



Northern Ireland
Assembly

Committee for Agriculture, Environment and
Rural Affairs

OFFICIAL REPORT (Hansard)

Environment Bill: Department of Agriculture,
Environment and Rural Affairs

27 February 2020

NORTHERN IRELAND ASSEMBLY

Committee for Agriculture, Environment and Rural Affairs

Environment Bill: Department of Agriculture, Environment and Rural Affairs

27 February 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

Witnesses:

Mr Karl Beattie	Department of Agriculture, Environment and Rural Affairs
Ms Hazel Bleeks	Department of Agriculture, Environment and Rural Affairs
Mr John Mills	Department of Agriculture, Environment and Rural Affairs

The Chairperson (Mr McAleer): I welcome John Mills, grade 5, director of environmental policy; Hazel Bleeks, principal officer, regulatory and natural resources policy division; and Karl Beattie, grade 7, environmental team. I invite you to brief the Committee.

Mr John Mills (Department of Agriculture, Environment and Rural Affairs): Thank you, Chair. We welcome the opportunity to speak to the Committee about the Environment Bill. Apologies if some of this repeats what was said in the previous session.

The Environment Bill is a Westminster Bill which deals with devolved matters, ie the environment. Therefore, the Northern Ireland provisions of the Bill need a legislative consent motion through the Assembly. When legislative consent is sought, it is normal for the Committee to do a report prior to any debate. If there is anything that we can do to assist with that, we are happy to do so. The current position is that the Minister has sought Executive agreement to lay the legislative consent motion due to the significance of some of the provisions in the Environment Bill. As you have heard, they are quite wide-ranging. We do not really regard the Bill as controversial, and, certainly at Second Reading and in its previous life, it received all-party support. We hope to have the Executive's agreement shortly, and we intend to lay the legislative consent motion as soon as possible thereafter.

Looking at the timetable going forward, we are trying to marry up the Bill's timetable, which is obviously happening in Westminster, and the legislative consent procedure that will go through the Assembly. The Bill was introduced in Parliament in January. A very similar previous version was introduced last year, but it fell on the general election. The Second Reading of the Bill took place

yesterday and received, as I say, general support. The next stage, the detailed Committee stage in Westminster will be likely to commence sometime in March, with Report being soon thereafter, probably about the start of May, we think. Report stage is significant because that is the deadline for us to give legislative consent, if the Assembly does that. It is possible that the Committee stage may go more quickly than we think, but we hope that it will stick with the start of May.

Fitting that, then, with the Northern Ireland timescale, our current plans are based on Executive agreement and laying about the start of March. Then the Committee will do its report some time around the end of March, and debate will take place thereafter. We will have to factor in the Easter recess, but hopefully that timetable works to get legislative consent, if that is, indeed, what happens, before Report.

Turning to what the Bill is about, I should say that not all of it extends to Northern Ireland, as you have heard. There are really two main themes, to summarise it very briefly. The first provides a legal framework for environmental governance post Brexit, and the second makes provision for a range of changes to specific environmental areas such as waste water and biodiversity, as you have heard.

The first theme — environmental governance — covers environmental targets, plans, principles and oversight, and the oversight is through the Office for Environmental Protection (OEP). Having listened to the previous session, I will just make the point that the office of environmental oversight is that; it is oversight to hold Government to account in the same way as the European Commission held Governments to account. It is to be distinguished from the environmental regulator, the Northern Ireland Environment Agency (NIEA), which is, of course, part of DAERA at the moment. We can expect a small number of high-profile cases per year for the OEP to deal with, whereas the Northern Ireland Environment Agency regulates thousands of instances of approvals and permitting throughout the year. They are very distinct functions. As you have heard, we are not doing the targets, but we are involved in all the other aspects of that.

On the second theme, we are covering waste, which, as you have heard, we are quite extensively involved in. We have minor involvement in air, water and chemicals, and we are not involved in the biodiversity and conservation aspects of the Bill. The purpose of the governance provisions is to address what is referred to as the "environmental governance gap" left after we leave the EU. That involves translating environmental principles in EU treaties into domestic law and the establishment of the OEP, as I have said, to replace the Commission's role. The provisions also include the preparation and publication of environmental improvement plans, and the environmental strategy may well be the first of those in Northern Ireland.

The main purpose of the waste provisions is to require producers to pay the full net cost of managing their products at the end of life, so as to incentivise more sustainable use of resources; to allow deposit-and-return schemes to be established; to enable charges to be applied to specific single-use plastic items; to enable government to set resource efficiency product standards; and to improve the management of waste, enabling DAERA to make regulations in relation to the electronic tracking of waste. The other amendments are largely technical.

Participation has been on the basis that decisions on implementation will be a matter for devolved Ministers and the Assembly. That means that there will need to be a debate in the Assembly to commence the Northern Ireland provisions, with one minor exception on chemicals. Again, as you have heard, a discussion document on the future implementation of the plans, principles and governance elements of the Bill will be issued shortly. The Committee has received a draft of that document, and we will provide an update shortly to the Committee.

Consultation has taken place on a number of specific elements on the Bill. On extended producer responsibility and deposit-and-return schemes, there was an extensive consultation across the UK in which Northern Ireland participated last year, and there will be further consultations on that.

I will conclude by giving the Committee a very brief read-out of the debate yesterday in the House of Commons. As I said, the Bill got through unopposed. Much of the debate, of course, centred on matters affecting England, particularly air quality and tree planting. On the Bill's provisions that affect Northern Ireland, the main issues raised were the independence and powers of the OEP, the requirement to have due regard to environmental principles — the angle there probably being that the Bill is not strong enough in both respects — and the fact that there is no non-regression clause for Northern Ireland.

We were going to offer to take you through the details of the Bill, if you wanted, but you have already had a session on that, so we are happy to provide more detail or take questions.

The Chairperson (Mr McAleer): OK. Thank you very much for that briefing, John. A number of members have signalled that they want to ask some questions. We are trying to grab a lot of information from the tabled papers and our packs.

In relation to the non-regression, we noted from reading some of the narrative relating to the Bill that there had not been a specific consultation on the Bill and that previous consultations had been relied upon. The pre-legislative scrutiny report by the Department for Environment, Food and Rural Affairs (DEFRA) in 2019 made the point that there was no equivalence to the protections that were provided by the EU and that there was significant regression. Obviously, that causes concern for here, particularly given that we have an Irish protocol relating to those matters. What is the Department's opinion on that?

Mr Mills: There has been a non-regression clause put in for England. We were not offered the opportunity to participate in that; it is, at the end of the day, DEFRA's Bill. So the short answer is that there is no non-regression clause for Northern Ireland.

The Chairperson (Mr McAleer): What are the implications of that for the Irish protocol?

Mr Mills: The protocol, as you have heard, requires adherence to about 300-odd regulations in annexes 2 and 4. Northern Ireland will need to adhere to those; that is what the protocol says. Those regulations are largely about facilitating free trade in goods, and it is a requirement that Northern Ireland follows those regulations.

The Chairperson (Mr McAleer): How does the fact that emissions and waste know no boundaries sit with all our strand two arrangements?

Mr Mills: There is nothing in the Bill that contradicts the requirements in the Good Friday Agreement such as the North/South Ministerial Council and other arrangements.

Mr McGuigan: Chair, you asked one of the questions that I was going to ask.

The Chairperson (Mr McAleer): Apologies.

Mr McGuigan: I will keep my points general, and maybe I will be allowed back in later to ask some specifics. You said that the Bill is not deemed to be controversial, and you also mentioned at the finish some of the comments in the Westminster debate yesterday about weakening current provisions. What is your assessment of the legislation in regard to the North? Will the Bill weaken environmental protections that we have within the EU? Is it going to weaken our potential to strengthen environmental laws in the future? On the way here, I heard about the survey out today on the 1.3 million bits of waste along our roads and in the countryside. There was a bit of commentary about current EU legislation that would have a positive impact on that is not now part of our law. Can you factor that into your response?

Following on from the Chair — it is complicated, and I understand that we may not be at the point where we can answer some of these questions — we are talking about the OEP, but we also have the protocol, and we are talking about the potential for regulatory divergence between here and across the water. In your view — I listen to British politicians talking about the withdrawal agreement and the political agreement, and their assessment of things that they can now do is not my assessment of what they can do — what takes precedence with regard to the protocol for this island and any potential OEP? I ask that so that we have some semblance of knowledge of where we are at in future.

In relation to Scotland and Wales taking forward their own Bills, has the Minister any thought of producing a Bill for the North? In your view, would that be a sensible approach to take?

Mr Mills: I will try to pick up on those, and maybe my colleagues will correct me if I have missed some of the things.

Will this Bill weaken environmental protection here? There are people who have the view that leaving the EU will weaken environmental protection here. On the other hand, the Government have said that

they will maintain environmental standards. That is the issue. There is nothing in the Bill that will weaken environmental protections. What it will do is maintain, as far as possible, some of the things that were in the EU that we would otherwise lose. The environmental principles in EU treaties have to be observed. When we leave those treaties, if the principles are not reinstated, as it were, into domestic law by the Bill, we will lose them. Similarly, we have oversight through the Commission and the European Court of Justice, and if we did not have an OEP to replace that, we would again lose that. People say, "Are these things strong enough?". Well, certainly an OEP will not be able to impose fines for infraction as the Commission or the European Court of Justice can, but then that is a mechanism outside the state, so it could do that. Ultimately, an OEP cannot ever be as independent as the Commission would have been.

On the protocol, I hesitate to get drawn into comments on the meaning of the protocol. We are seeing negotiating positions being set out and committees being set up that are supposed to deal with the interpretation of how the protocol works. The bottom line about the force of the protocol is that the European Union (Withdrawal Agreement) Act 2020 that went through Parliament in January says that the agreement, of which the protocol is part, is part of UK law. So the protocol is law, and it says that, as far as Northern Ireland is concerned, the regulations identified in the protocol have to be obeyed. Now, some work will have to be done to see how that is interpreted. I cannot comment on that. That work is ongoing.

As for Scotland and Wales doing their own Bills on environmental governance, they chose to do that. Interestingly, Wales consulted, and they got quite a big kickback saying that they would have been better going with the OEP. So there is support for the measures in other jurisdictions.

Is the Minister thinking of bringing forward a Bill as well? I think that the Minister's view is, "This is enough to be getting on with at the moment. Let's get this in place". If the Bill gets legislative consent and is implemented, it will not prevent Northern Ireland from making changes to it or doing things in addition that it wants to do. If the Bill does not go forward, it is unlikely that there will be governance arrangements in place in time; you may end up with a gap at the end of this year where we do not have environmental principles or oversight.

The Chairperson (Mr McAleer): I note that the Welsh have expressed concern about the OEP around the role of the devolved Administrations. I also note that there is provision for the OEP to be extended here, and it is actually the Secretary of State who would appoint members to it. What would be the involvement of the Assembly here in relation to the OEP? What is DAERA's position on it?

Mr Mills: On appointments?

The Chairperson (Mr McAleer): On the OEP.

Mr Mills: Do you want to get that, Hazel?

Ms Hazel Bleeks (Department of Agriculture, Environment and Rural Affairs): That is something that we flagged up with DEFRA. If the OEP is to be extended here and its remit is to extend to Northern Ireland, we want to be sure that it is not viewed as just an English body operating in Northern Ireland. We said that there needed to be Northern Ireland representation, that the Assembly needed to have a role in certain aspects and that there would be accountability in Northern Ireland for the OEP's functions here. Assuming that we decide to extend it to Northern Ireland, the chair of the OEP will have to be appointed jointly by the DEFRA Secretary of State and by DAERA. There is a role there. We have also ensured that there is provision in the Bill for a specific Northern Ireland member to be appointed to the OEP board to ensure that Northern Ireland's interests are represented adequately. That Northern Ireland member would be appointed by DAERA; they would have to consult the DEFRA Secretary of State and the chair of the OEP, but the appointment would actually be by DAERA. DAERA would also be consulted on the appointment of all the other non-executive members of the board. In terms of accountability, the OEP would have to lay its strategy, annual reports and certified annual accounts before the Northern Ireland Assembly, as well as before Parliament.

The Chairperson (Mr McAleer): Thank you, Hazel. Phil, did you want to ask something quickly?

Mr McGuigan: Other questions were raised earlier about the OEP in terms of funding. Will the North be expected to fund it? Does the money come out of the block grant? You asked some of the accountability questions that I was going to ask, but what about funding?

Ms Bleeks: To be fair, we are still at a very early in that process; at this stage, we simply do not know for sure whether the OEP will be extended to here. That will be a matter for the Assembly. We have not gone into that detail with DEFRA. As far as we have got is that, if it is extended here, Northern Ireland will be expected to make a contribution to the funding of the OEP. We just do not know at this stage how that would work or the amount that we would be expected to contribute. That is something that would have to be looked at if we decided to go ahead.

Mr Blair: Thank you, John and your colleagues, for being here and for what we have heard so far. I have two or three questions. Some of it has been touched on, so I will try to go into it from a different angle or with some different lines of questioning. What I hear of the OEP, with the potential to have one Northern Ireland person appointed to a body that sits elsewhere in these islands, is a long way short of independent environmental protection. It is something not that we were promised but that we promised it in a cross-party agreement at the start of this year, and it is something that some of us are determined to deliver on. I have to emphasise as strongly as I can that that was explained in the Bill and it was outside the control of DAERA to do the Bill otherwise. What is there currently is some way short of where we need to be in relation to independent environmental protection. In that regard, what preparations are being made to establish an independent environmental protection agency that would have to, one would have thought, work alongside whatever structures emanate from the Bill? Specifically, what ministerial directives or objectives are being set in relation to the establishment of an independent protection agency in Northern Ireland?

This is a more general question. On the business of the deposit-and-return scheme for plastic products, is it not the case that these conversations are very similar to the conversations that took place when the plastic bag levy was introduced? I referenced earlier — I think that you were here — that, in other places, they have introduced schemes that have brought massive improvements in plastics recycling. Stemming from that, what analysis is the Department carrying out of international actions in relation to this and what success or otherwise there has been in those instances?

My third and final question has been touched on by other members, Philip and the Chair in particular. What preparation is being made for readiness for the protocol, and what ministerial action has been taken to ensure that we deliver the preparation for the protocol, given the time frame involved? Is there a time frame that can be published and shared with us so that the Committee, and the Assembly, generally knows where we are in relation towards progress before we reach the end of the Bill?

Mr Mills: You referenced the OEP as being elsewhere in these islands. Some of the implementation detail has not been decided yet and would not be in the Bill. The Bill just establishes the legal framework, I guess, for this. It may be that there is a Northern Ireland office and that the OEP is not elsewhere in these islands. As Hazel said, it will be Northern Ireland's accountability body as well as England's, and there will be a cost to that.

On the objectives for the independent environmental regulator, which is what I take it you were talking about — the role of the NIEA — advice is going to the Minister. The Minister might say that the agreement says that that will be considered as part of a Programme for Government. I think that it is accepted that, around the establishment of an independent agency, there would need to be some scoping of the costs, of the timescale to make legislative changes, personnel changes and so on. Inevitably, there would have to be that work.

We do not see the relationship between the OEP and the potentially independent agency as being problematic, because you have to remember that, elsewhere in the jurisdictions of Wales and England, there is an independent agency, and the OEP will fit with England anyway. Sorry if I have missed anything.

On the deposit-return scheme (DRS), you are absolutely right to point to those examples. We have looked to Germany, and, indeed, some of the people in my division went over to see reverse vending machines and how the system works there, where there is very high recycling rates for plastics.

It is generally accepted that DRS is the only way of achieving targets of 80% or 90%. Obviously, our current rate of recycling is 50%, which is a great achievement, incidentally, over the past decade to achieve that European target.

I simply cannot answer the questions about publishing time frames for the protocol or what steps have been taken. DAERA has a central body that does that. Obviously, we will note your questions and take them back.

Ms Bailey: Thank you very much for the presentation. I completely understand what you are saying: that the Bill is not viewed as controversial, that it is overarching, and that we can fill in regulations and gaps along the way. Where it starts to become a bit politically controversial for me is that the Bill contains no legally binding targets for Northern Ireland. While we have the Ireland/Northern Ireland protocol in place, we hear reports that the Prime Minister and his Department are actively looking at ways to get around it.

In the Bill, we have nothing specific for Northern Ireland, although we have an international treaty in the form of the protocol and a political system willing to circumnavigate it as far as possible. That is where it gets controversial for me, and the scrutiny element becomes critical.

We could set up the OEP, but we will be asked for legislative consent for it while we are not protected by it. The political system is willing to override any protections that we have outside it. When the OEP is set up and operational in Northern Ireland, we can shape it if it is going to happen. Where there are any discussions between the Department and the Department of the Environment, Fisheries and Rural Affairs (DEFRA) to try to include binding targets, commitments to uphold the protocol or implement and establish the independent environmental protection agency, as stated in the New Decade, New Approach deal?

Mr Mills: Perhaps somebody will add to this. Yes, we have raised with DEFRA the question of how the role of the OEP might dovetail or work with the Northern Ireland protocol. That work is ongoing. We discussed with DEFRA the question of the independent environmental regulator, NIEA's role, if you like. I have to say that, when we were developing the Bill, our line was that it is not a matter that officials would want to go near. It was one for elected representatives. Why did we not do the targets, anyone? Again, there were similar reasons, I think, but, Karl, if you can say something.

Mr Karl Beattie (Department of Agriculture, Environment and Rural Affairs): It predates my involvement with the Bill, but, yes, as I understand it, there was concern about officials taking a policy direction during a period of suspension. The other thing was that, at that time, England had its 25-year environment plan, and a lot of those targets flowed out of it. We did not, and do not, have a similar document, but we are working towards our environment strategy for Northern Ireland, which is likely to become our first environmental improvement plan, and targets will have to flow out of that. We recognised, in developing it, that we need to take a different look at how we measure environmental protection and improvement. We will be looking at that as part of the strategy and then, if legislation is needed beyond that, we will look at it then.

Ms Bailey: To follow up on my question, we are putting together our own environment strategy. Have we a timeline for that? Do we know when the strategy will be produced?

Mr Beattie: The consultation document went out before the institutions returned. In the absence of a Minister, we felt it best not to put policy proposals in it. The document asked stakeholders what should be in the strategy and how ambitious we should be. We asked for their "big ideas", as we put it.

That consultation closed on 5 February. The response rate of approximately 2,500 was very high —

Ms Bailey: Good.

Mr Beattie: — and exceeded our expectations. Those responses are being analysed. The Minister has stated that the environment strategy is one of his priorities. As for a timeline, we do not know that yet, but the consultation is actively resourced and is being worked on.

Ms Bailey: Is the Department sharing those responses with other Departments or even interdepartmental bodies to inform other published strategies, for example, the energy strategy?

Mr Beattie: I do not know the specific answer to that. We have had a lot of discussions with other Departments about what is being done to join things up as best we can.

Mr Mills: I cannot think why we would not be doing that, to be honest. Last week, I was given a presentation at the opening of the consultation on the energy strategy. We then had a future generations meeting on climate change, chaired by the Minister, on the theme of energy. The energy strategy was part of that, so we are quite well joined up.

Ms Bailey: General data protection regulation (GDPR) is what I am hearing. I will take a step back. We are trying to put together an environment strategy that has no timeline and which has had a huge response, yet we are to be asked to give legislative consent to a Bill that does not protect us in the hope that we will have a strategy at some time in the future when we can start to fill in the gaps, with no political will or certainty within that.

Mr Beattie: The Assembly granting legislative consent does not tie us in any way to implementing any of the devolved provisions in the Bill. Almost all of them are subject to commencement order that will be subject to the draft affirmative procedure in the Assembly.

There are a lot of enabling powers in the Bill, so if the regulations were being made by DAERA, they would also go through Committee scrutiny and the Assembly. Granting legislative consent does not sign anything away; we still have control over what happens with the implementation of all the provisions.

One provision is not commenced by commencement order. However, even that would require the consent of DAERA and the Department for the Economy to make regulations.

Ms Bleeks: If you take the bit in the Bill about environmental improvement plans, which is the bit that relates to the strategy, even if legislative consent is granted and the Assembly decides that it wants to implement those provisions and put the strategy on a legislative footing — wanting to introduce the provisions here — it could choose not to do that until the strategy was fully developed and its targets in place.

There is nothing to stop the Assembly making legislation to enshrine those targets. There is nothing in the Bill to prevent that.

Ms Bailey: I understand that. Politics in the background, of course.

Mrs Barton: Do you have the infrastructure to introduce the Bill? You talk about the electronic tagging of devices on waste products and that type of thing.

Mr Mills: That is a good follow-up question to what we have just discussed. Do we have it now? The answer is no. The Bill is, largely, a framework. We do not have the infrastructure on electronic tracking at the moment. We have a collection of paper-based systems that are not complete. Hopefully, the Bill will give us powers to replace that with a comprehensive electronic-tracking system that will allow us to follow waste wherever it goes. It is not in law, but there is a project at the moment. We are getting down to the selected bidder to provide the system, but it will be 2021-22 at the earliest before that system is in place.

I will not go through all the provision, but, similarly, there are powers there to allow us to reform or extend producer-responsibility schemes to reduce packaging. There will be another round of consultations on them and on the deposit-and-return scheme. Those will be in 2022-23. Yes, some of it is really a framework.

Mrs Barton: What about dealing with illegal waste?

Mr Mills: The Environment Agency has measures to deal with illegal waste. Our operational colleagues in the agency will attempt to enforce and prevent that.

Mrs Barton: Lastly, have you given any thought to the cost of those resources?

Mr Mills: Yes. The Bill covers a lot of ground. On things like the establishment of the OEP, as Hazel said, there will be a cost to Northern Ireland, although we do not know what that is yet. The deposit-and-return scheme and the extended producer responsibilities will be paid for by industry; by those who, if you like, create the pollution problem. That will have financial implications, but it will not have Government funding.

Incidentally, on enforcement and tackling crime, the Bill has one or two measures — they are not extensive — to enable a wider range of penalties to be used by the agency. It is not one of the main features of the Bill.

Mr McGuigan: I have a quick question on some of the issues that Clare was talking about with regard to the environmental strategy's evolving into an environmental plan. Maybe I read it incorrectly, but I thought that I had read somewhere that, within a year of its becoming law, there had to be an environmental plan. If that is right, how does the strategy evolve into a plan? Is there more consultation, or does one literally just become the other?

Mr Beattie: The time period referred to is measured from when the provision is commenced, so we would not seek to commence that until we were in a position to publish a strategy. That having been said, we would expect to do it sooner rather than later.

Mr McGuigan: In the process, do we just change the title? What happens?

Mr Beattie: We do not even need to change the title: it is just redesignated as our environmental improvement plan.

Mr Blair: Two issues arise from the broader discussion and additional questions. I recall that, John, you said that you would expect that, at current rates, an OEP would deal with one or two high-profile cases a year. Can you give as detailed an answer as possible: what constitutes a high-profile case? I would draw a comparison, for example, with a concern that I have raised many times in writing to the Department and the Minister, and hope to raise soon on the Floor of the Assembly, which is the proportionality between pollution and the fines that are imposed on those who pollute, and also the rates of detection and prosecution in that regard. What is "high profile"? Is it Mobuoy, or is it below or above Mobuoy, for example?

Going back to the costs of the duties being imposed on us, which Rosemary quite rightly raised, through the Bill and other factors, and EU exit, it is probably worth making the point that the Minister released information just a couple of days ago about the provision of £2.2 million for environmental schemes coming from the plastic bag levy. It may be that costs are recouped and community engagement nurtured as well from moneys brought back from any deposit-and-return scheme.

Mr Mills: Yes. On the last point, again, we are approaching a second round of consultation, so I cannot answer that, but, certainly, the plastic carrier bag levy provides a lot of funding for environmental projects.

What is "high profile"? Well, Mobuoy certainly is. However, when I say "high profile" — they are probably the wrong words — I am looking at the number of EU infractions that we have at the moment. I am also looking at the fact that we would get one or two a year, and we probably have half a dozen or a few more outstanding over a number of years. By "high profile", I meant that they are in that category, such as the harbour porpoises one that is ongoing.

Mr Blair: "High level"?

Mr Mills: Yes, "high level" is a better term than "high profile".

Ms Bleeks: It is important to make a distinction between the types of cases. The NIEA takes enforcement cases such as causing a pollution incident, for example, whereas OEP takes cases that were quite distinct from that and which were at a much higher level.

Mr Blair: That, in turn, demonstrates clearly the need for an environmental protection/enforcement agency to do the day-and-daily protection duties as best it can.

The Chairperson (Mr McAleer): Parallel to the work that we are doing on the Environment Bill, we are also considering the Agriculture Bill and its implications for here. I read about exchanges yesterday between George Eustice and the National Farmers Union in Britain, and from some of the evidence that we have picked up here, it looks suspiciously as though Britain does not plan to include minimum food standards in its Agriculture Bill, that payments to farmers will be for public goods and they have very strong environmental targets.

Some in the farming community, and here as well — because that is a large export market for here — feel that Britain is, more or less, going to sell out the farmers as far as food production is concerned and import from the rest of the world, perhaps from areas where animal welfare and environmental

standards are far lower. They want to improve their own environmental targets but have a far higher carbon footprint in terms of entering world trade deals with countries with lower standards.

What are the implications of the Environment Bill for the Agriculture Bill and, indeed, for farmers?

Mr Mills: I read those stories as well, but I do not have anything to add to them. The OEP will oversee all actions, so that could impact on agriculture. If agriculture affects the environment, the principles would apply to all Departments, so that will apply to DAERA with its role in agriculture at that level. We have looked at rural proofing as far as we need to at a high level, and we have not identified any particular impacts for agriculture.

Mr Irwin: You are all very welcome. Yes, it is important that the environment strategy and all the rest be replaced, but we have been a member of Europe for 50 years. During that time, millions of tons were dumped at Mobuoy. Some of it was imported, and a lot of it came from another jurisdiction. No matter what is put in place, there are those who are prepared to break the law, and there is a lot of money to be made from doing so. I am therefore not sure whether anything can be built into legislation to prevent dumping. Guys who made millions from it go to court and are fined £10,000. There is no real deterrent for people who are prepared to break the rules. It is all very well making rules that are adhered to in a small way but not adhered to in other ways. When people are brought to court for something as major as dumping, I am not so sure whether anything can be built into legislation to deal with them properly and not just give them a slap on the wrist. That is what has happened in the past. As I said, they make absolute millions out of dumping, yet the fine is £10,000. You can put in place all the strategies in the world, but, if you do not deal with those who break the rules, you have a problem.

Mr Mills: At the end of the day, the Bill is a framework. That is down to a variety of factors, such as enforcement. A lot of my operational colleagues would not disagree with you on the scale of fines, but the Bill does not address that. Some of the waste provisions do, however, support a direction in which more and more recycling is done so that there is less waste. If waste has a value — say that a plastic drinks bottle can be left back for 10p, 20p or whatever — it is less likely to be, one, littered and, two, dumped.

Mr Irwin: Absolutely. That is good, and I am fully behind it. We need to do the best that we can. It just seems to me, however, that there are those who will break the rules and get away with dumping.

Mr Beattie: It is difficult for us to legislate for the penalties that are imposed in court, because the judiciary is independent. A lot of environmental law has unlimited fines for transgressions, but it is a matter for the courts to decide what fines they impose.

Mr Irwin: I understand that, but the fines seem so trivial in some situations.

Mr Beattie: Absolutely.

Ms Bailey: Penalties need to be tougher, I agree.

Mr Irwin: Especially for those who are making millions from breaking the rules.

Ms Bailey: This is legislation that has come from Westminster, and we will implement it under the statutory rules process. However, primary legislation would be stronger. Is the Department working on any type of primary legislation for Northern Ireland?

Mr Mills: No. The Environment Bill is primary legislation as well.

Ms Bailey: When we implement it for Northern Ireland, that is done by statutory rule.

Mr Mills: As has been said, a lot of the Bill is framework. To give a crude definition, it states that DAERA, by regulations, as you say, can set up an electronic tracking system. That will be done by statutory rules of Northern Ireland. There will be an affirmative resolution debate on the regulations in the Assembly to get them through, but there will be public consultation beforehand anyway. If the Assembly were to give legislative consent to the provisions in the Bill but then said in the future, "Actually, we do not like certain aspects", primary legislation would be required, but Northern Ireland primary legislation can amend the provisions in the Bill anyway.

Ms Bailey: Primary legislation is not currently being looked at or worked on.

Mr Mills: The Fisheries Bill and the Agriculture Bill are both going through, and there is the agricultural payments Act as well. Can either of you think of any other primary legislation?

Mr Beattie: There is not any Northern Ireland primary legislation, what with the institutions just being back up and running. As to what is planned, we do not know.

Ms Bailey: OK. There is no sunset clause in here for us. If we are minded to put together primary legislation, there is no sunset clause in the Bill to encourage us to do so: is there?

Mr Mills: There is not, but there would be nothing to stop the Assembly introducing the provisions one day and changing them the next.

Ms Bailey: OK. The Bill got its Second Reading yesterday in the House of Commons. Is there still time to amend the Bill at Westminster?

Mr Mills: Yes. If the Government agree.

Ms Bailey: Can we add a sunset clause when the Bill comes to the Assembly for legislative consent, or does that have to be done at Westminster?

Mr Mills: We would have to persuade DEFRA to make changes to the Bill. At the moment, it is its Bill.

Ms Bailey: Is that still possible?

Mr Mills: It is possible to do it. Whether it is possible to persuade DEFRA to do it is a different matter.

Ms Bailey: There is still time, however.

Mr Mills: There is still time. Committee Stage is the main stage, and that will happen in March.

Ms Bailey: How long will it be before the Bill comes before the Assembly? What is the last point at which we can debate it here?

Mr Beattie: It is normal for us to grant legislative consent in time for Report Stage, which will be in early May. That having been said, it is technically possible to grant it after May, but that provision is generally there for any amendments and new clauses that are then added to the Bill, as legislative consent would also be required before they could be included in the Bill.

Yes, there is time. Most of the amendments will be made at Committee Stage, which will start in the middle of March.

Mr Mills: For a few weeks, Karl?

Mr Beattie: Committee Stage is six to eight weeks, but it will probably be six weeks.

The Chairperson (Mr McAleer): As we did with the Hansard report of our meeting on the Agriculture Bill, perhaps we could forward the Hansard report of this Committee meeting to the Environment, Food and Rural Affairs Committee at Westminster, if that would be in order. We would at least be feeding this Committee's thoughts into the debate.

Ms Bailey: Great. Thank you.

Mr M Bradley: It has already been said that the Bill could be used as a yardstick for our own environmental improvement plan, for which, thankfully, there is good cross-party support. The Chairman raised the valid point that it dovetails with agriculture, especially on the increase in phosphorus in our waterways.

William introduced the point that fines for polluters are not high enough. After a pollution incident, our rivers have to be cleaned and restocked. People who pollute them in the first instance should also have a duty of care to improve the riverbank, rivers and riverbeds. Another deterrent to them polluting the river would be them having to undertake environmental improvements as part of their fine. Those are a few things that we can perhaps factor in.

The Chairperson (Mr McAleer): Do you want to respond to that?

Mr Mills: I do not know what the maximum penalties are for polluting rivers or what the law is on making people carry out restoration.

Mr Beattie: We already have quite strong legislation in that regard in the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009. It is exactly what they were introduced for: pollution to waterways or land or if the pollution affects health. The regulations contain a requirement to restore or, if the polluted area cannot be restored because the damage is irreversible, to undertake compensatory remediation elsewhere to improve another area. The regulations are generally intended to be used in fairly high-level cases, but it is very strong legislation that came out of a European directive.

The Chairperson (Mr McAleer): Thank you very much for coming. Sorry, Philip.

Mr McGuigan: I have come in twice already, so I was waiting until the end.

A number of us have asked about the relationship between the OEP and the protocol. I accept that we were given an answer, but, if you were happy enough, it would do no harm for the Committee to ask for a written briefing so that we have something in writing.

The Chairperson (Mr McAleer): Absolutely. It could also deal with the issue of regression, which was flagged up in Wales as well. Is that fair enough?

Mr McGuigan: Yes.

The Chairperson (Mr McAleer): A good suggestion. Does everyone agree?

Members indicated assent.

The Chairperson (Mr McAleer): Thank you very much, Hazel, John and Karl, for coming here this morning. No doubt we will see you in the time ahead.

Mr Mills: Thank you.

The Chairperson (Mr McAleer): I am sorry. Before you leave, there are a couple of other things that we should, perhaps, pick up on. We can do this in writing. They concern the Executive subcommittee on EU exit. We want to know what role it has in decision-making and what recommendations it can make to the Assembly on which clauses it should consent to. Do you want to do deal with that now? Terms of reference for the Executive subcommittee on EU exit have been laid in the Assembly. Are you aware of whether the Environment Bill has been scrutinised or seen by the Executive subcommittee?

Mr Mills: It has not.

The Chairperson (Mr McAleer): It has not. That is something that we can pick up on again. Thank you very much.