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THOUGHT PIECE · NOVEMBER 2026

The law on the books is not the law on the ground

Repeal, Replace, Renew: a register of sleeping law, and a single code for how decisions about the environment, climate, infrastructure and the public realm are made across the UK and in Northern Ireland.

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Facts as at 21 November 2026. Not legal advice.

SUMMARY

Five things this paper argues

Much of the law that governs land, water, carbon and the streets we share does not do what its text says. Some was never switched on. Some has been quietly replaced. Some has been rewritten by the courts. Eight of the fifteen provisions in this paper's register are Northern Ireland law.

01 The statute book no longer tells you the law

This paper's register finds 15 provisions that are uncommenced, unused, bypassed or overtaken by the courts. Eight are Northern Ireland law.

02 Commence, explain or repeal

Ministers should have a duty to bring law into force within five years, or explain to the legislature every year why not. Nothing should lapse by accident.

03 One code of engagement

One named decision-maker, one front door, plain notice, reasons, and optional internal review, whatever statute the decision is taken under.

04 Northern Ireland: central delivery, local voice

Keep delivery with the Department for Infrastructure, the Housing Executive, Translink and NI Water. Give councils a statutory voice and a right to reasons.

05 Consolidate in instalments

Wales is already rebuilding its statute book topic by topic. A UK framework, with each nation's own Code inside it, can do the same for environment and infrastructure.

How this was made

The analysis was tested against three simulated review panels: legislative drafters, local government lawyers and academic lawyers, none with a stake in environmental policy. Their views are reasoned positions, not quotations from real people.

1 · THE PROBLEM

Five layers of law, and Northern Ireland has all five

A manufacturer in Larne, a council officer in Newry and a householder in Enniskillen all live under the same tangle. UK Acts of Parliament sit beside Northern Ireland's own Acts and Orders. Former EU law survives as "assimilated law" under the Retained EU Law (Revocation and Reform) Act 2023. Some EU law still applies directly under the Windsor Framework and must be read the way the EU reads it. And beneath it all, Victorian statutes for Ireland, such as the Public Health (Ireland) Act 1878, still carry live sections.

Who lives under which layers of law

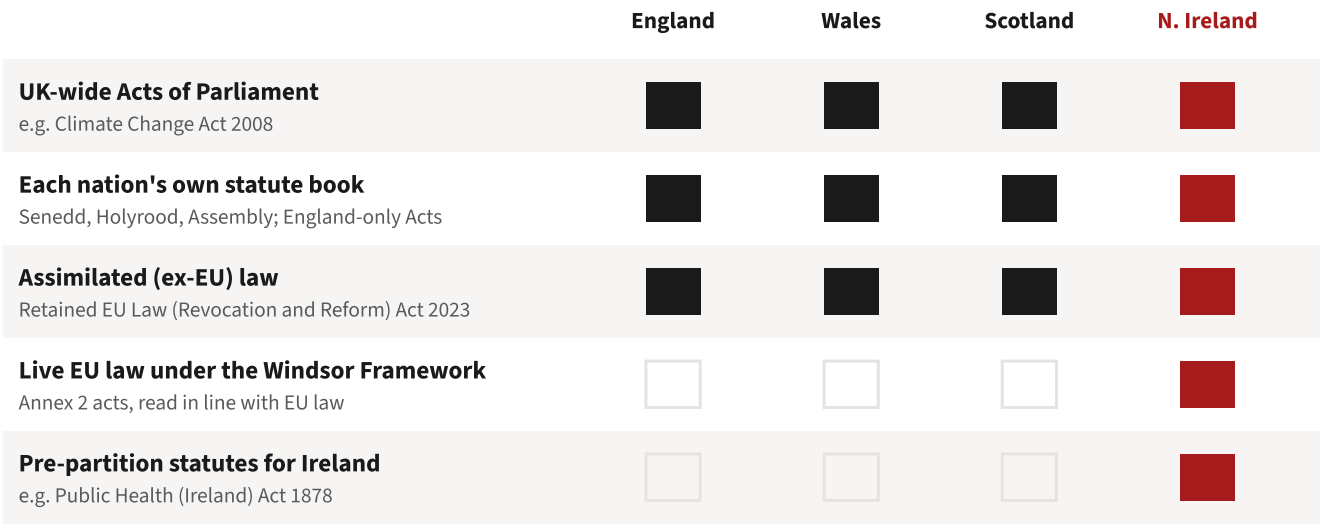


Figure 1. Layers of law in force for environment, infrastructure and public realm matters. England, Wales and Scotland each have the first three; Northern Ireland has all five. Sources: REUL Act 2023 Explanatory Notes; Windsor Framework, Annex 2; legislation.gov.uk.

Each layer was written by different people, at different times, in different words. "Nuisance", "pollution", "public place" and "relevant authority" mean different things from one Act to the next. The same notices, appeals, powers of entry and offences are re-enacted again and again with small, unprincipled differences. Nobody set out to make it this way; it accreted.

> The question is not whether there should be more or less environmental protection. It is whether anyone can find out what the law already requires.

Fifteen pieces of law that do not work as written

The register applies four tests. **Uncommenced**: enacted but never brought into force. **In force, not working**: law that is live but has no one to work it, or was implemented so late that it has not yet done its job. **Bypassed or overlapping**: law routinely worked around by a later Act, a subsidy or a parallel duty. **Text overtaken by the courts**: law where a reader of the text alone would now get the wrong answer.

The register at a glance

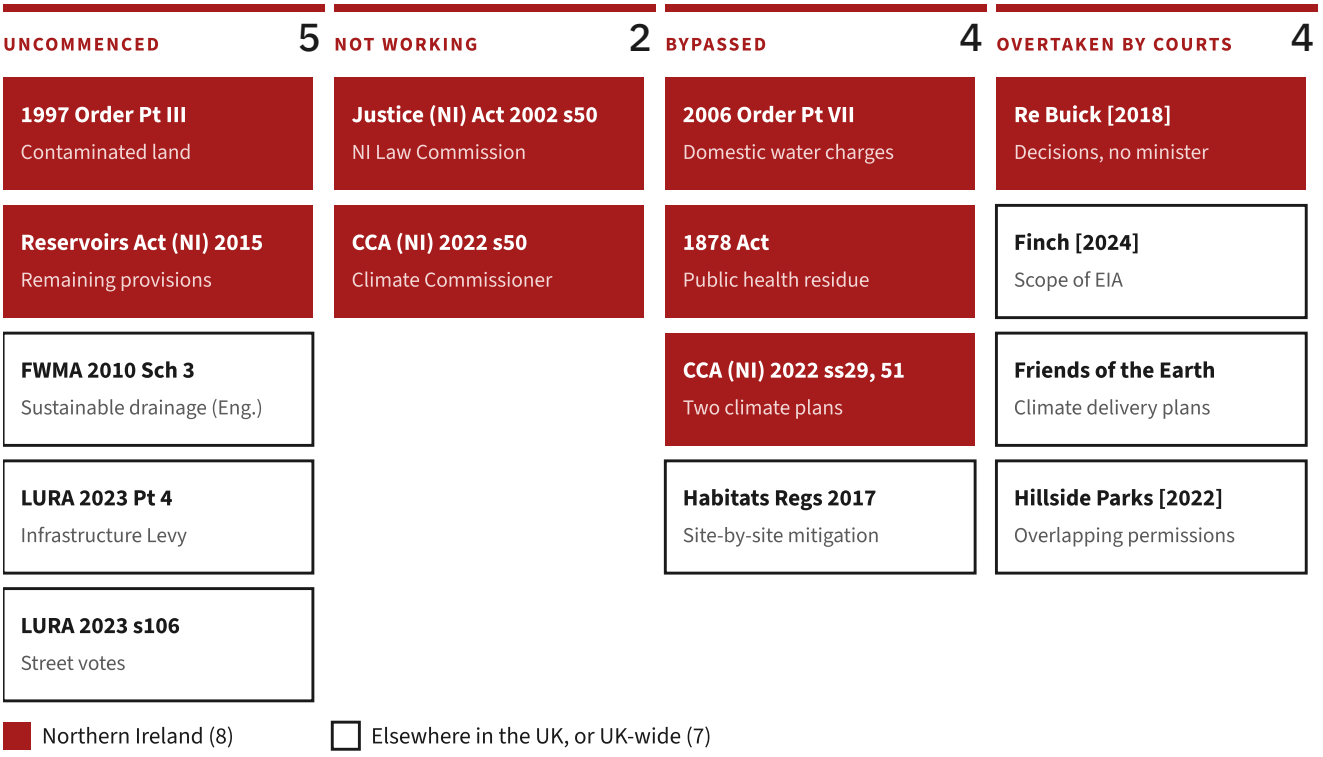


Figure 2. Fifteen provisions by test. Red tiles are Northern Ireland law. The full register, with sources, is in the annex. Checked against legislation.gov.uk, the courts and departmental sources on 21 November 2026.

Three that tell the story

Contaminated land in Northern Ireland. Part III of the Waste and Contaminated Land (NI) Order 1997 was meant to give Northern Ireland the regime Great Britain has under Part 2A of the Environmental Protection Act 1990. It has never been commenced. Councils fall back on planning conditions and nuisance law to deal with land that is contaminated.

Water charges. The Water and Sewerage Services (NI) Order 2006 was built around household charges from April 2007. Instead, the Department pays NI Water grants under Article 213 equal to the discounts on household charges, currently for the period ending 31 March 2027. The statute describes one funding model; the country runs another, and its legal basis lapses in March 2027 unless renewed.

A climate watchdog with no one in post. The Climate Change Act (NI) 2022 required regulations creating a Northern Ireland Climate Commissioner within two years. The regulations came into

operation on 9 April 2025, late. No appointment had been announced in the latest Assembly answer we found (March 2026), and no timescale was agreed.

How long the law has waited

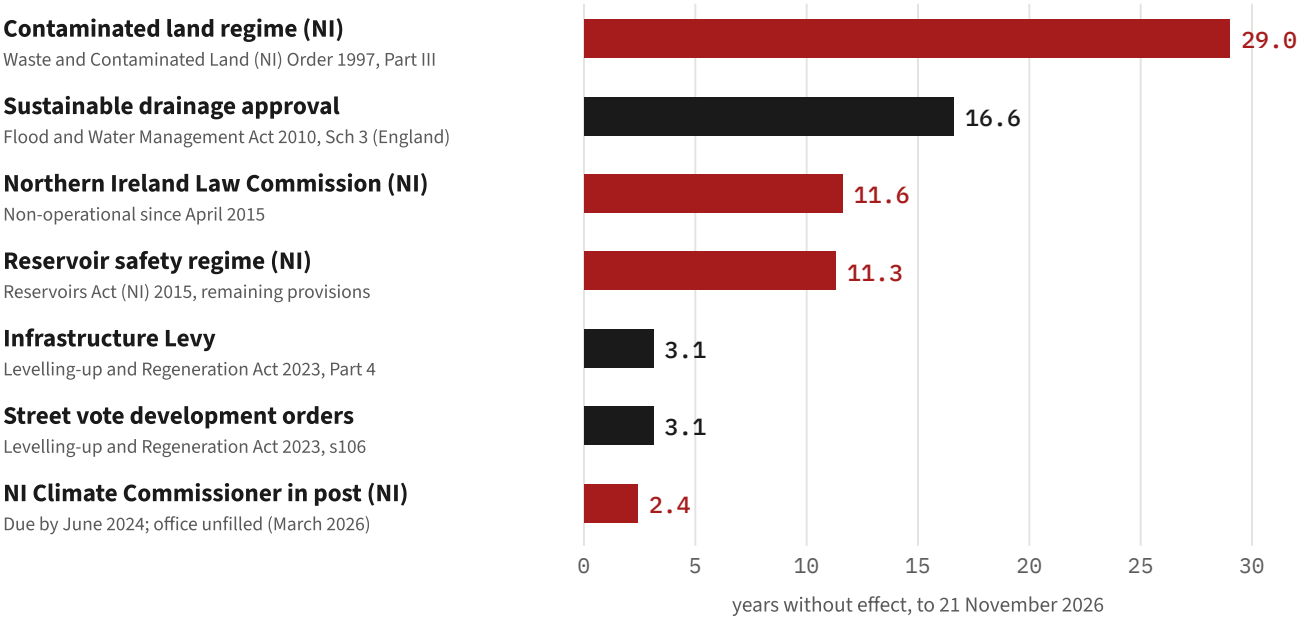


Figure 3. Years each provision has been on the statute book without effect, counted to 21 November 2026 from enactment (for the NI Law Commission, from April 2015, when it stopped operating; for the Climate Commissioner, from the date the regulations were due). Red and (NI): Northern Ireland. Sources: legislation.gov.uk; NI Law Commission; Department for Infrastructure; Belfast Gazette; NI Assembly questions, March 2026.

Also noted, though not a defect: Strangford ferry fares are set under Article 101 of the Roads (NI) Order 1993, the express power for road-ferry charges (whether it covers Rathlin is not clear). The power works; it is simply filed under roads. A consolidated code would give lifeline ferries a short Part of their own.

3 · COMMENCEMENT

Commence, explain or repeal

When Parliament or the Assembly passes a law and leaves the start date to a minister, the minister holds a power that can be left unused indefinitely. The House of Lords confirmed in *R v Secretary of State for the Home Department, ex parte Fire Brigades Union* [1995] 2 AC 513 that a minister must keep such a power under review and cannot frustrate the Act by other means. This paper proposes to put that duty in statute, and make it visible.

A five-year clock on every start date

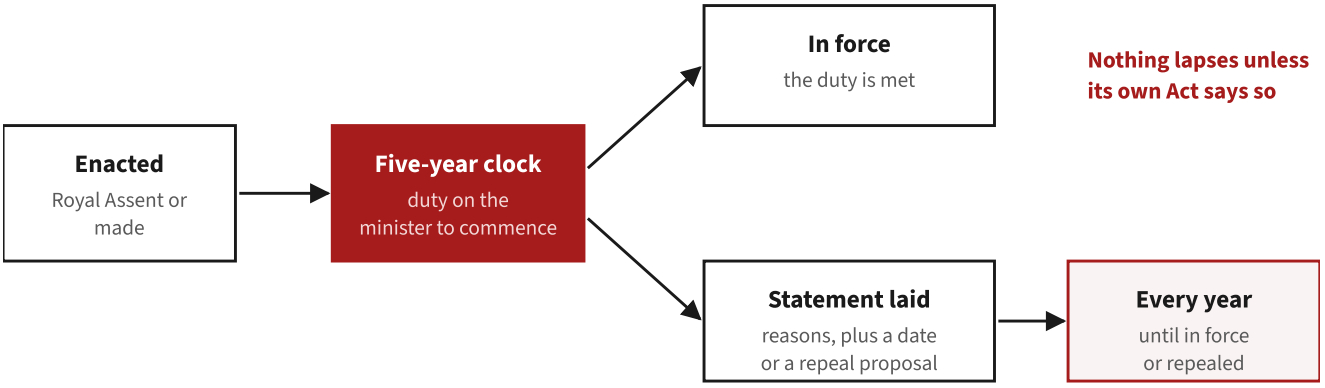


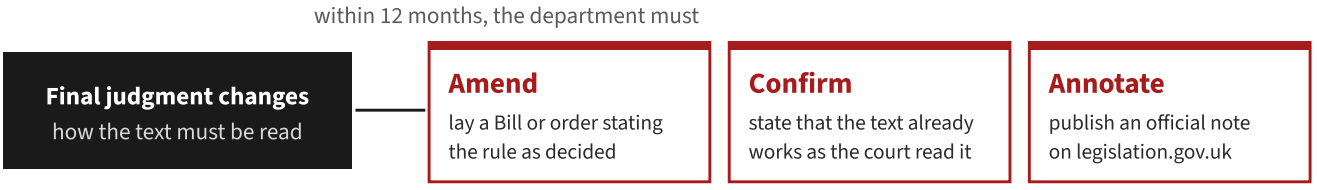
Figure 4. The proposed duty to commence (section 16 of the draft Bill in the annex). A sunset applies only where an Act expressly provides one.

Had this rule applied in 1997, Northern Ireland's contaminated land regime would have been in force, or its absence explained to the Assembly every year, since 2002. Under a pure five-years-from-enactment rule, the Infrastructure Levy and street votes in England would have fallen due in October 2028; under the draft Bill, the clock for existing law runs for five years from commencement of section 16.

When the courts change the meaning

Four judgments in the register change what the text means in practice. In *Re Buick* [2018] NICA 26, the Court of Appeal held that civil servants could not approve the arc21 incinerator with no minister in office; Westminster then passed the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018. In *Finch* [2024] UKSC 20, the Supreme Court held that the downstream combustion emissions of extracted oil must be assessed. In the *Friends of the Earth* cases (2022 and 2024), the High Court held climate delivery plans unlawful where they rested on vague, unquantified evidence. In *Hillside Parks* [2022] UKSC 30, a later planning permission made an earlier one impossible to complete. None of these rules can be found by reading the statute.

Within a year of a ruling, the law should say what it means



Loosely modelled on the Human Rights Act 1998, s10 route. Parliament's freedom to legislate is untouched.

Figure 5. The proposed duty after a final judgment (section 15). The department chooses the most proportionate fix.

4 · CASE LAW

Why case law matters as much as the statute

What is the common law? The common law is law made by judges rather than by a legislature. When a court decides a case, the legal reasoning needed for the decision binds lower courts in later cases raising the same point. This is the doctrine of precedent. The common law governs matters no statute covers, such as most of the law of nuisance and negligence, and it sets the rules courts use to read statutes. England and Wales, and Northern Ireland, are common law jurisdictions; Scotland has a mixed system with civil law roots. An Act can override the common law at any time, but until it does, the courts' rules are the law, and the courts' reading of an Act is what the Act means.

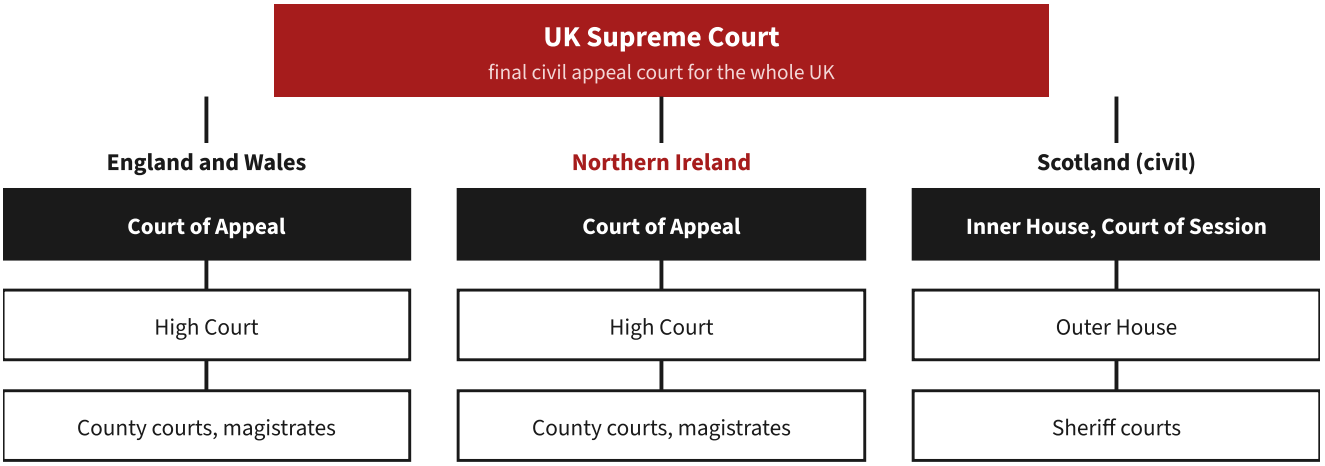
In environment, infrastructure and the public realm, case law does three jobs.

It fills gaps the statute book leaves. Harm escaping from land is still governed by private nuisance and the rule in *Rylands v Fletcher* (1868) LR 3 HL 330, refined in *Cambridge Water Co v Eastern Counties Leather plc* [1994] 2 AC 264, which requires the type of harm to have been foreseeable. In Northern Ireland, where the statutory contaminated land regime has never been commenced, these judge-made rules, with statutory nuisance, are much of what a neighbour of contaminated land can rely on. The common law still moves: in *Fearn v Tate Gallery* [2023] UKSC 4 the Supreme Court applied nuisance to a viewing platform overlooking homes.

It decides what statutes mean. *Finch* and *Hillside Parks*, above, changed how environmental assessment and planning permissions work without a word of the legislation changing.

It holds public bodies to account. Judicial review asks whether a decision was lawful, rational and fair. Its grounds are largely judge-made. *Re Buick* and the *Friends of the Earth* cases show how a single judgment can stop a project or send a national plan back for redrafting. In Northern Ireland the procedure is set by Order 53 of the Rules of the Court of Judicature, but the tests come from case law.

How precedent binds



Lines: decisions bind the courts below them in the same jurisdiction.

Across the UK's three jurisdictions, decisions of the others' courts are persuasive, not binding.

Figure 6. The civil courts of the UK and the binding force of precedent. A Supreme Court ruling binds the lower courts of the jurisdiction the appeal came from and is, in practice, followed across the UK where the law is shared. Simplified: tribunals and criminal courts are not shown.

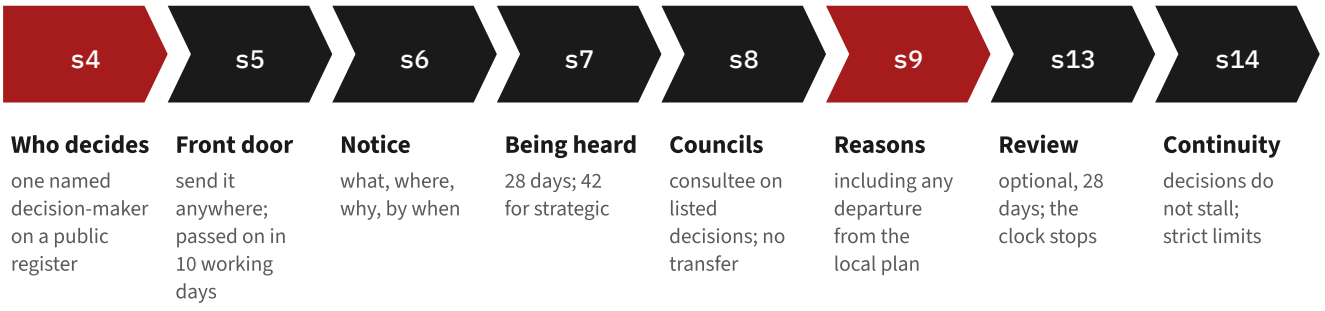
This is why a register of statute is not enough, and why the draft Bill does not try to freeze or codify the common law. Its section 15 does something narrower. Within 12 months of a final ruling that changes what an enactment within the code means, the department must propose an amendment, state that none is needed, or publish an official annotation of the text. A reader of the statute book should then be able to find the law without reading the law reports first.

5 · THE CODE OF ENGAGEMENT

One set of rules for how decisions are made

Planning, permits, roads, water, bathing waters and street cleansing each have their own procedure. The code does not change any environmental standard. It sets ten procedural rules (sections 4 to 13 of the draft Bill) that apply to every decision in scope, so that a person can find the decision-maker, see what is proposed, be heard, get reasons and challenge the outcome without first finding the right statute.

A decision, start to finish



Other sections: applicants' information (10), decision periods (11), environmental information (12), court rulings (15), duty to commence (16).

Figure 7. Main sections of the code of engagement (draft Bill, sections 4 to 14) as a decision journey. Red: sections 4 (who decides) and 9 (reasons), which do most of the work.

Built-in limits, after review. The front door does not apply to enforcement notices, fixed penalties or criminal proceedings, and time runs only from receipt by the right body. Councils are consultees for listed classes of strategic or district-wide decisions, not every traffic order. Information is published by default, except personal data, enforcement intelligence and live investigations. Internal review is optional and stops the clock on appeal deadlines.

6 · NORTHERN IRELAND

Central delivery, local voice

Northern Ireland's infrastructure is the most centralised in the UK, and deliberately so. Roads, and the Strangford and Rathlin ferries, sit with the Department for Infrastructure; social housing with the Housing Executive; public transport with Translink; water and sewerage with NI Water. Councils have no roads, public transport or social housing functions. They do run off-street car parks (since 2015), license houses in multiple occupation, decide most planning applications and lead community planning; Derry City and Strabane District Council owns City of Derry Airport.

The centralisation is a choice with a history. Housing allocation was taken out of local hands after the disputes examined by the Cameron Commission in 1969, and the Housing Executive followed. The 2015 reform of local government planned to pass regeneration powers to councils; the transfer did not go ahead, and the Department confirmed in 2016. This paper does not reopen that settlement.

Who delivers, and who must be heard

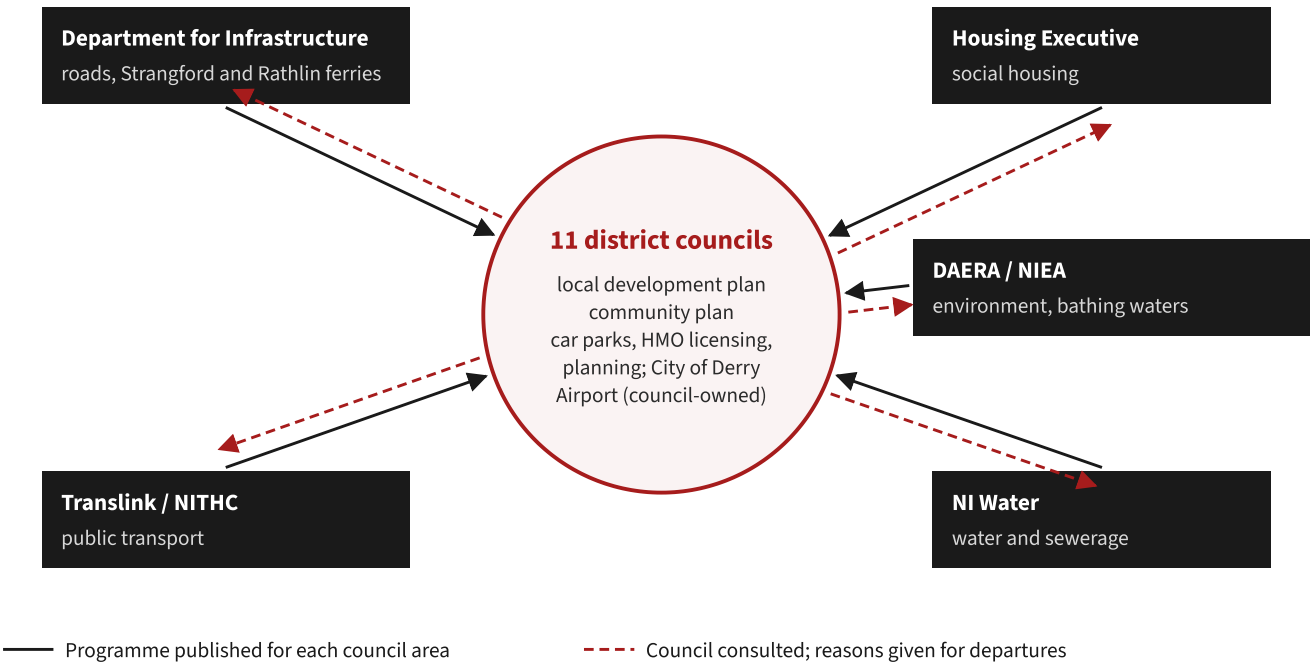


Figure 8. Central delivery bodies and the 11 councils under the proposed duty to engage. Sources: Local Government Act (NI) 2014 Part 10; Off-street Parking (Functions of District Councils) Act (NI) 2015; Department for Infrastructure.

A duty already exists to build on. Under Part 10 of the Local Government Act (NI) 2014, departments must promote community planning and have regard to community plans, and named partners must take part. The proposal strengthens that duty from "have regard" to "give reasons": departments publish how their programmes, and those of the bodies they sponsor, respond to each council's local development plan and community plan, and explain any departure. NI Water publishes how its investment programme responds to adopted plans and gives reasons where it does not, so that housing is not held back by full wastewater works without anyone having to say why.

Out of scope: domestic water charging. The duty to engage works under any funding model. The independent environmental regulator recommended by DAERA's governance panel in October 2025, accepted by the Minister on 4 November 2025 and, as far as we could confirm, still awaiting Executive agreement, would be a relevant authority under the code.

7 · THE UK FRAMEWORK

Working through the devolution settlement, not around it

A UK-wide framework cannot simply legislate for devolved matters. Most of housing, local roads, water and the environment are devolved in Scotland and Wales and transferred in Northern Ireland. The framework therefore works in four tiers, each resting on a power that already exists.

Four tiers

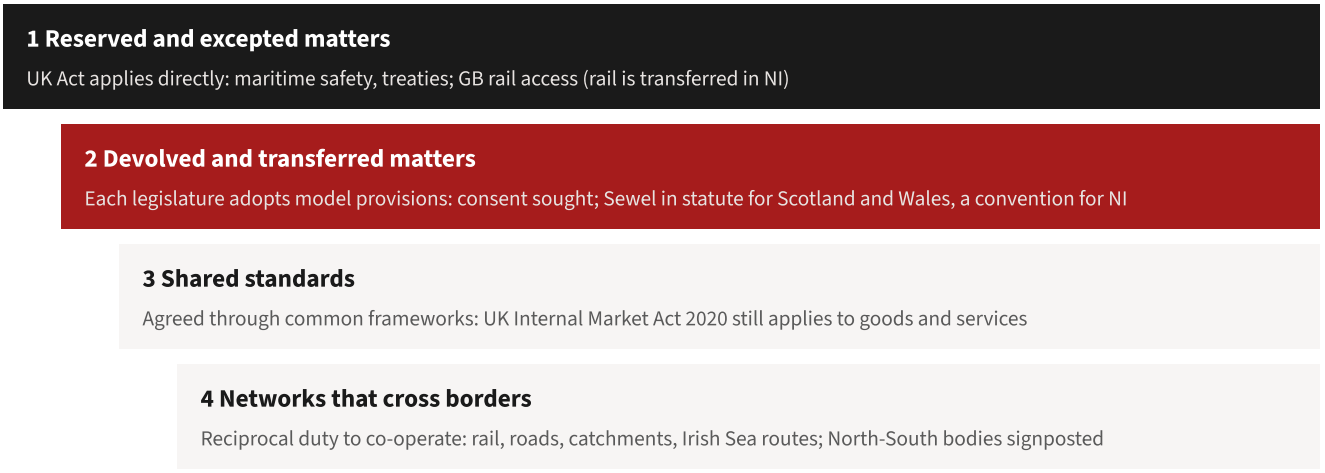


Figure 9. How the framework applies. The Sewel convention is in statute for Scotland (Scotland Act 1998 s28(8)) and Wales (Government of Wales Act 2006 s107(6)), and a convention for Northern Ireland.

England already has much of the local layer. The English Devolution and Community Empowerment Act 2026, which received Royal Assent on 29 April 2026, gives strategic authorities competences over transport, housing, strategic planning, regeneration, environment and climate. The framework builds on it rather than replacing it.

Standards once, networks at scale, places locally

	Standards set once, UK or nation-wide	**Networks** run at the scale the network needs	**Places** decided locally, with reasons
Housing	safety, energy, tenant rights	finance and lending	where and what to build
Roads	design and safety	strategic roads	streets, parking, active travel
Rail	safety, access	track and timetable	stations as places
Water	drinking and bathing quality	supply and treatment	drainage, bathing-site stewardship
Ferries	maritime safety	strategic ports	lifeline crossings

Figure 10. The three-layer rule for infrastructure. In Northern Ireland the "places" column means a statutory voice and reasons, not a transfer of functions.

8 · REBUILDING THE STATUTE BOOK

One Code, enacted in instalments

Wales has shown the method. The Historic Environment (Wales) Act 2023 and the Planning (Wales) Act 2026 (Royal Assent 27 April 2026) restate whole subjects in single, bilingual Acts that form Codes. A short Framework and Reform Bill clears the ground; consolidation Bills then restate each Part without changing its substance, so they can take the fast parliamentary route.

The shape of the Code

Framework and Reform Bill: common definitions, notices, appeals, enforcement, dead-law repeals

Accounts #1	Places #2	Activities #3	Products #4
Targets and budgets	Contaminated land	Industrial emissions	Packaging
Improvement plans	Protected sites	Waste	Chemicals, F-gas, PFAS
Measurement and reporting	Planning and heritage	Water abstraction	Carbon at the border
Oversight bodies	Public realm	Emissions trading	

#1 to #4: order of enactment after the Framework Bill. Products goes last because carbon-at-the-border rules are still moving.

Figure 11. The proposed Environment and Public Realm Code. The law is sorted by what it acts on: an activity, a place, a product, or an account that must be measured and reported.

Northern Ireland would have a parallel edition, made by the Assembly, with the same numbering so that a reader can move between the texts section by section. The Northern Ireland Law Commission still exists in statute but has been non-operational since 2015; the work needs either its revival or a joint reference with the Law Commission for England and Wales.

9 · NEXT STEPS

What should happen now

1. **Count it.** A systematic sweep of legislation.gov.uk for every uncommenced provision in environment, infrastructure and public realm law, UK-wide and in Northern Ireland.
2. **Start the clock.** Legislate the duty to commence, explain or repeal. It costs little, and the clock starts on Royal Assent.
3. **Revive the NI Law Commission**, or agree a joint reference with England and Wales.
4. **Strengthen community planning** in Northern Ireland from "have regard" to "give reasons".
5. **Adopt the code of engagement**, starting with the register of responsibility: one named decision-maker for every decision.
6. **Before the May 2027 Assembly election**, ask each party where it stands on items 2 to 4.

The annex sets out the full register with sources and a first draft of the Environment, Climate, Infrastructure and Public Realm (Code of Engagement) Bill.

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This paper is not legal advice. Statements of the law and of regulatory status are as at 21 November 2026. The review panels described are simulated expert viewpoints. Created with assistive technology including AI and re-checked against the official sources cited in the text, figure captions and annex.