



Northern Ireland
Assembly

Committee for Agriculture, Environment and
Rural Affairs

OFFICIAL REPORT (Hansard)

EU Exit Preparations: Department of
Agriculture, Environment and Rural Affairs

17 September 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Declan McAleer (Chairperson)
Mr Philip McGuigan (Deputy Chairperson)
Ms Clare Bailey
Mrs Rosemary Barton
Mr John Blair
Mr Maurice Bradley
Mr Harry Harvey
Mr William Irwin
Mr Patsy McGlone

Witnesses:

Mr Richard Coey	Department of Agriculture, Environment and Rural Affairs
Mr Anthony Courtney	Department of Agriculture, Environment and Rural Affairs
Ms Helen Lewis	Department of Agriculture, Environment and Rural Affairs
Mr John Mills	Department of Agriculture, Environment and Rural Affairs

The Chairperson (Mr McAleer): I welcome by StarLeaf John Mills, Richard Coey, Helen Lewis and Anthony Courtney. I invite John and his colleagues to begin the presentation.

Mr John Mills (Department of Agriculture, Environment and Rural Affairs): Joining us is Helen Lewis, who is from the transition team at the Environment Agency, and Anthony Courtney, who is head of the legislation branch in the environmental policy division and who will be able to cover the circular economy, which the Committee asked for a briefing on in this session.

The Committee was briefed on the overall legislative programme last Thursday and is to be briefed on the overall DAERA transition programme next Thursday. I have seen proposals for further sessions on matters including fisheries and specific sessions on chemicals and waste. I am not sure whether the Committee has agreed that yet. I am covering the environmental areas, so I am not covering fisheries. Given the large number of areas to cover, we will do our best to answer questions, because on detailed areas we might struggle a bit.

I will start with an overview of what is covered by environmental transition. About 20 environmental areas are identified in the Northern Ireland protocol that require us to apply EU regulations or directives. Unfortunately, everybody's definition of what is covered by the environment differs slightly. The EU regards some areas as climate change: emissions trading, which we were discussing, and emissions reduction, fluorinated gases (F gases) and so on. We cover those, but the EU environment

sector does not regard them as environment. It includes timber, which, in DAERA is dealt with by Forest Service. Some of the areas are dealt with by the Department for Business, Energy and Industrial Strategy (BEIS) and by the Department for Environment, Food and Rural Affairs (DEFRA). Everybody has a slightly different definition of what constitutes the things that are in the environment, but, at the end of the day, all elements of the protocol have to be implemented.

This covers things like waste shipments, packaging, batteries, restrictions on the use of hazardous substances and goods, chemicals, pesticides and other potentially harmful substances, such as mercury, the Convention on International Trade in Endangered Species (CITES), which is trading in endangered species, carbon emissions trading, industrial emissions, F-gases and a number of other areas. In addition to that, the Environment Marine and Fisheries Group (EMFG) includes a number of things that are more in the agricultural field, such as fertilisers and pesticides, for example.

Some of these issues affect significant areas of Northern Ireland business and society and are very complex. Obviously, emissions trading, waste and chemicals are examples of that. Some of the 20-odd areas have limited effects and require limited resources to implement, hopefully. Something like Ecolabel would be an example of that.

The number of environmental areas caught by the protocol is, of course, dwarfed by the number of regulations not covered by it, covering air, water, biodiversity, birds, habitats, environmental impact assessment and so on. In those areas, the UK Government undertook a significant legislative programme in 2018-19 to move all those environmental protections that were in EU law into domestic law so that environmental standards should be maintained. Some of that legislation will have to be amended to account for the Northern Ireland protocol, but, after the end of this year, Northern Ireland's environment law will be a mixture of retained EU legislation that has been brought from the EU into domestic law and directly applicable EU law through the Northern Ireland protocol.

If we look at why some areas are covered in the protocol and others are not, this is not primarily probably due to the environment. A lot of the areas covered reflect EU concerns about maintaining the integrity of its internal market in respect of products and safety standards. Some other areas reflect the need to comply with international conventions. As already discussed, emissions trading is included to maintain the integrity of the single electricity market.

I will highlight two other areas of work. The first is the Environment Bill, which, amongst other things, replaces aspects of independent environmental oversight, which we had through membership of the EU. The Bill received legislative consent on 30 June, which I am sure members will recall. Scrutiny at Westminster was expected to resume at the end of this month, but we have had no definitive word that that will happen. We hope to issue a public consultation on the environmental oversight and governance aspects very shortly.

The other area to mention is that the environment, as an aspect of the debates around the level playing field, such as things like state aid, as we discussed, is part of the ongoing negotiations between the UK and EU on future relations. Amongst the main issues are things like the commitment to non-regression on environmental standards.

Other broad issues affecting the environment, which affect everybody, are what the protocol actually means. Along with other areas, we need clarity on what is meant by Northern Ireland's qualifying goods, on the extent of what has become called unfettered access and the impact of the recent Internal Market Bill introduced by the UK Government. I guess that a lot of those issues might be covered by the permanent secretary next week.

Some helpful documents have been produced by the UK Government in the form of a command paper on the interpretation of the Northern Ireland protocol, published on 20 May, and guidance on the movement of goods, published on 7 August. In addition, the EU has produced some technical notes on various aspects.

There are certain terms, like "heavily regulated goods", which have still to be defined by the UK Government, and that particularly affects areas such as chemicals. The requirements regarding international agreements also need to be clarified.

What do we need to do? The first thing is to try to manage the process. Within the environment group, we have established an environmental transition board to oversee a programme of work to implement the protocol. Back in May, we set up a dedicated division to do that work. The work is split into 22 work packages or projects at the moment, and these are set out in the diagram that we sent as an

annex to the written briefing that we provided to the Committee. Some of the projects reflect individual business areas, such as emissions trading, and other are cross-cutting, such as legislation. The diagram that we sent is about as close as we can get to a one-page representation of the work that we face.

Our aims on the environment are consistent with the overall DAERA aims of having a programme in place that, as far as possible, delivers legislative and policy frameworks, operational preparedness and contingency arrangements and communicates this as far as we can to stakeholders.

Our programme of work is split into two phases, with the issues that we are talking about today really being phase 1, those that we need to address by the end of 2020. After that, there will be a phase 2, which will be things that we need to deal with to establish, if you like, the new business as usual. That will be implementing the office of environmental protection, for example, and other aspects of the environment Bill or dealing with how reporting is to be done in future, now that it will not be reporting to the EU on many environmental areas.

We have been considering what is critical to implement. Most of the areas that we are dealing with are critical because it is a legal requirement to implement the Northern Ireland protocol. If we were to not implement them, the EU could rightly say that we are not acting in good faith. We would not want to be responsible for having undermined the negotiation process by failing to implement the legislation, so, even where the real-world implications of some of the environmental measures in the protocol are not that great, we still need to implement them by the end of the year.

I will move on to preparation in specific areas. On legislation, we have to process eight statutory rules relating to transition, and, as of today, 26 statutory instruments, which will be dealt with at Westminster and in which we have an interest. The vast majority of those are due to be laid in October and November. A handful have been laid already, for example the emissions Order that we have just been discussing. Some of these instruments make purely technical amendments, such as making sure that legislative references are up to date, and some cover reserved areas where devolved Administration ministerial agreement is not needed. Others, as the Committee has been advised, cover areas where there might be policy content, and these have been assessed and the information provided to the Committee on what might be the areas with more policy content. My understanding is that the Committee is considering that. In the environmental areas, the main areas are waste chemicals and emissions trading. I should stress that this is a moving target. At the moment, we have 16 of these instruments and frameworks, including seven priority ones, and, if I were to come back in a week's time, the numbers that I have given you would probably be different. Obviously, we are committed to achieving the implementation of the legislation and frameworks by the end of the implementation period, but these time frames are extremely challenging.

On operational readiness, we are working with colleagues across DAERA to prepare for the end of the implementation period. The protocol will come into force then, unless aspects are overridden by a free trade agreement. Obviously, the scenario that we have to consider is that there is no agreement. We are working with colleagues in DEFRA and BEIS in Whitehall and with other Administrations on preparing for the end of the implementation period. We have regular updates with DEFRA and the devolved Administrations through an environmental working group. We have separate meetings on implementation of the Northern Ireland protocol with DEFRA. Key to progress is the contact between individual business areas on things like waste chemicals and emissions. In addition, along with DEFRA, we have had a number of meetings with the EU representatives on technical implementation of the directives. Our next general meeting with the EU on the environment will be towards the end of September.

It is a challenging timescale, but it should be remembered that much of the work to transpose EU legislation to domestic law took place in 2018-19. Even where there is a requirement to implement the Northern Ireland protocol, we are implementing regulations that are already in place. So, the amount of change that we need to make is not always significant across all 20-odd areas of the environment. However, being operationally ready is still a major challenge.

On preparing contingency plans, we would be on our third emergency activation of the Department's major emergency response plan if we did go into that mode. So, we have quite a lot of experience of putting the right contingency structures in place. We can reactivate or adapt those as required. We have structures for transition at operational, tactical and strategic level that, in an emergency response, could move in to fill the roles of the bronze, silver and gold command structure. We have experience of developing the responses to issues that could emerge, for example, through disruption to trade and preparation for no agreement, because we went through this at the end of 2018.

Finally, we engaged with a stakeholder group at the start of August. We have had a number of meetings with stakeholder representatives in particular business areas. There have also been UK Government publications. One thing that it is probably worth saying about the environmental stakeholders group is that a lot of businesses in specific areas are looking for very detailed guidance on their particular area, so there is not necessarily one group of environmental stakeholders.

That concludes what I was going to say on environmental transition. I emphasise that this is very much a moving picture and that things can change. I know that the Committee is being offered regular updates. I am happy to take questions, as I have said. I might not be able to answer on all the detailed areas, but I will be happy to get back to you. I would finish there, but the Committee also asked for a briefing on the circular economy transposition and another statutory instrument (SI). I can go on to cover those things or stop there as you wish, Chair.

The Chairperson (Mr McAleer): We will stop there so that we can ask a couple of questions now. John, I want to say one other thing. The first paragraph of the briefing that we received states:

"The EU (Withdrawal Act) 2018 ensures that all existing EU environmental law will continue to operate in NI after the end of the transition period."

The Internal Market Bill, which we heard about just over a week ago, has dented a lot of people's confidence when they listen to what the British Government might do or say as regards here. In light of that and other things, how can we be 100% sure that all existing EU environmental law will continue to be applied here? Will the likes of DAERA be able to scrutinise it and flag it up if that is not the case? As I say, confidence is at an all-time low right now, not in the Department but certainly in Boris and his friends.

Mr Mills: As you say, there is obviously a big confidence issue at the moment. It is certainly not my job to defend Mr Johnson's Government. The environmental laws that we were subject to in the EU have been brought into domestic law. The changes to do so were pretty much technical, so where it said, "We must report to the EU on air quality" or whatever, that legislation was changed, in the case of reporting, to, "We must publish data on air quality". Those were the sorts of technical changes. Where something used to be monitored by the EU, it is now monitored by something else. All those laws maintained the environmental laws that we had. They are on the statute book, so they are law.

Given that the environment is an area of devolved competence, you would say that those laws cannot change in Northern Ireland without going through the Committee and the Assembly. That said, Parliament can do anything, really, and it is possible to make new laws that override that. I guess that it is a matter of trust that the Government will not do that. It is fair to say that the majority of environmental law is on the statute book. Then, there is the Northern Ireland protocol that will keep us directly subject to those 20-odd pieces of EU environmental law. That is a legal requirement. Again, in domestic law, the Withdrawal Agreement Act 2020 says that the agreement, including the protocol, is law and must be implemented, but, as you say, given the Internal Market Bill, that can always be overridden by new laws.

The Chairperson (Mr McAleer): We received a presentation recently from NI Environment Link. It highlighted its concern that, whilst 18 areas of environmental legislation are referenced in the protocol, some key areas such as habitats, birds and the water framework are not mentioned and that the environment is referenced only in relation to trade. It also highlighted the fact that there are areas such as wetlands and areas of special scientific interest (ASSIs) that straddle the border and that the implementation of the protocol has a deficiency in that regard that could have serious implications. Do you share those concerns? If so, what steps can the Department take to mitigate them? Have they been highlighted? What is your assessment of that, John?

Mr Mills: On the general point about things not being covered by the protocol, all environmental laws have been preserved by the secondary legislation that has already been made. Those environmental requirements will remain in place. The protocol will override that in some areas and bring us back to EU legislation. In general terms, nothing should change.

On the areas mentioned, such as habitats and the water framework directive, it would really need to understand the specific area that is of concern. There is nothing in the protocol or in domestic legislation that will prevent ongoing cooperation with the South; indeed, the withdrawal legislation goes out of its way to say, "Nothing in this is detrimental to North/South cooperation". On things such as waterbodies or wetlands that straddle the border, where there is specific cooperation, there is no

reason for that not to continue; there is no legal barrier to that continuing. We recently got agreement to engage with Southern colleagues on some of those detailed areas. We will continue to explore that, and, if there are problems, we will raise them.

Mr Blair: John, I will focus on the circular economy transposition that is detailed. I intend to move from Boris Johnson's Government to our own, if I may. You will be aware of the commitment in New Decade, New Approach to the elimination of plastic pollution. I wonder whether that figures in the work that is being done on the circular economy. If it does, is work being done in conjunction with other Departments in Northern Ireland, not least the Department for the Economy, to ensure that we meet current demands in terms of EU exit and transition as well as pre-existing commitments here?

Mr Mills: Yes, there are a number of proposals, statutory and non-statutory, to deal with plastics and their progress has probably been affected by COVID. I am not sure where we are with specific areas, but that is being picked up again. Anthony, are you able to say where we are on plastics? Is that in the consultation that has gone out on the circular economy?

Mr Anthony Courtney (Department of Agriculture, Environment and Rural Affairs): No. The circular economy package (CEP) covers waste more generally, and plastics are one of the waste treatments in that. Separate strands of work are ongoing on plastics. In DAERA, officials are looking at whether it would be appropriate to try to introduce measures on single-use plastics in Northern Ireland that are similar to those that are being implemented in the UK. At a broader level in the UK, legislative measures are being introduced that will have a significant impact on plastics. In some ways, they might result in benefits that go beyond some of the stuff that is coming from Europe. The CEP will help to retain the value of plastic resources in addition to the other waste resources in the economy and keep them out of the environment.

That is probably the position on plastics. The CEP transposition will not specifically cover that, apart from under the general waste requirements that apply, such as the separate collection of plastics and glass etc.

The Chairperson (Mr McAleer): Thank you very much, John, Richard, Helen and Anthony for attending. No doubt, we will hear from you again.