



Northern Ireland
Assembly

Committee for Agriculture and Rural
Development

OFFICIAL REPORT (Hansard)

Fisheries Bill:
Department of Agriculture
and Rural Development

12 January 2016

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr William Irwin (Chairperson)
Mr Sydney Anderson
Mr Declan McAleer
Mr Oliver McMullan
Mr Edwin Poots
Mr Robin Swann

Witnesses:

Mr Paddy Campbell	Department of Agriculture and Rural Development
Mr John Terrington	Department of Agriculture and Rural Development

The Chairperson (Mr Irwin): I welcome John Terrington from the Fisheries Bill team in DARD and Paddy Campbell from the DARD sea fisheries policy. I ask you to give a presentation of up to 10 minutes. We will then ask some questions.

Mr John Terrington (Department of Agriculture and Rural Development): It will not take any longer than that. Thank you, Chairman and members. As the Committee has stated that its intention is to consider only clause 6 and the supporting clause or clauses, I will say a few words on those clauses only. As was outlined to the Committee previously, clause 6 is necessary and particularly urgent, given that we have given an assurance to the EU Commission that it will be brought in to ensure that we can directly enforce all aspects of the common fisheries policy (CFP). The timetable given to the Commission would see that in place by April this year.

That technical yet important amendment to the Fisheries Act 1981 will ensure that all common fisheries policy rules are directly enforceable, as the Commission would expect. Such legislation is directly applicable here, and there is little or no discretion available to the Department to implement the legislation in a way that would be less restrictive than the EU regulations, bound, as we are, to operate in a way that is fully compatible with EU law. Clause 6 would therefore allow the Department to enforce EU fisheries legislation as soon as the new regulation comes into effect, as we are statutorily required to do. Clause 6 will bring us into line with England, Wales and Scotland.

As was noted in earlier submissions, the proposal to amend the relevant legislation was included in the consultation that ended in November 2014. The Commission noted the position during the audit that it carried out here in January 2015 when we set out the timetable to deal with this matter, which, as I said, would see the Bill coming in before the end of the mandate. Without that change, the Department would find it challenging to implement EU legislation by the required deadlines. The Commission is already threatening to take action as a result of our inability to directly enforce such legislation.

Clause 6 amends section 31 of the Fisheries Act 1981. As I said, it does so to parallel the position already in Britain. It amends that Act so that it specifically applies to:

"enforceable EU restrictions, and enforceable EU obligations".

In detail, it extends all references to "EU restrictions" to include "obligations". It updates all references to "community" to read "EU" because that is now how it is referred to. The clause makes it clear that any powers of enforcement of EU obligations and restrictions relate to any boat in the Northern Ireland zone or any Northern Ireland-registered boat, wherever it may be. It also ensures that it pertains to any person who would otherwise be regulated for under the common fisheries policy. That, for example, could include fish buyers and sellers. The clause makes it an offence to catch fish in contravention of any such restriction or to fail to comply with any such obligation.

In addition, subsection (2) of section 1 of the 1981 Act currently empowers the Department to make subordinate legislation in relation to any EU rules. It is under that that we currently legislate for EU obligations. That is prior to making the proposed change. The Bill amends that subsection, and, in doing so, aligns with Britain, to empower the Department to make provision to extend the enforcement of EU rules to Northern Ireland-based fishing boats wherever they are, that is, outside of EU waters. That power could be needed if it were felt that we had more detailed rules or we needed stronger powers of enforcement for vessels operating in third-country waters, but that will require going back to the Assembly.

Finally, the clause defines "Northern Ireland zone" and "Northern Ireland fishing boat" in line with accepted definitions elsewhere. The impact of the clause on fishermen or anyone regulated under the CFP will be negligible as the clause simply alters the legislative basis on which any contravention of an EU regulation would be enforced.

If only clause 6 is progressed, there is no need for clause 16, as none of the terms defined in it relate to clause 6. If the only substantive clause being considered is clause 6, there is no need for clause 17, as we cannot envisage any consequential amendments being required to clause 6 or related to clause 6. If the Bill is reduced to clause 6 only, we believe that clause 18 will not be needed. The Act as a whole would commence at Royal Assent. Finally, with respect to the long title at clause 19, the reduced Bill — clause 6 only — the name of the Act could be changed, but there is no strong case to do so either way, so it is proposed to keep it as it is.

I trust that the Committee found this short introduction helpful. We are now happy to take any questions that members have at this point.

The Chairperson (Mr Irwin): Thank you for your presentation. Will you assure us that that brings us into line with the rest of the UK and the Republic of Ireland?

Mr Terrington: That is our understanding. There is not an issue in the South, as far as we know. The way in which the UK legislation is used is that we tend to bring the EU legislation in through existing legislation. That is what was done in 1981, but this part was not carried forward. Things are done differently in the South, but this is to align us with the changes already made in Britain.

The Chairperson (Mr Irwin): Can you also assure us that no gold-plating is involved in this?

Mr Terrington: If anything, the impact of this would be to reduce any risk of gold-plating. It is the EU rules as they came in. There is nothing else that we can do beyond that. Paddy, you might want to say something about the scope.

Mr Paddy Campbell (Department of Agriculture and Rural Development): If an EU regulation said, "A member state may do something", we would still need to bring forward subordinate legislation to require our fishermen to do that. You could argue that "may" might be gold-plating. If we decided to bring forward something that was optional, before it would be brought in, there would be consultation and we would have to bring forward regulations. The Committee and Assembly would have a chance to have a say on that.

Mr Terrington: As a rule, the better regulation position is that we do not do that. The point is that, right now, we would have to bring in a regulation if we wanted to do something that was optional. The same thing would apply; nothing has changed by what this does. The things that are set in regulation would automatically come in.

The Chairperson (Mr Irwin): Are you going to undertake any consultation before you directly enforce the EU rules?

Mr Terrington: We are currently involved in a long drawn-out process before we get to the stage of the EU regulation coming into play. Again, Paddy has experience of doing that in the past.

Mr P Campbell: The process at the moment is that a lot of the EU fisheries legislation is by co-decision with the European Council and the European Parliament. The process normally starts with the Commission bringing forward what it calls a non-paper, which is really a consultation document. The process in the UK is that we circulate that document to fishing industry representatives and take their opinion on the issues. Basically, at that stage, we are trying to find out whether there are any red lines or really difficult issues with what the Commission has proposed. We then feed that into the UK position. The first stage is that, at a fisheries council, the UK position will be put forward. After it has issued its non-paper, its consultation document, the Commission will come back, and the UK will put forward its position, which will be influenced by the opinions of fishermen in Scotland, Wales and Northern Ireland. An agreed UK position will go forward. The Commission will then take on board the opinions of the various member states and will eventually get to the point where it is ready to issue a formal proposal. The next stage, under co-decision, is that the European Council of Ministers will take an agreed position on the proposal and the Parliament will take an agreed position on that proposal. There is then a period of dialogue and negotiations, during which members of European Parliament can get involved in the process. It will eventually get to a point where there is a compromise agreement between the two institutions, and the regulation is made.

Mr Terrington: The three-way conversations are an opportunity for local stakeholders to feed in if any of the red lines have not made it through the negotiations. Indeed, it is an opportunity for us to do the same. It is not over at that point. It involves all member states.

Mr Swann: Thanks, John and Paddy. You indicated that, once it has received Royal Assent, it will be accepted and there is no reason for a delay. How will that affect the pilot case in regard to infraction?

Mr Terrington: It is worth saying we have just received, through the UK, notification that the pilot case will close if that happens. We have to write back to them before July, I think, or June to prove that that has been the case.

Mr Swann: In the current timeline for the Bill, when will Royal Assent be?

Mr Terrington: In April at the latest.

Mr Swann: That ties that up. That is what I am saying.

Mr Terrington: They are content that the outline of the Bill would do what they need it to do, and I have had experience of seeing that in the changes made in Britain.

The Chairperson (Mr Irwin): I am looking at the provisions for enforcement in the Fisheries Act 1981. It states:

"The Ministers may by order make such provision as appears to them to be requisite for the enforcement of any [EU] restriction or other obligation relating to sea fishing; and any such order may in particular contain provisions which (with any necessary modifications) apply or correspond to any relevant provisions".

Do you have any examples of when a Minister would use that?

Mr Terrington: Paddy can give a couple of examples, but the current power that will be amended is the power that we would have used to bring in EU regulations. That amendment, in line with the rest of the UK, is about boats that are maybe outside UK waters, but there is sometimes a requirement for those boats to still meet the EU rules.

Mr P Campbell: The residual power to make an order will only be used in cases where a vessel is fishing in third-country waters. We will probably feel that our enforcement powers in the well-developed fishing nations are adequate. For example, if one of our vessels is fishing in Norwegian

waters, we may feel that it is adequate because there are enough controls in Norway to make sure that those vessels are behaving properly. Say, for example — we do not have any of these vessels; this is hypothetical — a vessel came into our fleet and entered into some fishing arrangement with a country in south-western Africa or somewhere, we might feel that there is a need for that because the fishing management controls in that area are not well developed, and there may be a high risk of illegal fishing or of malpractice. We might feel that we need an order to set out exactly what that vessel has to comply with and give us some powers to take action against them if they did something that we felt was unsustainable.

The Chairperson (Mr Irwin): OK, it is not normal procedure but is for something more serious.

Mr McMullan: I have a question, but I do not know if it is relevant. Do we have the power to ban certain fishing boats from our waters?

Mr P Campbell: There are general fishing restrictions. If we had a national closed area, for example, and it affected areas that were under EU control, and other member states had access to those areas — say it was between six and 12 miles from our coast — and we felt that there was a need to have a completely closed area to keep those vessels out, we could bring in something national for our own vessels relatively straightforwardly but, if we wanted to make sure that other EU or other third-country vessels could not get in, we would have to take it through Europe. We would say to Europe that there is a need to protect this particular area. Europe would then start, at our behest, a consultation among other member states and eventually an EU regulation would be made that would exclude vessels from our waters.

Mr McMullan: I am thinking about these big factory boats that come in and can just clean out the sea in one big sweep.

Mr P Campbell: There is, in the back of the common fisheries policy regulation, details as to what access rights various member states have to the waters of other member states. Generally, there is no access within six miles of the coast. Some member states have access between six and 12 miles from the coast. Once you are outside 12 miles, you are into EU-only waters, so any vessel from the EU can get into those waters, as long as it has relevant fishing quotas and so on. It would be up to the EU to take action if a rogue vessel, for example, came in that did not have access rights or quotas. Action would be taken at EU level.

The Chairperson (Mr Irwin): OK. Members have no other questions. Thank you very much

Mr Terrington: Thank you.