



Northern Ireland
Assembly

Committee for Agriculture, Environment and
Rural Affairs

OFFICIAL REPORT (Hansard)

Environment Bill: Department of Agriculture,
Environment and Rural Affairs

11 February 2021

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
Mr Stuart Morwood	Department of Agriculture, Environment and Rural Affairs

The Chairperson (Mr McAleer): I welcome to the Committee, via StarLeaf, John Mills, head of environmental policy division; Karl Beattie, Environment Bill team; and Stuart Morwood, head of forest policy, regulation and development at Forest Service.

I invite the officials to brief the Committee. Subsequently, members will want to ask questions.

Mr John Mills (Department of Agriculture, Environment and Rural Affairs): I will cover the recent delay to the Environment Bill and the potential impact of that delay on the Northern Ireland provisions. You have also asked for an update on the amendments made to the Bill since the Committee last considered it. Karl and Stuart will cover those.

We had hoped to brief you today on a draft supplementary legislative consent motion memorandum, and we regret that that is not possible. I understand that there may have been some miscommunication on this, and we apologise for any inconvenience that this may have caused. Unfortunately, some procedural issues need to be ironed out on a cross-cutting matter, and, to that end, we are liaising with colleagues in the Department for the Economy and the Department for Environment, Food and Rural Affairs (DEFRA). We look forward to providing a briefing in due course.

The cause of the delay to the Bill is that the UK Government decided to seek Parliament's agreement to carry it over to the next session of Parliament, which is expected to commence in May. Parliament agreed to that request, and, on 26 January, the Bill was paused during its Report Stage. The EFRA

Minister advised the House of Commons that the UK Government intend to complete Report Stage as soon as possible in the new session; that is, in May, when it comes back. Although this is undesirable, we accept that it is due to procedural issues. In normal circumstances, the Bill would have completed its passage through Parliament during this first session. After a significant delay at Committee Stage, due to COVID restrictions and the high volume of Brexit legislation passing through Parliament towards the end of 2020, the UK Government identified a risk that the Bill might not complete all of the relevant parliamentary stages and receive Royal Assent before the opening of the second session. In that case, the Bill would have fallen and had to be reintroduced, causing an even longer delay.

The effects on the Northern Ireland provisions of the overall time frame being extended by five to six months are mixed. We have outlined them in the written briefing, so I will not go through them again in detail. In many areas, it will, because of existing timescales for policy development, drafting and subordinate legislation, have no effect at all: for example, some items have quite long timescales. In other cases, a potential impact would be realised if an urgent need arose to amend existing legislation through not having the enabling powers in the Bill. For the core plans, principles and governance provisions, because the environmental strategy will not be completed until later in the year, we are not expecting a significant impact on the environmental improvement plan (EIP). If the strategy is completed before the Environment Bill, there is no legal reason for its publication to be delayed. There will, however, be obvious delays to the publication of an environmental principles policy statement and the establishment of the Office for Environmental Protection (OEP), neither of which can come into law until after Royal Assent is granted and the Assembly approves commencement. As a result, it is unavoidable that governance gaps will continue. Interim arrangements for the OEP have been put in place through the interim environmental governance secretariat (IEGS). It will continue as long as necessary, with processes being refined as more experience is gained in managing complaints. Whilst not ideal, the OEP will be able to deal retrospectively with complaints received during this interim period.

We have provided a list of the amendments made to the Bill, most of which are relatively minor and technical. Only two will be the subject of the supplementary legislative consent motion: the powers for DEFRA to give guidance to the OEP on specific matters; and provisions on forest risk commodities and commercial activities. Karl and Stuart are happy to explain those two areas, or, if you prefer, we can go to questions now.

The Chairperson (Mr McAleer): Thank you. If members have questions on those amendments, they can pick them up during the question session, if that is OK with them.

John, there is one thing that I want to pick up on before I move to members. The notes state, and you mentioned it, that we have an interim arrangement of the IEGS and that we are integrated within the IEGS as far as is practical to do so. Can you elaborate on that? What is the interface between DAERA and the IEGS? Can you elaborate on that a little?

Mr Mills: Karl, do you want to pick that up?

Mr Karl Beattie (Department of Agriculture, Environment and Rural Affairs): The IEGS is up set by DEFRA. Essentially, it is a team within DEFRA but with information barriers. The IEGS in England has two main roles. One is to monitor the implementation of the 25-year environment plan, and the old natural capital committee secretariat has been moved into the IEGS, so we have no involvement in that part of the IEGS's operation.

The bit that we are involved with is the complaints management system. Given that we have this gap between the end of the transition period and the beginning of the OEP operating, we needed a facility for people to be able to register their complaints. Those complaints are collated and triaged to determine that they are valid complaints that will come under the remit of the OEP. The OEP will then be able to deal with those as it sees fit when it comes into being.

The direct Northern Ireland involvement in that is that we have a member of staff who works with the IEGS for approximately one day a week and has full access to the complaints management system. That person is fully integrated into that team on a part-time basis. People from Northern Ireland can complain through the web portal that has been established for that in the same way as anyone in England can.

The Chairperson (Mr McAleer): I want to touch on the amendments again. The Minister has indicated that he wants the North to have parity with Britain on these amendments. Will you elaborate on those two amendments, please?

Mr Beattie: Amendment No 20 at Report Stage is the one on OEP guidance, and that is the one OEP amendment that falls outside the scope of the original legislative consent motion. This power enables DAERA to issue statutory guidance to the OEP on its enforcement policy, which is a list of matters set out in clause 22(6) insofar as they relate to the OEP's Northern Ireland enforcement functions. The OEP will be required to have regard to the DAERA guidance in preparing its Northern Ireland enforcement policy and in exercising its Northern Ireland enforcement functions. It is important to note that this power is intended to be used only reactively: in response to issues that may arise in practice in relation to the OEP's Northern Ireland enforcement policy. It is not intended to set the agenda for the OEP. Access to similar powers for the Secretary of State and DAERA will help to ensure a consistent approach to environmental governance arrangements across both jurisdictions.

It has been suggested that this amendment erodes the independence of the OEP. If it does, it is in a very limited way. First, the guidance does not bind the OEP where it has clear reasons not to follow it. It is merely required to have regard to the guidance. Secondly, DAERA must exercise the power in line with its duty to have regard to the need to protect the OEP's independence, which is in paragraph 17 of schedule 1. We know from discussions with stakeholders that there are concerns with this particular amendment, and we understand those concerns. However, taking all circumstances into account, we believe that this amendment is appropriate.

The Chairperson (Mr McAleer): Is this amendment No 20?

Mr Beattie: Yes, amendment No 20 at Report Stage.

The Chairperson (Mr McAleer): There was a second amendment.

Mr Beattie: Yes, and Stuart will cover that.

Mr Stuart Morwood (Department of Agriculture, Environment and Rural Affairs): The new schedule 16 to the Environment Bill provides for the EFRA Secretary of State to make requirements for the use of forest risk commodities in commercial use in the UK. Those include defining what the risk commodities are; the prohibition of the use of illegally produced forest risk commodities in the UK; the establishment and implementation of due diligence and reporting requirements by businesses that are using such forest risk commodities; the introduction of enforcement powers through secondary legislation following consultation; and the periodic review of the effectiveness of the provisions and publication of that review.

It might be worth very briefly outlining the background to the schedule. The UK consumes a significant amount of so-called forest risk commodities. The rapid expansion in the use of these commodities is associated with global deforestation, often in contravention of local laws. This issue receives significant media scrutiny. It adds to the release of carbon dioxide, creating climate change, and generates significant loss in biodiversity. The commodities include products such as soya, cocoa, palm oil, rubber, beef and leather. Many UK-retailed foods, cleaning products and cosmetics rely on these commodities. If one looks at the small print on the back, one will see a component of these. It is fair to say that these risk commodities are also embedded in other products — for example, soya is often a constituent of animal feed.

The whole purpose of this aspect of the legislation is to make it illegal for businesses to use, in their supply chain, their production or their trade in the UK, forest risk commodities that have not been produced in compliance with applicable laws of the country in which they are grown. Globally, there is good evidence that a large proportion of forest clearance to produce these commodities is not legal. Businesses coming under the scope of this legislation will be required to operate a system to meet the due diligence requirement and report on it so that they are able to demonstrate compliance.

A UK-wide consultation on the use of forest risk commodities in commercial activity took place last November and received an overwhelmingly positive response to these proposals. Since the power to regulate companies in Northern Ireland, which would be the basis of regulating these risk commodities, is a competence of the Executive and the Assembly, it is for the Executive and the Assembly to consider this issue as part of a legislative consent motion.

The Chairperson (Mr McAleer): Thank you for that answer, Stuart.

I want to ask about the cross-border, all-island dimension to all this, even in relation to forests here. Killeter forest in my West Tyrone constituency, for example, extends right into Donegal. It seems to be very much an east-west type of amendment that we are talking about here. How does this amendment, and, indeed, the Environment Bill in general, fit with our cross-border dimension and the fact that we, who are technically outside the EU, share the island with another jurisdiction that is in the EU? Where does all of that fit with the protocol?

Mr Mills: Shall I answer that generally and then Stuart can pick up on forestry? In general, there are both *[Inaudible]* North/South Ministerial Council and, indeed, across all jurisdictions on the islands through the British-Irish Council. A lot of the withdrawal legislation specifically protects against any weakening of or interference with that, and, at a practical level, there are ongoing operational arrangements and meetings between various groups at official level. That will all continue.

The Environment Bill's effect on the protocol is that the OEP and the governance arrangements affect all aspects of the environment. You have to remember that the protocol affects only about 20 specific environmental areas, and the focus of those is on the protection of the single market rather than environmental protection per se. In the Bill, there is provision for the OEP to have discussions with bodies outside the UK that could have an impact. Again, that is meant to be aimed at the European Commission and its continued oversight of some areas through the protocol. Those arrangements are in place. They are not damaged, undermined or weakened by what is in the Bill.

Stuart, do you want to say anything about forestry specifically?

Mr Morwood: Yes. Thanks, John. The Chair gives a very good example of Killeter forest, where Forest Service-managed woodland is immediately adjacent to Coillte-managed woodland in Ireland. The marketing of round conifer logs, which *[Inaudible]* management of these forests in Northern Ireland and in Ireland, are subject to the timber regulations, which require them to be legally produced. In addition to that, Forest Service and Coillte are independently certified. That is a voluntary independent certification to say that they produce their timber not only legally but sustainably, and that is key for both Coillte and us in marketing the wood products to the processing plants and the processing plants then supplying that to the retailer. You may notice that, when you purchase some sawn timber in one of the large distributors or, indeed, in a local yard, it will have a Forest Stewardship Council (FSC) certified mark on it, and that demonstrates that it is both legal and sustainable.

The amendment to schedule 16 to the Environment Bill is trying to introduce a case of these risk commodities being produced overseas to ensure that they are at least legally produced. Timber is a good example of where the mechanisms are already in place to show that it is legally produced, and, on the island of Ireland, the major producers also have voluntary certification indicating that it is sustainably produced.

The Chairperson (Mr McAleer): Just to be clear: the article 16 amendment should not result in any differentiation in the managements of forests such as Killeter, which, whatever the jurisdiction, is all on the island of Ireland and in the same territory. Therefore, it should not create any differentiation.

Mr Morwood: It is very unlikely that timber will be identified as a risk commodity. That is simply on the basis of legislation already being in place in the North and the South to cover the legality of its harvesting, and, in addition to that, a voluntary means to ensure sustainability.

Ms Bailey: I want to look at new clause 2, which would end the requirement for authorities to assess the impacts of a project on special areas of conservation (SACs) and special protection areas (SPAs). These duties have been in place since 1992 under the EU habitats directive, and their removal would further expose the huge network of irreplaceable habitats to damage and development. My concern is that the ending of these legal duties would not only represent a real major change to planning but would be in non-compliance with international law. Are you concerned that it would mark a regression of current environmental requirements?

Mr Beattie: I am sorry — new clause 2?

Ms Bailey: Yes.

Mr Beattie: I am not sure that new clause 2 applies in Northern Ireland.

Ms Bailey: That would be good news.

Mr Beattie: It is not familiar to me. Was this at Committee Stage or in *[Inaudible?]*

Ms Bailey: Yes. If it is not applicable in Northern Ireland, that is good. You are saying that amendment No 20 is not meant to set the agenda but is simply a reactive measure. We know that there are environmental problems in Northern Ireland. I will use the ammonia issue as an example. In our SPAs and SACs, we are breaching the EU directive by 300% year-on-year. When Shared Environmental Services (SES) tried to change the critical level to 1% for planning approval, the Minister wrote to Mid and East Antrim Borough Council to confirm that the Environment Agency's critical level of between 1% and 10% should be used. However, that does not take account of the levels in the area as a whole. Therefore, if we are looking at passing amendment No 20, and the OEP must have regard to advice from the Minister, how can we get really good and proper protections in our current circumstances in Northern Ireland?

Mr Beattie: The guidance applies only to a specific range of provisions, which are those in clause 22(6) of the Bill. Those are the items that must be included in the OEP's enforcement policy. Those items are:

"how the OEP intends to determine whether failures to comply with environmental law are serious ... how the OEP intends to determine whether damage to the natural environment or to human health is serious ... how the OEP intends to exercise its enforcement functions in a way that respects the integrity of other statutory regimes ... how the OEP intends to avoid any overlap between the exercise of its functions ... and how the OEP intends to prioritise cases."

The guidance can be issued only for specific items both for the preparation and implementation of that enforcement policy. The OEP must have regard to that, but, if it has a good reason not to apply that guidance, it is perfectly within its rights to do so. It does not give the AERA Minister or the EFRA Secretary of State carte blanche to dictate what the OEP does. It is simply providing guidance, and the intention is that that would be only if the OEP's enforcement policy is significantly out of whack with what is expected or normal and what it is set up to achieve. It is noted in the delegated powers memorandum that it is intended to be a responsive measure.

Ms Bailey: Does the Minister have the power to reclassify our special areas of conservation and special protection areas?

Mr Beattie: I cannot answer that question. It is outside my area of expertise.

Mr Mills: There is nothing in the Bill, Karl.

Mr Beattie: It is certainly not in the Bill. However, I do not know whether it is in existing legislation.

Ms Bailey: Thank you.

Mr Blair: Some of my points have already been covered by Clare. I want to go a bit further on the point about the OEP following DAERA guidelines. If the OEP has to work within the confines of what is expected, surely that means it will be much more difficult to make environmental improvements, especially those that might be directed by the OEP. Therefore, that presents a challenge.

Karl has already covered some of my questions. I am concerned that there will be a lack of improvement to standards or a higher bar set if we are doing only what is expected. I assume that that means what we do already rather than making improvements in the future. Are you with me?

Mr Beattie: Yes. I am afraid that that was clumsy language on my part. I meant that, essentially, it is intended as a means of correcting a situation where the OEP has gone off on a tangent. The intention is not for the Department to set out the OEP's ambitions. The OEP will be an independent body that is free to act as it sees fit within the constraints of the legislation.

Mr Mills: Karl, is it worth saying that the Department has to produce an environmental improvement plan? It is an improvement plan, and the OEP will assess that plan for environmental improvements. The OEP will report on the environmental improvement plan annually, and that will be laid in the Assembly. The Department is obliged to respond to any recommendations that the OEP makes, and that also has to be laid in the Assembly. There will be a very transparent process to improve the environment, with legal requirements for the Department to respond. Ultimately, if the OEP concluded that any public body's compliance with environmental law was awry, it can take enforcement action. There is a recognition of improvement in that.

Mr Blair: Thanks for that. We can assess that as we go forward and as the Bill continues to make its way through Parliament. I am sure that other members and I will be paying particular attention to that.

Mrs Barton: Chair, I heard you mention something about the protocol, and then I lost the signal. I am not sure whether my question has been answered. I presume that the outworkings of the Bill will result in Northern Ireland remaining under some EU legislation. What impact will the Northern Ireland protocol have on that?

The Chairperson (Mr McAleer): Did the panel pick up on that?

Mr Beattie: I think that John's screen has frozen. Could you possibly repeat the question, please?

The Chairperson (Mr McAleer): Can you repeat the question, Rosemary?

Mrs Barton: Yes. The outworkings of the Bill will result in Northern Ireland remaining under some EU legislation. What impact will that have on the Northern Ireland protocol *[Inaudible.]*

Mr Beattie: We expect a fairly limited impact from the protocol. As John mentioned, only a limited amount of environmental legislation is listed at annex 2 of the protocol. The only specific provision in the Bill that is covered in annex 2 of the protocol is the registration, evaluation, authorisation and restriction of chemicals (REACH) regulations. Northern Ireland is required to comply with EU REACH as opposed to UK REACH regulations on chemicals. Initially, it will not have any impact at all. If, in the future, there is some sort of divergence between EU REACH and UK REACH, Northern Ireland would follow EU REACH.

Mr M Bradley: Some media coverage across the water of the Environment Bill suggests that the OEP will not have the teeth that it needs to make sure that environmental regulations and protections are adhered to. Over the years in my area, some pollution incidents have occurred because of the actions of Departments. Will the OEP have the ability to fine the Government or government bodies if they breach their responsibilities?

Amendment Nos 9 to 20 to schedule 3 to the Bill suggest to me that there are a lot of grey areas, and the word "may" is used quite a lot with regard to environmental protection. To me, "may" is a weak word that can be easily transposed to "may not". Surely that negates enforcement action to be dependent on the polluter, who the polluter is and who is in breach of environmental protections. Do you think that the word "may" could be replaced by the word "will"? It is still too open-ended for me.

Mr Mills: The first thing to say is that, when it comes to specific environmental offences or incidents, the OEP is the high-level body that will oversee other public bodies and make sure that they are doing their job. It will not be involved in the direct enforcement of environmental law or direct regulation. That is a matter for the environmental regulator, which is the Northern Ireland Environment Agency (NIEA) and various bodies in other areas. There will be various powers, including criminal sanctions, for dealing with specific incidents. As you said, the OEP will be more about making sure that organisations like the Northern Ireland Environment Agency do their job. *[Inaudible]* the OEP might be in a position to take action. The OEP will maintain that oversight.

On the use of the word "may", I did not catch the particular provision that was being referred to. Did you, Karl?

Mr Beattie: Sorry, not entirely. I am afraid that *[Inaudible]* has been a little bit difficult today.

The Chairperson (Mr McAleer): Maurice, do you want to repeat your question about the use of "may" and "will"?

Mr M Bradley: In schedule 3, a lot of the amendments that were made use the word "may" in the context of "may take action" and "may not take action". "May" is a weak word, and I would like to see it replaced by "will"; it should be "will take action" not "may take action", because "may" also means "may not". It is a small word, but it has very difficult outworkings.

Mr Mills: We will have to come back on that specific issue. Just as a general comment, the OEP is independent, so if you use the word "may" it allows it discretion to make its own judgements. If you say that it "must" do this and "must" do that, it is like the Government are dictating what it must do. That may be one answer, but we would need to look at the specific provisions.

We are aware of the concerns about independence, and I know that the chair designate of the OEP, Dame Glenys Stacey, has offered to brief the Committee. If the Committee would find it useful to hear — I hesitate to say from the horse's mouth — directly from Dame Glenys, I am sure that that can be arranged.

Mr M Bradley: Thanks very much, John. We will see what happens. I look forward to your answers. If you send them to me in writing, I would be happy enough.

The Chairperson (Mr McAleer): John, Karl and Stewart, I thank you for attending this morning, for your presentation and for taking all the questions that members posed. Thank you, and we will see you again.

Mr Mills: Thank you.