and 2022 Executive Formation Acts were passed. Section 16 goes further than *ex parte Fire Brigades Union* [1995] 2 AC 513, which found only a duty to keep the power to commence under review; it should be mirrored in the Northern Ireland edition for Assembly Acts.

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Not legal advice. Law and regulatory status as at 21 November 2026. Created with assistive technology including AI and re-checked against the official sources cited in the text, figure captions and annex.