



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Environmental Better Regulation Bill:
DOE Officials

15 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 William Irwin
Mr Barry McElduff
Mr Gary Middleton
Mr Ian Milne
Mrs Sandra Overend

Witnesses:

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

The Chairperson (Ms Lo): I welcome Mr Robert Gray, regulatory and natural resources policy division, and Mr Dave Foster, director of regulatory and natural resources policy division.

The session will be covered by Hansard, members. This is only the initial deliberation on the Bill. It provides an opportunity for you to indicate whether you are content with the clauses, require further information or clarification or are minded to reject or seek to amend clauses. You have a copy of the clause-by-clause table. All responses from the Department have now been received, and those are reflected in that table.

We will start at Part 1, clause 1, which is the general purpose of "protecting and improving the environment". The general purpose was broadly supported and welcomed by those who provided comment on the clause. Two stakeholders commented that the purpose of better regulations should relate to enhancing industry. There were also comments on international obligations. The Committee has asked the Department for justification of the phrase "including (but not limited to)" and for clarification on where in the Bill the broad purposes are defined and legislated for. I now ask Dave and Robert to comment on the issues raised on clause 1 in the clause-by-clause table.

Mr Robert Gray (Department of the Environment): We looked at the issue of the general purpose not being in the Bill. We took the view that the Assembly has published the explanatory and financial memorandum to accompany the Bill and that the two documents should be read together. The purpose of the explanatory and financial memorandum is to set out the background to and policy objectives of the Bill, and it states that one of the key aims is:

"to provide a more streamlined and effective regulatory system."

The long title of the Bill, on page 1, is a summary of the various provisions and what they do. We were satisfied that reading the documents together gives a really full picture of the policy intent, the background, the policy objective, the aims of the Bill and what it is trying to do.

The Chairperson (Ms Lo): OK. Will you respond to the use of the phrase "including (but not limited to)"?

Mr Gray: Clause 1 sets out the general purpose of the Bill. I would like to say at the outset that, as we all know, the key elements of the Bill are enabling — it is a skeleton Bill. Clause 1 is an attempt by the Department to set out the general purpose of what the Bill plans to do in relation to protecting and improving the environment. We are really trying to cover everything in terms of protecting and improving the environment. That is why we are saying that it is not limited. If you just looked at the words "protecting and improving the environment" on their own and gave those words their ordinary, everyday meaning, that could mean a lot of things to a lot of people. We also want to ensure that we are covering the implementation of EU and international obligations, in case there is an attempt to construe it as being confined to simply national issues. It is an attempt to allow for the regulations that are coming forward and give the Department the flexibility to deal with all of these issues.

Mr Dave Foster (Department of the Environment): It is an attempt to future-proof the Bill to some extent. The environment is one area where, every few years, there seems to be a new issue that comes on to the agenda that was not there five or 10 years before. Sometimes, it is hard to second-guess that. In the previous session, members discussed genetically modified organisms (GMOs) with the Minister. Other things on the horizon, such as nanotechnology and other technological advances, seem, at face value, beneficial for society, but, somewhere down the line, concerns might be raised by the scientific community about their environmental aspects. As Robert said, we are trying to ensure that we are able to deal with those if and when they come up.

The Chairperson (Ms Lo): To be able to encapsulate what may happen in 10 years' time that, now, we do not even know exists.

Mrs Overend: I get what you are saying about future-proofing, but I still do not understand why you say, "but not limited to", given that clause 1(1) (a), (b) and (c) enable you to future-proof it. Why do you need to extend that beyond (a), (b) and (c)? The inclusion of "but not limited to" extends it beyond clause 1(1)(a), (b) and (c). Why do you need to extend it beyond regulating environmental activities and implementing the EU and international obligations of the United Kingdom?

Mr Gray: It sounds like everything is covered there, but that is a drafting technique to allow the interpretation of that to go beyond the issues listed.

Mrs Overend: You have not convinced me. Give me an example of something that would go beyond those.

Mr Gray: I cannot give you that example at the moment.

Mrs Overend: Then you are leaving it open-ended.

Mr Gray: It is a very broad power. It is governed by "protecting and improving the environment".

The Chairperson (Ms Lo): That can be so vague, which is the main criticism from NGOs and others. It covers so much, and we do not know what will come down the line.

Mrs Overend: If it is so important, you can come back and bring us further legislation. To me, it seems too open-ended.

Mr D Foster: In the future, something that does not fall within the definition of "environmental activities" might come up as an issue. An environmental concern that has not come up as an EU issue might require us to use the Bill to try to mitigate it. That would give us the opportunity to deal with it, rather than us having to come back to the Assembly to put primary legislation in place.

Mrs Overend: What if it is about regulating environmental activities? Does it fall under clause 1(1) (a)?

The Chairperson (Ms Lo): Yes. Even clause 1(1)(a) is quite vague: "regulating environmental activities" can mean so many things.

Mr Gray: All of those words have been identified and defined in clause 5. You will see that those definitions are also very wide. There are definitions of "activities", "environmental activities" and "protecting and improving the environment". It is an attempt to cover everything, and the proof of the pudding will be in the regulations. The Committee will have a chance to consider those and see the sheer range of issues covered in them. You never know what will come out of the consultation exercise and so on in relation to the regulations. As Dave said earlier, it is also an attempt to future-proof what the Bill can do. I accept that it is very broad.

The Chairperson (Ms Lo): People are concerned that we are giving you too much power, at this very early stage. You can regulate on so many things that it is almost a blank cheque.

Mr Gray: The Bill, of itself, cannot do anything; it is the regulations made under the Bill that will implement and change the law. You say that it gives the Department a wide power to do basically anything, but the regulations that contain those provisions are subject to full and robust Assembly scrutiny and full consultation. If people find something in the regulations that they have a problem with, that will have to be sorted out in how they are developed. Given the scope of the environmental permitting regulations, we are talking about probably the largest set of environmental regulations ever introduced in Northern Ireland. Given the range of issues that they cover, we thought it best to ensure that the Bill gave the Department the full flexibility and power to introduce those regulations. However, if there is something in the regulations that people are unhappy with, the regulations, or the offending provisions in them, will not proceed. I appreciate what you are saying.

The Chairperson (Ms Lo): It is a safeguard.

Mr Gray: When you look at the Bill on its own, you think, "It is very broad. How can we bring it in a bit?". However, as I say, it is only when the regulations come forward that you gain a full appreciation of what we are trying to do.

The Chairperson (Ms Lo): What have you in mind as to the regulations that may come on board in the next year or two? Give us some examples.

Mr D Foster: One primary set of regulations, which will cover the new permitting regimes, is in development now. We look across to other jurisdictions to see how they have tried to integrate their regimes for the purposes of better regulation. That first set of regulations, as Robert said, is substantial because we are trying to pull together regimes that deal with air, waste, water and radioactivity, a lot of which comes from European legislation, and European directives tend to have a lot of technical annexes attached. So far, the first regulations will be quite substantial.

Mr Gray: We have attempted, as best we can in the delegated powers memorandum, to outline the issues that we envisage the regulations covering. There will be regulations to provide for charging schemes, related to public registers, compliance, the enforcement of offences and rights of appeal. There is a whole range of issues. Similar regulations in Britain are over 200 pages long and contain 128 regulations and eight schedules, all covering areas of the environment that require licensing and control. The purpose is to enhance the protection and improvement of the environment and, at the same time, simplify it and make it easier to understand and more effective for regulators to implement.

The Chairperson (Ms Lo): OK.

Mr Gray: You are seeing only half the picture at the moment.

The Chairperson (Ms Lo): Or just one of the pictures, which is the overall aim rather than any details down the line.

Mrs Cameron: I share some of the concerns already voiced. Let me turn it on its head and use your own words, by way of argument or explanation, against you. You talk about full flexibility, power and future-proofing. We want to do the same. We need to know exactly what it is we are scrutinising and, if there is not enough detail and the powers are too wide, we do not know — or do you — what may be affected in time. I am with Sandra on this: it looks, on the face of it, as if there is enough without

putting extra flexibility and power in there. I have not really asked a question; it is more of a statement. We could use your argument and cast it back at you.

Mr Gray: I fully appreciate that, and I appreciate the challenges that an enabling Bill of this nature presents to a Committee. I fully accept that, but enabling Bills are not unusual. This is similar to legislation in Scotland called the Regulatory Reform (Scotland) Act 2014. Including the regulations in the Bill would just become very unwieldy.

Mr D Foster: The different regulatory and permitting and licensing regimes that will be addressed by this have developed over probably 20 or 25 years, primarily in European legislation. An attempt to integrate those and produce a system for industry that is easy to understand and implement is complicated and takes a number of steps.

We sought to break it into manageable steps in the Bill's provisions. That means that after the Bill's assent, we will not have to come back to the Assembly and Committee to explain our next step, how we intend to go about that, consult widely and take on board the representations from the consultation. It is such a big programme of work that it is not possible to bite it all off in one piece of legislation. Unfortunately, that means that the primary legislation is broad in its approach and is very much enabling legislation, as Robert said.

Mrs Cameron: OK. You spoke about the explanatory and financial memorandum and what is in the Bill. It is useful to see what you are being asked to endorse in front of you in black and white. It is good to see exactly what it is rather than relying on additional information. It is good to see in black and white what exactly we are dealing with. Again, that is not really a question; it is just a statement.

Mr Gray: I was aware of this issue, which was raised by the Committee. In my own research, I looked through about a dozen previous Assembly Bills. It was interesting that the long titles of, say, eight or nine of them were quite factual, similar to the long title of this Bill. In perhaps one or two long titles there was a reference to a programme or an aim, so there is no consistency in this with previous Assembly Bills.

It is an interesting point, but we thought that there was sufficient information in the accompanying explanatory and financial memorandum for the public and interested parties to appreciate the aim.

Mr D Foster: If the Committee feels that additional wording or a change of wording in the long title would help, we could consider that.

Mrs Cameron: I do not think that it would simplify matters if that was the case.

The Chairperson (Ms Lo): The general comments from the sector, the Human Rights Commission and others, were that the purpose of the Bill was vague and gave too much power to the Department. If you could elaborate on its purpose and be more definite about what you are going to enforce, even the framework, that may be helpful. That would make people not feel so edgy about you having overall power and embracing everything in protecting the environment and simplifying regulations. It is the vagueness that people have concerns about.

Mr Gray: Do you mean in the Bill?

The Chairperson (Ms Lo): Yes, in the Bill.

Mr Gray: We can look at that.

The Chairperson (Ms Lo): That would give all of us a bit more confidence that we are not giving the Department a blank cheque.

Mr D Foster: The first page of the Bill has the long title and the general purpose, so if we make sure that the first page gives the reader a clear overall feeling of what the Bill is seeking to achieve and its general purpose, that is to everyone's benefit.

The Chairperson (Ms Lo): When can you give the wording to us? Can you do it as soon as possible? Is it possible for you to give us the wording next Monday to strengthen that?

Mr Gray: Any amendments to the Bill have to go through the Minister's office. They also have to be drafted by the legal draftsmen.

The Chairperson (Ms Lo): I know, but just to know what you intend to put in. If not, we can ask the Bill Office to draft an amendment for the Committee to look at.

Mr D Foster: I am sure that we could put something together that would give an intention of what we might seek to do fairly quickly on that.

The Chairperson (Ms Lo): Yes, if you can do that. Members, are you content with that?

Members indicated assent.

The Chairperson (Ms Lo): We move on to clause 2, "Regulations relating to protecting and improving the environment". Comments on this clause were supportive in general. One stakeholder commented that clause 2 and schedule 1 have the potential for wide-ranging impacts on councils, including financial costs, particularly where functions may be added or removed. Can you comment on that? That was from NILGA. It is concerned that it may give you the power to take a function away or to impose financial costs on them.

Mr Gray: No functions will be removed in terms of the environmental permitting regulations. It is about streamlining the system and making it more effective, but no functions will be removed.

With regard to the impact on the regulator, on business and everyone else, the Department is committed to bringing forward a robust regulatory impact assessment to accompany the subordinate legislation programme. That, again, is something that will come forward in the future. All that will be subject to consultation with the Environment Committee and should include details of the impact costs and benefits and all those issues. That is what the regulatory impact assessment should cover.

Mr D Foster: We will engage directly with any sectors affected by that as part of developing the regulatory impact assessment. So, in the specific example of local councils, if there were likely to be any potential impacts, we would talk to them about developing the regulatory impact assessment to see what they were, their nature and scale, so that they could go into it and be subject to the consultation process.

Mr Gray: There is also the impact on business. The thrust of the legislation is to ease administrative burdens and to reduce red tape on business at the same time as protecting and improving the environment. That would be covered in the regulatory impact assessment, given that that, in essence, is a key thrust of the Bill. We would seek to explain how, in the regulatory impact assessment, the regulations would help to reduce administrative burdens on business.

The Chairperson (Ms Lo): The sector welcomed the flexibility in clause 2. The Ulster Angling Federation (UAF) and Northern Ireland Environment Link (NIEL) say that there should be emphasis that better regulation must not mean less regulation or a lowering of standards. Can you guarantee that that will be the case? They appreciate that there is a need for flexibility in the Bill.

Mr Gray: Throughout the process of the Bill, the Minister and the Department are both on record as saying that, under no circumstances, should the Bill result in any weakening of the protection of the environment.

The Chairperson (Ms Lo): Have we seen any evidence in other jurisdictions of deregulation, if you like, that there has been a lowering of standards?

Mr D Foster: The Bill is about changing the process and bringing together the processes that give you the regulations. In the permits that the regulations would deliver, the requirements that relate to environmental performance almost all stem from European legislation. For instance, if a factory or power station has certain requirements relating to air emissions, those standards come primarily from European air quality directives. Those standards would remain the same and would feature as annexes to the first set of regulations. The same would apply to requirements for waste management or effluent quality into waters. The standards that the facility has to meet will remain the same; it is just about how we package up the permit and the type of permit that they use and bring them together so that they are easier to understand for operators on the basis that it will save them time and money.

It will also mean that, if something is easier to understand, they are more likely to comply with it and therefore protect the environment.

The Chairperson (Ms Lo): Is there a danger that if you lump too many things together, when an inspector goes out, they may not have the same knowledge to be able to inspect all the different areas — water, air or whatever? Is there a danger of someone missing it?

Mr D Foster: That is certainly a valid point. In taking the regulations that flow from the legislation into operation, the agency will have to be very careful in how it takes that forward. The experience in other jurisdictions of the idea of one "super-inspector" who can inspect everything from air and waste to radioactivity is not borne out, so I do not think that there is any intention that the agency will have one inspector. What it will seek to do is have as few as is appropriate so as not to overburden a business but enough to ensure that the inspector or inspectors who go are competent in the different environmental elements that they are inspecting. That is something that we will have to be cognisant of; not just expect someone already to have a great knowledge of everything and also recognise what businesses say inasmuch as they are expected to have a certain knowledge of all the permits that they have so that if we are bringing them into one, at least they will be able to see the totality of what is expected of them.

The Chairperson (Ms Lo): OK. Members, are you happy with clause 2?

Members indicated assent.

The Chairperson (Ms Lo): If you are content with that and there are no further questions or amendments that you would like to see, we will move on to clause 3 "Regulations relating to protecting and improving the environment: consultation". There was a suggested amended clause to cover cases whereby the regulations would also remove functions from any regulator as well as conferring new functions. That is from Arc21. The Committee asked the Department to justify phrases used in the clause such as:

"such other persons as it thinks fit ... as it considers appropriate."

Stakeholders also commented on that phrase. One suggested an amendment to remove the subjective text and include specific time frames and provision for the outcome of the consultation to be taken into account as far as possible. Another suggested that the clause should also specify consultation in cases where proposals would lead to functions being removed from councils. Those phrases are pretty condescending, if I may say so. Instead of, "such other persons as it thinks fit", it has been suggested that the word "relevant" may be better. Instead of saying, "as the Department thinks fit", you could say "relevant bodies" or "relevant organisations".

Mr Gray: I will talk about clause 3 in a general sense first. The very fact that, in the Bill, there is a statutory duty on the Department to consult reflects the importance —

The Chairperson (Ms Lo): Can you speak up a little bit, Robert?

Mr Gray: Yes. The fact that clause 3 imposes a statutory duty on the Department to consult reflects the importance that the Department attaches to the consultation exercise. The Department completes any consultation exercise, and, we, as officials in the Department, follow working practices in relation to those consultation exercises. We engage with the Committee in advance of the consultation exercise going public. There is not much difference between "as it thinks fit" and "as it thinks relevant". When the Department is deciding which other persons it thinks fit, it will regard those persons as relevant persons. We are getting into drafting techniques. This is how it has been drafted by a professional draftsman. It is an all-embracing statutory duty on consultation.

There was a comment about the Aarhus convention. I have looked at that, and it is essentially about ensuring that the public should be given the opportunity to comment directly —

The Chairperson (Ms Lo): And take into account, as far as possible, their comments.

Mr Gray: As the Committee knows, it is customary in the Department, when completing a consultation exercise, to complete a synopsis of the outcome of the consultation covering the issues raised and the departmental response to them. The Department also follows OFMDFM guidance on the distribution

of consultation documents; that is, the section 75 guidance on distribution of consultation documents. It also published details on the Department's website and through the local press. The Department is of the view that, as a complete package, the clause is a very robust consultation requirement.

The Chairperson (Ms Lo): It has been suggested that clause 3(1)(b) can state:

"including such persons appearing to it to be representative of the interests".

Then you list various organisations and bodies. You could add, "and any other persons as it thinks fit" or "any other relevant persons".

Mr Gray: If you look at that from the point of view of the Department trying to bring forward a consultation exercise, those words allow us to have the complete flexibility to consult with the people who are relevant and anyone else who is interested. Anyone who is not consulted, but who thinks they should have been, will soon let the Department know. Otherwise, you are getting into a situation where you would be drawing up in legislation a complete list of who would be relevant. Who are the relevant persons? Only the Department can decide that when it is taking forward the consultation document, developing it and distributing it, and so on.

The Chairperson (Ms Lo): So, you do not think "relevant" is the right word. Would "relevant" make it difficult for you?

Mr Gray: I do not think there is much difference between "thinks fit" and "relevant". In practice, the outcome of that would be the same, I think.

Mr D Foster: You would prefer "relevant" to "fit" in clause 3(b).

The Chairperson (Ms Lo): Yes. The Northern Ireland Human Rights Commission, for example, suggested that, rather than "as it thinks fit", it should be "such other relevant persons".

Mr Gray: In practice, there would be the same outcome. So, if the Committee is asking if we should change that to "relevant" —

Mr D Foster: I think we could look at that.

The Chairperson (Ms Lo): Members, are you content with that? That was suggested by the Human Rights Commission. It seems to be more equal than to say as the Department thinks fit, which is, in a way, subjective.

The Human Rights Commission suggested an amendment to remove the subjective text and to include specific time frames, and to include provision for the outcome of the consultation to be taken into account as far as possible. Can you put those things into the Bill?

Mr D Foster: What is considered to be a relevant or best practice time frame for consultation has changed over time in the best practice guidance from OFMDFM and the Cabinet Office in Westminster. So, putting a specific time frame in the Bill might be constraining. We as a Department always follow the current best practice from OFMDFM. If that changes, we change the nature and timing of our consultations. We always seek to ensure that we are following the best practice guidance in that regard. If we put a specific time frame in the Bill, it might be constraining at some point going forward.

The Chairperson (Ms Lo): Can you assure people that you have taken into account, as far as possible, what people have told you in the consultation when deciding what to put in the Bill? I think that that is what people are saying. That is also in the Aarhus convention; you must not only consult, but take into consideration, as far as you can, the comments.

Mr Gray: That is what we do in any consultation. Obviously, we take into account what is said, and we respond to that. We do not need to make that a legal requirement.

The Chairperson (Ms Lo): Are members content with the responses from the Department?

Members indicated assent.

The Chairperson (Ms Lo): You are going to look into changing the phrase "as it thinks fit" to "as it thinks relevant"?

Mr D Foster: Yes.

The Chairperson (Ms Lo): OK. We will move on to clause 4. We will go as far as we can in Part 1. When do we have to finish?

The Committee Clerk: We have another briefing, but we could see how we get on. We might be able to get Part 2 done, but we will see where we are after Part 1.

The Chairperson (Ms Lo): We will do Part 1 as far as we can, anyway. Clause 4 in Part 1 is on general environmental rules. Two stakeholders, the Human Rights Commission and the Northern Ireland Local Government Association (NILGA), commented on this clause and were supportive. The Examiner of Statutory Rules asked for clarification of sub-delegated general environmental rules made under the regulations rather than being specified in them. The Committee also asked officials to justify the lack of statutory oversight rules made under the regulations and to provide examples of what they will include. Can you respond to that, Dave and Robert?

Mr Gray: I will address the examiner's point. As we have explained, the environmental permitting regulations will specify the general environmental rules. The Department's intention is that they will be in the regulations. We want to retain the flexibility to make them under the regulations if that proves necessary at some point in future. The rules may be a very discrete rule that affects only a certain type of business. If that happens, they are subject to robust statutory requirements in themselves. They are subject to the normal Assembly rules that apply to regulations.

To answer the examiner's question, the Department's intention is that there would not be any sub-delegation. The general environmental rules would be contained in this very large set of environmental permitting regulations that I mentioned earlier. We want to retain the flexibility because there may be something minor that would not justify a fully formed regulation. Even if that happens, there is still a procedure to go through in relation to consultation and engagement with the Assembly and so on. This is not new; there are general environmental rules and provisions similar to this in existing legislation on integrated pollution prevention and control (IPPC) regulations, I think.

The Chairperson (Ms Lo): OK. So, they will be rare; is that what you are saying?

Mr Gray: Our intention at the moment is that there will not be any that are outside the —

The Chairperson (Ms Lo): You just want to keep that flexibility.

Mr Gray: — in case something arises in future. It could be a power that is never used. We do not have a crystal ball in relation to such issues.

You asked about providing examples. It is too soon; we are not in a position to provide the examples. That is all part of the policy development process surrounding the regulations. When the regulations are in a form suitable for consultation and so on, those sorts of questions can be looked at in proper detail.

The Chairperson (Ms Lo): What about justification for the lack of statutory oversight on this?

Mr Gray: As I said, all general environmental rules will be subject to statutory requirements. General environmental rules specified in regulations will be subject to normal Assembly rules applying to regulations. They are going to be in the regulations and, therefore, they are subject to robust —

The Chairperson (Ms Lo): Consultation.

Mr Gray: Those regulations require affirmative resolution procedure.

The Chairperson (Ms Lo): All affirmative resolution procedure?

Mr Gray: They will be in the main set of environmental permitting regulations, and that is affirmative.

The Chairperson (Ms Lo): Are members content with the response?

Members indicated assent.

The Chairperson (Ms Lo): We move on to clause 5, which is interpretation. There were comments on specific definitions in the clause. The Northern Ireland Environment Link (NIEL) and the Ulster Angling Federation suggested that an amendment to the definition of "environmental harm" should include interference with the functioning of natural systems. They said that ecosystems take time, and they also talked about monitoring.

The Committee also asked the Department to justify and explain the terms "offences to the senses", "damage to property", "impairment of, or interference with, amenities or other legitimate uses of the environment" and "regulator". People say that "regulator" could mean so many things. One stakeholder commented on the definition "protecting and improving the environment" and suggested that there is a need for repeat assessment of the ecosystem status. As I said earlier, sometimes you do not see damage to the ecosystems without regular assessment.

Mr D Foster: I will take your latter point about assessment of ecosystems and then the suggestion around functioning of natural systems. We agree that the ongoing monitoring of the ecosystems and the determination of their status needs to continue. That is an operational matter for the regulator, but we recognise that it cannot be a one-off assessment; ecosystems change and their status changes, so that would need to be repeated regularly as an operational issue.

The Chairperson (Ms Lo): How will you assure people that that will happen?

Mr D Foster: Under some of the EU legislation — the water framework directive, the marine framework directive, the habitats directive and the birds directive — there are statutory requirements and implementing regulations for regular monitoring of the environment and the status of the environment and reporting through to Europe as part of that process. Those assessments would be the baseline of the assessment of ecosystems, whether freshwater, terrestrial or marine and their status. That is a statutory requirement already, and those assessments inform what the regulator does in relation to permits on industry or other installations.

The Chairperson (Ms Lo): We may have those assessments, but they do not always come up with the standards required, and that is a problem.

Mr D Foster: As the assessments are updated, the regulator needs to take cognisance of that. If standards need to be tightened in regulations, that is the appropriate mechanism for doing that. In relation to the functioning of natural systems, we recognise the point that is being made, but the Department's view is that the inclusion of that is not strictly necessary, because the words:

"protecting and enhancing, the status of ecosystems"

are already in the definitions in clause 5. An ecosystem can be defined as all of the living things — plants, animals and organisms — in a given area, interacting with each other and with their non-living environment, which is the weather, earth, sun or climate atmosphere. Effectively, in assessing the status of an ecosystem, if it is not functioning, then the status will not be shown to be good. In making that determination, we think that the functioning of natural systems is covered by the existing definition of ecosystems.

The Chairperson (Ms Lo): You have these different terms "offence to the senses", "damage to property" and "impairment": can you make it more specific?

Mr Gray: The interpretation definitions are an attempt to cover anything that could harm or protect the environment. Some specific questions were asked, for example, about the meaning of the word "premises". Does that include a residential home? "Premises" as it appears in the Bill is just given its ordinary, everyday meaning and, therefore, it would include a residence. The definition also makes clear that it also includes movable property or a tent. It is really trying to cover any premises within which it is possible for some polluting activity, or something that could potentially damage the environment, to occur. The word is just given its ordinary, everyday meaning. Similarly with:

"offence to the senses of human beings"

That is just sight, smell or noise issues and that sort of thing. "Damage to property", again, really just means what it says. There is no hidden agenda or anything there.

Mr D Foster: Some of those terms are already covered in existing legislation. For example, the Environment Order 2002 and the Pollution Prevention and Control Act 1999 cover some of those phrases, so there is existing precedence in the way they are interpreted for our existing regulatory regimes. There is no proposal to change that.

The Chairperson (Ms Lo): I know you said that it is covered in other legislation, but this is an individual piece of legislation. It does not make it right if someone else is doing it wrong. People are just a bit concerned that it is very wide-ranging. It catches all. Is there any way that you can make it more specific?

Mr Gray: I do not think so. We want to ensure that the permitting regulations are able to deal with damage to property. We want to ensure that they can deal with polluting activities that cause offence to the senses of human beings. I think the ultimate safeguard is what is in the regulations. I keep coming back to that point.

The Chairperson (Ms Lo): Those are all subject to affirmative resolution.

Mr Gray: These environmental permitting regulations that I am talking about will be affirmed.

Mrs Overend: I just want to come in on what you are saying, Anna. It is so wide-ranging. With regard to offence to the senses of human beings, if I see something that offends me, there could be regulations under this legislation that relate to something that I do not like the look of.

Mr Gray: It is probably dealing with light pollution issues or —

Mr D Foster: Or noise or smell. Those are the three things that would come up.

Mrs Overend: What about graffiti that I do not like the look of on walls?

Mr Gray: There already is legislation.

Mrs Overend: It is in the environment that I live in. Is that included or excluded?

Mr Gray: That is legislation dealing with the amenity of a neighbourhood. By amenity, we mean visual amenity. There is legislation dealing with graffiti under clean neighbourhoods legislation, which allows district councils to deal with graffiti issues.

The Chairperson (Ms Lo): To follow up on Sandra's point, if my next-door neighbour or people across the road painted their building a horrible bright purple or rainbow colour, can I claim that that is an offence to my sense of colour?

Mr Gray: Yes, but is it causing environmental harm? These are examples in the overall definition of environmental harm.

The Chairperson (Ms Lo): OK.

Mr D Foster: It is the harm that is pertaining from a premises that is subject to a permit. So, ultimately, it comes back to a permit for any environmental activity on the premises, industrial site or waste site.

Mr Gray: I fully appreciate the point that you are making. When you look at this, you could say, "What is to stop the Department bringing forward something that makes red buildings illegal?" In order to do that, you would have to bring forward regulations. Where would they go? They are not going to go anywhere.

Mrs Overend: That is fine. I just thought that I would tease that out.

The Chairperson (Ms Lo): So, it would be a bad smell or things like that.

Mr D Foster: It tends to be, operationally, that, despite the fact that we are implementing EU legislation to, say, control air quality, and not just on the dark side and such like, a lot of our inspectors have to deal with complaints about the noise or odour from an industrial premises. This is scope to cover that and to allow us to continue to react to those complaints from members of the public.

Mrs Cameron: On that, some of the descriptions that you have given on this offence to the senses of human beings are noise, noxious smells, light pollution etc. What is the "et cetera"? You talk about questioning whether that does environmental harm: where is the environmental harm in noxious smells?

Mr Gray: It could be harm to the health of human beings. In the definition of environmental harm, it could be harm to the health of human beings and harm to the quality of air, water or land.

Mrs Cameron: You have given the example of noxious smells. When you look it up, it says, "Harmful, poisonous or very unpleasant". "Very unpleasant" might not be classed as environmental harm. It is just reinforcing the wideness of it.

Mr D Foster: As regards certain premises, such as landfill sites or waste water treatment sites, people who live close to those tend to be affected. The health of humans could also be defined as people's mental health. If, day and daily, they are subject to noxious smells, and, over time, it is not dealt with, it has that impact. We seek to react when people complain about that because we recognise that.

The Chairperson (Ms Lo): Can some of those be put into the explanatory and financial memorandum (EFM) to assure people? For example, you talk about ecosystems and the ongoing assessment.

Mr Gray: Yes, because the EFM will eventually become the explanatory notes on the Act.

The Chairperson (Ms Lo): Can you add that?

Mr Gray: We could elaborate on that. I am happy to accept that.

The Chairperson (Ms Lo): OK. Are members content with the explanation from the officials?

Members indicated assent.

The Chairperson (Ms Lo): We have finished Part 1, so we will leave it and come back next week. We have another briefing to do. Thank you.