



Northern Ireland  
Assembly

Committee for the Environment

# OFFICIAL REPORT (Hansard)

Environmental Better Regulation Bill:  
Northern Ireland Local Government  
Association

24 September 2015

# NORTHERN IRELAND ASSEMBLY

## Committee for the Environment

Environmental Better Regulation Bill: Northern Ireland Local Government Association

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**Members present for all or part of the proceedings:**

Ms Anna Lo (Chairperson)  
Mr Colum Eastwood  
Mr Barry McElduff  
Mr Gary Middleton  
Mr Ian Milne  
Lord Morrow  
Mrs Sandra Overend

**Witnesses:**

|                     |  |
|---------------------|--|
| Mr Paul McCullough  | Armagh City, Banbridge and Craigavon Borough Council |
| Alderman Mervyn Rea | Northern Ireland Local Government Association        |
| Ms Karen Smyth      | Northern Ireland Local Government Association        |

**The Chairperson (Ms Lo):** Good morning. We welcome Karen Smyth, head of policy in the Northern Ireland Local Government Association (NILGA); Alderman Mervyn Rea, NILGA waste management spokesman — it is good of you to come — and Mr Paul McCullough, principal environmental health officer from the new Armagh City, Banbridge and Craigavon Borough Council. You are all very welcome. I remind you all that the session is being reported by Hansard. That will help us in our consideration of the Bill and will go into our report. We have your paper, so please give us your oral presentation.

**Alderman Mervyn Rea (Northern Ireland Local Government Association):** Thank you, Chairperson, for the opportunity to discuss the Bill with the Committee. I hope that you have the written NILGA evidence to hand. We do not intend adding much more to what we have already given you. We hope that we can use this time for a productive discussion.

I will give you an update on the wider context. NILGA is in the process of consulting the 11 councils on the proposed content of a programme for local government that we will share with the Committee when finalised. We firmly believe that local government should have an active part to play in the delivery of the programme for local government's priorities and objectives, including growing a sustainable economy and investing in the future. In that context, NILGA is very supportive of the principles of better regulation and the intent to modernise the regulatory system. We are keenly aware of the need to ensure that businesses that operate outside Northern Ireland are not discouraged from investing here by overly complex regulation.

We are pleased by the recent efforts that the Department has made, in the wake of local government reform and the Mills report, to improve communications and working relationships with councils. We recognise that a healthy partnership approach will be vital to encouraging the success of the drive

towards better regulation. I would like to promote our councils as publicly visible good practice examples of regulation, both as regulator and regulated. However — this is the key point — although we encourage a single permitting scheme, it is vital that any changes to the current regime that will impact on council provision are subject to prior discussion with councils in a time frame that will allow for appropriate business planning. Councils are willing partners in collaborative efforts to improve public services but within resource constraints and provided that liabilities are not conferred. That is of particular concern in relation to clauses 2 and 3.

I now ask Mr Paul McCullough to discuss the individual clauses in more technical detail.

**Mr Paul McCullough (Armagh City, Banbridge and Craigavon Borough Council):** I do not wish to restate the comments on technical matters already made, but I will run through the substance of what we are saying. Part 1, "General Environmental Regulation", in particular clause 2 and the associated schedule 1, have the potential to have wide-ranging impacts on councils, including financial costs, particularly where single environmental permitting will remove or introduce new functions to councils. We therefore particularly welcome the intent to consult councils in clause 3. Local government is keen to work with the Committee to maintain a close watching brief on the progress of the Bill and related regulations, policies and guidance.

We welcome the thrust of single environmental permitting, but it should be recognised that councils already make attempts, where possible, to combine, for example, industrial pollution, petroleum licensing, health and safety, food hygiene, smoke control inspections etc to minimise its impact on local businesses. It is particularly vital, given the lack of detail in the Bill, that a robust and substantive consultation exercise with local government takes place prior to the regulations coming to the Assembly.

Clause 3 specifically requires the Department to consult councils "as it thinks fit". We suggest that clause 3 should also specify consultation in cases in which proposals would lead to functions being removed from councils to allow for business planning, as we said.

There is an absence of detail at this stage on Part 2 — powers of entry and associated powers — and clause 10. As a general principle, however, we are keen that the Department be required to consult on this matter again when any council powers of entry are to be changed. We welcome clause 12, but, in addition to comments in our written submission, we encourage the Committee to ensure that the proposed code of practice be given adequate scrutiny through the relevant Assembly mechanisms.

In Part 3, the amendments to the Clean Air (Northern Ireland) Order 1981 have been subject to discussion between local government and the DOE and are welcomed, as they can bring about market benefits to those involved in the private sector.

Finally, the Part 4 amendments to the Environment (Northern Ireland) Order 2002 have also been subject to discussion between local government and the DOE. They are of minor consequence to the local air quality management process and are welcomed, therefore, as a means of better regulation.

That concludes my views.

**Alderman Rea:** On behalf of the three of us, I thank you, Chairman, for listening to our presentation. We will endeavour to do our best to answer any questions from the Committee.

**The Chairperson (Ms Lo):** Thank you. In your paper and verbally, you mentioned the single environmental permitting scheme, of which you are very much in favour. Other people have also told us that they are concerned that a single permitting scheme, with the NIEA or whoever acting as the inspector and such a wide-ranging remit and duties, may not have the expertise to inspect premises. You said that councils are already doing away with permits and collapsing down to fewer permits. How does that work for councils?

**Mr McCullough:** In practice, whilst the legislative provisions are discrete, councils will certainly make an attempt to minimise the impact on local businesses by combining, when possible, the regulatory inspections. The general thrust of a single environmental permit is to be welcomed, because efficiencies can be delivered. However, I concur with the views that have been put forward that it needs to be balanced in such a way as to ensure that the regulator has the appropriate skill set if that

single permit is to extend the breadth of work that they are already doing. That will apply to local government or the NIEA, whoever the regulator happens to be.

**The Chairperson (Ms Lo):** What would the single permitting scheme cover? Would it be air quality —

**Mr McCullough:** Off the top of my head, it may be water consent to discharge, but it could also be industrial emissions to air and certain aspects of waste and how it is handled, associated with the premises in question. That is the model in force in England and Wales, where that permit encapsulates those aspects. I will draw on a narrow example: there are certain industrial sites where the council will be the regulator for air pollution, but it will not have any regard to the consent to discharge water or waste aspects associated with that. That is by virtue of the way in which the regulations are drafted.

**The Chairperson (Ms Lo):** Would that require staff to be retrained so that they can be aware of all the different issues?

**Mr McCullough:** Absolutely, Madam Chairperson. Indeed, by virtue of the nature of regulation and environmental impacts that you are looking at, some of that is quite detailed and technical. It is a challenge to make sure that it is properly resourced. That brings us back to the point in our submission that that needs to be done. The detail needs to be sorted out in consultation with local government to make sure that we can resource it and that any impacts are minimised.

**The Chairperson (Ms Lo):** You mentioned consultations quite a lot, and it is important that councils are statutory consultees and are consulted every step of the way when regulations are being made. This is skeleton legislation; it is enabling primary legislation. A lot of the details and regulations will come at a later stage, and it is very important. Do you feel that the Bill is strong enough in saying that you should be consulted every step of the way?

**Ms Karen Smyth (Northern Ireland Local Government Association):** Madam Chairperson, before we came into the meeting, we were saying that a scoping exercise could be useful, which would give an overview from the word "Go" about what could come from the Bill. We recognise that there were pressures in making sure that the Bill was brought through during this Assembly session, and it has come through in a certain form because of that. Rather than regulations coming through on a drip-feed basis, it might be easier to have an overview so that we have more details on what we are facing after the Bill passes through the Assembly.

**The Chairperson (Ms Lo):** We certainly share your concerns that so much is unknown about what will follow.

**Mrs Overend:** I want to ask you about the consultation that you mentioned. Clause 3 is very general when it refers to consultation, citing:

*"such other persons as it thinks fit".*

That is very wide-ranging. I presume that you agree with that, but have you more precise preferences on who else should be consulted? You said that councils should be consulted.

**Ms Smyth:** It is not really for us to suggest whom the Department would want to consult beyond councils. Obviously, NILGA has been very strong in putting forward the view that local government should be a partner in government. Even the word "consultation" can rankle slightly in that, if we are being treated as a partner, we want to be involved in ongoing discussions. Those relationships are starting to develop with the Department and the NIEA specifically as a follow-up to the Mills report. We know that work is afoot to make sure that things improve.

**Mr McElduff:** Can the delegation envisage any circumstances in which functions are removed from councils and when you would want to be properly consulted?

**Mr McCullough:** In the realm of single environmental permitting, I go back to the example that I used whereby local government would have responsibility for airborne emissions, perhaps from an industrial plant, but would not have regard to water or waste. If, for example, a single environmental permitting regime were to be introduced, that would take that air quality responsibility from councils from those specific premises and maybe give it to the NIEA. That would clearly involve a loss of function. I

apologise, but the nature of the Bill as it is presented is such that there is not a lot of detail for us to work on, but we surmise that there are circumstances in which that could indeed be the case and vice versa. Functions that are being regulated by others could come to councils. In consultation and discussion, we need to have an understanding of what the detail would look like and to be able to scope out exactly what the impacts and resource impacts are likely to be.

**Ms Smyth:** Madam Chair —

**The Chairperson (Ms Lo):** Sorry, I have to stop you there. I want to welcome the students from Rathfriland High School. The Committee is looking at the Environmental Better Regulation Bill. Representatives from the Northern Ireland Local Government Association are here to give us their view on the Bill. You are very welcome to stay.

**Ms Smyth:** I will follow on from what Paul said. I remind members that there are precedents for functions being removed from councils on environmental matters. When I worked in councils, we were responsible for inspecting landfill sites, and, because of European legislation and changes to waste legislation, that was taken into the NIEA in the 1990s: it was a long time ago, and I am giving away my age. As Paul said, there have been occasions when that has happened, and it can happen both ways. Either way, we need to know and to be able to plan for it.

**Mr McElduff:** Did the tidying up of fly-tipping and that type of thing also move from councils to the Environment Agency?

**Ms Smyth:** Fly-tipping is one of those odd areas in which there is some joint responsibility. We have been working for some time to develop a joint enforcement approach. That is coming to fruition, and most councils are working closely with the NIEA, or they were prior to reform, to make sure that we know who is responsible for what. The dividing line is the size of tipping. The NIEA will not deal with stuff in back entries in Belfast — that would be the council — but the massive illegal landfill sites are definitely its responsibility. We have been working on a protocol and an exercise to make sure that we are communicating effectively on where that is happening and the scale of it, and making sure that that is adequately resourced. That will need to be taken up again post-reform. I know that the NIEA is working on that and will write to councils soon to enhance the operational working group mechanism to make sure that that is taken forward properly.

**The Chairperson (Ms Lo):** It is important to have that local partnership. Are you finished, Barry?

**Mr McElduff:** Yes, thanks.

**The Chairperson (Ms Lo):** You mentioned the potential for a financial impact on councils: can you expand on that?

**Mr McCullough:** That really harks back to the same point about the removal of certain functions, whereby those functions will attract a subsistence fee from the industry to pay for that function. If that element of function were removed from a council, the fee would also be removed.

**The Chairperson (Ms Lo):** It ties in with the function and, if that goes, you would obviously have less money.

**Ms Smyth:** Conversely, if there is a move afoot to shift a responsibility to councils, there would obviously be a financial impact. We are in the process of trying to assess the financial impact of reform. That was exacerbated with the situation with the Budget, which impacted the DOE quite severely. It is part of a wider financial hit that councils could be taking. The concern comes from the lack of detail in the Bill.

**Alderman Rea:** I will come in on that point. The main source of finance for councils comes from ratepayers. We have to be careful that we do not impose too much on ratepayers without getting additional funding. Some small shopkeepers are hard-pressed enough without increasing that. We have a strong local government, and we need to work hand in hand with central government on whatever we do.

**Mr Middleton:** I welcome you along today. One of my questions has already been asked. We are getting a clear message that consultation is vital. I am not long off council, and we have seen the

difficulties with the transfer of functions. What was supposed to be cost neutral has turned out to be almost the opposite, which has proved problematic for councils.

It is important that councils get as much information as possible and as much consultation as possible on the financial impact so that they are aware. As Alderman Mervyn Rea said, the last thing that we want is for another burden to be put onto ratepayers, who will ultimately have to cover the costs. That is vital, and we need to bear it in mind as we go forward with this work.

**Ms Smyth:** May I come back in, Chair? The word "burden" has triggered something with me. Over a number of years, we have been trying to encourage Departments to become fully cognisant of the new burdens doctrine, which is policy across the water. What it means is that, if councils across the water are required to take new burdens on, the finance follows. We are starting to see a drip feed of that not happening here and of Departments not doing certain functions, which ratepayers expect councils to do in the absence of a central provision. We are deeply concerned that that will be a growing problem.

**The Chairperson (Ms Lo):** There was a promise that money would follow function, but you think that that is not happening adequately.

**Ms Smyth:** Not for this Committee, but we have had discussions with the Social Development Committee about the Regeneration Bill. That is a good example, because it has taken a bit longer to get through.

**The Chairperson (Ms Lo):** It will happen next year.

**Ms Smyth:** The funding reduces each year. Some councils are now getting 25% less than they expected. Councils in the west are particularly hard hit.

**Lord Morrow:** I welcome the delegation. Paul, you are aware that the Bill is enabling legislation, but you also referred to its vagueness, which then prompts this question: does the legislation enable you and local government to deliver and to do the things that you want to do? We fully understand that there are financial restraints. That is not unique to local government; I am not saying that to excuse it but as someone who was in council for a while. Are you confident that this enabling legislation enables local government, particularly in your case, to do the things that you want to do and that it gives you the powers that you feel you will require? Karen mentioned a scoping exercise, which might be useful. However, are you content with the present Bill?

**Mr McCullough:** The Bill as it is presented is vague in the sense that it is very hard to see what the ultimate outcomes will look like for councils. Without wishing to avoid the question, I am really unable to say. Through the consultation process and engagement, we will get a clearer picture of the mindset. It is just impossible to say at this stage.

**Lord Morrow:** I understand why Paul answered my question in that way. That should concern us, because we have three folk here who are at the coalface and trying to deliver on behalf of those whom they represent. Councillor Rea said — it is a very valid point — that he does not want to increase the burden on ratepayers, particularly small businesses that are struggling with all the competition that they have to meet. If we keep hitting them again and again, and they do not see any return for their money, much more frustration will enter the picture. The Committee should forcibly put that to the Department and the Minister after today's evidence session, which has been very useful.

**Ms Smyth:** Councils have been very active over a number of years in working with local businesses to improve their environmental practices through projects such as STEM (sustainable together through environmental management), which is down in Paul's neck of the woods. It encourages businesses to engage on environmental management and saves them money through effective environmental management. It is my understanding that the intent of the Environmental Better Regulation Bill is — reward is maybe the wrong word — to lead to less burden on businesses that are working the way that they should be working and to start to come down heavily on businesses that are not complying with the law. We have seen the difficulties that rogue businesses have caused, particularly in waste management, over recent times. I do not want to discourage the Committee from the Bill, but its vague nature is an issue for us.

**The Chairperson (Ms Lo):** It is what will come next.

I want to welcome the students from Rathfriland High School again. Quite a big group has come today. Are you all in lower six or fifth year? You are in fifth year. We are looking at the Environmental Better Regulation Bill. It is about how we streamline regulations on protection of the environment and make it less burdensome for industries and businesses. We have representatives from the Northern Ireland Local Government Association with us today.

Sorry, Lord Morrow. Did I disturb you there?

**Lord Morrow:** No, you did not; you are fine, Chair. I have listened carefully to what has been said. I do not wish to ask any questions, but I think that we should take cognisance of what has been said here today. That is important.

**The Chairperson (Ms Lo):** I want to ask a couple more questions. It has been mentioned to us by an expert in drafting legislation that the word "regulators", which occurs right through the Bill on enforcement and regulating, is too vague. How can we make it tighter and more explicit as to who the regulators should be? Should they be environmental officers? Should we define it better in the Bill rather than just using the word "regulators"? Have you any suggestions?

**Ms Smyth:** Madam Chair, from a practical perspective, if you start to single out individual organisations as regulators in the legislation, to my mind — Paul possibly concurs — that could make things quite complicated because there are a number of different areas, such as fly-tipping, which you mentioned, and industrial emissions, whereby responsibility between the NIEA and councils dovetails. Those separations are already identified in other places. It may make the Bill overly complex for people to understand what to expect, particularly the people who are being regulated.

**Mr McCullough:** Subordinate legislation is likely to drill down a little more on that. That is my initial reading. I take and follow Karen's point that being too specific at this overarching stage may hinder the choices that are made later on.

**The Chairperson (Ms Lo):** You may be too restrictive. You may leave some people out.

**Ms Smyth:** Particularly if there is an intent to change responsibility after the Bill is written. You could put something in the Bill — in a schedule or something like that — to list the different regulators, but specifying who does what, given that the rest of the Bill is so vague, would be quite difficult.

**Alderman Rea:** Maybe I could add to that from a councillor's point of view. I see difficulties with the example that has been mentioned. When two bodies are regulating, it is sometimes difficult, as Karen said, to dovetail those two bodies. One expects the other to be doing something. It is not clear-cut in my eyes. If we move forward, we must have precise legislation so that one knows what the other is doing.

**The Chairperson (Ms Lo):** If it is done through good communication and consultation, you know what the others are doing.

I will move to clause 12 on powers of entry. You broadly support the requirement that the Department must provide a draft code of practice on powers of entry. What do you see as being the safeguard in that code of practice? What should be included?

**Ms Smyth:** Essentially, the Bill provides for a code of practice, and, given that the detail is not in the Bill, we would like the code to be brought to the Committee for scrutiny. We do not have an awful lot of detail, so it would be hard for us to say now that it should contain x, y and z. At the very least, we will want to see it before it goes too far. I anticipate that the Department will share that with us, and potentially even work with local government on drafting the code of practice. When guidance documents are being developed, it is usual for the Department to work closely with us if those documents affect us.

**The Chairperson (Ms Lo):** Have you found that the Department is cooperative enough? Does it collaborate when it is developing guidance and codes of practice under the Local Government Act (Northern Ireland) 2014?

**Ms Smyth:** More generally and more recently, yes. However, changes are coming to Departments. There is a resource issue, particularly in the Department of the Environment: a huge sea change is

happening with staffing in its local government division and at the environment end. I am concerned that the Bill will start, but the rest of it may be taken forward in a different place or by a different Department, which adds to the unknown quantity that we face. We are working closely with people and are happy with the working relationships that have been built up over a number of years. However, people move.

**The Chairperson (Ms Lo):** Yes, and there will be fewer staff. The Department anticipates that it will lose 500 staff overall.

**Ms Smyth:** There are huge pressures on them.

**The Chairperson (Ms Lo):** Those are all the questions that we have for you. Thank you very much for coming. It has been very useful.

**Alderman Rea:** May I also thank you once again for listening to us? I must say that I leave here with a feeling that all of you understand local government, which is a big plus. Far too often, dictatorship could come in, and there would be no consultation with local government. I think that you people, many of whom have come through local government, understand it and understand our reasoning for putting this presentation to you. Once again, thank you very much.

**The Chairperson (Ms Lo):** Thank you.