



Northern Ireland
Assembly

Committee for Agriculture, Environment and
Rural Affairs

OFFICIAL REPORT (Hansard)

Environment Plans, Principles and Governance:
Department of Agriculture, Environment
and Rural Affairs

15 October 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 Karl Beattie	Department of Agriculture, Environment and Rural Affairs
Mr John Mills	Department of Agriculture, Environment and Rural Affairs

The Chairperson (Mr McAleer): I welcome, via StarLeaf, John Mills, head of environmental policy operations, and Karl Beattie, a grade 7 in the Environment Bill team. I invite you to present your briefing, and afterwards, members will have the opportunity to ask questions.

Mr John Mills (Department of Agriculture, Environment and Rural Affairs): Thank you very much, Chair. Hopefully, you can hear me.

The Chairperson (Mr McAleer): We can.

Mr Mills: We are here to respond to questions raised by the Committee on the discussion document, as you have said. By way of background, the Committee completed its report on the Bill earlier this year, and the Bill received legislative consent in the Assembly on 30 June 2020. The COVID emergency has delayed the progress of the Bill at Westminster, and its Commons Committee Stage is due to begin at the start of next month.

The Bill covers a wider area than the discussion document that is before the Committee. Some of those areas have been subject to consultation exercises and others will be in the future. The environmental governance provisions of the Bill, which are in the discussion document, have not been subject to public consultation in Northern Ireland. That is a gap that we have intended to cover for some time. We had intended to publish the discussion document around the end of March, but, with the COVID emergency, it was not appropriate to issue it. Current timing is hardly ideal. However, time

is pressing if Ministers in the Assembly are to be informed on the implementation of *[Inaudible]* exercises prior to any implementation. Given the lengthy delays that we have had, we are keen to publish the document as soon as possible.

The discussion document focuses on three areas: environmental improvement plans; the proposed policy statement on environmental principles; and environmental governance, which, in the context of the Northern Ireland provisions of the Bill, is confined to environmental oversight, as exercised currently by the European Commission. The discussion document considers those three elements at high level. We are trying to keep the document short. For the technically minded, there are the 200 pages of explanatory notes to the Bill and the 230 pages of the Bill itself, though, of course, not all of that applies to the governance elements.

In addition, some of the more detailed aspects of the environmental governance will be set out in subsequent documents, such as DAERA's environmental improvement plan or a statement on environmental principles.

The discussion document is not intended to generate suggestions for amendments to the Bill. The invitation extended to devolved Administrations when this exercise began was on the basis of approximate parity, rather than the opportunity to create bespoke systems. Where Northern Ireland provisions deviate from or extend those that apply in England, the differences are largely due to legal, technical or structural differences between jurisdictions.

A lot of the document is devoted to environmental oversight because the environmental governance provisions are more complex and the Office for Environmental Protection (OEP) has attracted the most attention.

That is the background. The specific issues raised by the Committee last week include the lack of specific references to an independent environment agency, climate change, a sunset or non-regression clause, and perceived potential for stakeholders to be confused about the role of the Office for Environment Protection as compared with the role of an independent environment agency or the existing Northern Ireland Environment Agency (NIEA). I will cover them briefly now, and I am happy to answer questions when I am finished.

Consideration of other environmental governance issues is, of course, extremely important and the commitments made in respect of the environment in the New Decade, New Approach (NDNA) agreement, equally so. However, those issues are not being consulted on at this time. Policy in those areas still needs to be developed, and relevant proposals will be consulted on in due course. In the context of the Northern Ireland provisions of the Bill, the NDNA commitments are, of course, relevant as part of the strategic overview. We have included reference to that document, but we do not elaborate on those, as we are not consulting on them.

With regard to sunset and non-regression clauses, the Minister said in the debate on legislative consent that he is not minded to ask the UK Government to table amendments to that effect. Therefore, the discussion document does not go into detail on those issues. However, in deference to the Committee's views, we reference those issues and provide a link to the Committee's report, which goes into more detail on them.

While we understand concerns about confusion on the roles of the Office for Environment Protection and — to use the phrase in NDNA — an independent environmental protection agency, we have gone to some lengths to try to make it clear in the discussion document that the functions of the NIEA will remain separate from those of the proposed oversight body. Section 6 in the discussion document is specifically devoted to that, and it is preceded by section 5, which emphasises the point, saying that:

The principal environmental regulator in Northern Ireland is the Northern Ireland Environment Agency (NIEA), which is an executive agency of DAERA. It is, and will remain, responsible for environmental regulation. Where necessary the agency takes enforcement action to ensure our environmental standards are met. This is not the job that the new governance body will be doing. It will operate at an oversight level to ensure that government and regulators are doing their job.

An environmental oversight body is required to replace the governance functions of the European Commission and not the NIEA.

In the discussion document, "not" is bold and underlined. I am not sure how much clearer we could make that.

Section 10 of the document sets out the functions of the Office for Environment Protection to further elaborate on its role and on that role being distinct from that of the Northern Ireland Environment Agency.

Apart from some updating to reflect the passage of time, for instance references to green growth and legislative consent, the version of the document before you has not changed substantially from the one that we sent to the Committee in February. As things stand, if we were able to publish within the next few days, the closing date for consultation would be around the middle of December. Further delays would take us into the new year, realistically. We ask the Committee to support swift publication. However, should the Committee still consider that changes to the document are necessary, we will, of course, put those to the Minister for decision.

That concludes my opening remarks.

The Chairperson (Mr McAleer): Thank you for that. A number of concerns were raised last week in relation to NDNA and the reference to a climate change Act and other issues. A number of members wish to speak.

Mr McGuigan: I understand what you have said, John, in your explanation, but the Committee was very concerned last week. I am not sure that your explanation has eased my concerns about big environmental issues being left out of the Department's document in terms of future environmental plans, proposals and procedures. Climate change is the biggest issue that we face in environmental protection. It was in the 'NDNA' document, as was a specific reference to bringing an independent environmental protection agency to the North. Those are two very important environmental governance issues in that agreement, and we would like to see the Executive bringing them forward. Obviously, we would particularly like to see the Minister with responsibility for the environment bringing them forward in departmental plans and proposals that will go out for consultation.

The other issue is to do with the Environment Bill that is going through Westminster. The Committee has, in its deliberations, expressed deep concern; there should be no regression from current EU legislation. We have been given what some may propose as assurances that that will be the case, but they do not satisfy me. During the Stages of the Agriculture Bill, for example, the British Parliament has knocked down three amendments that would have maintained food standards, and that is connected to environmental practice. I do not have any confidence that the British Government at Westminster will not regress from current EU laws. It is the Committee's view and certainly my view that the document contains gaps on important environmental issues. Those need to be filled.

Mr Mills: I do not think that we have any disagreement with you, Mr McGuigan, about the importance of the issues that you have highlighted. However, those are not for this document. It is performing a specific role on these elements of environmental governance: environmental oversight through the Office for Environmental Protection, environmental improvement plans and environmental principles. We are establishing a framework, and that is what we are consulting on.

Options on climate change have been put to the Minister. He is considering those in terms of climate change legislation and on the question of plans for *[Inaudible.]*

The Chairperson (Mr McAleer): John, we lost you there.

Mr Mills: OK? Can you hear me now?

The Chairperson (Mr McAleer): Yes, we can hear you now, John. Philip wants to come back in.

Mr McGuigan: John, we heard, in the Assembly and on the air waves, the Minister's position with regard to climate change. He has, obviously, had to row back from that embarrassing position. We know about his reluctance about an independent environmental protection agency. Are those issues not included in the document because, in some way, the Minister is making sure that they are not included?

Mr Mills: No. We have not put them in because they are not part of this consultation and because other work streams are taking those matters forward.

Mr Blair: Thank you, John, for the information that you have given us so far. Philip has covered some of the points that I was going to raise about the independent environmental protection agency. However, for clarification, I want to drill down further. Are we to assume that no progress at all has been made on the establishment of an independent environmental protection agency, and that there is, at this stage, no ministerial or departmental directive on that issue? That is my first question. We need to be clear, because that NDNA commitment was crucial — to some of us at least.

Another issue arises for me, John, on page 22 of the consultation document, in the section titled, "Transboundary Issues". Do you think that it is sufficient that the questions asked relate only to the OEP working with the European Commission, for example? Should there not be more recognition of the existence of and more encouragement of discussion around the fact that the EU border on this island is more than just an interface? In fact, that border incorporates waterways, roads and all sorts of environmental issues that straddle it. Should we not encourage more discussion and debate around those issues, which, of course, impact on the lives of the people who live on the border and also, indeed, those beyond?

Mr Mills: Indeed, again, those are important issues. On the trans-border point, at the end of the day, the Office for Environmental Protection has a legal remit that extends to Northern Ireland. It will, no doubt, cooperate and work with other institutions and bodies, recognising the cross-border nature of some of those bodies, as other public bodies do. I do not think that, in the Department, there is any lack of appreciation of the importance of the issues that you raise. In a few days, they will be discussed through the North/South Ministerial Council, for example. Again, I think that what is said in the consultation document is what is necessary to point out the legal functions of that.

With regard to ministerial directives on an independent environmental protection agency, the ministerial direction, I understand, is to assess what would be needed to establish such a thing. That work is being taken forward.

Mr Blair: Can I come back on that point briefly, Chair? I think that we know where we are on an independent environmental protection agency. Regrettably, we are not as far on from the January commitment as some of us would like to be.

With regard to the consultation document, and the question about what it calls "transboundary issues", I ask again, John, and, hopefully, you can clarify this: is it too late to have included in that document an encouragement of issues around environmental cooperation and protection, addressing such issues as environmental crime? The document's title states that it is for consultation on "Plans, Principles and Governance". I would have thought that, for example, the risk of cross-border environmental crime should be included there for discussion and debate, with the aim of setting up some frameworks around that.

Mr Mills: There will be a cost in terms of when we can get it out to consultation if we put other stuff in, but it is not too late. We would not want to consult again on tackling environmental crime, which is a specific area that is being dealt with by others. However, I appreciate your point about cross-border frameworks. We could put additional stuff in on that, but that will be down to the Minister.

Ms Bailey: We all seem to be in agreement that we are dealing with critical and pivotal issues. Are we missing a trick by limiting the scope of the consultation? Departmental officials briefed the Committee on the recent environmental consultation and expressed their surprise that they received thousands of responses to it. However, we have moved on and we have the NDNA commitments, the Environment Bill, Brexit and the potential overlapping of agencies such as the OEP or the proposed independent environment protection agency with the Environment Agency.

The Minister is saying that he will scoping out what should be included in a climate change Act. You are talking about costs and workloads in the Department as well. Are we missing a trick if we cannot have a comprehensive consultation in one go and get the information that we all need to feed into it? I understand that workloads are really stretched at the moment, but those whom we consult have equally stressed workloads, and in most quarters, they are even less resourced. Are we going to over-consult the same people and agencies when we could do it all with a full scoping exercise here?

Mr Mills: There are a couple of points there that I want to pick up on. There is not an overlap between the functions of the Office for Environmental Protection and the regulation that is carried out by the Northern Ireland Environment Agency or if that was an independent agency. However, it is the work of

an oversight body like the European Commission to make sure that government and public bodies respect the environment. That is what this consultation is about.

Ms Bailey: Yes, I am sorry; just to be specific, there is a possibility of an overlap between the work of an independent environment protection agency, an OEP and the Environment Agency. That is something that we will have to consult on if it is going to happen. That is what I meant by overlap.

Mr Mills: I apologise; I want to come back quite strongly on that. Whether the regulation is done by the Northern Ireland Environment Agency, as part of DAERA, as it is at the moment, or whether it is done by an independent public environment agency, that body would still be responsible for regulation. The Office for Environmental Protection would be an oversight body that would carry out its functions in either case and would not be affected by that. In other jurisdictions, of course, such as England, there are independent environment agencies. The OEP can sit very comfortably with that, as it can do with our body, which is part of the Department here. I wanted to make that clear, because it explains why we are consulting specifically on just this issue.

I appreciate your point about consultation. It would be great to consult on everything, but it is extremely unwieldy, and there are large work streams on a lot of the areas that you mention. In other jurisdictions, for example, the strategies on climate change are separate from the environment strategies. It would generally be accepted that it is difficult to do everything on the environment in one document.

Ms Bailey: Thank you.

The Chairperson (Mr McAleer): Thank you. As no other members have indicated that they wish to speak, I thank you, John and Karl, for your attendance at the Committee meeting.

Mr Mills: Thank you.