



Northern Ireland  
Assembly

Committee for Agriculture, Environment and  
Rural Affairs

# OFFICIAL REPORT (Hansard)

Waste Regulations:  
Department of Agriculture, Environment  
and Rural Affairs

8 October 2020

# NORTHERN IRELAND ASSEMBLY

## Committee for Agriculture, Environment and Rural Affairs

Waste Regulations: Department of Agriculture, Environment and Rural Affairs

8 October 2020

**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:**

Ms Janice Harris	Department of Agriculture, Environment and Rural Affairs
Miss Alison Jaynes	Department of Agriculture, Environment and Rural Affairs
Ms Wendy Lindsay	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, head of environmental policy division; Alison Jaynes, the assistant director; and Wendy Lindsay, the deputy principal.

To kick off with, John, Alison and Wendy, can you explain why only one of the SIs in this group has been provided, and what are the consequences of the Committee not being able to consider them? Will the Minister still give consent for the provisions that apply here to be included in the SI? Do you want to just kick off there, John, Alison or Wendy?

**Mr John Mills (Department of Agriculture, Environment and Rural Affairs):** Sorry, I was having trouble hearing there. Can Committee members hear me OK?

**The Chairperson (Mr McAleer):** Yes.

**Mr Mills:** Good morning, Chair. I think that Janice Harris is also with me. I am not sure if she is on the call, but she also works on waste.

I will come to those questions. The Committee has asked that we cover the SIs on waste as part of the procedure for the SIs. That involves the EFRA Minister writing to the Northern Ireland Ministers to obtain their consent for SIs that concern devolved matters and the Minister, in turn, seeking the Committee's recommendation on whether it is content to agree that the SI be laid in Parliament. The

SIs on waste — and on chemicals, which you are considering next — are part of a very extensive programme to deal with EU exit. The environment comprises half of DAERA's legislative programme. The number and speed with which the SIs have been progressed is more normally what we would be doing in a year rather than the space of a few weeks. This is certainly not how we would prefer to engage with the Committee, so apologies for the lack of papers and the pressures on timing. The timetable is, I should emphasise, the UK Government's timetable, not ours.

On waste SIs, we are not in a position, as you have said, Chair, to ask for the Committee's recommendations on the Waste and Environmental Permitting etc (Amendment etc.) (EU Exit) Regulations 2020 and the Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020 or the International Waste Shipments (Amendment) (EU Exit) Regulations 2020. As far as the timing of the SIs is concerned, the Government's — that is, DEFRA's — stated aim is to lay the first two of these waste instruments on 14 and 15 October. We understand that the scrutiny Committee at Westminster, the Joint Committee on Statutory Instruments, has raised some technical issues about these SIs, so we do not have a final version of them. In addition, we are having discussions with DEFRA about the extent to which the matters dealt with in these SIs are reserved or devolved. We are also discussing the impacts of some of the measures in the SIs. The laying dates, may slip or DEFRA may proceed to lay the SIs.

The International Waste Shipments (Amendment) (EU Exit) Regulations have been pulled from the programme, and we await a new laying date. Again, we are having debates about the extent to which this instrument is reserved or devolved and about the impacts of it. Finally, the International Waste Shipments (Amendment) (Plastic Waste) Regulations 2020 are not due to be laid until December, and we do not have a draft of those at this time.

I am happy to give a description of what those regulations concern if the Committee would find that helpful at this stage, or we are happy to answer questions on them.

**The Chairperson (Mr McAleer):** Members may want to ask questions at this stage.

**Mr Blair:** I have a quick question. I am asking this deliberately because this is, as members may know, Clean Air Day. I am therefore very keen to know the up-to-date situation on the Air Quality (Northern Ireland Protocol) Regulations 2020, on which we have not at this point received papers. Given the relevance of that matter today, and given the urgency around the timetable of those SIs for which we have not received papers — and, indeed, for many other matters relating to EU exit — I am keen, because of the date today, to have an update on progress on that SI in particular. Obviously, we cannot scrutinise it properly until we have the full paperwork in place.

**Mr Mills:** The Air Quality (Northern Ireland Protocol) Regulations 2020 were scheduled to be laid on 15 October. This is one of the chemical ones, really. Although it is called "Air Quality", it deals with a range of matters, to my recollection. I think that there is revision to that SI, so, again, we do not have a final version of that particular SI to send to the Minister, let alone the Committee, at this time. Dave Foster or Caroline Barry will be able to confirm what I have said on that instrument.

**The Chairperson (Mr McAleer):** If members do not have any more questions in relation to that, we can move to Committee consideration of the waste SIs. We are going to take some evidence on the Air Quality (Northern Ireland Protocol) Regulations 2020. We have received no papers for this SI and therefore cannot consider it, but is there any oral evidence or comment in relation to it?

**Mr Mills:** Sorry, a briefing on air quality?

**The Chairperson (Mr McAleer):** Yes. We have not received any papers.

**Mr Mills:** That is correct. As regards any further briefing on that, that is one of the chemical SIs, so I will ask my colleagues who cover chemicals to provide any briefing on that in the next session. As you said, Chair, it is not ready yet.

**The Chairperson (Mr McAleer):** OK then. We then have oral evidence on the Waste and Environmental Permitting etc (Amendment etc.) (EU Exit) Regulations 2020. That is a category 3. We have not got papers, and therefore we cannot consider it either. What is the update on that one?

**Mr Mills:** This SI relates to three directives in annex 2 of the Northern Ireland protocol on producer responsibility for packaging and packaging waste, batteries and accumulators, and the restriction on the use of certain hazardous substances in electrical and electronic equipment, which is known as the restriction of hazardous substances (RoHS) directive. This is a UK-wide SI which amends UK-wide legislation that underpins mature and well-established UK systems, including largely those for producer responsibility. The instrument is largely technical and mostly makes minor amendments to existing waste legislation to ensure that it complies with the EU (Withdrawal Agreement) Act 2020 at the end of the implementation period. It amends a number of technical things like the definition of "implementation period". It removes Northern Ireland from the UK system of RoHS that was introduced by the no-deal legislative exercise last year. There is a related SI on RoHS. The most recent position on this is that technical amendments to this legislation were being recommended by the Westminster scrutiny committee. Therefore, we cannot be clear that we have a final version of this SI. In addition, we are having ongoing debates with DEFRA on the extent to which the SI is reserved and about its impact. We are not in a position to brief the Committee definitively on it today.

**Ms Bailey:** We are hearing that it is largely technical, but it is listed here as a category 3, which indicates that there could be significant policy implications there as well.

**The Chairperson (Mr McAleer):** John, it is listed as a category 3 SI, which normally means that it involves substantive policy changes. Are you aware of what those substantive policy changes may be? Clare asked the question.

**Mr Mills:** My colleagues can add to what I say if they want to, or if Janice wants to add anything. It makes, largely, a series of technical changes. One of the effects of those technical changes is that we are concerned about the application of EU regimes to small businesses in Northern Ireland. We are concerned about a risk of, if you like, to use not-very-accurate language, heavy-duty regimes being applied to very small businesses that are going to have a lot of difficulty coping with the bureaucratic nature of some of those regimes. That is where our policy concern lies. It has to be said that that policy implication arises from the implementation of the Northern Ireland protocol rather than the legislation itself, but the effect of the legislation is to do that. That is the policy concern that we have in that area. Do you want to add anything, Janice?

**Ms Janice Harris (Department of Agriculture, Environment and Rural Affairs):** No, that is in a nutshell. It is the impact on businesses that are not affected by the regime at the moment and what it means for them in practical terms.

**The Chairperson (Mr McAleer):** Thank you, John and Janice. Moving on, then, to the oral evidence on the Transfrontier Shipment of Radioactive Waste and Spent Fuel (EU Exit) (Amendment) Regulations 2020. I advise members that this SI deals with a reserved matter and is for information and noting only.

**Mr Mills:** Do you want me to say a few words about that, Chair?

**The Chairperson (Mr McAleer):** Yes, absolutely. Go ahead, John

**Mr Mills:** I believe that a letter went to the Committee about this yesterday. Apologies again for that. The regulations are expected to be laid on 14 October. As you said, the regulations are reserved, so consent is not being sought from the Minister. Therefore, we are not seeking the Committee's agreement on the laying of the regulations, but we invite you to note them.

The regulations implement the rules for control of the movement of radioactive fuel and spent fuel between EU states. They are necessary to implement the Northern Ireland protocol as council directive 2006/117/EURATOM on the supervision and control of radioactive waste and spent fuels is one of the items listed in the EU environmental legislation in annex 2 to the Northern Ireland protocol. It applies to the UK in respect of Northern Ireland. In practical terms, Northern Ireland sends only a very small number of consignments of radioactive waste to GB each year, receives none and sends none to other EU countries. These regulations do not make any policy changes to existing arrangements and therefore will have no impact on current arrangements.

**The Chairperson (Mr McAleer):** OK. The next one we are going to look at is the Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020.

Again, no papers have been received for this SI, and the Committee cannot consider it. Do you have any commentary on this one, John?

**Mr Mills:** Yes, sure. Thanks, Chair. *[Inaudible]* the RoHs directive, so it is very allied to the one we have already talked about. The RoHS directive restricts certain hazardous substances in electrical and electronic equipment that is placed on the market in an EU member states. It aims to reduce the environmental effect and health impacts of substances in electronics, while the packaging and packing waste directive prevents the presence of noxious materials in the manufacture of packaging. This is traditionally regarded as a reserved matter, and it is a UK-wide SI. We have some debate with DEFRA about whether it is reserved because, while things like trade and placing goods on the market fall into the reserved area, the directive is designed to cope with the environmental impact of those hazardous substances in equipment or goods. The environment is, of course, a devolved matter, so that is an ongoing legal debate. That is where we are on that. The SI is largely technical and makes minor amendments but, as we have already said, with regard to the effect of this SI, we are debating with DEFRA policy around the effect it will have on small businesses in Northern Ireland.

**The Chairperson (Mr McAleer):** Thank you for that. The next item is the oral evidence on the International Waste Shipments (Amendment) (Plastic Waste) Regulations 2020.

**Mr Mills:** The international waste shipments is WST/05. This SI relates to the EU waste shipments regulations, which again are in annex 2 of the Northern Ireland protocol. The waste shipments regulations establish procedures and a control regime for the international shipment of waste to improve environmental protection. Procedure and controls are dependent on the origin, destination and route of the shipment, the type of waste shipments and the type of treatment to be applied to the waste at its destination. Again, these regulations are, in themselves, largely minor and technical. The minor amendments are to existing waste legislation to ensure it complies with the EU (Withdrawal Agreement) Act 2020. The substantive amendments proposed in respect to Northern Ireland concern the movement of waste between Northern Ireland and GB. Those movements, which are controlled by a domestic regime at the moment, could fall under, again, a rather more onerous international regime, and some waste movements could be prohibited. Again, we are debating the impact of these regulations with DEFRA and whether they are reserved or not. As with the other two, we are not in a position to provide the Committee with definitive regulations or advice at the moment.

**Ms Bailey:** The waste and air quality regulations are both listed as still needing their category to be confirmed. Have you any indication of whether there will be significant policy shifts within the regulations? Will they be category 3?

**Mr Mills:** The categorisation is pretty subjective. I would say that this is a significant one because of the effect of the way it implements the Northern Ireland protocol. If we have not provided a categorisation, this one should be category 3. My colleagues who cover chemicals will have a better idea about what the air quality regulations should be. I think it makes a series of rather technical changes across the piece, and I thought it might not be a category 3.

**The Chairperson (Mr McAleer):** OK. Thank you.