Office for Environmental
Protection
Wildwood
Wildwood Drive
Worcester
WR5 2QT

03300 416 581
www.theoep.org.uk

Mr Andrew Muir MLA
Minister for Agriculture, Environment and Rural Affairs
Clare House
303 Airport Road West
Belfast
BT3 9ED
By email only

7 September 2026

Letter of Advice on the revised NAP proposals 2027-2030

Dear Minister Muir

I am pleased to submit the OEP's advice, given under paragraph 3 of Schedule 3 to the Environment Act 2021, in response to your consultation on the Nutrient Action Programme (NAP) 2027-2030 and proposed changes to the Nutrient Action Programme Regulations (Northern Ireland) 2019 (the 'NAP Regulations').

This letter and annex provide statutory advice in accordance with the OEP's functions under the Environment Act 2021. While it is not legal advice to DAERA, it is offered to support your further consideration of the consultation proposals. In providing our observations, we recognise that the proposals remain under development and that decisions on any legislative changes are matters for DAERA, the Executive and, ultimately, the Assembly. DAERA will want to take legal advice on the final form of the NAP 2027-2030 and on its compliance with the relevant legal requirements.

Getting the NAP Regulations right is essential and I recognise the significant effort you have made in seeking to do this. They are a key part of the wider measures needed to address chronic nutrient pollution.

Addressing nutrient pollution in the round

As highlighted in our recent 'Review of Implementation of the Nutrient Action Programme Regulations (2019) in Northern Ireland' (the 'NAP Regulations Report'),[1] we recognise the importance of the agri-food industry in Northern Ireland, and the efforts and investments made to date to improve water and air quality. We have also been clear that it is important to address nutrient pollution not only from the agri-food sector but also from wastewater. Both of these sources of pollution are together a leading cause of biodiversity decline, as identified in our 2024 report on the drivers and pressures affecting nature in Northern Ireland.[2] We welcome your recognition of this point in this consultation and elsewhere.

Your consultation also recognises that the consequences of failing to address nutrient pollution in the round are already grave. They extend not only to the state of Northern Ireland's loughs and rivers, but also to drinking water supplies and, critically, to prospects for future agricultural, residential and commercial developments. These challenges will only become more acute in the face of current and ongoing climate change.

The OEP's interest in the NAP Regulations

As you know, the OEP has had an interest in the NAP for some time. We corresponded with DAERA in autumn 2023 on the then-delayed NAP review.[3] We subsequently gave advice on the previous NAP consultation in July 2025.[4] In April 2026, we published our NAP Regulations Report which found that the regulations and their implementation need to be significantly strengthened, and areas of legal uncertainty clarified. We made 12 recommendations to increase the prospects of achieving positive environmental outcomes and complying with environmental law.

The findings of that report and its 12 recommendations still stand. We welcome your recent statutory response to our report and note that your action in areas covered by several recommendations depends on the outcome of this present consultation.

Our statutory role

We acknowledge and appreciate the work of the Stakeholder Task and Finish Group and your officials in DAERA. Considerable effort has gone into developing proposals that aim to be acceptable, workable and capable of delivering environmental improvements. This ambition and the commitment to co-design by both agri-food and environmental stakeholders have been notable. The stakeholders have

[1] OEP, 'Review of Implementation of the Nutrient Action Programme Regulations (2019) in Northern Ireland' (2026) <https://www.theoep.org.uk/report/review-implementation-nutrient-action-programme-regulations-2019-northern-ireland> accessed 1 July 2026.

[2] OEP, 'Drivers and Pressures Affecting Terrestrial and Freshwater Biodiversity in Northern Ireland' (2024) <www.theoep.org.uk/report/drivers-and-pressures-northern-ireland> accessed 16 March 2026.

[3] The Office for Environmental Protection, 'Review of Nutrient Action Programme in NI a "Matter of Urgency" as Deadline Missed' <www.theoep.org.uk/report/review-nutrient-action-programme-ni-matter-urgency-deadline-missed> accessed 3 June 2025.

[4] The Office for Environmental Protection, 'OEP Gives Advice to DAERA Minister on Nutrients Action Programme Regulations Consultation' <www.theoep.org.uk/report/oep-gives-advice-daera-minister-nutrients-action-programme-regulations-consultation> accessed 15 October 2025.

demonstrated a clear and shared ambition towards addressing the challenges of balancing agricultural production with environmental protection and improvement.

While the group's key focus has been to strike a balance between these sometimes-competing priorities, the OEP adds a further, essential dimension. Our role is to scrutinise compliance with environmental law and advise on the ability of measures to achieve positive environmental outcomes. In so doing, we seek to support the Executive in meeting its legal obligations and delivering on its commitments in the Environmental Improvement Plan and elsewhere to protect Lough Neagh and the wider environment, as a priority in the Programme for Government.

Our view of the proposed measures

There is much to welcome in the new NAP proposals. This includes reducing the national phosphorus surplus by 30%, increased advisory support, the focused areas approach, stronger reporting of slurry movements and revised excreta rates for dairy cows and poultry. These are important steps towards reducing nutrient losses.

We welcome the commitment throughout the consultation document to enhanced advisory support, as the evidence is clear that effective advice can improve nutrient management, with benefits for both agricultural production and the environment. The proposed two-year review of key measures is also welcome, particularly given uncertainty around their likely effectiveness, due at least in part to climate change and its impact on nutrient cycles and water body sensitivity.

The proposed regulations also recognise the importance of establishing and growing a circular bioeconomy to address the manure surplus in Northern Ireland. These measures should help to enable this important transition by supporting more effective use, movement and processing of organic nutrients and reducing dependence on imported fertilisers.

There are three key issues in the consultation to which we draw your attention. We summarise these issues below and discuss them further in the annex. They represent areas where we recommend DAERA consider adjusting or clarifying the proposals, to increase the likely effectiveness of the new NAP and to ensure it complies with environmental law and supports the achievement of your intended environmental outcomes.

This stage of the policy development process is a clear opportunity to refine the proposals before adoption, thus improving prospects for the environment and future generations. It would be better to take this opportunity now, to avoid the risk of being challenged in the future and to prevent unintended consequences for the environment associated with potential increased emissions to air and water. This should also help to mitigate the risk of creating farm business models that cannot be sustained in the long term given the serious environmental issues involved.

1. **Risk of increased emissions**

We highlight that, without further controls, the proposals for the Nutrient Stewardship Programme (NSP) could lead to higher emissions of nitrates, ammonia and methane to air and water from some farms. This is because of the proposal to remove the current requirement for farms operating above 170kg N/ha/year to stay within a phosphorus surplus of 10kg P/ha/year. As a result, it would become a viable option for significantly more farms to operate up to an organic nitrogen loading limit of 250kg N/ha/yr. We also identify a need to carefully select the reference period against which phosphorus surpluses will be measured.

Additionally, we note a similar risk of increased emissions to air and water in respect of the proposal to address nutrient surpluses on poultry farms falling below the Integrated Pollution Prevention and Control (IPPC) threshold. This would appear to allow these farms to operate with a nutrient surplus until an ‘end-of-pipe’ technological solution becomes available. It could therefore result in higher nutrient losses compared to the provisions of the current NAP Regulations, which require manures with a high nitrogen-to-phosphorus ratio to be applied only in line with crop requirements.

Further, while the proposals include welcome reductions in the phosphorus surplus, there is no target set for a reduction in the nitrogen surplus. It is unclear why nitrogen is treated differently, given its contribution to water quality problems and to ammonia and nitrous oxide emissions.

Finally, climate change is already affecting Northern Ireland, increasing the urgency of reducing nutrient losses from agriculture to air and water. Climate change is expected to increase nutrient emissions and make ecosystems more sensitive to nutrient inputs. These impacts are already evident after rising water temperatures in Lough Neagh, for example. We therefore emphasise that assessing these climate-related impacts should be a key focus of the proposed two-year reviews.

2. Compliance and enforcement on the ground

There has been a commendable effort to make proposals workable at farm level. However, achieving this flexibility will increase the challenges and resources required in assessing and enforcing compliance.

We recognise the resource constraints that apply to DAERA and the Northern Ireland Environment Agency in this regard. Nevertheless, DAERA will need to put robust processes in place and allocate sufficient resources for the new regime to be effective, when the final proposals are implemented, to ensure compliance on the ground and to enforce where necessary.

We also highlight the following specific compliance and enforcement issues for DAERA to consider:

- We are concerned that the wording in the consultation may be understood by some farmers operating above 170kg N/ha/year without a derogation as leaving the option open for them to continue to do so, rather than joining the NSP.

- We reiterate the point made in our NAP Regulations Report that inspections and sanctions must, together, provide a strong enough deterrent to encourage compliance if they are to be effective.
- While the consultation includes proposals for enhanced management of slurry exports and imports, we highlight the remaining risk that slurry and manure may be spread on unsuitable land on the farm of origin.

3. Compliance with environmental law

It will be important that the final NAP is developed in a manner that is consistent with, and capable of contributing to the delivery of, the obligations, objectives and outcomes established under environmental law. The key environmental laws in this context are:

- the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (the 'Habitats Regulations'),
- the Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004 (the 'SEA Regulations'),
- the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017 (the 'WFD Regulations'), and
- the Climate Change Act (Northern Ireland) 2022.

We highlight a particular risk that, as proposed, the NSP, and assessment of its impacts on protected European sites, would not comply with Regulation 43 of the Habitats Regulations (which implements Article 6(3) of the Habitats Directive). Compliance is not just a procedural issue but rather a vital environmental safeguard. Its purpose is to ensure a scientifically robust understanding of the consequences of the proposals for protected European sites, as a basis to identify any necessary measures to avoid adverse effects on site integrity.

There is, therefore, a direct relationship between meeting these legal requirements and achieving environmental outcomes. These outcomes including maintaining or restoring sites to favourable conservation status, addressing existing damage and preventing possible further harm. We also note that some aspects of the proposals would lower the standards of environmental protection compared to those in the current regulations.

Looking beyond the NAP, we suggest DAERA may also wish to consider a more comprehensive package of measures to protect and improve the environment under Article 6(2) of the Habitats Directive. We have provided some further details in the annex on how a Strategic Nutrient Reduction Programme might work under Article 6(2) and would be pleased to provide further advice on this matter.

Our recommendations

For convenience, we set out our recommendations below. They are intended to help you improve the proposals before adoption and address the key points that we highlight in this advice.

Recommendation 1: Reducing the risk of increased emissions. DAERA should ensure that the final NAP 2027-2030 measures will not unintentionally result in any increase in emissions to air and water, both during the transition to the new regime and once it is in place. To this end, DAERA should:

a) Ensure the new proposals for controlling phosphorus surpluses on poultry farms below the IPPC threshold are consistent with the current measures in Regulation 14(1) that will be carried over from the 2019 NAP Regulations.
b) Set the baseline for reducing phosphorus surpluses for livestock grazing farms joining Tier 2 of the NSP by reference to a recorded and fixed, past period. This should ensure reductions are measured against an established starting point and prevent farms from increasing surpluses before reducing them.
c) Assess the implications of more farms operating up to the 250kg N/ha/year limit for the achievement of the objectives of the Ammonia Strategy and Climate Action Plan, and take any additional action needed to address any consequences.

Recommendation 2: Clarify land eligibility for nitrogen load calculations. Alongside changes to improve the management of slurry and manure exports and imports, we recommend that DAERA ensure that only land suitable for grazing or organic manure application is included in on-farm nitrogen loading calculations. As set out in our NAP Regulations Report, this should include clarifying the relationship between the ‘Agricultural Area’ as defined in the NAP Regulations and the new land eligibility rules under the Farm Sustainability Payment Scheme.

Recommendation 3: Strengthen the combination of inspections and sanctions to incentivise compliance. Reiterating the findings of our NAP Regulations Report, we continue to recommend that DAERA ensure that the combination of the frequency of inspections and the financial or other penalties that may be imposed is sufficient to incentivise compliance. This should be the case for all farms but DAERA should ensure it is clear that operating above the 170kg N/ha/year limit without permission will be treated as a serious offence and enforced robustly. To this end, we also recommend that DAERA proceed with its previous proposal to introduce suitably dissuasive fixed and variable monetary penalties for breaches under the NAP Regulations, when primary powers are available.

Recommendation 4: Statutory review and evaluation framework. DAERA should include in the revised regulations a requirement to review the effectiveness of the revised NAP after two years. This would provide a statutory underpinning and certainty for the intended review described in the consultation. DAERA should also develop a clear delivery plan and criteria for that review. This should determine what is to be monitored to assess progress in implementation and achievement of environmental outcomes, how, by whom and against what baseline.

Recommendation 5: Align nutrient applications with crop requirements. We recommend that DAERA consider tightening the rules on nutrient management planning over time, through the NAP review cycles, so all nutrient applications ultimately are based on crop requirements. For transparency, DAERA should set out a clear timeline for this transition, taking into account practical and economic considerations. The proposed nutrient use efficiency road map may provide an appropriate route for doing so. DAERA will also need to provide advice and guidance for farmers to support such a transition.

Recommendation 6: Compliance with the Habitats Regulations. Before finalising the NAP 2027-2030, DAERA should satisfy itself and clearly demonstrate, based on a robust evidential assessment, that the programme complies with the Habitats Regulations. The Appropriate Assessment should set out the basis on which DAERA has concluded that the NAP, alone or in combination with other plans or projects, will not adversely affect the integrity of any European site and explain how any identified risks have been avoided or mitigated.

Recommendation 7: Compliance with other environmental law obligations. DAERA should ensure that the final supporting assessments for the NAP clearly set out how the proposed measures align with obligations and intended outcomes under the WFD Regulations**,** the SEA Regulations and the Climate Change Act. This should include a clear explanation of how the measures support the achievement of water body objectives and are compatible with Northern Ireland's statutory emissions reduction targets.

Next steps

I trust that you will find this advice helpful. I also wish you success in meeting the significant challenges ahead by concluding your consultation and amending the NAP Regulations for their next period of implementation.

We would be pleased to discuss any of the points in our advice and to offer our wider assistance, in finalising your changes to the regulations or addressing the wider problems of nutrient pollution.

Yours sincerely

Dame Helen Ghosh

Helen Ghosh
Chair, Office for Environmental Protection

Annex 1

1. Introduction

Many of the proposed measures in the NAP 2027–2030 are positive steps in addressing agricultural nutrient losses. The benefits of these proposals have been clearly outlined in the consultation document and supporting materials.

There are also a number of opportunities to enhance the regulatory regime to which we draw DAERA's attention. They represent areas where we suggest DAERA consider adjusting or clarifying the proposals, to increase the likely effectiveness of the new NAP and ensure it complies with environmental law.

We deal with these matters under three main headings: technical effectiveness of the NAP proposals (Section 2); compliance and enforcement at farm level (Section 3); and assessment of the NAP proposals against environmental law (Section 4).

We also note that Northern Ireland's Environmental Principles Policy Statement (EPPS) applies to policy-making from 2 September 2026. The NAP 2027-2030 will therefore need to take the EPPS properly into account. We suggest that DAERA explain, in the final Regulatory Impact Assessment, how it has done this and what difference it has made to the programme.

2. Technical effectiveness of the NAP proposals

2.1 Nutrient surplus

The commitment to reduce the national agricultural phosphorus surplus by 30% over four years is welcome and could contribute significantly to improving water quality. However, the consultation says this reduction depends on manure processing end-of-pipe solutions, which creates a significant delivery risk given the challenge of scaling the circular bioeconomy in time. If this cannot be achieved, the target will need to be met through improved nutrient efficiency and reduced inputs, including fertiliser and livestock feed, if the intended environmental outcomes are to be delivered.

While phosphorus surplus limits are proposed, no comparable approach is set out for nitrogen. The reason for this is unclear, given nitrogen's contribution to water quality problems and to ammonia and nitrous oxide emissions.

The consultation recognises that both chemical fertiliser and livestock feed contribute to nitrogen and phosphorus surpluses. However, the proposals address only chemical fertiliser. In our view, this offers a significant omission and an opportunity to strengthen the programme, as concentrated livestock feed accounts for some 80% of the phosphorus used on farms and a substantial proportion of the nitrogen surplus.

We raised this issue in our previous NAP Regulations Report. We remain of the view that DAERA should consider tighter controls on the phosphorus and crude protein content and/or quantity of livestock feed. We note that the Northern Ireland

Executive has also identified the need to reduce the phosphorus and protein content of concentrated animal feeds in its Environmental Improvement Plan.[5]

Under the current NAP Regulations, Regulation 14(1) requires manures with a high nitrogen-to-phosphorus ratio be applied only in line with crop requirements. This applies to the management of all poultry manures. Poultry farms should, therefore, either be applying manure to land in their control (i.e. owned or rented land) on the basis of phosphorus crop requirements, or exporting the manure off-farm. As such, these farms should already be operating close to a zero-phosphorus farm surplus.

In this context, the proposal for managing the phosphorus surplus on poultry farms below the IPPC threshold[6] is concerning. The consultation provides protocols for poultry farms to demonstrate sustainable phosphorus management, as a complementary means to achieve a farmgate phosphorus balance. These proposed protocols are detailed in the Technical Subgroup Papers[7] published as part of the NAP 2027-2030 consultation. They would appear to allow these farms to operate with a nutrient surplus until an end-of-pipe technological solution becomes available.

This contradiction between the current NAP Regulations and the consultation proposals has the potential to cause confusion and could result in an increase in emissions from poultry units operating below the IPPC threshold. We suggest that DAERA should address this before the new regulations are finalised and implemented to ensure that the regime will be effective.

2.2 Nutrient Stewardship Programme

Beyond questions about the NSP's compliance with environmental law (see Section 4), we have some concerns about the risks it may pose to air and water quality.

Specifically, we are concerned that removing the requirement for farms operating above the 170kg N/ha/year limit to stay within a phosphorus surplus of 10kg P/ha/year could result in many more farms operating up to the 250kg N/ha/year limit, with knock on consequences for nitrates, ammonia and methane emissions to air and water. The proposed revision of dairy cow nutrient excretion values partly mitigates this risk for that sector, but risks remain for both dairy and other livestock farms. DAERA should therefore assess the unintended consequences of lowering the entry criteria for the NSP, including the implications for the NAP, the WFD Regulations, the Climate Action Plan and the Ammonia Strategy.

---

[5] DAERA, 'Environmental Improvement Plan for Northern Ireland' (2024) 25 <https://www.daera-ni.gov.uk/publications/environmental-improvement-plan-northern-ireland> accessed 26 February 2026.

[6] Section 6.9 of Part 1 of Schedule 1 of The Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 contains the relevant threshold capacities for intensive pig and poultry installations requiring a PPC permit.

[7] Department of Agriculture, Environment and Rural Affairs, 'Technical Subgroup Papers Public Consultation on the Nutrients Action Programme 2027-2030' <www.daera-ni.gov.uk/sites/default/files/2026-07/Technical%20Subgroup%20papers_0.PDF> accessed 17 August 2026.

Further, we note some uncertainty in the consultation as to whether farms currently operating under a derogation could only join Tier 1 of the NSP, or alternatively if they could also opt to enter Tier 2. We think the intention is that they could only join Tier 1, but the consultation is not entirely clear on this point.

This matters because the standards applicable to the two tiers are very different. We also highlight that the proposed introduction of a less stringent Tier 2 category within the NSP would reduce the required standards of environmental protection below those set in the current NAP Regulations.

The consequence is that the Tier 2 farms, which may have avoided legal compliance for several years, will come into a system of regulation that is considerably less stringent, in terms of phosphorus surplus limits, than the current legal requirements that should have been applied to them and which will continue to apply to Tier 1 farms. In addition, no timeframe is provided for meeting the 10kg P/ha/year target, which would be necessary for the NSP to align with the current derogation requirements.

Finally, we note that the baseline year is not specified for the proposed 10% phosphorus reduction over four years. We suggest that this should be a complete, previous year, or an average over two or more previous years, to ensure that the baseline phosphorus level is effectively fixed. If, in contrast, the baseline year extends up to the start of or even covers the initial period of the new regime, it will allow the possibility for farms to increase their phosphorus levels during this time and then have more headroom to reduce them afterwards. Overall, this could lead to a purely theoretical rather than an actual reduction.

2.3 Manure application

The proposed stronger controls on slurry movements are welcome. The consultation also recognises that land receiving transported slurry must be suitable for application. We strongly support this proposal.

The proposed changes to application rates during high-risk periods, including a ban on slurry spreading during official yellow weather warnings, are also welcome. These measures should give farmers greater clarity and reduce the risk of spreading in unsuitable conditions.

Although the Soil Phosphorus Protocol limits manure application in some circumstances, manure may still be applied where there is no crop requirement. The proposal therefore largely maintains the status quo. This is concerning given the fact that 40% of fields in Northern Ireland remain above the agronomic optimum for phosphorus and therefore poses a long-term risk to water quality.

While an immediate ban on manure applications to these fields may not be practical or economically viable, we suggest that DAERA consider tightening the rules over time so that nutrient applications are ultimately based on crop requirements. This should be coupled with advice for farmers on how they can do this on their farm.

For transparency, DAERA should set out a clear timeline for such a transition. The proposed nutrient use efficiency road map may offer an appropriate route to do so.

2.4 Climate change

Although many of the proposed measures are positive, in our view they do not appear to go far enough, or quickly enough, given the likely effects of climate change on nutrient cycles and ecosystems. The consultation materials also do not provide an assessment of whether the proposed measures are resilient to these risks.

We recognise the need for pragmatism about the pace of change at farm level. However, this must be balanced against the increasing risks from climate change and the speed of its impacts. DAERA therefore needs to ensure the industry is adequately supported to adjust at the pace required to mitigate against these risks.

Food security is vital, but so too is water security. Northern Ireland depends on Lough Neagh for 40% of its drinking water supply, with most of the remainder coming from other surface water bodies also at risk from nutrient pollution. A recent government National Security Risk Assessment has emphasised the serious risks that climate and ecosystem collapse pose to both food and water security.[8]

The proposed two-year review period in the NAP governance framework will therefore be important in supporting an adaptive management approach that can respond to climate-related risks and help ensure successful delivery of the NAP.

3. Compliance and enforcement

There has been a clear effort to make the proposals workable at farm level, and this is to be commended. However, achieving this flexibility at farm level would significantly increase the challenges and resources required for DAERA and NIEA in monitoring and evaluating compliance and undertaking enforcement. As set out in our NAP Regulations Report, this has been an area of past weakness, with hundreds if not thousands of farms apparently having operated in exceedance of the limit of 170kg N/ha/year without being subject to a derogation.

DAERA will therefore need to make sure it has the right systems, staff and resources in place when the final proposals take effect, so that compliance can be checked on farms and action taken where needed.

3.1 Options for farms operating above 170kg N/ha/year without a derogation

We are concerned that the consultation may be read as offering farms operating above 170kg N/ha/year without a derogation the option of continuing to do so rather than coming into Tier 2 of the NSP. It states (page 86) that: ‘Farms which are not part

[8] HM Government, ‘Global Biodiversity Loss, Ecosystem Collapse and National Security’ <https://assets.publishing.service.gov.uk/media/696e0eae719d837d69afc7de/National_security_assessment_-_global_biodiversity_loss__ecosystem_collapse_and_national_security.pdf> accessed 17 August 2026.

of the NSP, but which are operating over 170kg Nitrogen per hectare per year, will be considered High Risk and will be subject to the highest 10% rate of inspection.'

It may be that this is simply intended to reflect the reality that some regulated parties in any regime may fail to comply, either deliberately or accidentally. In this case, however, DAERA is dealing with a known group of farms for which specific data highlight potential non-compliance. We therefore suggest that DAERA, the farms in question, and the law and associated guidance should all be clear that operating above 170kg N/ha/year without the necessary permission is not a compliant option and would constitute a serious offence and be subject to appropriate penalties.

This should give those farms a clear choice: either adjust their practices to comply with the 170kg N/ha/year limit and demonstrate this to DAERA's satisfaction or apply to operate above that limit.

3.2 Sanctions for non-compliance

Further to the above, we note that the consultation proposes increasing inspections for some farms. While this is welcome, we also reiterate the recommendation in our previous NAP Regulations Report to ensure that the combination of the chance of being identified as breaching legal requirements and the associated sanctions needs to be sufficient to incentivise compliance.

Neither the current consultation, nor DAERA's response to our report, addresses the question of sanctions. Our previous NAP Regulations Report noted a lack of clarity in respect of which sanctions will be applied in different circumstances when more than one is available. It also highlighted the relatively modest consequences of a farm being found to be non-compliant. We note, for example, that current cross-compliance and criminal sanctions are usually considerably lower than the direct aid payments that most farms receive from public funds.

As a result, while current sanctions create some incentive to comply with the law, coupled with relatively infrequent inspections their deterrent effect may be relatively limited. We suggest that DAERA revisit this. We would also support the introduction of suitably dissuasive fixed and variable monetary penalties for breaches of the NAP Regulations. DAERA previously proposed to do so, when primary powers are available, in its earlier consultation but the current consultation does not discuss this.

3.3 Ensuring only suitable land is included in nitrogen loading calculations

Further, the consultation deals in some detail (page 96 onwards) with proposals for enhanced management of slurry and manure exports and imports. This includes measures to deal with false or misleading information (e.g. where slurry has not actually been exported as claimed), or exports to land unsuitable for spreading slurry or manure, such as bog or upland rough grazing. We support these proposals.

In parallel, we highlight to DAERA a further, potentially significant compliance issue. This concerns the possibility that slurry and manure are spread on unsuitable land on the farm of origin, rather than being exported or imported.

We discussed this issue in our NAP Regulations Report, highlighting our understanding that DAERA does not currently check to ensure that land included in nitrogen loading calculations is suitable for grazing or organic manure application, although NIEA may review land suitability during an inspection. We noted that this issue may be exacerbated by inconsistencies between the 'Agricultural Area' as defined in the NAP Regulations and the new land eligibility rules under the Farm Sustainability Payment Scheme.

This could result in land such as bog, heather and rush being included when calculating a farm nitrogen loading rate, despite not being suitable for grazing or manure applications. This matter is not dealt with in the consultation or in DAERA's response to our report. We suggest that it continues to merit attention.

4. Assessment of the NAP proposals against environmental law

This section considers whether the proposed NAP 2027-2030 is capable of securing compliance with environmental law and other obligations in Northern Ireland. It does so having regard to the current state of the environment, the performance of the existing regulatory framework and the legal duties applicable to DAERA (under the Habitats Regulations, the SEA Regulations, the WFD Regulations, the Trade and Cooperation Agreement and Windsor Framework, and the Climate Change Act (Northern Ireland) 2022).

4.1 Legal Context

The proposed NAP must be considered in the context of a number of overlapping legal obligations, including: the Nitrates Action Programme framework and associated domestic regulations; the Habitats Regulations and the requirements in Article 6 of the Habitats Directive;[9] the SEA Regulations; the WFD Regulations; and obligations under section 52 of the Climate Change Act (Northern Ireland) 2022.

Agricultural nutrient loading is a key driver of eutrophication and water quality decline in Northern Ireland's waterways and lakes, most acutely evidenced in Lough Neagh's ongoing algal bloom crisis. It remains a significant barrier to achieving the WFD Regulations 'good status' objectives.

In addition, ammonia deposition and diffuse pollution place Northern Ireland's protected sites and habitats under sustained pressure. This undermines the conservation objectives that the Habitats Regulations exist to secure. These impacts are compounded by the sector's disproportionately high greenhouse gas emissions, linking the NAP directly to climate law obligations.

[9] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. While the obligations arising under the Habitats Directive are implemented in Northern Ireland through the Habitats Regulations, the relevant jurisprudence continues to be framed largely by reference to Article 6 of the Directive. Accordingly, and for ease of reference, this advice adopts the same convention. References to Article 6 are intended to encompass the corresponding provisions of the Habitats Regulations, unless the context requires otherwise.

The question for this analysis is, therefore, not simply whether the proposed measures comply with the relevant legislation in isolation. Rather, the key issue is whether the proposed NAP represents a legally sufficient programme of measures capable of contributing to compliance with those obligations. The assessment below looks at them in turn.

4.2 Compliance of the NAP proposals with the Habitats Regulations

This section addresses whether the NAP 2027-2030, and in particular the proposed NSP, is compliant with Regulation 43 of the Habitats Regulations, which gives effect to Article 6(3) of the Habitats Directive.[10] The NSP is a measure within the NAP, which constitutes a plan for the purpose of the Habitats Regulations. It can also be argued that the implementation of the NSP is a plan it is own right. Either way, it therefore falls within the scope of the Habitats Regulations (and Article 6(3)).

This section is broadly structured as follows:

- We begin by setting out the legislative framework of the Habitats Regulations, focusing on the operation of Article 6 of the Habitats Directive and the distinct functions served by Articles 6(1), 6(2) and 6(3).
- We then consider the NSP's status as an Article 6(3) plan and the implications of relying on a programme-level approach to assessment.
- Next, we examine the principles governing Appropriate Assessment and whether the RIAA appears to satisfy those requirements, including those relating to conservation objectives, scientific certainty and the identification and effectiveness of mitigation measures.
- Finally, we consider how the NSP and wider NAP proposals fit within the broader framework of Articles 6(1) and 6(2) of the Habitats Directive. This includes the need to address historic nutrient pressures, avoid further deterioration when assessed against the correct baseline, and the potential for a broader strategic approach to nutrient reduction and environmental restoration.

4.2.1 The Habitats Regulations and Article 6

Article 6 establishes the legal framework for the protection and management of European sites. For the purposes of the Habitats Regulations, 'European sites'[11] include Special Areas of Conservation ('SACs') and Special Protection Areas ('SPAs') afforded protection under the Habitats Regulations. The objective of the

[10] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora is transposed into domestic law by the Habitats Regulations. Following the UK's departure from the EU, the Habitats Regulations became 'assimilated law' within the meaning of Section 5 of the Retained EU Law (Revocation and Reform) Act 2023.
[11] 'European site' is defined in Regulation 2(2) of the Habitats Regulations and has the meaning given by Regulation 9.

regime under the Habitats Regulations is to maintain or restore protected habitats and species to 'favourable conservation status'.[12]

Article 6 contains four distinct but complementary obligations. Article 6(1) requires the establishment of conservation measures, which involve management plans, and statutory, administrative or contractual measures, necessary to meet the ecological requirements of protected habitats and species. Article 6(2) requires authorities to take appropriate steps to avoid deterioration and disturbance. Article 6(3) establishes a precautionary 'appropriate assessment' regime for plans and projects that may affect European sites and are not directly connected with or necessary to the site management, but likely to have a significant effect on the site. Article 6(4) provides a limited derogation mechanism where a plan or project fails the Article 6(3) test but must nevertheless proceed for imperative reasons of overriding public interest.

Each provision contains a distinct mechanism to achieve the objectives to maintain or restore the favourable conservation status of relevant habitats and species.

4.2.2 Distinction between Articles 6(1), 6(2) and 6(3)

Articles 6(1), 6(2) and 6(3) are legally distinct and perform different functions.

Articles 6(1) and (2) are primarily concerned with addressing existing threats and pressures: the implementation of conservation measures under Article 6(1) should aim to ensure delivery of the conservation objectives of the European Site,[13] and Article 6(2) steps should be measured having regard to those site-level objectives.[14] Together, Articles 6(1) and 6(2) provide the framework for the ongoing management and protection of European sites, addressing existing pressures and preventing deterioration of site features and ecological integrity.

DAERA has prepared a suite of conservation management plans to assist in the implementation of Article 6(1) obligations for SACs in Northern Ireland, although management plans for some sites remain outstanding. This advice does not consider the adequacy or effectiveness of the management plans currently in place.

Article 6(3) and (4), in contrast, are reactive, preventative measures to avoid significant effects from proposed plans and projects. Under Article 6(3), therefore, any plan or project not directly connected with or necessary to the management of a European site, but likely to have a significant effect on it (alone or in combination with other plans or projects), must be subject to 'appropriate assessment' (AA) of its implications for the site in view of its conservation objectives, before consent or adoption.[15] The competent authority may only agree to the plan after having ascertained it will not adversely affect the integrity of the site. The Article 6(3) tests

[12] This term is defined in Regulation 2 of the Habitats Regulations by reference to Article 1 of the Habitats Directive.

[13] *Commission v Ireland* (Case C-444/21) at paragraphs 156 and 160.

[14] *Peter Sweetman and Others v An Bord Pleanála* (C-258/11) at paragraph 44 of the AG's Opinion.

[15] Regulation 43(5) of the Habitats Regulations gives this domestic effect.

apply strictly to plans and projects subject to assessment and preclude consideration of social and economic considerations or wider matters of public interest.

The three distinct obligations stemming from Article 6(1), (2) and (3) are not interchangeable descriptions of a single, underlying obligation. They carry different tests, burdens and consequences for a competent authority. Compliance with Articles 6(1) and 6(2) cannot substitute for compliance with Article 6(3). Nor can reliance on future conservation measures relieve a competent authority of its obligation to ascertain that a proposed plan will not adversely affect the integrity of a European site. Accordingly, the question for this advice is whether the requirements of Regulation 43 and Article 6(3) have been satisfied in relation to the NSP.

4.2.3 Interpretation of EU-derived legislation post-Brexit

The Habitats Regulations are retained EU law and now termed 'assimilated law'.[16] As a piece of assimilated law, the Habitats Regulations must be interpreted in accordance with case law of the Court of Justice of the European Union (CJEU) made prior to 31 December 2020,[17] subject to various limitations set out in the European Union (Withdrawal) Act 2018 (the '2018 Act').

Whilst the courts are not bound by EU case law made after 1 January 2021,[18] such case law retains significance for the interpretation of assimilated law such as the Habitats Regulations. The 2018 Act provides that courts 'may have regard to' CJEU judgments following the UK's departure from the EU,[19] and the domestic courts have confirmed that such judgments can be 'highly persuasive', particularly where they 'further refine the CJEU's previous jurisprudence'.[20]

The recent Supreme Court decision in *CG Fry & Son Ltd v Secretary of State for Housing, Communities and Local Government and another* [2025] UKSC 35 casts some light on the approach the courts take to such matters. The Court applied multiple pieces of retained CJEU case law to inform the proper interpretation of the Habitats Regulations. The Court also emphasised that Regulation 3A of the Conservation of Habitats and Species Regulations 2017 states that where the Habitats Directive is referred to it should be construed as if the UK were still a member state of the EU.

Accordingly, this advice interprets the Habitats Regulations and Directive by reference to relevant CJEU authorities, consistent with the approach in *CG Fry*.

4.2.4 Why the NSP is classified as an Article 6(3) 'plan'

The NSP provides for the increased application of nutrients in a programme of measures that is neither directly connected with nor necessary to the management

[16] Sections 1B(7), 2(1) and 6(7) of the European Union (Withdrawal) Act 2018 (the '2018 Act') and Section 6 of the Retained EU Law (Revocation and Reform) Act 2023.
[17] Section 6(3) of the 2018 Act.
[18] Section 6(1) of the 2018 Act.
[19] Section 6(2) of the 2018 Act.
[20] Warner Music UK Ltd and another v TuneIn Inc [2021] EWCA Civ 441 Paragraph 91.

of a protected site, namely the conservation and management measures required to maintain or restore the site in accordance with the objectives reflected in Article 6(1) and 6(2). On that basis it falls outside the narrow exemption in Article 6(3) for measures directly connected with or necessary to site management. Accordingly, the NSP falls to be assessed as a 'plan' within the meaning of Article 6(3).

This conclusion is reinforced by DAERA's own Report to Inform AA ('RIAA'), which draws the same distinction between Articles 6(2) and 6(3).[21] The former addresses existing or historic environmental deterioration, while the latter is concerned with preventing future adverse effects arising from the adoption of new plans. The RIAA further records that likely significant effects on European sites could not be excluded at the screening stage, necessitating a full AA.[22] Against that background, DAERA's own screening conclusion places the NAP, and the NSP within it, firmly within the scope of Article 6(3).

Notably, entry into the NSP does not appear to require project level assessment at the farm or catchment-level of impacts before entry is approved, relying instead on compliance with generic, plan-level conditions as a proxy for AA. Where a plan of this kind is intended to remove the need for individual farm-level AA, it falls within the category of programmatic approach considered by the CJEU in *Coöperatie Mobilisation for the Environment UA and Vereniging Leefmilieu* (Joined Cases C-293/17 and C-294/17) EU:C:2018:882[23] (commonly known as '*Dutch Nitrogen*') which must itself be subject to AA.

The principles established in *Dutch Nitrogen* require that any plan relied on to dispense with project-level assessment must be supported by a plan-level assessment capable of excluding, beyond reasonable scientific doubt, adverse effects on the integrity of European sites. The position is reflected in Advocate General (AG) Kokott's Opinion in *An Taisce – The National Trust for Ireland and Others* (Cases C-531/24 and C-895/24) delivered on 26 March 2026, which recognises that a general approval regime permitting increased nitrogen application constitutes a 'plan' within the meaning of Article 6(3). The Opinion further indicates that, where a plan lacks sufficient site-specific information to permit a proper assessment of impacts on European sites, the assessment must instead be undertaken at the level of the individual farm or project.

Accordingly, unless the NSP is supported either by a robust plan-level AA capable of excluding adverse effects on site integrity beyond reasonable scientific doubt, or by legally effective project-level assessment of participating farms, its operation raises significant questions as to compliance with Article 6(3).

[21] Sections 1.1 and 5.5 of the RIAA.
[22] Section 1.2 of the RIAA.
[23] *Coöperatie Mobilisation for the Environment UA and Vereniging Leefmilieu v College van gedeputeerde staten van Limburg and College van gedeputeerde staten van Gelderland* (Joined Cases C-293/17 and C-294/17) EU:C:2018:882.

4.2.5 Principles of Appropriate Assessment

The classification of the NSP as an Article 6(3) plan therefore requires consideration of whether the accompanying RIAA meets the legal standards established by the Habitats Regulations and the relevant case law. There are a series of general principles that apply to AAs. First, the purpose of an assessment is to ascertain, in view of the conservation objectives of the identified European sites, whether it can be concluded that the specific plan or project in question will not adversely affect the integrity of the European sites in question, either alone or in combination with other relevant permissions, plans or projects.

To carry out such an AA, therefore, it is necessary to:

1) Identify the relevant European sites with the potential to be affected, either alone or in combination with other plans or projects, by the plan or project in question.
2) Identify the qualifying habitats and species for which each of those sites has been designated, and the site-specific conservation objectives that apply to them, since it is only in view of those conservation objectives that the assessment can properly be carried out.
3) Assess, in light of the best available scientific knowledge, all aspects of the plan or project which could, either by themselves or in combination with other plans or projects, affect those conservation objectives, including effects that are direct, indirect, temporary or permanent.
4) Consider whether any mitigation measures are relied upon to avoid or reduce the identified effects, and, if so, evaluate whether the effectiveness of those measures is demonstrated with sufficient certainty to be taken into account before, rather than after, the conclusion on integrity is reached.
5) Reach a clear conclusion, for each site individually, as to whether it can be ascertained, with no reasonable scientific doubt remaining, that the plan or project will not adversely affect the integrity of that site, whether alone or in combination with other plans or projects.
6) Where an adverse effect on integrity cannot be ruled out, consider whether the plan or project can nonetheless proceed under Article 6(4), which requires an examination of alternative solutions and, in the absence of a less damaging alternative, imperative reasons of overriding public interest together with compensatory measures to protect the coherence of the wider site network.

The issue is therefore not the content of these principles, which are well established, but whether the RIAA for the NSP satisfies them in practice.

4.2.6 Assessment of adequacy of the RIAA/Appropriate Assessment

Having established that the NSP is a plan for the purposes of Article 6(3) and requires an AA that meets certain principles, DAERA will need to consider if a single, overarching AA of the NSP can be relied upon to exempt individual farm-level NSP applications from fresh, site-specific scrutiny in compliance with Article 6(3). In other words: can a compliant programmatic approach be adopted to process derogation equivalent applications under the NSP? Such an approach is not inherently incompatible with Article 6(3), but could only be compliant within tightly defined limits.

The limits of that approach were considered by the CJEU in *Dutch Nitrogen*. The Dutch scheme at issue established a programme-wide system for allocating nitrogen deposition capacity and relied on a prior assessment to support subsequent project authorisations. The Court accepted, in principle, that a programmatic assessment may be used in this way, including where individual authorisations are not themselves subject to fresh AA, but only where the programme level assessment itself satisfies the full requirements of Article 6(3).

The Court held that this will be the case only where the scientific soundness of the programmatic approach has been examined thoroughly and consistently with Article 6(3), such that, for each authorisation granted pursuant to the scheme, no reasonable scientific doubt remains as to the absence of adverse effects at the project level (*Dutch Nitrogen*, paragraphs 109-112). Individual AAs may accordingly be dispensed with only where the absence of adverse effects has already been robustly established through the assessment process. It cannot be presumed merely because an activity falls within the scope of the wider programme, nor can it rest on assumptions, future measures, or anticipated environmental improvements whose effectiveness remains uncertain.

It follows that a programmatic approach is compliant with Article 6(3) only where the prior overarching AA is itself of sufficient depth and site specificity to establish, on objective information subjected to thorough scrutiny, that no individual application covered by it could have a significant effect on a European site. A generalised, country-wide average assessment does not meet this bar. The Court in *Dutch Nitrogen* held that an average value calculated across activities cannot ensure the absence of significant effects on any single European site, since such effects depend on the extent, intensity, and proximity of the specific activity to the specific site, and on that site's particular conditions (*Dutch Nitrogen*, paragraph 119).

Neither the consultation document nor the RIAA states whether the NSP is intended to dispense with future farm-level assessment. Unlike the equivalent proposals in the earlier NAP consultation, the current NSP proposal contains no provision for individual farm-level screening and relies entirely on a single plan-level RIAA. If that omission reflects an intention to dispense with farm-level assessment, the Article 6(3) assessment of the NSP as a programmatic measure must itself contain the detailed site and farm-level information necessary to exclude adverse effects to the standard required by law. In particular, the competent authority must be able to conclude, on objective, scientifically reliable evidence, that activities authorised under the NSP will not adversely affect the integrity of European sites, either alone or in combination with other plans or projects.

In our view, the NSP proposals do not meet this standard. The evidence base presently lacks the detail required to justify dispensing with individual farm-level assessment. Neither the NSP nor the RIAA contains:

- site-specific phosphorus and nitrogen objectives;
- site-specific conservation objectives linked to the NSP measures;
- identification of farms contributing to adverse impacts;
- evidence demonstrating how proposed reductions will achieve ecological outcomes at particular sites.

The two-tier structure (Tier 1 at 1% inspection, Tier 2 at 5% inspection with a 10% phosphorus reduction over four years or reduction to 10kg P/ha/year) is not calibrated to the conservation objectives of any particular European site. Moreover, no analysis links the 10% figure to identified adverse effects at particular sites. Without this information, it is not possible to determine whether an Article 6(3) assessment compliant with *Dutch Nitrogen* and *An Taisce* is achievable on the basis of the NSP as currently proposed.[24]

The deficiency is compounded by the RIAA's own approach. Its deferral of catchment and site-level assessment to 'Pathway to Compliance' steps (Section 6.2) suggests that the site-specific evidence base *Dutch Nitrogen* requires does not currently exist. That evidence base must exist, however, and must withstand thorough and in-depth scrutiny, before a programmatic level assessment can be relied upon. It cannot be developed afterwards, as part of the programme's implementation and be compliant with Article 6(3).

The AA is contained within Tables 5.5 and 5.6 where there is no clear record of the formal conclusions reached with reference to the integrity test for the NAP itself. The tables recognise the potential for a number of NAP measures to give rise to negative effects but do not clearly record for each measure whether it is possible to conclude no adverse effect to site integrity, or not.

The conclusion refers to the measures giving rise to negative effects due to the increased risk of nutrient loading to water bodies from the derogation (even though the measure being assessed is the NSP to replace the derogation).[25] The conclusion then recognises that a deemed grant of permission can lead to an authority allowing activities by default without adequate scrutiny and continues:

'This can be clarified and appropriately addressed through the finalised measure to allow NSP administration and management to inform the evidence base to correctly

[24] See also *Waddenzee* (Case C-127/02) and *Commission v France* (C-241/08).

[25] See Table 6-3, under the heading 'Nutrient Stewardship Programme – a revised approach to Derogation' and Table 5-6, under the heading 'Farming Approaches to Improve Nutrient Use and Water Quality'.

target a wider suite of Article 6(2) restorative measures to prevent ongoing deterioration'.[26]

This statement does not provide a meaningful conclusion to the integrity test. In terms of compliance, the RIAA published by DAERA for the NAP 2027-2030 does not reach a clear conclusion in respect of the effects of the NSP within Table 5-6. Accordingly, on the information currently available, the RIAA does not contain the complete and definitive findings required to exclude adverse effects on the integrity of European sites beyond reasonable scientific doubt. In the absence of the site-specific evidence, assessment methodology and clear integrity conclusions required by Article 6(3), the NSP cannot presently be relied upon as a compliant programmatic basis for dispensing with individual farm-level assessment.

4.2.7 Limits of plan-level assessment

The challenge with applying Article 6(3) tests in the absence of relevant detail was recently recognised by AG Kokott in her opinion in the *An Taisce* case. The Opinion states that it is permissible to defer the AA to a later project (farm) level assessment, where the plan or programmatic measure lacks geographic specificity, and means that it is not possible to identify specific risks to individual sites.

In light of the lack of specificity as to which farms may enter the programme, the measures within the NSP entail an abstract risk to European sites. This means that the specific effects on individual European sites cannot be identified. As a result, the NSP cannot be properly assessed in view of site-specific conservation objectives.

Although a precautionary assessment could be undertaken on the assumption that all farms would fully utilise the derogation, the AG considered in the *An Taisce* case that approach unduly burdensome and inconsistent with the requirement that an AA be 'appropriate'. In the context of the derogation provisions within that NAP, the AG was of the opinion that it did not appear appropriate to carry out an assessment on a worst-case scenario (whereby all farms utilise the derogation). Instead, it would be sufficient to make only farms wishing to make use of the derogation provisions subject to an assessment (paragraph 100). The interim conclusion put forward by the AG was that there was no need to carry out a plan level AA of the derogation provision within the NAP, if it was ensured that utilisation of that provision by individual farms was subject to an AA pursuant to Article 6(3) (paragraph 113).

Drawing on AG Kokott's Opinion in *An Taisce*, a similar approach may be applied here. A meaningful assessment of the NSP's implications can only be undertaken where potential adverse effects on European sites are sufficiently identifiable. Given the lack of certainty as to which farms will participate in the programme, the NSP gives rise only to an abstract risk to European sites. The likely effects on individual sites cannot presently be identified. Accordingly, it would be very difficult for the NSP to be robustly assessed against site-specific conservation objectives at plan level.

[26] See Table 6-3, under heading 'Farming Approaches to Improve Nutrient Use and Water Quality'.

However, caution is required in relying on the AG's reasoning. The Court's judgment in *An Taisce* has not yet been delivered and may not endorse all aspects of the Opinion. Accordingly, while the Opinion provides persuasive support for deferring assessment to a later stage where site-specific effects cannot yet be identified, it does not represent the Court's authoritative interpretation of Article 6(3).

While deferral of assessment might be an appropriate option, based on the AG's Opinion in *An Taisce*, other Article 6(3) principles are also relevant. In *Commission v United Kingdom (Case C-6/04)*, the Court recognised that the scope of assessment will depend on the level of detail available at the relevant stage of the decision-making process. As the AG observed:

'... adverse effects on areas of conservation must be assessed at every relevant stage of the procedure to the extent possible on the basis of the precision of the plan. This assessment is to be updated with increasing specificity in subsequent stages of the procedure.'

This points to a middle-ground approach between undertaking a complete assessment at plan level and deferring assessment entirely to project level. Under this approach, the plan is assessed at plan level to the extent permitted by the information available, with further, more detailed assessment undertaken as additional detail emerges.

The available case law supports either a phased assessment approach or the deferral of assessment to a later farm-level stage where site-specific effects can properly be identified. The RIAA does not clearly adopt either approach. It is notably silent on any requirement for farm-level assessment. Accordingly, DAERA will need to identify a mechanism for farm-level assessment or provide a programme-level assessment of sufficient precision to exclude adverse effects on site integrity in order to meet the requirements of Article 6(3).

4.2.8 Conservation objectives and site-specific assessment

An AA must identify: any European sites that may be affected, either alone or in combination with other plans or projects; their qualifying features; and the relevant site-specific conservation objectives. It must then assess, in light of the best available scientific knowledge, whether the plan is capable of affecting those objectives, whether directly, indirectly, temporarily or permanently.

This sequence is important because site-specific conservation objectives are not merely contextual considerations. They are the benchmark against which the assessment must be conducted (*An Taisce*, paragraph 89).

The benchmark is site-specific. In the case of Case C-127/02 *Landelijke Vereniging tot Behoud van de Waddenzee v Staatssecretaris van Landbouw, Natuurbeheer en Visserij [2005] 2 CMLR* ('Waddenzee'),[27] the Court held that a plan or project not

[27] Case C-127/02 *Waddenvereniging and Vogelbeschermingsvereniging* [2004] ECR I-7405, ECLI:EU:C:2004:482.

liable to undermine a site's conservation objectives cannot be regarded as likely to have a significant effect, whereas one that is liable to undermine them must be so regarded (paragraphs 47-48). This approach was reaffirmed in *Commission v France*[28] (paragraph 54).

Measured against this standard, the RIAA's assessment falls short. Table 5-6 records a generic finding of potential negative effects for European sites, rather than testing the NSP against the conservation objectives for each individual SAC and SPA at risk. The evidential base does not meet the standard required by *Waddenzee* or *Commission v France*, and falls short of what would be needed to justify dispensing with individual farm-level assessment. Without a site-by-site assessment against the relevant conservation objectives, it is difficult to see how the RIAA can satisfy the requirements identified in *Waddenzee* and subsequent case law.

4.2.9 Certainty

Article 6(3) requires a high degree of certainty.[29] An AA must contain complete, precise and definitive findings capable of dispelling all reasonable scientific doubt as to adverse effects on the integrity of European sites (*Brian Holohan and Others v An Bord Pleanála* (Case C-461/17), paragraph 43). It cannot leave material gaps, uncertainties or unresolved questions to be addressed at a later stage. This standard applies equally at plan, programme and project level.

Against that standard, rather than reaching definitive conclusions on effects, the RIAA acknowledges the existence of 'potential' negative effects. This is difficult to reconcile with the requirement for complete, precise and definitive conclusions capable of excluding adverse effects beyond reasonable scientific doubt.

A significant difficulty is that the evidence base does not appear to demonstrate a level of compliance supporting the requisite degree of certainty. The documented lack of participation in the existing derogation scheme, together with the apparent shortcomings in enforcement, create uncertainty as to whether the anticipated environmental outcomes can be achieved. Against that background, the RIAA does not adequately explain how the Article 6(3) certainty threshold has been met. The RIAA appears instead to rely on the Pathway to Compliance to address uncertainties after adoption. This depends on future actions, compliance rates and environmental outcomes rather than measures whose effectiveness has already been demonstrated, leaving key aspects of the assessment contingent on future events.

In these circumstances, and particularly in the absence of farm-level assessments, it is difficult to see how the requisite level of certainty can be achieved. Unless that uncertainty is resolved, the requirements of Article 6(3) cannot be satisfied.

4.2.10 Mitigation measures

---

[28] Case C-241/08 *Commission v France* EU:C:2010:114, [2010] ECR I-1697.

[29] Dutch Nitrogen, paragraph 104; Grace & Sweetman v An Bord Pleanála (Case C-164/17); and R (Champion) v North Norfolk DC [2015] 1 WLR 3710.

Given the precautionary nature of the AA process, mitigation measures may only be relied upon where their effectiveness is demonstrated with a high degree of certainty. The relevant case law establishes three key principles:

1) Measures intended to avoid or reduce harmful effects (i.e. mitigation measures) cannot be considered when deciding whether or not a plan or project is likely to have a significant effect on a European site. Competent authorities must instead take account of measures intended to avoid or reduce the harmful effects of a plan or project as part of the AA: *People over Wind v. Coillte Teoranta* Case C-323/17 [2018].

   The RIAA appears to acknowledge this at Section 2.2.4, where it accepts that mitigation measures should not be taken into account at 'screening' stage.

2) Where it cannot be concluded that the plan in question will not have an adverse effect on the integrity of a site, the plan should not proceed, unless mitigation measures exist which ensure there is no adverse effect on the integrity of the site(s). It is unlawful to rely on the provision of mitigation in the absence of information regarding the effectiveness of the mitigation: Case C-142/16 *Commission v Germany* (26 April 2017), paragraphs 34-38 and *Dutch Nitrogen*, paragraphs 126 and 130.

3) Further, and in line with the precautionary principle, it is only when it is sufficiently certain that a measure will make an effective contribution to avoiding harm to the integrity of the site concerned, by guaranteeing beyond all reasonable doubt that the project at issue will not adversely affect the integrity of that site, that such a measure may be taken into consideration in the AA (*Dutch Nitrogen* at paragraph 126). The AA must not take into account the future benefits of mitigation measures if those benefits are uncertain, for example, because the procedures needed to accomplish them have not yet been carried out or because the level of scientific knowledge does not allow them to be identified with certainty (*Dutch Nitrogen* paragraphs 126 and 130).

Similar principles are reflected in Defra's 2021 guidance *'*Habitats regulations assessments: protecting a European site*'*.[30] This emphasises that mitigation must be shown to be effective, implemented, enforceable, monitored and in place before adverse effects occur. Section 2.2.4 of the RIAA does not appear to engage with these principles or explain how the proposed mitigation measures satisfy them.

In our view, the RIAA does not provide a sufficient basis for concluding that the proposed mitigation measures will avoid adverse effects on site integrity. Section 6 seeks to assess and rely upon mitigation measures, but Section 5 does not first identify, on a site-by-site basis, the adverse effects requiring mitigation. Nor does it clearly explain whether such adverse effects can be excluded.

---

[30] Department for Environment, Food & Rural Affairs, Natural Resources Wales and Welsh Government, 'Habitats Regulations Assessments: Protecting a European Site' (2023) <www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site> accessed 17 August 2026.

The result is that the assessment moves directly from a high-level discussion of potential effects to proposed mitigation, without establishing a clear link between a defined adverse effect and the measure said to address it. Without that link, it is difficult to understand how the effectiveness of the proposed mitigation can be evaluated or how the competent authority could be satisfied that the measures would prevent adverse effects on site integrity.

Further, the RIAA proposes generalised, process-based improvements (better inspection, better enforcement, and evidence gathering pathway) and treats these as a substitute for site-specific analysis that should have preceded them. It is difficult to understand how this is able to satisfy the established and stringent requirements of AA, summarised by the Court of Appeal in *R (Wyatt) v Fareham BC* [2023] PTSR 1952 at paragraph 9(10) as follows:

> *'(10) What is required of the competent authority, therefore, is a case-specific assessment in which the applicable science is brought to bear with sufficient rigour on the implications of the project for the protected site concerned. If an appropriate assessment is to comply with article 6(3) of the Habitats Directive it "cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned" (see the judgment of the CJEU in Sweetman v An Bord Pleanála (Case C-258/11) [2014] PTSR 1092, at para 44 , and its judgment in People Over Wind v Coillte Teoranta (Case C-323/17) [2018] PTSR 1668, at para 38).'*

The case law on mitigation is clear that future, uncertain benefits cannot be relied upon in an Article 6(3) context. While domestic case law[31] is clear that the competent authority retains an evaluative judgement in carrying out an AA, that judgement must be exercised based on complete and reliable information. The concerns identified above mean it is unclear how the requisite level of certainty could be achieved.

The same difficulty arises in relation to the proposed 'Pathway to Compliance'.[32] The Pathway is not presented as a site-specific mitigation measure addressing identified adverse effects. Rather, it establishes a future, four-step process through which risks will be identified, measures developed, additional legislative powers considered, and outcomes monitored and reviewed.

The effectiveness of that process is uncertain. The focused measures that form the substance of the mitigation have yet to be identified, parts of the legislative framework are not yet in place, and the Pathway relies on future monitoring to determine whether additional intervention is required. In substance, therefore, the assessment relies on measures that may be developed and strengthened in the future if existing measures prove insufficient. This is illustrated by Step 4 of the Pathway, which expressly contemplates the possibility that the proposed measures

[31] R (Champion) v North Norfolk District Council [2015] UKSC 52.

[32] See Section 8.2.2 of the RIAA.

may fail to achieve the desired outcomes and that additional measures, including curtailment of farming activities, may subsequently be required.

The RIAA therefore appears to rely on measures whose effectiveness has not yet been demonstrated and whose content, implementation and outcomes remain uncertain. On the authorities cited above, it is unclear how such measures can provide the level of certainty required to conclude, beyond reasonable scientific doubt, that the NAP will not adversely affect the integrity of affected European sites.

4.2.11 Conclusions on compliance with the Habitats Regulations

Article 6(3) requires a competent authority to ascertain that a plan will not adversely affect the integrity of European sites, based on complete, precise and definitive findings capable of excluding reasonable scientific doubt. The issue is therefore not whether the NSP may deliver environmental benefits in general terms, but whether the AA provides a sufficiently robust evidential basis for the conclusions required by law. Moreover, an adequate AA is not simply a procedural exercise. Its purpose is to ensure there is robust understanding of the consequences of the proposals for European sites. A compliant and comprehensive assessment may show that the proposals would, in fact, have substantial impacts on sites, such that much more extensive mitigation measures, and potentially additional restrictions, are necessary to avoid adverse effects on site integrity.

As currently presented, a number of issues raise concern in this regard. These include the absence of site-specific analysis linked to conservation objectives, uncertainty as to whether participation in the NSP will be subject to any subsequent farm-level assessment, reliance on future Pathway to Compliance measures to address identified risks, and the absence of clear integrity conclusions within the AA itself. Taken together, these matters make it difficult to identify the evidential basis upon which adverse effects on the integrity of European sites have been excluded beyond reasonable scientific doubt.

DAERA will doubtless want to take legal advice on these matters and satisfy itself as to the need for the final proposals to properly comply with the Habitats Regulations. In doing so, it will need to be satisfied either that the AA contains sufficient site-specific evidence and analysis to support a compliant programme-level assessment of the NSP, or that an effective mechanism exists for undertaking the necessary assessment at farm level before activities capable of affecting European sites proceed. In our view, the final regulations and supporting assessment should explain more clearly how the requirements of Article 6 have been addressed and on what evidential basis the necessary conclusions have been reached.

4.3 Historic non-compliance and strategic approaches under Article 6

The conclusions above regarding the adequacy of the RIAA under Article 6(3) do not mean that the challenges associated with historic nutrient pressures are incapable of resolution. The Habitats Regulations contain a broader suite of mechanisms, including Article 6(2) measures aimed at preventing deterioration and supporting restoration. Given the history of nutrient pressures and concerns about past compliance, DAERA may wish to consider how these wider Article 6 measures can support, rather than replace, a compliant assessment under Article 6(3).

4.3.1 Historic non-compliance and remedial obligations

It is not in dispute that there has been a historic failure to undertake AA in relation to farm derogations. This is a fact which forms an important part of the background against which the current proposals must be assessed.

The CJEU has consistently held that where activities have been authorised in breach of Article 6(3), the competent authorities are under a positive obligation to remedy that breach. What is required is a *Grüne Liga*[33]-type review and remediation of that failure.

In *Grüne Liga*, the CJEU held that where a project was not previously assessed in compliance with Article 6(3), implementation may continue only where the risk of deterioration has been excluded. If that has not been done there is an 'obligation to carry out that review' as an appropriate step under Article 6(2) (paragraph 44). The Court concluded that a subsequent review is required where it is 'the only appropriate step for avoiding' deterioration or disturbance (paragraph 46).

Similarly, in *Aqua Pri,*[34] the CJEU held that a project authorised in breach of Article 6(3) 'cannot [...] be regarded as having been lawfully authorised' and that the Member State must 'eliminate the unlawful consequences of the breach [...] by taking all measures necessary within the sphere of its competence to remedy it' (paragraph 39).

The historic granting of derogations without Article 6(3) assessment, together with the suggestion that potentially up to 2,000 farms may have been operating without the required derogations and therefore without any Article 6(3) assessment, points to a systemic compliance issue. The effect of the case law is that this issue cannot simply be regularised by treating those activities as if they had always been lawfully authorised. Instead, there is a legal obligation to review the position and ensure that the consequences of the historic non-compliance are properly addressed

The competent authority retains a margin of discretion as to how it chooses to remedy that historic breach. One way may be to adopt a strategic or programmatic approach operating as part of a wider Article 6(2) framework. However, that Article 6(2) programme must itself be subject to Article 6(3) assessment (at the programmatic level) where it dispenses with future Article 6(3) assessments which would otherwise have been required, to ensure that its application will not lead to adverse impacts on specific sites.

[33] Grüne Liga Sachsen v Freistaat Sachsen C-399/14 (14.1.16).

[34] Dansk Akvakultur (acting for AquaPri A/S) v Miljø- og Fødevareklagenævnet (Case C-278/21) [2023] PTSR 187.

Where the Article 6(3) assessment of the programme can rule out such adverse impacts, no further farm-level Article 6(3) assessment is required. Where it cannot (as is currently the case with the NSP/RIAA), any follow-on farm-level decision must be subject to Article 6(3) assessment. Participation in the NSP cannot, by itself, remove the need for Article 6(3) assessment where the historic breach has not been properly addressed.

4.3.2 Deterioration, restoration and the importance of the correct baseline

Article 6(2) of the Habitats Directive imposes a continuing obligation to take appropriate steps to avoid the deterioration of protected habitats and the disturbance of species for which sites have been designated. While states retain discretion as to how that obligation is implemented, the measures adopted must be capable of ensuring effective protection of the sites concerned. A key aspect of Article 6(2) is the baseline against which deterioration is assessed.

'Deterioration' is to be assessed by reference to the point at which Article 6(2) first became applicable to a site – the date when it first became eligible for designation.[35] The obligation is therefore concerned with preventing further deterioration relative to that baseline and the site's conservation objectives. It is not concerned with measuring compliance against an assumed future state of improvement.

This is relevant to the NSP because a programme intended to address historic nutrient pressures cannot satisfy Article 6(2) if it permits further deterioration in the short term on the basis that improvements may be secured at a later date. Such an approach risks replacing the legally relevant baseline with a more permissive, future baseline that reflects deterioration which has already occurred. It cannot properly be characterised as an 'appropriate step to avoid deterioration'

DAERA will therefore need to ensure that the NSP delivers improvements measured against the pre-existing baseline, not against a baseline that has been allowed to deteriorate in the interim.

This requirement is reinforced by the need for the underlying measures to be binding rather than aspirational. In Case C-47/23 *Commission v Germany*, the Court held that a failure to adopt legally binding measures to protect SACs from over-fertilisation and early mowing constituted a breach of Article 6(2). It follows that, to demonstrate compliance, the measures relied upon in the NSP must be legally binding on farms contributing excess nutrients. An optional approach will not provide the confidence necessary to establish that the required measures will in fact be taken.

Notably, Article 6(2) does not require a single measure to address every source of environmental pressure. The NSP may form part of a wider Article 6(2) response. It is difficult to see how it could, on its own, address all relevant sources of deterioration affecting European sites, including ammonia emissions. Compliance

[35] By virtue of the protection afforded under Article 4(2); see Case C-559/19, paras 165–167.

with Article 6(2) is therefore more likely to require a broader package of coordinated measures operating across the relevant pressures and sectors.

Finally, the Article 6(2) duty is continuing. DAERA's obligation does not lapse once a single measure has been adopted. The key requirement is that DAERA is, at all times, doing something to prevent deterioration.

4.3.3 The NSP and the wider Article 6 framework

DAERA has included the NSP within the scope of the assessment under Article 6(3) of the overarching NAP, which suggests the department does not regard it as 'directly connected with or necessary to the management of the site' and therefore exempt from assessment under the Habitats Regulations.

At the same time, the consultation documents and RIAA repeatedly refer to the NSP and related measures as forming 'part of a wider suite of Article 6(2) restorative measures'. In several places, the NSP is described in terms of contributing to the protection and recovery of sensitive habitats and assisting DAERA in meeting its obligations under the Habitats Regulations (see for example Table 3-2). Such language is characteristic of measures intended to prevent deterioration or support the achievement of conservation objectives.

The situation as to the NAP, the NSP and Article 6(2) is therefore somewhat unclear. The consultation's conservation-measure framing of the NSP is confusing as to what DAERA is proposing.

On the information currently available, the NSP cannot yet be regarded as 'directly connected with or necessary to site management' under the Habitats Regulations. Measures which are genuinely part of a suite of Article 6(2) are measures which could legitimately be exempted from the scope of the AA in accordance with the conservation management exemption.

This lack of clarity is not confined to the high-level narrative contained in the consultation documents. Having reviewed the RIAA's sections 5.5.2 (Table 5-6) and 6.2.4 (Table 6-3), it appears that similar uncertainty is reflected within the assessment methodology itself. In particular, it is not always apparent whether the NSP is being assessed as a source of potential effects requiring mitigation, as mitigation in its own right, or as part of a wider package of measures intended to address existing environmental pressures.

It would be helpful if DAERA explained this, to be clear whether the NSP is intended to be part of a wider Article 6 strategy, a mitigation measure within the Article 6(3) assessment, or both.

Beyond the confusion, this raises an interesting question: could the NSP correctly be described as 'directly connected with or necessary to the management of the site', given its role in managing nutrients from agricultural sources and be able to avail of the conservation management exemption? Measures that are genuinely directed towards the management or protection of designated sites may occupy a different position within the Habitats Regulations framework from measures requiring assessment under Article 6(3).

On the information currently available, it is not possible to determine whether, or to what extent, the NSP is intended to function as part of a wider programme of conservation or restoration measures. Further clarification would be required, particularly regarding implementation arrangements and the transition from the existing derogation regime. If those arrangements increase emissions or permit deterioration before farms become subject to the NSP requirements, or indeed after they are subject to them, it may be difficult to demonstrate that the objectives of Articles 6(1) and 6(2) are being achieved during that period.

4.3.4 Potential strategic approaches

In our view, the NSP, as currently proposed, is unlikely on its own to deliver the scale, pace and certainty of nutrient reductions required to address the ongoing exceedance of nutrient loading on European sites and secure favourable conservation status and good water status objectives. Addressing these issues is likely to require a more comprehensive and strategic framework of measures over the medium to longer term, reflecting both the scale of the challenge and the range of environmental and societal outcomes at stake. This could take the form of a wider Strategic Nutrient Reduction Programme under Article 6(2) of the Habitats Directive, operating alongside the NSP.

Critically, any such package should be calibrated against the correct baseline: the nutrient load prevailing at the time the relevant European sites were proposed for designation, rather than current or recent nutrient loading. Anchoring the baseline to designation-era conditions is necessary to ensure that restorative measures are genuinely capable of reversing accumulated deterioration, rather than merely holding the line at an already degraded status-quo.

The current practice of assessing plans and projects against an already degraded environmental baseline risks placing increasing reliance on project-level AA as the primary mechanism for environmental protection, rather than addressing underlying causes of deterioration through proactive conservation and restoration measures. A strategic approach to Article 6 implementation would be more closely aligned with the overall objectives of the Habitats Regulations and would support long-term improvements in site condition, thereby creating greater environmental capacity for sustainable development in the future.

Such a programme, if adopted, should address all significant nutrient sources, including both agricultural and wastewater inputs, and should be designed to deliver equitable and evidence-based reductions across sectors. While the NSP could form a key element of this wider programme, it should operate as part of an integrated, catchment-scale response capable of delivering the nutrient reductions necessary to achieve favourable conservation status and good water quality.

Such an approach would also provide a mechanism for addressing the legacy of historic nutrient loading and wider compliance issues, which have occurred against a background of acknowledged deficiencies to date in the application of the Habitats Regulations in certain sectors. A strategic Article 6(2) programme offers an opportunity not only to prevent future deterioration, therefore, but also to remediate the consequences of past impacts through a coordinated programme of restoration and nutrient reduction measures.

Of course, any strategic approach is likely to require targeted, site-specific measures designed in light of sites' conservation objectives to address the particular pressures affecting individual SACs. In our view, this is likely to better reflect the precautionary and restorative objectives underpinning the Habitats Regulations than reliance on project-level assessments alone.

4.4 Compliance with the SEA Regulations

The SEA Environmental Report prepared in support of the draft NAP 2027-2030 contains a detailed description of the draft NAP, baseline environmental information and an assessment framework directed towards the requirements of the SEA process. However, there are a number of significant concerns as to whether the assessment fully satisfies the requirements of Schedule 2 to the SEA Regulations, particularly in relation to the identification and evaluation of reasonable alternatives. The SEA appears not to provide a sufficiently robust assessment to demonstrate compliance with the requirements of the SEA Regulations and the underlying SEA Directive.

It also appears that a number of findings and recommendations contained within the SEA Environmental Report have not been reflected in the NAP 2027-2030 proposals. While the SEA identifies a number of potential amendments and mitigation measures which appear to have implications for the design and operation of the proposed regime, there is no clear explanation as to whether those recommendations were accepted or rejected. We therefore suggest that DAERA look again at the SEA findings and explain how they have shaped the final proposals.

4.4.1 Consideration of reasonable alternatives

The assessment of alternatives in Section 6.0 of the SEA does not appear to demonstrate that all reasonable alternatives were identified, described and evaluated before selection of the preferred option. In substance, the analysis is confined to maintaining the existing 2019 regulatory framework or adopting the proposed NAP 2027-2030 measures. However, there is no assessment of the NAP 2026-2029 proposals that were developed and consulted upon previously.

Given the level of policy development they had reached and the fact that they contained a materially different suite of measures, those previous proposals constitute an obvious reasonable alternative which could have been evaluated alongside the preferred option. Not assessing this option leaves an important gap in the analysis and makes the decision-making process less transparent.

The alternatives assessment also fails to adequately consider whether the environmental objectives could be achieved through improved compliance and enforcement of the existing regime. Evidence of widespread non-compliance with the current regulations suggests that agricultural nutrient losses may be attributable, at least in part, to failures in implementation rather than deficiencies in the regulatory framework itself. Yet no alternative based on enhanced monitoring, inspection and enforcement activity is identified or assessed. In circumstances where a substantial number of farms reportedly are operating outside the existing requirements, a compliance-led approach would appear to be a reasonable alternative capable of contributing to the achievement of the stated environmental objectives, and therefore warrant explicit consideration.

The assessment does not fully compare the main elements of the preferred option with the alternatives considered. In particular, there is limited analysis of the environmental effects of measures such as the NSP and the proposed extension of derogation eligibility to additional farms.

These measures have the potential to influence nutrient loading and environmental outcomes and should therefore form a central part of the analysis of alternatives. Without a clear assessment of the likely effects of these measures, and a comparison of those effects against other reasonable alternatives, including the previously consulted-upon NAP 2026-2029 proposals and a compliance-focused approach, it is difficult to understand why the preferred option has been selected.

4.5 Compliance with the Water Framework Directive Regulations

The NSP also raises significant issues in relation to DAERA's obligations under the WFD Regulations. Regulation 3(1) of those regulations requires DAERA and other relevant departments to exercise their functions so as to secure compliance with the requirements of the WFD. Regulation 3(2) requires those functions to be exercised in a manner that is consistent with, and gives effect to, the environmental objectives established under the regulations. Those objectives include preventing deterioration in the status of surface water and groundwater bodies and protecting, enhancing and restoring water bodies with a view to achieving good status.

Against that statutory backdrop, the central question is not whether the NSP may deliver some environmental benefit relative to alternative scenarios, but rather whether there is sufficient evidence that it will prevent deterioration and support achievement of the applicable environmental objectives.

Nutrient pollution remains one of the principal pressures on Northern Ireland's water environment and a significant cause of failure to meet objectives. Yet the consultation documents do not appear to demonstrate, through robust catchment-specific assessment, that the nutrient losses likely to arise under the NSP will not contribute to deterioration in water body status. Nor do they demonstrate that the measures proposed are sufficient to secure compliance with the relevant environmental objectives.

This concern is particularly acute given the extent of existing non-achievement of objectives under the WFD Regulations across Northern Ireland and the well-documented impacts of nutrient enrichment, including within the Lough Neagh catchment. In the absence of clear evidence that the NSP will avoid deterioration and contribute towards achieving statutory objectives under the WFD Regulations, it is difficult to see how DAERA can be satisfied that the scheme is consistent with its duties under the regulations.

This concern is reinforced by the findings of the SEA Environmental Report prepared in support of the NAP 2027-2030.[36] While the SEA concludes that the proposed measures could generally be viewed as beneficial to water quality, it also acknowledges that, without effective implementation and enforcement, there is insufficient evidence that the package of proposed and existing measures will be sufficient to halt and reverse continuing declines in water quality. The SEA further notes that the NAP is at risk of contravening the WFD Regulations and identifies agricultural activities as a significant contributor to nutrient enrichment and the failure of water bodies to achieve required standards.

Significantly, the SEA report recognises that, while many of the proposed measures are expected to have positive effects, the NAP also functions as the mechanism through which agricultural activities giving rise to nutrient losses are effectively authorised, and that potentially significant negative effects may therefore arise.

The SEA seeks to address this uncertainty through the proposed ‘Pathway to Compliance’ approach. However, whilst such an adaptive framework may assist in improving environmental outcomes over time, it does not in itself demonstrate that the NSP and associated measures will avoid deterioration or secure achievement of environmental objectives under the WFD Regulations at the point they are adopted.

We suggest that DAERA consider legal advice and assure itself that this is the case, to avoid leaving the policy vulnerable to challenge on grounds analogous to those arising in the context of compliance with the Habitats Regulations.

4.6 Climate change obligations

The consultation documents do not contain any climate-related assessment of the measures proposed in the NAP 2027-2030 to ensure consistency with Northern Ireland’s carbon budgets and the draft Climate Action Plan. Section 52 of the Climate Change Act (Northern Ireland) 2022 provides where relevant that:

‘52.(1) The duties mentioned in sections 1, 3 to 5 and 24 on the Northern Ireland departments (namely, to ensure that the net Northern Ireland emissions account is below a certain amount and that the net Northern Ireland emissions account for carbon dioxide for 2050 is below a certain amount) are duties on each of them—

[36] See SEA Environmental Report, section 8.2 ’SEA Mitigation’.

a) *to exercise its own functions, so far as is possible to do so, in a manner that is consistent with the achievement of that objective,*

b) *so far as is consistent with the proper exercise of its own functions, to co-operate with each of the other departments in the performance by the other department of the other department's duty under paragraph (a), and*

c) *to draw up and implement such plans, policies and strategies as may be appropriate for the purpose of performing its duties under paragraphs (a) and (b)…'.*

The draft Climate Action Plan published by DAERA in June 2025 supports the view that agriculture provides the greatest challenge in terms of progress to net zero. At page 151 (Section 6.8) it states:

'Northern Ireland agriculture accounts for 29.1% of all GHG emissions, compared with 11.7% in the UK as a whole. This reflects the different composition of the Northern Ireland economy and emitting sectors and the fact that agriculture in Northern Ireland is much more focused towards livestock production. Agricultural GHGs are very different from other sector emissions. For most sectors, the main gas emitted is carbon dioxide from fossil fuel combustion, whilst for agriculture the two main gases are methane and nitrous oxide. The emissions from agriculture are from a combination of fertiliser practices, and natural processes within livestock production, in particular, enteric fermentation in the digestive systems of ruminant animals (cattle and sheep). In 2022, 57.3% of agriculture sector emissions were associated with enteric emissions related to livestock, other key emissions were from manure management, soils and emissions from off-road vehicles and machinery as displayed in Figure 25.'

Section 52 in all likelihood requires DAERA to undertake an assessment of the NSP's greenhouse gas implications, which is capable of demonstrating that 'the project fits into plans, strategies and policies which map out a realistic and achievable pathway for Northern Ireland to achieve net zero by 2050.' Any such assessment is likely to have to consider and assess impacts on livestock numbers and associated agricultural emissions, including the use of fertilisers.

Prior to making any decision about the NSP, therefore, DAERA will have to carry out a climate-related assessment of the measure, to ensure it is consistent with Northern Ireland's carbon budgets and Climate Action Plan. A final version of the draft Climate Action Plan has yet to be produced or laid before the Assembly (well beyond the timetable set in the Act), as required by Section 29, and no sectoral plan for agriculture has been published pursuant to Section 19.

It should be noted that the interpretation of Section 52 of the Climate Change Act (Northern Ireland) 2022 is currently the subject of ongoing appellate proceedings arising from the A5 road scheme litigation. In the High Court,[37] the Department for Infrastructure's decision was quashed in part on the basis of non-compliance with Section 52, with the Court finding insufficient evidence demonstrating alignment with the statutory climate obligations. However, the department has appealed that decision and the Court of Appeal's judgment is awaited.

Accordingly, any assessment of DAERA’s obligations under section 52 should be viewed in light of the potential for further judicial clarification of the scope and operation of those duties.

4.7 Conclusion

Getting the new NAP Regulations right is critical because of the breadth of environmental harm that inadequate nutrient management has caused and is causing across Northern Ireland. While agricultural nutrients are not the sole source of this pressure, and wastewater is a significant contributor, the NAP remains the primary regulatory lever governing agricultural nutrient loading.

That loading is a key driver of water quality decline, most clearly visible in Lough Neagh’s ongoing algal bloom crisis. It remains a significant barrier to achieving good status objectives under the WFD Regulations.

The same nutrient pathways, through ammonia deposition and nutrient pollution, also place Northern Ireland’s most important protected sites and habitats under sustained pressure. This undermines the conservation objectives that the Habitats Regulations exist to secure. In addition, the sector’s high agricultural greenhouse gas emissions link the NAP directly to climate law obligations.

Because the NAP governs how nutrients are applied, stored, and managed across the agricultural landscape, any weakness in its legal framing, whether in the adequacy of assessment or the robustness of safeguards, translates directly into continued degradation across water, biodiversity, and climate outcomes. This is what makes rigour of assessment and mitigation at the consultation and decision-making stages so consequential: the NAP is the point at which these agricultural degradation pathways converge and, critically, need to be effectively addressed.

[37] *Re The Trunk Road T3 (Western Transport Corridor) (Rev 1); Application by Hassard and others as members of the Alternative A5 Alliance* [2025] NIKB 42.