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Sent: 16 October 2015 11:12

To: McKay, Ciara

Cc: Cunningham, Greg; Eamonn Moran; King, Brenda; Wilson, Attracta; Shannon, Wesley; Foster, Dave; Webb, Simon; Allison, Mark; Beattie, Karl; McCay, Jennifer; Simms, Alison; Cluney, Janice

Subject: FW: Followup EBR 151015

Importance: High

Ciara

Thanks for this.

As agreed we have considered, as a matter of urgency, the amendments requested by the Committee as outlined in your letter dated 15 October 2015.

In relation to the first proposed amendment as set out in your letter.

“Clause 1: An amendment on the face of the Bill to elaborate on the purpose of Bill; to address concerns regarding the vagueness of the Bill; and to better define the framework of what will be enforced in the future.”

I have consulted with the Bill draftsman concerning this matter. On the face of the Bill as it stands, the key purpose of Part 1 is to protect and improve the environment. Statements as to intention/aims can be included on the face of a Bill but the long title on page 1 of the Bill is not the appropriate place. The purpose of the long title is to define the scope of the Bill for Parliamentary purposes. We think that really what is required to satisfy the Committee is the insertion of a new purpose or objects clause in Part 1 of the Bill having regard to the fact that the **key** purpose of Part 1 of the Bill is to protect and improve the environment.

In order to address the Committee’s concerns we are proposing, subject to the necessary approvals, to insert a new clause 3A in the Bill. As I say this proposal is subject to the necessary approvals and subsequent final drafting of the proposed amendment for tabling at Consideration Stage. With that in mind we expect, at this stage, the new clause to be along the following lines:-

**“Regulations relating to protecting and improving the environment:
objective**

3A. The Department must, in making regulations under section 2, have as an objective reducing the regulatory and administrative burden on persons carrying on regulated activities to the greatest extent possible consistent with protecting and improving the environment.”

Once we have the proposed new clause 3A in its final agreed form I will forward a copy to you immediately – hopefully that should be early next week.

Turning now to the second proposed amendment as set out in your letter.

“Clause 3: An amendment to replace ‘such other persons as it thinks fit’ to ‘such other relevant persons’.”

I have consulted with the Bill draftsman on this point also. The draftsman has advised that the expression “as it thinks fit” is a very common one in legislation. Its intention is to confer a broad discretion on a person performing a function or exercising a power. However, in view of the Committee’s concerns regarding the expression there is no problem in substituting “considers appropriate” for “thinks fit”. This approach would also be consistent with clause 10(a).

I think we would wish to resist the use of the word “relevant” as it begs the question of “relevant to what”.

We would therefore be proposing to bring forward an amendment for tabling at Consideration Stage to amend clause 3(1)(b) by substituting “considers appropriate” for “thinks fit”. This proposal is also subject to the necessary approvals and subsequent final drafting of the amendment for tabling at Consideration Stage. Once we have the amendment in its final agreed form I will forward a copy to you immediately – hopefully that should be early next week.

Regarding the third point raised in your letter.

“Clause 5: To provide more detailed information in the EFM to explain what is meant by ‘offence to the senses of human beings’; and ecosystems.”

We will include more detailed information in the Explanatory Notes to accompany the Bill once it is passed to explain what is meant by “offence to the senses of human beings” and “ecosystems” in the definition of “environmental harm” in clause 5 of the Bill.

I hope that you will find the above information helpful.

Regards.

Robert
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