

Ciara

Your letter dated 23 October 2015 refers.

Please find attached:-

**(Tab A refers)** the final wording of amendments to the Bill as drafted by the Bill draftsman for tabling at Consideration Stage;

**(Tab B refers)** the wording that will be added to the E&FM (Explanatory Notes) to explain what is meant by “offence to the senses of human beings” and “ecosystems” in clause 5 of the Bill, the technical amendment to clause 8 of the Bill and “premises” in clause 13 of the Bill, and

**(Tab C refers)** clarification of the reason why a maximum fine is defined in paragraph 13(10) of Schedule 1 to the Bill but not a minimum fine and further clarification of what paragraph 13(11) of Schedule 1 to the Bill will mean in practice.

Regards.

Robert  
54711

# **Environmental Better Regulation Bill**

## **Consideration Stage**

### **Minister of the Environment**

#### **Amendment 1**

**Clause 3**, Page 2, Line 32

Leave out ‘as it thinks fit, including such’ and insert ‘, including’

#### **Amendment 2**

##### **New Clause**

After clause 3 insert –

##### **‘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.’

#### **Amendment 3**

**Clause 8**, Page 5, Line 35

After ‘scale’ insert ‘for an offence that is triable only summarily or the statutory maximum for an offence that is triable summarily or on indictment’

#### **Amendment 4**

**Clause 12**, Page 7, Lines 3 and 4

Leave out ‘publish the code in any manner that it considers appropriate’ and insert ‘cause a draft of the code to be laid before the Assembly’

#### **Amendment 5**

**Clause 12**, Page 7, Line 4

At end insert -

‘(3A) If within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further steps may be taken in relation

to the draft.

(3B) Nothing in subsection (3A) prevents a new draft being prepared and dealt with in accordance with this section, including subsection (3).

(3C) If the Assembly does not resolve as mentioned in subsection (3A), the Department must publish the code in any manner that it considers appropriate.'

## **Amendment 6**

**Schedule 1**, Page 14, Line 7

Leave out sub-paragraph (1)

## **Amendment 7**

**Schedule 1**, Page 14, Line 8

Leave out 'of those' and insert 'environmental'

# **ENVIRONMENTAL BETTER REGULATION BILL – COMMITTEE STAGE**

## **ADDITIONAL DETAIL TO BE ADDED TO THE EXPLANATORY NOTES IN RESPONSE TO REQUEST FROM THE ENVIRONMENT COMMITTEE (ADDITIONAL DETAIL IS SHOWN IN RED)**

### **Clause 5: Interpretation**

Clause 5 defines terms used in Part 1 of the Bill. It includes definitions of:

- “environmental activities” (to cover activities that are capable of causing, or liable to cause, environmental harm); and
- “environmental harm” (to cover a wide range of matters, including-
  - harm to the quality of the environment such as might be caused by, for example, polluting activities, **and**
  - **offence to the senses of human beings such as might be caused by, for example, excessive noise or unpleasant odours or stench**es).

In this context, “activities” is also defined, so that it covers a broad range of matters including the production, treatment, keeping, transportation, depositing or disposal of substances.

The effect is that the Bill enables the regulation under section 2 of a wide range of matters relating to environmental activities, and the prevention of environmental harm.

(The definitions of “environmental harm” and “protecting and improving the environment” make reference to “ecosystems”. An ecosystem is a very wide ranging term and can be defined as including all of the living things (plants, animals and organisms) in a given area, interacting with each other, and also with their non-living environments (weather, earth, sun, soil, climate, atmosphere)).

~~Regulations under section 2 may further define environmental activities (see paragraph 1 of Schedule 1).~~

### **Clause 8: Rewriting powers of entry**

Clause 8 gives the Department the power, exercisable by regulations, to rewrite powers of entry or associated powers. Such regulations might consolidate a number of powers of entry exercisable for similar purposes. The power extends to rewording related legislation and connected offences. Whilst regulations under this clause may alter a power of entry or associated power and any safeguard linked to such powers, the combined effect of the changes must be to add to the level of protection afforded by the safeguards when taken together (subsection (5)).

Subsection (3) provides for the treatment of offences. In general terms, an offence that is tried summarily (usually in the Magistrates’ Court) falls into one of two categories: (a) an offence that can only be tried summarily; and (b) one that can be tried summarily or on indictment. Subsection (3)(b)(ii) [as amended at Consideration Stage] makes the distinction between the different formulae for

expressing the maximum fines applicable to those offences which are triable only summarily (a fine not exceeding level 5 on the standard scale) and those which are triable either summarily or on indictment (a fine which must not exceed the statutory maximum). While level 5 on the standard scale and the statutory maximum are both currently £5,000, they are two distinct legal concepts and the monetary values may diverge in the future.

### **Clause 13: Interpretation**

Clause 13 defines terms used in Part 2. The clause includes a definition of “premises”. The definition makes it clear that “premises” includes any land, vehicle, vessel, aircraft or hovercraft, and any tent or moveable property.

However, it is an inclusive definition so, in addition to the things listed, the term bears its ordinary, natural and literal meaning and would, therefore, include a wide range of houses or buildings including residential premises.

## ENVIRONMENTAL BETTER REGULATION BILL

### CLARIFICATION OF THE REASON WHY A MAXIMUM FINE IS DEFINED IN PARAGRAPH 13(10) OF SCHEDULE 1 BUT NOT A MINIMUM FINE

Paragraph 13(8) of Schedule 1 provides that the environmental permitting regulations to be made under the Bill, after the Bill is passed, may create offences. Paragraph 13(10) provides for such offences to be punishable on summary conviction by, amongst other things, a fine not exceeding such amount as is specified in the regulations (the amount must not exceed £50,000).

Maximum fines are used extensively in environmental law. The maximum fine specified in paragraph 13(10) is the same as that currently specified in existing environmental permitting regulations made under the Environment (NI) Order 2002 and is also in line with the level of fines specified in Westminster legislation. This provision allows the courts to exercise discretion in deciding on the appropriate level of fine, up to the maximum, taking into account all of the circumstances of a particular case.

The inclusion of a set minimum level of fine would limit the powers of the court to exercise discretion. Compulsory minimum sentencing makes no allowance for the possibility that always exists of an exceptional case and could lead to unintended and unwelcome consequences.

The full details of the creation of offences and the levels of fines relevant to those offences will be a matter for the environmental permitting regulations to be made under the Bill, after the Bill is passed. A draft of the regulations will be subject to full public consultation. The regulations will also be subject to the Assembly's affirmative resolution procedure.

### FURTHER CLARIFICATION OF WHAT PARAGRAPH 13(11) OF SCHEDULE 1 WILL MEAN IN PRACTICE

Paragraph 13(11) of Schedule 1 to the Bill provides that the environmental permitting regulations to be made under the Bill, after the Bill is passed, may provide for continuing offences to be punishable by a daily fine. Provision for daily fines for continuing offences is not uncommon in environmental law – such fines are a tool to encourage timely compliance to protect the environment. A daily fine may be appropriate if there is a continuing breach which the person could take action to remedy.

Some examples of daily fines in existing environmental law:-

- under the Environment (NI) Order 2002, where a person is found to be guilty of an environmental offence in respect of an ASSI (area of special scientific interest) the court may make an order requiring that person to restore the ASSI to its former condition within such period as may be specified in the order. If within the period specified the person fails to comply with the court order he or she shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale, and in the case of a continuing offence, to a further fine not exceeding £100 for each day during which the offence continues after conviction;
- under anti-litter legislation if a person fails to comply with a litter abatement notice he or she shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale. If in the case of a continuing offence, the offender continues to fail to comply with the litter abatement notice he or she shall be guilty of a further offence and shall be liable on summary conviction to an additional fine not

exceeding one-twentieth of level 4 on the standard scale for each day on which the offence is continued.

The environmental permitting regulations to be made under the Bill, after the Bill is passed, will set out the full details of all daily fines for continuing environmental offences and the amounts of such fines. A draft of the regulations will be subject to full public consultation. The regulations will also be subject to the Assembly's affirmative resolution procedure.