



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Environmental Better Regulation Bill: DOE
Officials

5 March 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mrs Pam Cameron (Deputy Chairperson)
Mr Cathal Boylan
Mr Colum Eastwood
Mr Alban Maginness
Mr Ian McCrea
Mr Ian Milne
Lord Morrow
Mr Peter Weir

Witnesses:

Mr Dave Foster	Department of the Environment
Mr Robert Gray	Department of the Environment
Mr Sandy Truesdale	Department of the Environment

The Chairperson (Ms Lo): I welcome Dave Foster, director of the regulatory and natural resources policy division, Sandy Truesdale, assistant director, and Robert Gray, the Bill lead in the Department's policy division. We have about half an hour for this session, if you could brief us for about 10 minutes, please.

Mr Dave Foster (Department of the Environment): OK. Thank you, Chair and Committee, for inviting us this morning to provide an informal briefing on the Environmental Better Regulation Bill. I am Dave Foster, the director of the regulatory and natural resources policy division. This is Robert Gray and Sandy Truesdale —

The Chairperson (Ms Lo): Sorry, I just remind everyone that this is being recorded in Hansard.

Mr D Foster: With your permission, I propose to ask Robert to provide an outline briefing of the draft Bill, and then we will be very happy to take any questions that you may have, recognising, of course, that you will have further questions once the Bill is formally introduced to the Assembly and goes through the various stages.

Before I hand over to Robert, I will just make one or two introductory remarks to set the context for the Bill. On his appointment, the Minister made it very clear that he was adopting a key theme for his time in office of a better environment and a stronger economy. We can no longer afford to consider either the environment or the economy in isolation. It is therefore vital that we grasp the many opportunities that arise in thinking about the environment and the economy in tandem. In particular, the Minister believes that the Department needs to think and work differently to support innovation and prosperity.

With that in mind, we need an environmental regulatory system that goes beyond being fit for purpose and actively supports and recognises responsible business and its need for swift, well-informed decisions. Regulatory reform is high in the priorities of the Minister. Also, the work of DOE's regulatory reform initiative is recognised at Executive level, not least within the Northern Ireland economic strategy. In particular, the strategy's action plan commits DOE to develop proposals for primary legislation to improve environmental regulation and reduce the regulatory burden on businesses.

A good, modern regulatory system in the 21st century should ensure two key things: if you comply with environmental and heritage laws, you should have less burdensome regulation; and, if you regularly fail to comply with the environment laws, you should get more attention from the regulator, the Northern Ireland Environment Agency (NIEA).

The draft Environmental Better Regulation Bill was designed to support that outcome by providing the capacity for DOE to introduce a new streamlined environmental permitting regime and by providing the opportunity to provide more uniform inspection powers in particular. It will also provide for more streamlined regulatory systems in relation to air quality and drinking water.

Just before I hand across to Robert, I would like to highlight that the Bill is not the only thing that the Department is doing in relation to improving environmental regulation. There are things that we are doing outside of the legislation. The Bill is part of a wider departmental regulatory transformation programme, which is aimed at reducing the burden of regulation on businesses. That in itself has evolved from 2008, when NIEA published its first better regulation programme.

For example, members might be aware that, over the past 12 months, NIEA has been developing prosperity agreements with businesses to support innovation in resource efficiency and environmental performance. The first of those is signed by the Minister and the managing directors of Linergy and Linden Foods. The aim of those new prosperity agreements is to help to reinvent NIEA's relationship with the business community. NIEA is also undertaking a number of initiatives in the area of customer relations, including the appointment of contact points in NIEA for its key customers and partners, with the aim of ensuring that there is a more strategic and joined-up relationship between the agency and its main business and NGO customers.

As part of the regulatory transformation programme in the Department, the agency has adopted a new operating principle, that NIEA and the Department will be make it easy for good performance and difficult for poor performance. The aim of the draft Environmental Better Regulation Bill is to provide the policy and legislation framework to enable NIEA to make good on that operating principle. I will now hand over to Robert to explain the draft Bill in more detail.

Mr Robert Gray (Department of the Environment): The Bill is one important element of the Department's regulatory transformation programme, and I want to work through the outline paper that has been provided. We are trying to deal with the fact that businesses find environmental regulations complex, inflexible, incoherent and time-consuming. It has become increasingly burdensome for businesses to understand environmental law and, equally important, for regulators to implement it. Following consultation, policy development work and engagement with stakeholders, environmental permitting and powers of entry and investigation are key areas of environmental law that have been identified as a priority for legislative reform.

I will elaborate a little on how we have got to this point. The main elements of this Bill have their origins in a report by the Northern Ireland Law Commission that scoped out environmental law and identified environmental permitting and powers of entry as areas that would benefit from legislative reform. In the previous Assembly mandate, an environmental better regulation White Paper issued for consultation, and it received widespread support from stakeholders. That was followed up with a consultation on policy proposals for this Bill. The Committee may recall that, in September 2013, it was content to note the synopsis of the responses to that public consultation on the key policy proposals in relation to environmental permitting, powers of entry and associated powers. The Committee was also content for the Department to make the policy.

The main purpose of this Bill is to provide enabling powers to allow subsequent regulations to be made by the Department for protecting and improving the environment. Essentially, in respect of those elements, it is what we would call a skeleton Bill. The meat is put on the bones of that skeleton in the subordinate legislation programme that will follow. The regulations to be made under the Bill will introduce an environmental permitting system and rationalise powers of entry.

The Bill makes amendments to the Clean Air (Northern Ireland) Order 1981 to provide for a new, streamlined method for listing authorised fuels and exempted fireplaces for use in a smoke control area. It also contains amendments to The Environment (Northern Ireland) Order 2002 to remove the requirement to make further assessments of air quality in air quality management areas. It amends The Water and Sewerage Services (Northern Ireland) Order 2006, to transfer responsibility for the regulation of drinking water quality for public supplies from the Department for Regional Development to the Department of the Environment.

The policy intention behind this Bill aligns with the Executive's Programme for Government priority of growing a sustainable economy and investing in the future by having a simpler, harmonised and easier-to-understand regulatory framework. The Bill also supports the Executive's initiative of Building a Prosperous and United Community, which refers to the need to reduce regulatory burdens and red tape for businesses. I think that you mentioned at the beginning that we aim to introduce this Bill to the Assembly by the end of March 2015. That is still our target.

I have referred to the term "environmental permitting"; what do we actually mean by that? I will briefly summarise it. A wide range of activities that involve the management of waste or cause emissions that have the potential to pollute the air, water or land must have a permit or a licence issued by the Department or, in some respects, a district council, in order to carry on those operations. Currently, there are separate regimes with different sets of regulatory controls governing waste, pollution prevention and control, water, and radioactive substances. Regulations to be made under this Bill will enable the Department to bring forward an environmental permitting system, whereby the existing separate regimes are integrated into a single regulatory framework with common procedures, leading to greater consistency.

The other key element of the Bill concerns powers of entry. Environmental powers of entry and their associated powers fulfil many different purposes and functions, ranging from routine compliance inspection to investigative powers. The powers allow an authorised person to carry out inspections on land and property, take samples, and search and seize items during investigation. What we are trying to do with this Bill is reduce the complexity of environmental legislation in respect of permitting and powers of entry and associated powers, in order to lessen regulatory burdens.

As I said, the Bill is a key element of the Department's regulatory transformation programme. The overall aim of the programme is to provide a more streamlined and effective regulatory system for business and regulate it so that businesses that deliberately breach environmental laws will find regulation to be direct, robust and expensive; they are the worst performers. Businesses that occasionally breach environmental laws through lack of understanding will find regulation to be supportive and effective in getting them into compliance; they are regarded as the middle performers. Businesses that regularly comply with environmental laws will find regulation to be quick and easy; they are the best performers. Businesses that want to go beyond compliance, to unlock economic opportunities through business innovation, will be supported and encouraged; they are the visionaries.

I will give the Committee a very brief outline of Parts 1 to 5 of the Bill. Part 1 is about environmental permitting. The current system of regulatory control in respect of environmental permitting contains elements of duplication. It is confusing for industry, regulators and others and may act as a barrier to entry for new businesses. It is necessary to rationalise the permitting regime to simplify and reduce the administrative costs of environmental regulation while continuing to achieve intended outcomes. The regulations to be made under Part 1 of the Bill will provide an environmental permitting regime to replace the current system with a simpler, risk-based approach to permitting, supported by common administrative procedures. Regulated activities may require a bespoke permit, a standard permit or a registration, or may be subject to general environmental rules, depending on the complexity of the activity and the environmental risks that it poses. The regulations will provide a common set of environmental permitting procedures to replace several regimes under existing arrangements and will allow for a single permit to cover multiple activities on a site, where appropriate. That will simplify compliance assessment arrangements and will, in some cases, reduce the number of inspections required. The scope of the new permitting regime will be subject to consultation as the regulations are developed. The regulations to be made under the Bill in relation to permitting will not change the substantive requirements of permits, but they will reduce the administration necessary to deliver those requirements. The benefits to business will, therefore, generally be expressed in terms of savings in administrative costs. This approach has the additional benefit of reducing the risk of long-term serious non-compliance going undetected and has strong similarities with good practice in other countries, such as the Netherlands, Australia, England and Wales.

I will now turn to Part 2 of the Bill, regarding powers of entry and associated powers. All elements of environmental law contain provisions concerning powers of entry, which are quite significant powers. They are a valuable tool for environmental regulators in their enforcement, inspection and monitoring activities. They allow environmental regulators to enter premises and conduct actions, such as inspections, searches, and collecting and retaining evidence. Businesses may have their activities regulated by different areas of environmental law, with differing powers of entry and investigation. This plethora of powers of entry across the body of environmental law makes it difficult for individual businesses to understand the law and perhaps also for regulators to implement the law.

Part 2 of the Bill requires a review of powers of entry and associated powers to be completed by the Department. The review will provide an opportunity for a thorough and full analysis of all environmental powers of entry and associated powers. The review will question whether the existing powers are fully justified and proportionate. It will give a full picture of how environmental regulators can exercise the powers and in what circumstances. The review will help to determine the extent of the subordinate legislation necessary to rationalise the powers of entry and associated powers.

Parts 1 and 2 of the Bill will make it easier for regulated businesses to understand their compliance requirements and for the Department to assess and enforce compliance. They will help to deliver a more efficient and outcome-focused regime that will protect the environment and contribute to the development of a prosperous economy. The subsequent regulations will also provide a robust legislative platform for the implementation of new and future EU environmental directives. As I mentioned earlier, Parts 3, 4 and 5 of the Bill contain miscellaneous amendments to the Clean Air (Northern Ireland) Order 1981, the Environment (Northern Ireland) Order 2002 and the Water and Sewerage Services (Northern Ireland) Order 2006.

We are happy to take any questions. I look forward to detailed engagement with the Committee during Committee Stage. I worked with the Committee before, on previous Bills, and I look forward to the detailed clause-by-clause scrutiny of the Bill.

The Chairperson (Ms Lo): Thank you very much. We have all heard about the White Paper consultation and the Green Paper. A lot of people will welcome that. I have some reservations, and I look forward to looking at the Bill. I am all for helping businesses and streamlining the regulatory regimes. As you said, different inspection regimes and different rules make it so confusing for businesses. Sometimes, they do not intend to break the law but do so because of the confusion caused by different types of laws and regulations. I welcome simplifying and streamlining the law. This is also in line with the EU REFIT initiative to simplify some of the requirements of directives. I suppose that the Bill is travelling in the same direction as the EU. My real concern is this: are we compromising NIEA's compliance and enforcement role? I think that a balance has to be struck there.

You said that Part 2 of the Bill concerns a review. The primary legislation is just to ask for a review of the power of entry, but all the regulations will be in the secondary legislation.

Mr Gray: Yes.

The Chairperson (Ms Lo): Why are we doing that? What is the benefit of doing that?

Mr Gray: The powers of entry and the associated safeguards are very important. There are human rights implications in relation to all this. The Bill provides a very robust platform for a thorough examination of that. A report will come from that, and it will be laid before the Assembly, and the Environment Committee will have a full opportunity to consider it.

The Chairperson (Ms Lo): Is it unusual in primary legislation to make provision for a review and to look at the findings of such a review and then make secondary legislation? Would you not usually do some research or consultation and then set in primary legislation what you are going to do?

Mr Gray: There is a precedent for this in the Protection of Freedoms Act 2012, which is in force in GB. Parts of that Act look at the whole area of powers of entry and associated powers. We have used the model in that Act as a basis for taking forward this element of the legislation. That model included a published review that could be consulted on before the regulations were brought forward. There are important issues about safeguards and so on in relation to powers of entry. It is about being up front with all that. I agree that it is a slightly unusual approach, but we are following that model.

The Chairperson (Ms Lo): So, Part 2 is just a call for a review of the powers of entry, and you are not going to set in law what those powers are going to be?

Mr Gray: The review has to be carried out first, yes. We expect at the very least, given the work that has already been done, some attempt to bring together the various fragmented powers of entry and to simplify them. There are issues of safeguards and human rights implications and that sort of thing, so we want to have a robust platform to deliver that.

Mr D Foster: I will pick up on your first point, Chairperson, about the risk of compromising NIEA's role or powers. The key thing there is that the new permitting regime will be a simplification of the administrative procedures but it will not in any way affect the technical judgement of the agency nor will it compromise standards that come primarily from European legislation. For instance, if a regulated site currently has one or more licences that might require certain emissions-to-air limits to be met, this will not affect those limits but it might mean that they are more simplified in the licence with conditions relating to waste or water discharges. The fundamental requirements in terms of what has to be done to mitigate any risk to the environment will not be directly impacted by this legislation.

The Chairperson (Ms Lo): And it is not giving out the message to businesses that there is going to be a lowering of the standards required of them?

Mr D Foster: No. In our conversations with businesses they recognise that the requirements are there in terms of best standards of performance. In general terms, the good performers and the best performers and the vast majority of businesses have no issue with that. What they have fed back to us, to the agency and, probably, to members is that it is the bureaucracy, the paperwork and the confusion that is causing the most difficulties. It is about whether we can do something to remove that so that they are able to focus on their requirements in the licence. Their conversations with the regulator are about that and not about what this paper means. Their discussion is on the key issues about what the appropriate level of performance should be within a permit. That will be of help to the regulator and those who are regulated.

The Chairperson (Ms Lo): Yes. I am smiling thinking of the terms that you gave them, such as the "visionaries" and the "good performers".

Do any other members want to ask a question? Lord Morrow.

Lord Morrow: No. I do not know where you got that from. I am listening intently.

The Chairperson (Ms Lo): OK. No problem.

Mr Boylan: Thank you very much for the presentation. I am sure that you are really looking forward to going through it piece by piece. I want clarification on some things, particularly Part 3 of the Bill, which is on the authorised fuel and exempt fireplaces. In working with businesses, there is always the issue of how they adapt to change and the cost of change. Could you expand a wee bit on the responses that you got, especially on exempt fireplaces? Could you say a wee bit on what you mean by this and what impact it will have on businesses?

Mr Sandy Truesdale (Department of the Environment): It is a simplification of the law on exempt fireplaces and fuels. It will make it easier and better for businesses. Today, when an operator develops a new smokeless fuel or, more importantly and more likely, develops a new fireplace that can be exempt in a smokeless zone, we make legislation every six months to catch the new approved fireplaces.

The Chairperson (Ms Lo): We have seen plenty of that coming through the Committee.

Mr Truesdale: Yes. There will now be a centrally held list. The fireplaces will still be tested and approved, but, instead of coming back to the Committee every six months to add to the list, that list will be deemed the list of authorised fireplaces. Basically, if a manufacturer designs and builds a new fireplace in December, he will not have to wait until June to get it on to the authorised list. He will have to wait a month. It is the same with fuels. It is basically a streamlining of the process. If those things are tested, they go onto the list automatically, and so, instead of making the statute, they will be on a centrally held list. The testing will be the same. The checks that will have to be done will still be the same, but it will be on a list rather than being on statute brought through the Assembly.

Mr D Foster: The testing is done on a UK-wide basis, and the different jurisdictions currently make their own regulations. Department for Environment, Food and Rural Affairs (DEFRA) is moving away from that in England and Wales, and so this enables us to be equally quick when the technical assessment has been done and they have been deemed appropriate fuels or fireplaces. Rather than waiting for regulations to be made and signed by me or another colleague, we are able to do it administratively, and so it should speed things up for the manufacturers. The technical assessment and rigour will still be there.

The Chairperson (Ms Lo): That will certainly help business and, as you say, innovation as well.

When will you introduce the Bill in the Assembly? We have only three weeks to go.

Mr Gray: We are hoping that it will be cleared by the Executive today. It depends on whether it gets on the agenda. We are ready to go, providing it is cleared by the Executive. If it is cleared by the Executive today, we will look to have the First Reading on 16 March.

The Chairperson (Ms Lo): Monday.

Mr Gray: Because of the Easter recess, it could be April —

The Chairperson (Ms Lo): Then we will come back for the Second Stage in April. Very good. We have heard about this for a long time, and we want to see it in front of us. Thank you very much.