



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Environmental Better Regulation Bill:
Stakeholder Event

1 October 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 Gary Middleton
Mrs Sandra Overend

Witnesses:

Dr John Bailey	Agri-Food and Biosciences Institute
Dr Chris Johnston	Agri-Food and Biosciences Institute
Mr Joe McDonald	Asda
Ms Leanne Cochrane	Northern Ireland Human Rights Commission
Mr Daniel Morris	Northern Ireland Human Rights Commission
Ms Angela Halpenny	Northern Ireland Water

The Chairperson (Ms Lo): I welcome everyone here today. We know all your names, so I will not ask you to introduce yourselves. You have all sent us written submissions, and today is for members to explore those further with you. The session is being reported by Hansard but is not being broadcast; the session is for the Committee's reporting purposes. The report of the meeting will be included in the Committee's final report on the Bill.

The Bill has six Parts, and we will consider each one. The screen will show each clause that we are going to look at in each Part. You have all been given a copy of the Bill for reference. We will ask questions on each Part. We have a time frame, but it is fairly loose. We plan to finish the session by about 1.00 pm, at which time we will have a bit of light lunch.

We will move on to Part 1, which relates to general environmental regulation.

The Committee Clerk: We have included schedule 1, because it relates to clause 2.

The Chairperson (Ms Lo): Clauses 1 to 5 and schedule 1 are included. The focus is on environmental permitting. I thought that it would be best if each organisation gave us one or two minutes with their views on those clauses. I will start with the Agri-Food and Biosciences Institute (AFBI). John or Chris, would you like to remind members briefly of your submission?

Dr John Bailey (Agri-Food and Biosciences Institute): Our submission refers to protecting and improving the environment, preventing the deterioration of and protecting and enhancing the status of ecosystems, biodiversity, geodiversity and habitats. The Bill seeks to improve and protect, but there has to be some way to monitor that. As far as we know, the UK National Ecosystem Assessment, which was published in 2011, gave a survey and assessment of the state of ecosystems at that time.

That would have to be repeated. We also need the right metrics for things that are measured and for how they are measured over time, because this is not like water quality, which is easy to measure. We do that regularly and routinely, but this would require a survey-type approach. It is to see whether anything is considered with taking the Bill forward and how we will monitor. Are we achieving improvements? Are we protecting those ecosystems and that biodiversity and so on? That is the thrust of our submission.

Ms Angela Halpenny (Northern Ireland Water): Northern Ireland Water is very supportive of the streamlining of the whole environmental permitting regime. Our company has a huge number of consents, permits and licences — it is approaching 1,500 — so, from our perspective, any improvements in streamlining those would be very welcome.

Mr Joe McDonald (Asda): Our situation is similar to that of Northern Ireland Water. We are really pleased with the direction of legislation. In retail, a lot of environmental regulation tends to be down our supply chain rather than directly affecting our business. Some things affect our business directly, but there is more down our supply chain. Retail has a huge breadth of compliance issues on food hygiene, food labelling and consumer protection. We have a licence to sell fish, we have a licence to sell petrol — it just goes on and on.

I would make the broad point, whether for this process or for later food for thought for the Committee, about widening that approach not only for the environment but across government. What would really help our business is not only better regulation for the environment, integrated permitting, a more online approach and so on but work on how you capture that across other Departments and their work. Could a fish licence, a petrol licence and a food labelling licence ever find their way into an integrated permit? I accept that that is a huge challenge, but we want to make that point to the Committee. In the future, how will you broaden this good work to capture all those other areas of compliance?

The Chairperson (Ms Lo): The difficulty is that each Department has a different remit and expertise. I do not know whether one person would have the same expertise in Environment, Agriculture or DETI. If you want a catch-all permit, we may need to think about that.

Mr McDonald: From our perspective, we are expected to have all that expertise under the one roof. Our expectation is that government should have the same expertise and be able to deliver that for us.

The Chairperson (Ms Lo): Fair enough.

Ms Leanne Cochrane (Northern Ireland Human Rights Commission): The Human Rights Commission wants to take this opportunity to highlight and to remind the Committee that the realisation of human rights is intrinsically linked with the environment and that a number of rights that could be relevant should be considered by the Committee, such as the right to health, the right to privacy, the right to life and the right to water. Generally, we note that, under clause 1, regulations should be implemented only for the purpose of improving and protecting the environment, which we welcome. We welcome the thrust of the Bill generally. We would like the Committee to consider the consultation requirements that are laid out in clause 3, and we question whether those meet the standards in the Aarhus convention, specifically article 8, which is about public participation in decision-making on environmental matters. In the context of these regulations under clause 2 and when the Department is making regulations that will have a significant environmental impact, article 8 of the Aarhus convention requires that there should be a specific time frame in legislation and that there should be some recognition of the degree to which the consultation responses will be taken into account. Compare clause 3 with the consultation requirements in clause 4, which is about general environmental rules, and it is much more clearly defined. We would like the precision and detail in clause 4 to be replicated in clause 3 with regard to regulations.

The Chairperson (Ms Lo): Thank you. We very seldom have the Human Rights Commission in front of us, so you are very welcome. AFBI and others have been in front of us before.

I will start with general questions. If anyone wants to answer, put your hand up and we can go around. Based on your submissions, we have specific questions for specific organisations. In general, the purpose of the Bill is to provide a more streamlined and effective regulatory system, and we received submissions that criticise on the basis that the Bill is not clear enough. Do you have any suggestions on whether we should add amendments or make the wording better so that it is clear that this is specifically for streamlining and making the process more efficient? Clause 1 states that the purpose of the Bill is to provide a more streamlined and effective regulatory system. It is enabling

legislation, and it states that this is the general principle of the Bill. The details will come through later in secondary legislation in the form of regulations. In general the majority of the regulations, if they are to make changes, need to be consulted on separately. The criticism is that this is just a line that states that we want to streamline the process without giving a lot of detail. Do you think that there is merit in saying something more in the Bill to make sure that that will happen?

Mr McDonald: I will say something about that. As things stand, we get the general direction of the Bill and are satisfied with the intention. Later on, or maybe now, it will be about measuring progress. If, for example, there is one regulation in, there should be an objective to have one regulation out. Perhaps we should even consider having one regulation in and two regulations out, or anything that benchmarks where we are now and any progress that is made. Industry wants that measured. It also brings an element of accountability. As you review annually, you can see whether, either in the Department or across government in the future, genuine progress is being made.

We have a big concern about the deposit return scheme, which the Minister of the Environment has mentioned as a possibility for Northern Ireland. For us, that is an example of where we could make a lot of progress with the Bill and then undo all the good with something new that would bring a lot of new burdens on our business. I would like the one-in, one-out principle or even the one-in, two-out principle.

The Chairperson (Ms Lo): The Bill is so vague that people are not too sure where they will be in future. What may happen in future? Will they do away with some regulations, or will new regulations be brought in? We do not know.

You mentioned industry. The purpose of the Bill is also to make life easier for industry and to encourage more efficiency and less bureaucracy. Do you think that the Bill will do that?

Ms L Cochrane: We are not environmental policy experts, but, in one sense, I do not know whether that puts us in a better position when we read the legislation. It struck me that it is quite broad. I know that it is enabling legislation, but it states that the Department can introduce regulations for the purpose of protecting and improving the environment. I am not sure whether it is any more defined than that, as long as it is to do with schedule 1. Schedule 1 is quite vast and, to me, streamlining seems sensible. When I read the Bill for the first time, it appeared to me that it gave the Department quite broad powers. I do not know a lot about environmental policy, so I wondered about the breadth of that.

The Chairperson (Ms Lo): We do not know either. *[Laughter.]* That is why we want to drill down. We want to know what the activities are, who the regulators are and what sort of powers they are going to bring in.

Mrs Cameron: Thank you very much for coming today. Joe, you spoke about the one-in, one-out approach, and I understand what you mean. Are you aware of any examples in any other government where that is used?

Mr McDonald: No. That is probably the problem. This is a red-tape problem across the UK. Let us take the deposit return scheme as an example. The one-in, one-out approach implies that one is equal to the other, whereas a deposit return scheme would be a huge environmental regulatory burden for the retail sector. The Bill could progress with all the best intentions and create the opportunity to reduce some of the burden by integrated permits, corporate permits and whatever. All those things will be a big help to our business. We operate across 17 sites in Northern Ireland, so, if we have an opportunity to have a single permit to cover some of our activities, that is great. It is all progress, but you could then introduce something new and additional, and that is where the one-in, one-out principle needs some thought. It feels like a classic example of that that we are about to face into.

You have to take into context that that starts to complicate matters quite a bit for businesses like Asda that operate across the UK. We try to operate a single price file across the UK, which means that all our support systems are based on the principle that we operate in a single market across the UK. Any legislation that is brought forward by the Northern Ireland Assembly potentially creates a difficulty for us in delivering that single price to customers. The Bill's intentions are very good, but it feels like there is still the potential for other regulation to come along and undo the good work. That is the basic point that we are concerned about.

Mrs Cameron: We all like the Bill's intention, but it is only when we see its outworkings that we will believe whether it does reduce the burden. Hopefully, there will not be a whole stream of other regulations coming in behind it to make things worse or as bad as they were before.

Mr McDonald: That is where measuring or capturing the outcome of the Bill every year will give you evidence that it has delivered for business and, ultimately, for consumers.

Mrs Cameron: I have a question for all of you or any of you. What are your views on the definitions in clause 5? Do you think that they are adequate or perhaps too broad?

The Committee Clerk: We received comments on the definitions of "environmental harm", "regulator" and "protecting and improving the environment". It is just to know whether the definitions are clear and you know what they mean when you read them.

Dr Chris Johnston (Agri-Food and Biosciences Institute): They are clear.

Ms L Cochrane: We will come to that in Part 6. We have linked in the affirmative resolution or negative resolution procedure with some of the definitions because we think that it is important that the affirmative resolution procedure happens in certain contexts because of the potential breadth. I will let us come to that.

The Chairperson (Ms Lo): Under clause 5, there is no mention of residential premises and use. It states:

"activities' means activities of any nature, whether industrial, commercial or otherwise".

It does not state what "otherwise" is. Does that include domestic use or residential areas and homes?

Mr Daniel Morris (Northern Ireland Human Rights Commission): "Premises" is defined in clause 13, so we can come to that later on. There are some concerns about that.

The Chairperson (Ms Lo): That was your point, I think, in your submission. It is a moveable property.

Mr Morris: Exactly, yes.

The Chairperson (Ms Lo): OK. No comments on Pam's point? It is very broad. We received the criticism a couple of times: "Define 'activities' ". Any other general points that members want to make? Gary, you wanted to ask about the prosperity agreement.

Mr Middleton: Joe mentioned the reward for good practice. That is something we would all like to see. There should be encouragement for those who comply and penalties or punishment for those who do not. What benefit do you see in that for the NIEA? Through the Bill, there is a possibility of making savings. Do you see those savings being put back into the businesses, or what would you like to see?

Mr McDonald: I am sure that is a point right across business. Obviously we aim to be a responsible business and have made a lot of commitments around that, and we will carry those out. The opportunity with this type of work is to ask, "OK, for the businesses that are in that space and want to be responsible and do well, are there tangible benefits that they can feel for going beyond compliance and doing a better job?"

In practical terms, those are issues around the cost and frequency of licensing, the inspection regime and whether things can be categorised in different ways. The Environment Agency has been developing the concept of prosperity agreements, where you get into a completely different relationship with the agency. A business makes a commitment and, in return, the Environment Agency or the Department develops a different relationship with the business. That carrot approach would be a good thing for the business sector in Northern Ireland.

If we go to build a store, there is a long list of expensive processes that we have to go through — environmental impact assessments, archaeological assessments, ecological assessments and so on.

Those all come with very significant price tags. Once you are up and running, you then have your annual renewal and inspection regime for everything.

To go back to my original challenge, in retail it is not so much directly in the environmental regulation, but when you take everything into account, it is a big burden on business. It is definitely an issue in our supply chain, maybe more so with the IPCC and so on in our agrifood supply chain. That is all cost in our supply chain, which is ultimately passed on to the consumer. That is an important area to look into for us: that for a business like Asda or many other really great businesses in Northern Ireland that are trying to go way beyond compliance and do the right thing, there is a different working relationship with the Environment Agency or other agencies. It is a really good point to draw out.

Mr Middleton: You mentioned prosperity agreements. Maybe Angela can come in on this from the perspective of NI Water as well. Last week, we heard it argued that prosperity agreements should be in the Bill. I want to ascertain what your views are on that.

The Chairperson (Ms Lo): At the moment, it is a voluntary arrangement. Should we say that we want that to be put in the Bill?

Ms Halpenny: We are working with the Environment Agency to look at ways of developing prosperity agreements, because we have so many different areas in our business. Essentially, we are an environmental business in providing our service — drinking water supply and wastewater treatment — so we are very heavily regulated. There are many opportunities for us to explore with the Environment Agency whether we are meeting our compliance, for instance. Is there potential for a lighter touch of regulation where we might not be regulated so frequently? That in turn might reduce our regulatory fees for our water business, which are approaching £2 million per annum. We are very keen to explore whether, if we are demonstrating year-on-year compliance in areas of our business, there is a requirement for the level of regulation, inspections and so on. I see the Bill in terms of bringing together some of our wastewater treatment works, for example. We have three sets of regulations: the Water (Northern Ireland) Order 1999 consents, our PPC permits and waste management licensing for different activities within the sites. The streamlining of those, as proposed in the Bill, will be very welcome, from our perspective. I see that working into prosperity agreements.

Mr McDonald: That is a really good example. Ms Halpenny cited the cost for Northern Ireland Water. We are the same; we have a very big waste management side to our business. We do not do that directly; it is done for us by a third party, but it is a big cost to our business. Any lighter regulation in that area for doing the job the right way and going beyond compliance would take cost out of our business. That would be good for the business and for our customer base. It would also be an opportunity to make Northern Ireland a good place to invest in, which is always our intention, through the work that you do in the Assembly. From my business point of view, I always use this example. As you know, Asda is owned by Walmart. We are always trying to make the case that Northern Ireland is a good place to invest. Cost of business and cost of regulation is part of that equation. Walmart can spend its capital anywhere, globally, that it operates; it operates in almost 30 countries. We are fighting our corner for Northern Ireland to be a good place in which to invest. If there was a relationship with the environmental regulator, as suggested, where you would get into that positive working environment with lighter-touch regulation and lower costs because you are doing the right thing, it would be a great selling point for investment in Northern Ireland. I am sure that that is the case for a lot of international businesses.

The Chairperson (Ms Lo): I think that that is already a policy within the NIEA, with the environmental crime unit. Those who comply really well and beyond requirement have a light touch. That gives the unit the time to go after those who are constantly seen to be breaching rules or regulations. That policy thinking exists in that unit. So you think that prosperity agreements should be better or more widely used? Is that right?

Dr Johnston: I will add to what Angela said. I know from my past work in looking at environmental technologies for wastewater treatment that when the phrase "better regulation" comes up, all eyes in the room open. Northern Ireland Water has certainly put a lot of effort and expense into improving technologies for treatment, increasing sustainability of its treatment, improving systems that it uses, reducing its energy and greenhouse gas emissions and reducing the costs of running the business, especially in times of high fuel costs. The price of fuel is maybe not as high now as it has been in the past. Better regulation can open up many opportunities for the environmental management of waste and wastewater, which bring with them wins for many other Departments. There are wins for DETI, DRD, DOE and DARD — the lot of them.

The Chairperson (Ms Lo): Yes, right across.

Dr Johnston: Absolutely.

The Chairperson (Ms Lo): OK. That is a good point.

Mrs Overend: You talked earlier about ecosystems and our ability to measure them. Do you think that that should be a part of the Bill? Should it be a requirement?

Dr Bailey: I am not sure, from listening to what the Chair has said, whether this is an overarching piece of legislation. There may be other legislation or regulation coming beneath it. Maybe it will be referred to in that; I am not sure. I am a scientist, not a policymaker. I was reading it just for the technicality. Obviously, we need some way of monitoring what happens to the environment. Some of these things are difficult enough to monitor. Some are easy, like water quality; monitoring air quality is not easy. Ecosystems and biodiversity are tricky, but we need to get a handle on them. I am not sure that this Bill is the place to specify that. Maybe it is for the underneath legislation.

There is another issue. From speaking to people like John Gilliland and a number of others involved in the agricultural land use group, there is a need for a joined-up approach to look at all those particular issues, rather than in single silos like biodiversity, carbon footprint and nitrates issues with water quality and other agrienvironment issues. Some of those things are probably necessary trade-offs, because we will not be able to achieve them all at the one time. However, if farmers, or whoever it is, are only looking at one particular bit of regulation, then the Act will be improving one bit of the environment to destroy the other. There is a necessity to not take a silo mentality. For instance, you could be doing things to really improve water quality but you would be raising your carbon footprint quite considerably, so there needs to be ways of managing those issues. Again, I am not sure that that falls to this Bill, which looks at the improvement of environment regulation, but it is something that has to be addressed so that we can take a holistic approach to environmental regulation.

The Chairperson (Ms Lo): Well, certainly with this Bill, we finish here, so that is on the statute book but it will pass on to the new Department, probably with all the regulations coming later. Hopefully there will be more joined-up thinking inside the new Department, including on agriculture and rural affairs.

Dr Bailey: That is probably for the best.

Mrs Overend: That has sort of drawn us back to:

"protecting and improving the environment' includes"

at the bottom of page 3 of the Bill. Are the definitions included in that, and all those things that you referred to, broad enough?

Dr Bailey: I think that they are. I was just raising a follow-up as to how this was to be done, as opposed to making a statement that it is to be done. I presume that it will be done in subsequent legislation.

Mrs Overend: It would be good to see the regulations, would it not?

Dr Bailey: It would be, in order to see how it would be done. I am only familiar with the nitrates directive and the Nitrates Action Programme Regulations (Northern Ireland) 2014 but there are others which, particularly on the ecosystems and biodiversity side, are much more difficult to police and manage. I would like to see how that could be achieved.

Mrs Overend: It is difficult to assess a Bill without seeing the regulations.

Dr Bailey: It is, yes.

Mrs Overend: We are getting that time and again, Chair.

The Chairperson (Ms Lo): Certainly, it says "environmental harm" there, with not a lot of explanation. That is very wide: what is "environmental harm"? The Bill says that it could include:

"(i) harm to the quality of the environment taken as a whole;

(ii) harm to the quality of air, water or land".

It could include so many things. It gives the Department a very wide berth in terms of bringing forward regulations in later years under the enabling Bill.

Mrs Overend: The Minister has talked about regulations for bonfires. Is he going to bring the regulation for bonfires under this Bill?

The Chairperson (Ms Lo): I think so, yes. I think that that is the idea: to use it to make provision for licensing bonfires.

The Committee Clerk: We have sought clarification on the legislation.

The Chairperson (Ms Lo): We have mentioned that.

Mrs Overend: Have we?

The Chairperson (Ms Lo): Yes. We asked him specifically about his thinking on licensing bonfires. It could very well be under that.

OK. We have more or less asked all the general questions. Clause 3 mentions consultees. There is a funny phrase that we are a bit concerned about, and that is:

"such other persons as it thinks fit".

Again, that is really wide. I think that it was you, Leanne, from NIHRC, who said about maybe changing it to, "such other relevant persons". I think that that was your suggestion, from what I remember.

Ms L Cochrane: Yes. We thought that that test was quite subjective and should obviously be more objective. We recommend removing that aspect or changing it to be less subjective. As I mentioned at the start, we would like to see clause 3 also include a provision on the degree of weight — some kind of obligation on the degree of weight — that those consultation responses should be given, more like in clause 4. Whether they are required to be taken into account or to be given due regard, there should be some kind of consideration obligation.

The Chairperson (Ms Lo): Yes, it needs to be tighter. Also, there maybe needs to be independent oversight of it.

Ms L Cochrane: We really drew on article 8 of the Aarhus convention. It suggests laying out time frames and encourages specifying in legislation the time frame for a consultation. It says that a consultation should be open to the public and that, in so far as it is possible, consultation responses should be taken into account. We ask that article 8 of Aarhus be used to direct that clause.

The Chairperson (Ms Lo): We will explore that with you later.

We have kind of explored the general issues on the consultation and the purpose of the Bill. We have asked AFBI about that. I quite agree with you: you need to have constant monitoring of biodiversity. You think that, without mentioning it in the Bill, it is not enough and is not a sufficient safeguard that we keep our eye on biodiversity.

Dr Bailey: I am not too familiar with this whole regulation process or what the Bill is actually meant to cover, but the subsidiary legislation must make it clear that, over a certain time period, you have to resurvey and redo these things. I think that that has to be there, otherwise it is just an open door and there is no way of actually monitoring it. As I say, I am not sure whether it is this legislation or the

subsidiary legislation that has to deal with that, but we have to specify the time frame in which we have to resurvey and re-monitor.

The Chairperson (Ms Lo): John, what we can do at Consideration Stage is mention that that is what we want to see in future, without actually putting an amendment in the enabling Bill. We want the Minister's assurance that there will be continuous assessment when the regulations come on board later. If we get his assurance, that is all on paper, so, in future, we can go back to him. We could do that.

Dr Bailey: That seems reasonable. Thank you.

The Chairperson (Ms Lo): OK. We may want to ask Asda a few more questions. Is that right? I just want to maybe follow on from what Joe said about the streamlining and online applications for licences. Obviously we would have savings for the Department. Do you feel that those savings should be passed on to you and then passed on to consumers?

Mr McDonald: Yes, of course. *[Laughter.]*

The Chairperson (Ms Lo): How can we do that?

Mr McDonald: We have some direct costs, for example, when we are working with the Department if there is a new build. We have costs there. We then have costs in terms of, for example, handling hazardous wastes, batteries and packaging. We have to manage all of that, so there is a cost to our business with that as well. Down our supply chain there are a whole ream of costs in food processing and in primary production, agriculture and so on. There are a lot of different places where regulation is generating a cost in our business or in our supply chain. There is a really big opportunity there if you streamline permitting and move to online. Then there is the idea of corporate permits, where businesses are operating on multiple sites, if you can simplify that.

As Gary said, for businesses that are going beyond compliance, there should be lighter-touch regulation. Our assumption is that all of those measures will generate a saving, and that should reduce direct costs to ourselves, our supply chain and our service providers — and also a time saving, as well, if there is lighter-touch regulation and we can focus on doing the right thing and doing it even better. I think that the expectation across business would most definitely be that if you reduce the burden and the cost, we will see our costs lowered, which will be good for our business and good for our customer base. That is the desire, and the risk is that you almost achieve that when something else comes along and then takes us right back to where we started again, with some new legislation that might be coming along. I used the positive returns scheme as an example of that. It is like snakes and ladders: two forward, two back.

The Chairperson (Ms Lo): The Bill says that it is protection of the environment with deregulation. This is really deregulation that they are thinking about. Do you see a danger of maybe the lowering of environmental protection if there is only one permitting system or one permit for all the sites? Is there a risk there?

Mr McDonald: Not in our business. I can only speak for my business. We lowered our carbon footprint in Northern Ireland last year by 12%. There is a huge focus across our business on doing the right thing. It is good for business to do these things in the right way — to lower your resource use, lower your energy, lower your mileage and your transport fleet. All these things are good for the bottom line of our business. Also, because Asda is part of Walmart, there is a global recognition of the need to do the right thing environmentally. In our business the focus is on the right thing, in this sense. I cannot speak right across the business sector in Northern Ireland. It is not by job to do that here today; I am only representing Asda. For us, our journey will continue to do this the right way, and, if there is a benefit in terms of a lighter-touch regulation that comes with that, that is to the good, and that is what we want to try and capture with this whole process.

The Chairperson (Ms Lo): There is reputational damage, when you look at Volkswagen, for not following rules and legislation. There will be huge damage if a chain — Asda or whatever — is found not to be following the rules. People would have to be very careful about it.

There is a reason for compliance. Legislation or regulations usually have a good reason; that is why they are put there. If people tried to circumvent or to cut costs, it would have a consequence. A good

company like yours would certainly not want to fail to follow rules. The consequence of reputational damage could be immense. It makes sense for all of us to follow regulations, without their being overburdensome on business, expansion and investment, as you said. Striking a balance is very important. Are there any other questions that you want to ask, members? Are you happy about communication? Do you think that the Department has always been good at communicating with you and with supermarkets?

Mr McDonald: Yes. We have a good working relationship with the Environment Agency and with the Department of the Environment, in the sense that there is a direct line of communication, if necessary. I am not aware of any concerns in my organisation about any day-to-day working practice or any issues with compliance — none at all. I praise the Environment Agency for bringing forward the concept of prosperity agreements; it sends out a very positive message to the business community. My business has not adopted that as yet, but my business is aware of the positive message that is being sent out. The Bill sends out the same message: that there is a desire among regulators and policymakers in Northern Ireland to make Northern Ireland a good place for regulation. That is the right signal, at least.

The Chairperson (Ms Lo): OK. I think that we have asked Northern Ireland Water about the prosperity agreement. We will move on to the Human Rights Commission. You mentioned article 8 of the Aarhus convention, which was mentioned a few times in our wind energy inquiry. I think that you also mentioned international obligations. Can you give us a bit more on the Aarhus convention and how you would like to see it put into the Bill?

Ms L Cochrane: Yes; sure. It is a Council of Europe convention that was ratified by the UK in 2005, so it is part of the international obligations of the UK. I will read out the first bit of article 8 if that helps. It is basically about public participation during the preparation of executive regulations. It states:

"Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open"

— the earlier the better —

"during the preparation by public authorities of executive regulations ... that may have a significant effect on the environment."

We want the consultation obligations to be more defined in the context of regulations that may have a significant effect on the environment. It also states:

"the following steps should be taken:

(a) Time-frames sufficient for effective participation should be fixed;

(b) Draft rules should be published or otherwise made publicly available".

General environmental rules are dealt with in clause 4. We feel that the consultation in that context is much better. Part (c) states:

"The public should be given the opportunity to comment, directly or through representative consultative bodies. The result of the public participation shall be taken into account as far as possible."

Comparing clause 4 with clause 3, we felt that clause 4 was much more reflective of article 8 obligations than clause 3. We talked earlier about the subjective test. We recommend removing that in clause 3(1)(b) and replacing it with "such other relevant persons", not whom the Department thinks fit. It is a much more neutral and objective term.

We made general points on clause 1 about other international obligations. The definition "protecting and improving the environment" notes that it includes "implementing international obligations". We welcome that, because "international obligations", as defined in the Bill, has the same definition as that in the Northern Ireland Act, in that it includes any international standards, even those that are not domestically incorporated; that is standards beyond the ECHR, such as the Council of Europe, the Aarhus convention or other UN treaties.

The Chairperson (Ms Lo): Yes, other conventions.

Ms L Cochrane: The International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and all that.

The Chairperson (Ms Lo): Are there any other questions for the Human Rights Commission? No.

I want to drill down on the point of Travellers. Your submission states that:

"the Bill should be amended to ensure that no particular group, for example Travellers, is discriminated against".

That relates to the power of entry. In terms of premises, it included the phrase, "movable property". Is that the phrase that you are concerned about?

Ms L Cochrane: Yes.

Mr Morris: Maybe I could speak to that, Chair. It is more the omission of residential premises in the definition in clause 13, which we have interpreted as an intentional omission so that residential premises are not included. Yet it then talks about "any tent or movable property". Is there a divide between the assumption that all residential property is fixed and is not movable? Certain groups that we have highlighted, including the Traveller community, use such movable property as residential premises. We suggest that that could impact on them in a discriminatory manner.

The Chairperson (Ms Lo): What about caravans in general? Would they be in that category also?

Mr Morris: It would depend on the definition. We assume that movable property would include such movable caravans.

The Chairperson (Ms Lo): We will put that point to the officials. Would that be an infringement of The Equality Act or the Race Relations Order? Would that be seen as discrimination?

Mr Morris: We highlighted that in our submission. Article 26 of the ICCPR, article 14 of the European Convention on Human Rights, and article 5 of the Convention on the Elimination of Racial Discrimination all require the prohibition of racial discrimination, specifically the right to own property alone as well as in association with others. So there are specific regulations in relation to racial discrimination and the enjoyment of property.

The Chairperson (Ms Lo): We will certainly raise those questions with the officials when they come to talk to us. Thank you.

That finishes Part 1.

The Committee Clerk: Powers of entry was in Part 2 anyway.

The Chairperson (Ms Lo): That was Part 2; sorry. We will move on to it.

The Committee Clerk: There were not as many comments on Part 2.

The Chairperson (Ms Lo): We will move on to Part 2 and clauses 6 to 13 — powers of entry. I do not think that there are a lot of questions on that.

The Committee Clerk: No. There were not as many comments on that. If no other group has anything to say on Part 2, maybe you want to move on.

The Chairperson (Ms Lo): Yes. There is one thing under "powers of entry". It talks about a consultation requirement, and it named a number of statutory consultees. No, sorry; it does not name them; it just says, "statutory consultees". Do you think that they should be named under —

The Committee Clerk: Clause 10 at page 6 in Part 1. Under the general environment permitting, when they talked about consultation they named specific organisations as consultees; but in relation to Part 2 on powers of entry, when it talks about consultation, it does not mention any particular organisation. So, it is really just to get views to see whether that is right or whether there should be organisations named.

The Chairperson (Ms Lo): It just says that, "the Department must consult —".

The Committee Clerk:

"such persons appearing to the Department to be representative of the views".

The Chairperson (Ms Lo): Would that mean only police or local councils? Do not worry if you do not have any comments on that. That is fine. The Department has promised that it will prepare guidance for inspectors or for people having the power to enter premises. So, I think that we will see from the guidance what safeguards there are for people whose premises may be subject to search. I think that we are happy with that. Sandra, are you OK with the powers of entry into premises? Is that a question that you have there? Are you happy with the answer?

Mrs Overend: I am OK, thanks.

The Chairperson (Ms Lo): We could group Parts 3, 4 and 5. Part 3 is on clean air and amends the Clean Air (Northern Ireland) Order; Part 4 is amendments to the Environment (Northern Ireland) Order 2002 and requires district councils to undertake a further assessment of air quality in air-quality management areas; and Part 5 is an amendment to the Water and Sewerage Services (Northern Ireland) Order 2006. Angela, you may have something that you want to say on that. I am sure that you welcome that.

Ms Halpenny: Yes. Really, it is just the responsibilities for the Drinking Water Inspectorate. Where we would see the day-to-day regulation, there would be no change there. It was just that powers were being transferred completely to DOE for that.

The Chairperson (Ms Lo): It makes sense if they only call with you once rather than twice or three times.

Ms Halpenny: Well, it will make it easier for the Drinking Water Inspectorate having one Department to work with.

The Chairperson (Ms Lo): Other than working with two Departments.

Ms Halpenny: Yes, but in terms of how it regulates NI Water there would not be any changes there, so we did not have any particular comments on that.

The Chairperson (Ms Lo): Any questions on those three Parts, members? Members, we have a number of SLs coming to us about the exemption of fireplaces and fumes. It is really just trying to simplify that and say, "Right, here is the list. Go ahead and do it; do not keep coming to the Committee and asking for regulations". It will speed things up, too, with new fireplaces or new fuels being authorised. OK, no questions for the consultees.

Do you have any issue with further assessment? Part 4 amends the Environment (Northern Ireland) Order 2002. What it is saying is that they want to remove the requirement on local councils to undertake a further assessment of air quality in air-quality management areas. There is already UK-wide assessment of air quality, but, at the moment, current practice is that councils have to do a further assessment of their area. Do you think that there is a need for them to retain that duty that they have to do more?

Dr Johnston: On the face of it, if you do something twice rather than doing it properly the first time, it might be missing the point. Air quality will become more important, not just for domestic fuels,

commercial fuels, industrial fuels, and, needless to say, road traffic. There might be more to add to that.

Mr McDonald: Can I make a general point, Chair? It raises two important principles. One is duplication. We do not want duplication because that will lead to cost and time. That is the principle to work towards. The other is that it raises again the issue of all the different regulatory bodies that business has to engage with. A practical example for my business would be that the local council has to comply with the annual petroleum licence.

The Chairperson (Ms Lo): Sorry, what is that?

Mr McDonald: Petrol licence. To give you a practical example, every year we have to renew our licence with the local council to sell petrol. With the Environment Agency, we have to comply to get everything right with waste packaging. Then there is the European Union bringing forward other areas, for example, the energy-saving opportunity scheme. So, we have to comply with that and do an audit of our business to comply with that regulation. Even though we do all that process anyway, we then have to verify independently the audit that our business has identified areas for energy saving and is taking steps. It just brings up the issue of the fact that the Environmental Better Regulation Bill captures a lot of good practice for the Northern Ireland Environment Agency and DOE, but there is a lot of compliance outside that, which is my recurring point today.

The Chairperson (Ms Lo): This is only the start maybe.

Mr McDonald: It raises a really important issue for future consideration. There is a lot of stuff happening outside direct environmental regulation that the Environment Agency deals with.

The Chairperson (Ms Lo): I agree with you. If you really want to help businesses to simplify and do away with red tape, it goes for lots of other Departments as well not just Environment. If there are no other issues or questions, we will move on to Part 6, which deals with miscellaneous and supplementary. That is clauses 23 to 27.

The Bill does not cover regulations subject to the draft affirmative procedure for creating penalties of a non-criminal kind or for the provision of compensation. That means that the Department can just issue regulations without going to the Chamber to have an opportunity to air it in a debate. It just comes to us and says, "Do you agree with this?", and we say, "Yes", and that is passed as regulation. Do you think that there may be a danger that there is not enough scrutiny if all those issues go through a simple procedure in the Committee?

Mr Morris: Yes. The Human Rights Commission is always cautious of what we call Henry VIII clauses, where primary legislation provides for the ability to alter or amend any future or past primary or secondary legislation. On the face of it, the legal premise of no punishment without law would seem to be invalidated. We are mindful that regulations like this would streamline the process. There are measures to combat such Henry VIII powers. We notice in clause 23 the negative and affirmative requirements or resolutions in relation to the regulations, and we notice that, in relation to the regulations that establish criminal offences, there must be affirmative action. We welcome that and stress the importance of it. In relation to the other regulations, we understand the nature of the negative resolution process and stress the nature of Henry VIII powers and note caution in using them.

The Chairperson (Ms Lo): There is also a query from someone about clause 26(3) to say that the Bill allows the Department to modify statutory provisions as the Department considers necessary or expedient, which means that the Department has the power to alter the Bill at some stage. The question is why we bother to have this Bill, if we give the power to the Department to say that it can be modified.

Ms L Cochrane: If we are interpreting the Bill correctly, if the Department wants to modify any primary legislation, the procedure will have to be subject to affirmative resolution under clause 23. That is how we read it, and we regard it as very important that it is an affirmative resolution procedure. We read it that way at present but just advise the Committee that it should stay that way.

The Chairperson (Ms Lo): Yes, I agree with you. Thank you very much. It is good to see you all. Thank you for your comments. We will put them to the officials who are coming in two weeks to talk to us. There is plenty of food for thought.