



Northern Ireland
Assembly

Committee for Agriculture and Rural
Development

OFFICIAL REPORT (Hansard)

Better Regulation Inquiry: DARD Officials

16 February 2016

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr William Irwin (Chairperson)
Mr Seán Rogers (Deputy Chairperson)
Mr Sydney Anderson
Mrs Jo-Anne Dobson
Mr Declan McAleer
Mr Kieran McCarthy
Mr Oliver McMullan
Mr Ian Milne
Mr Robin Swann

Witnesses:

Mr John McConnell	Department of Agriculture and Rural Development
Mr Paul McGurnaghan	Department of Agriculture and Rural Development
Ms Pauline Rooney	Department of Agriculture and Rural Development
Ms Dera Watson	Department of Agriculture and Rural Development

The Chairperson (Mr Irwin): I welcome Paul McGurnaghan from central services, information systems; Pauline Rooney, head of EU area-based schemes division; Dera Watson, review of decisions; and John McConnell, animal identification, legislation and welfare branch. You are all very welcome. I will ask you take up to 10 minutes for your presentation. We will not be too tight with you.

Mr Paul McGurnaghan (Department of Agriculture and Rural Development): Thank you for your welcome. In conducting an inquiry into better regulation, the Committee has asked for clarification on a number of issues related to DARD's approach to reducing the regulatory burden on the farming community and, in particular, the recommendations concerned with the agrifood better regulation and simplification review. In addition, the Committee posed a number of questions to the Department on two research papers presented by your researcher. One was about cross-compliance and inspection processes, and the second was in relation to DARD's review of decisions and appeals procedures. We have provided the Committee with a detailed written brief addressing each of those areas, and I am joined this afternoon by Pauline Rooney, who is head of EU area-based schemes; Dera Watson, service delivery; and John McConnell from animal policy. We will be happy to address any further questions that you may have.

Perhaps, by way of introduction to our discussion, I can make one or two general points. I am sure that you will agree that efficient and effective regulation is essential to support business growth, but it is equally important to protect our citizens and the environment. A well-regulated industry is vital in underpinning trade, and, increasingly, it is a strength that the Northern Ireland agrifood industry is exploiting in securing new market export opportunities. I want, however, to make it clear that the

Department does not set out to make things difficult for farmers. We take our responsibilities seriously and have no interest in gold-plating. If there are areas where we can relax the rules, we will.

We use regulatory impact assessments as a key tool to ensure that the principles of good regulation are applied. There is a proportionate effort applied to regulatory impact assessments, including economic appraisals estimating the costs and benefits of options. I am aware, however, that the Committee has concerns that there is no external scrutiny of those assessments. The Minister of Enterprise, Trade and Investment, on behalf of the Executive, commissioned a review of business red tape, which published its report in November 2015. There are six main recommendations contained in the report, including the appointment of an independent better regulation champion and the appointment of an independent scrutiny committee to provide opinion on departmental regulatory impact assessments. The response to the recommendations and associated action plan is now being drawn up and will be presented to the Executive for consideration and agreement.

Since the completion of DARD's better regulation action plan in 2013, we have continued to make progress on reducing the administrative burden on farmers. Most notable is the achievement of official brucellosis-free (OBF) status. In the initial DARD/DOE better regulation review, animal disease control is identified as the most burdensome issue for farmers, and the securing of OBF status allows relaxation of controls, leading to savings in compliance costs of approximately £7 million per annum for the primary production sector, as well as £8 million in savings to the taxpayer.

The second example of progress relates to livestock identification, registration and movement. This was identified as the second most burdensome area for farmers. An amendment to the EU regulation has come into force allowing for electronic identification of cattle (EID). The amendment to the regulation allows the keeper to decide, on a voluntary basis, to make use of a derogation from keeping an on-farm holding register, subject to certain conditions. This means that keepers no longer have to maintain an on-farm herd book to record births, deaths and movements of cattle and can opt to rely on the animal and public health information system (APHIS) instead.

Another regulation of the better regulation report was to complete 80% of land eligibility inspections by remote sensing, using satellite imagery, rather than on-farm inspections. During 2015, DARD completed 86% of basic farm payment inspections using remote sensing, thus saving time for farmers.

Challenges remain. CAP reform illustrates some of the difficulties in further reducing the administrative burden on farmers. The Commission's proposals and regulatory framework are very complex to begin with, in comparison with the single farm payment system. Some progress has been made in simplifying these, and we welcome recent announcements on further simplification. However, we still see an increase in administration, which is disappointing, and the challenge is to keep this to a minimum. We are hopeful that the better regulation programme known as REFIT (regulatory fitness and performance programme), which is committed to making EU law lighter, simpler and less costly, will in the future deliver benefits to citizens and businesses. We will relax the rules wherever we can, and the Minister has given a clear commitment to examine any specific areas of excessive administrative burden which are brought to our attention. As the Committee will be aware, we have seen a few examples of this recently.

Finally, it is clear that further roll-out of enhanced digital services, with appropriate support, offers significant potential for farmers in reducing the burden of compliance and in increasing the ease of access to simplified procedures. There are real gains to be made by farmers who are willing to make the shift to online services. If forms can be pre-populated with information that we already hold, data can be validated before submission and human errors, such as omissions, can be instantly picked up so that there is less subsequent amendment and less cause for appeals, penalties and disallowances. We are actively working towards the establishment of a digital support team at the College of Agriculture, Food and Rural Enterprise that will provide assistance to farmers in making the switch to digital.

I hope this has given the Committee some insight into the better regulation and simplification agenda in the Department. I reassure the Committee that the Minister and the Department continue to see better regulation and the simplification of service delivery as strategically important, and we welcome the Committee's support and scrutiny in ensuring that it is embedded in our policy and delivery work in the future.

The Chairperson (Mr Irwin): Thank you very much for your presentation. I noted that you said that the Department had no interest in gold-plating. Surely the one clear example of gold-plating was the single tagging issue where, after two years of very stringent measures, the Committee put some

pressure on the Department and you then looked at other areas in the United Kingdom. We appreciate that you accepted that what you had put in place was erroneous and, in many people's eyes, totally discriminatory. When we see that happening, you can understand the perception that your Department does gold-plate things.

Mr McGurnaghan: Yes. That could be a perception on some occasions, but it is not our intention to gold-plate anything. There is an interpretation of the regulations, and we addressed that situation.

Ms Pauline Rooney (Department of Agriculture and Rural Development): I have talked to the Committee about this before, and yes, the threshold was set in good faith by the people involved. They looked at what the guidance said was needed, and there were various words in it. I cannot remember what those words were off the top of my head, but there was an interpretation. We looked, as we always do, at what the other regions around us were doing to gauge where we might go on it, but we have a responsibility to ensure that we do not end up with disallowance. It is a balance, and yes, that balance was skewed more strictly than it should have been, so we have rectified that.

The Chairperson (Mr Irwin): Full marks to you for doing that. We felt that, when one looked at it, it did not stack up, so we appreciate that.

Moving on to a review of decisions procedure, as you know, we have been concerned about the time that it takes for appeals to be heard. It appears that other jurisdictions have some sort of target or service standards for appeals. We asked you to look at this, and you appear to have made tentative steps at setting targets for turnaround time when responding to applicants in appeal cases. However, you have not yet committed to definite targets. Can you explain when we might expect to see such targets?

Ms Dera Watson (Department of Agriculture and Rural Development): Yes. I can say that, from the stage 2 point of view, we are well aware that setting targets has a very positive effect for the farmers and in motivating our staff as well. We are looking at the specific targets that other jurisdictions have set. In fact, we have a meeting with the Welsh and English jurisdictions next week at which we will have some of the recommendations that your report indicated, so we can discuss how they have arrived at the targets that they set. When we were before you in September, we said that we were putting a revised process in place to tackle the backlog that we had, although it will be 12 to 18 months before we know the effect that will have on turnarounds. However, we have reached a decision on 50 cases since September, so we are well on our way to achieving the target of 100 cases that we set for the 2015-16 year. That is a significant improvement, evidenced by the revised processes that we have put in place. We are certainly considering it, and we intend to revise our processes even further. We are continuously improving what we do, and if there are any ideas or suggestions that we can take from wherever to improve the efficiency of our process, we will do that.

The Chairperson (Mr Irwin): Do you have any idea of the percentages in England, Scotland, Wales and Northern Ireland? Do we have a higher percentage of appeals for our claims than the other regions?

Ms Watson: I can certainly find that out when I am in discussion about other jurisdictions, and we can report back to you.

The Chairperson (Mr Irwin): It will be interesting. It might tell a story about whether other Departments are gold-plating some things too.

Ms Rooney: Everybody has the opportunity to go to a review of decision, and it probably depends on the kinds of decision that are being made. For example, we have the active control in Northern Ireland to address a specific issue that we have here. It does not exist in other regions to the same extent, so we have people who come through the review of decisions, which you may not see in other regions, and are disappointed in that. I imagine there is probably an increase every time you go into a new CAP reform, because that is a brand new application into a new set of schemes. Decisions that people do not like and want reviewed are likely to peak. I imagine that they will peak every time you go through a CAP reform cycle.

The Chairperson (Mr Irwin): Yes. I would just be interested to know if we have a higher percentage.

Mrs Dobson: Thank you for your briefing. I wish to declare an interest: my husband is a beef farmer. Like the Chairperson, I was frantically noting Paul's comments. You said that you did not have an interest in gold-plating and that, if there were instances where you could relax, you would do so. I may quote those comments back to you at some point, because that is not the feeling among farmers.

I am interested in the principle of earned recognition, and I understand that farmers in the farm quality assurance scheme are given positive weighting by DARD's service delivery group (SDG). Would you explain that process for us? Does this show that DARD agrees with the principle of earned recognition?

Ms Rooney: If a farmer is a member of a farm quality assurance scheme, the competent control authorities in the service delivery group take that into account in the risk analysis that we carry out. The SDG will give a weighting or score for membership of that scheme.

As well as the farm quality assurance scheme, there are also the agri-environment schemes and organic farming schemes and various others, and we will give a weighting in the risk analysis. When we run the risk analysis every year against everybody who has applied to a scheme, depending on the nature of what they have done and what the factors are, they will score. At the end of the day, there will be a prioritised list from highest to lowest, and the ones that are picked for risk selection are those that are highest. If there is a requirement for a selection to be made on the basis of risk, that is where that earned recognition will come into play.

Mrs Dobson: Veterinary service is also within DARD, why has it, along with the Northern Ireland Environment Agency (NIEA) decided to deny that principle in its dealings with farmers?

Ms Rooney: I suppose it is because they are competent control authorities and so take responsibility for the inspections they carry out; they are accountable for them. I cannot speak on their behalf, but I imagine that they considered it seriously and did not think that it added sufficiently to be taken into the risk system.

Mrs Dobson: It is just that they are under the DARD umbrella; that is why I am trying to get clarity around why they have denied the principle of earned recognition to farmers. Would you not agree that, as we look at a regulation and when farmers jump through hoops and receive recognition from one government agency for meeting it, that recognition should, where possible, be extended to other agencies? Is that not a fair point?

Ms Rooney: Yes, where it is possible. We have to consider the relevance to what we are inspecting. We carry out inspections on food and feed, and the SDG takes account of the good agricultural and environmental condition (GAEC) standard in respect of land. The veterinary service carries out animal identification inspections, and the NIEA does pollution inspections. As competent authorities, they need to take those decisions for themselves.

Mrs Dobson: My husband is a beef farmer, so I am very aware of everything that goes on and the hoops that farmers have to jump through. It seems bizarre, when they are under the Department's umbrella, that they do not get recognition.

In the response to the Committee Clerk's letter of 15 December 2015, I am interested in the section on challenging the findings of the inspection report:

"On rare occasions this additional information may cause the inspector to reassess their decision."

Given that the reassessment would be carried out by the inspector who conducted the original inspection, how likely is it that more information would make them change their mind?

Ms Rooney: I would imagine that it would be information that the inspector did not have at the time of the original assessment. He will have made his assessment on the basis of what he saw on the day. Obviously, if a farmer provides more information, it adds to the picture that he can take into account.

Mrs Dobson: But was the picture not there originally when he first inspected?

Ms Rooney: It is very much on a case-by-case basis, Jo-Anne. I do not know what information a farmer will provide, but the inspector will seek to consider what is provided.

Mrs Dobson: In answer to the Clerk, you said that on this point:

"there are no statistics available to identify how many times a breach has been removed in the circumstances above."

It would be useful to have that information, because there is concern out there about the same person doing the inspection. That is something that farmers are fearful of. Why, then, is the information not recorded? We are supposed to be working towards better regulation, yet overturning a decision following an inspection is not deemed to be important enough to be recorded.

Ms Rooney: I do not know, Jo-Anne. You make a good point. We can take that away and add it into the inspection report that, when there is a reassessment, it should be included there.

Mrs Dobson: It seems bizarre that, given its significance, it is not. Are you making a commitment to review this? Is it likely to be reviewed?

Ms Rooney: The point you are making is a good idea. If a decision has been changed, it would be useful to record why.

Mr McGurnaghan: Chair, may I make a point on earned recognition? A review of inspections is ongoing. Earned recognition is one of the principles that they are actively looking at. I know that the veterinary service and the NIEA do not currently use it, but it is one of the criteria that are being looked at —

Mrs Dobson: So it is being reviewed. It seems nonsensical to farmers. Thank you for clarifying that.

The Chairperson (Mr Irwin): On recording the colours of animals and pets registered at birth, we understand that this is not an EU requirement and is not required in other jurisdictions. Why is it required here?

Mr McGurnaghan: That is right. There has been an ongoing debate right from the original review of better regulation. John can provide some background on that.

Mr John McConnell (Department of Agriculture and Rural Development): You are absolutely right: it is not a European requirement. The European requirement is that the member state or keeper records either the breed or colour of the animal; it is one or the other. Northern Ireland, of course, requires both. One thing I would say about this is that the colour of the animal being available is, potentially, of benefit to the keeper. When an animal with an identity query arrives at an abattoir, one of the factors they look at to decide whether to accept it is colour, alongside the other issues of date of birth, breed, sex and so on. It also sometimes helps to resolve an error, where one was made in recording breed, sex or date of birth. Having colour as a characteristic that we are aware of could help with an appeal to lift the APHIS status that restricts the movement of the animal.

The Chairperson (Mr Irwin): That restriction is very seldom lifted, as far as I am aware. I should declare an interest as a farmer.

Mr McConnell: Of the identification queries (IDQs) that are applied, somewhere around half or more are lifted.

The Chairperson (Mr Irwin): Yes, if the farmer comes to you at a very early stage, having noticed that he made the mistake himself. Apart from that, they are seldom lifted.

Mr McConnell: Where someone, for instance, records a male as a female and then comes to us to have that changed, we look at other characteristics recorded about the animal — date of birth, colour, breed and the rest. Having the breed and the colour — they are both quite subjective — gives us a better description of the animal and more evidence to go on to lift the status that has been applied.

The Chairperson (Mr Irwin): I have talked about this before. The word "dun" can cover red to white almost. That is a big variation in colour, and I know that some people have paid heavy penalties for animals. I know of a case some time ago where the DNA sample proved that it was the right animal

but it was still not accepted by the Department due to a colour issue. I would have thought that DNA was foolproof in this day and age, but it did not seem to be in that case. Would you not have thought DNA was foolproof?

Mr McConnell: It establishes a link between the dam and a calf, but there are issues around whether there is more than one calf or if there is another family relationship between the animals. It is not a straightforward guarantee that it is the animal you say it is. Certainly, it is one of the strongest pieces of evidence that we have to lift statuses where we can do so.

The Chairperson (Mr Irwin): Another issue is where an inspector does an inspection on some farms. I know of a case where the inspector said that seven calves were older than the farmer said. He disputes that strongly, but is the inspector qualified to know exactly? You would know whether an animal was a year old, but what if it was very close and there was a judgement call on that? Should the inspector have the final say?

Mr McConnell: This is the issue. Things like date of birth, age, breed and colour are subjective. Therefore, the more indicators we have, the more accurate we can be in assessing whether an animal is the animal that its tag number says it is. If we lose one element of those characteristics, we put more emphasis on the others, which puts more pressure on the accuracy of breed recording that we have now. As the breed becomes much more important, so does the age of the animal. The more indicators we have, the more we have, as a Department, to go on if we are trying to find a way to lift the status on an animal. If there is enough evidence to do so, that is something we can do, but, where we lose elements of the description of an animal, it makes it more difficult to lift the status.

The Chairperson (Mr Irwin): I am not going to go into individual cases by any means, but I know of one farmer who had an inspection and was told that six calves were not the age he said they were. He strongly contests that, but he is going to be fined heavily out of his single farm payment because of it. Is the departmental officer able to define the date of birth of an animal exactly? Some issues can be clear-cut, but some are certainly not. Some officials have been adamant where they have not, maybe, in my eyes, got the evidence. Very few people can tell, to within a week or two, when an animal was born. You have to know when it was born, and that would be well nigh impossible.

I declare an interest, but one farmer had a heavy penalty from his single farm payment, and he strongly contests that. Departmental officials can be prescriptive and make decisions that are difficult to overturn, because they are the inspectors. Would you accept that?

Mr McGurnaghan: There is a basket of evidence and the more you have, the more weight it gives to the decision; but there are grey areas.

The Chairperson (Mr Irwin): If there is a grey area, why should it go against the farmer? If it is so close that inspectors cannot be certain, one would have thought that the judgement call should fall on the side of the farmer and not on the side of the Department.

Mr McGurnaghan: We do not know the details of the case —

The Chairperson (Mr Irwin): I fully understand that.

Mr McGurnaghan: — but the more objective the assessment, the better. In the absence of objective evidence, more subjective criteria can be applied, and, at least, there is a better chance of one inspector coming to the same conclusion as another inspector.

Mr Rogers: I declare an interest as someone who does a bit of farming. Do you collate the number of incidents of grey areas? At the end of the year when you review practice and so on, do you look at those grey areas and say, "Maybe we need a bit more discretion there"?

Mr McGurnaghan: Not that I am aware of.

Mr McConnell: We know the number of statuses that are lifted each year, so we know the number that are resolved. We would not know how many were considered to be grey areas. We know just the ones that were able to be resolved.

The Chairperson (Mr Irwin): OK, thank you very much again.