



Northern Ireland  
Assembly

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**COMMITTEE FOR THE  
ENVIRONMENT**

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**OFFICIAL REPORT  
(Hansard)**

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**Wildlife and Natural Environment Bill**

24 June 2010

**NORTHERN IRELAND ASSEMBLY**

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**COMMITTEE FOR THE  
ENVIRONMENT**

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**Wildlife and Natural Environment Bill**

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

Mr Cathal Boylan (Chairperson)  
Mr Patsy McGlone (Deputy Chairperson)  
Mr Roy Beggs  
Mr John Dallat  
Mr Danny Kinahan  
Mr Ian McCrea  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

**The Chairperson:**

The Committee will now hear Mr Weir's presentation on his suggested amendments to the Wildlife and Natural Environment Bill. Mr Weir, before you begin, I do not want Jim "Sharpshooter" Shannon to be hammering down the door. *[Laughter.]* The Committee needs to get this right.

**Mr Weir:**

If you see one of those little red lights appear on my head — *[Interruption.]*

**The Chairperson:**

OK. Simmer down.

**Mr Weir:**

I have some information for Committee members. Members will note that I have been remarkably quiet today, and that is in the hope of minimising the mauling I will get over my proposed amendments to the Bill. Outside the Committee Room door, there is a list of instructions, two of which are that there is to be no shouting or hissing. I hope that Committee members will bear that in mind.

The Consideration Stage of the Bill exposed a procedural weakness in the Assembly in the time that is set aside for debates. However, that is something that the Committee on Procedures must address.

I spoke to departmental officials, and they are content with amendment Nos 22 and 24. Indeed, those amendments have also been Shannon-proofed, which was perhaps an even greater hurdle to overcome. Both amendments are also not entirely fresh and relate to amendments to pre-existing legislation.

I will take each amendment in turn. I am happy if Committee members want me to pause at the end of my briefing on amendment No 22 to take questions, or I can explain both amendments and then take questions. I am happy to do either.

I have only one copy of a background note with me today, but there is nothing in that note that I will not be saying anyway. I will give a copy of that note to the Committee Clerk.

**The Chairperson:**

For clarity, can you elaborate on what does and does not appear in existing legislation?

**Mr Weir:**

On amendment No 22, there is a pre-existing duty under article 40 of the Environment (Northern Ireland) Order 2002. Both amendments relate to the Environment (Northern Ireland) Order 2002. Article 40 of the 2002 Order outlines a range of pre-existing duties relating to authorising operations. Amendment No 22 expands on what is contained in article 40.

The wording of amendment No 22 is taken from two pieces of legislation from across the water: from section 28H of the Wildlife and Countryside Act 1981, as amended, which is the legislation that operates and covers areas of special scientific interest (ASSIs) in England and Wales, and sections 14(3) and 14(5) of the Nature Conservation (Scotland) Act 2004.

The wording of amendment No 22 would have the effect of bringing Northern Ireland into line with the rest of the United Kingdom — I appreciate that that may be a bigger issue for some members than it is for others — so that there is consistency in the issuing of licences or consents by public bodies for works on ASSIs. The wording of any such licence must make it clear that the operation should be carried out in such a way that minimises damage, and if damage occurs, the site should be restored.

In many instances, that happens already. Indeed, it would be considered good practice, and, essentially, amendment No 22 codifies such good practice. For example, it often happens that the Northern Ireland Environment Agency (NIEA) issues consent for notifiable operations on ASSIs, but a different branch of government issues the licences. For example, the NIEA's water management unit issues river abstraction licences. In the case of that specific example, concerns have been raised by the angling community about the impact of such licensing on salmon populations. Amendment No 22, combined with the biodiversity duty, will, I hope, ensure that

the water management unit takes biodiversity into account when issuing licences. The wording of amendment No 22 is compatible with other ASSI legislation and offers a degree of protection from damage.

There are, however, key qualifications. I am aware of other non-ASSI examples in which conditions are put in place by local councils that lease out to or license an organisation to carry out an activity for a period. Generally speaking, those conditions are concerned with minimising any damage, and also that the facilities are restored to their previous state. The key phrase, which is borrowed from the other legislation, is that conditions should be observed

“so far as is reasonably practical”.

That is a legal phrase that has been tested in the courts for reasonableness. It provides a degree of constraint on the issuer of the licence, so that someone is not so over-officious, whether in any organisation or government body, that conditions are attached that are over the top. For example, if a licence holder is supposed to minimise damage or restore a facility to its previous state, it would be ridiculous to argue over a blade of grass that has been disturbed. The conditions that are set must be reasonable and practical. The references to the obligation to give rise to as little damage as is reasonably practical and that a site should be restored to its former condition so far as is reasonably practical have both been tested in various ways by case law. It might be described as the reasonableness test. Roughly speaking, that is all that I have to say on amendment No 22.

**The Chairperson:**

To get a handle on it, a practical example might help my understanding. You might remember the issue at Lisnaragh, which was designated as an ASSI in order to stop sand and gravel extraction. How would that situation be coped with?

**Mr Weir:**

The Bill does not cover the designation of ASSIs, so it would not have stopped Lisnaragh from being designated. Similarly, when a decision is required on whether to issue an extraction licence, conditions can be placed on it. Conditions could probably be applied anyway. However,

when issuing licences, the idea is that people bear in mind that there should be as little damage as possible to sites and that they must be restored as closely as possible to their original state.

**The Chairperson:**

That is the point that I was trying to make. It must be reasonably practical for us not only to influence operational activities but to ensure that sites are restored to their original state.

**Mr Weir:**

If something is to be extracted from a site, it may, by definition, be impractical to restore it to exactly the same condition. Amendment No 22 is designed to ensure that the licensing body has that in mind. In other parts of the legislation, we have taken steps to protect the biodiversity duty, which has an affect on ASSI status, so the amendment is in line with that. As I said, that approach has been in operation for a number of years, and I am not aware of any problems with it. The exact same legislation applies in jurisdictions across the water.

**The Chairperson:**

On the pre-existing legislation —

**Mr Weir:**

The amendment simply expands on what is there. It adds a little, but not an enormous amount. A number of conditions already exist in article 40 of the Environment (Northern Ireland) Order 2002.

**The Chairperson:**

Do members have any further questions?

**Mr McGlone:**

I am wondering where we move to from here. I have been contacted by people who feel that a bit more information needs to be out there. I know that that is why we are here, and I respect Mr Weir's volition to do that. Nevertheless, particular groups have an interest, and you touched on one of them, which is the quarrying sector. I reckon that the farming and conservation sectors would also be interested, so I will be interested to hear what they have to say on the matter. They may well be supportive, which would be fine and good, but it will be useful to hear what they have to say. Indeed, to ensure that the Committee's position is consolidated, it would be useful to get a presentation from the Department as well.

**The Chairperson:**

Perhaps Mr Weir can tell us whether the subject came up during the consultation period.

**Mr Weir:**

This may be another flaw with the timescale, but the problem is that the issues were raised with me reasonably late in the day. It was Monday week ago when some of the suggestions were put to me. I then spoke to the Department, which got back to me within the given timescale.

Another point that I would make about the way in which ASSIs affect the authorisation of licensing operations is that they contain provisions for landowners, whose rights are protected anyway in general legislation. For example, there is no restriction on landowners taking actions that fall within their remit. It is meant to deal principally with broader commercial or departmental operations. I have a background note, which more or less covers what I have been saying, so it may be helpful to circulate it as an explanation.

**The Chairperson:**

Can we get a copy of that?

**Mr Weir:**

I shall get you a copy within the next 24 hours. I have marked this one, but I have the document on my computer, so I can print it again.

**Mr Kinahan:**

I am slightly nervous about this, partly because amendment No 23 is not under discussion today. We have seen that ASSIs are managed quite clumsily in Northern Ireland. My concern is that a mass of people is affected. From my experience on the Lough Neagh Advisory Committee, there are some 100 bodies involved. I want us to explore that properly, with stakeholders having a chance to have their say as if at Committee Stage. I know where you are coming from, and it is absolutely right that we protect landowners, but there is a whole mass that rides on the back of this. Therefore, I would like to see the matter properly explored.

**Mr Beggs:**

That seems reasonable. Peter may not be aware of any problems, but that does not mean that there are no problems.

**Mr Weir:**

Amendment No 23 provoked a lot of reaction, and many people contacted me and others about it. I appreciate that the time frame after I tabled the amendments was relatively short, but I have not had any adverse comments. Mr Shannon checked with his contacts, who did not see a problem. The wording in the Bill is identical to that which applies in the rest of the UK. I am not aware of its having caused any great problems there either.

**Mr Beggs:**

The wording seems reasonable. OK, the shooting fraternity feels that it is reasonable. However, I would seek a little more reassurance so that the network of people that could be affected at least has an opportunity to comment and check with their counterparts elsewhere, because there has been very restricted viewing of the wording.



**Mr Weir:**

Consulting is easily done, because I understand that any further amendments will be debated at Further Consideration Stage, which I presume will be in September.

**The Committee Clerk:**

Yes, that will be referred until after recess.

**Mr Weir:**

Therefore, we are talking September or October for the Further Consideration Stage. That will give us an opportunity for consultation.

**Mr Beggs:**

An opportunity for consultation would be helpful.

**Mr Weir:**

Consultation applies to the other amendment as well.

**The Chairperson:**

We will send this out to the all stakeholders who took part. To be fair, Mr Weir, it is OK explaining that to us, but we definitely need to court proper opinions on the matter.

**Mr Weir:**

As part of that process, it may be helpful to provide some sort of explanatory memorandum. It may also be worthwhile to wait until we get a comment from the Department.

**The Chairperson:**

We have the whole summer to contact stakeholders.

**Mr McGlone:**

I have genuinely not arrived at a considered position on the amendment. De facto, the amendment is not a Committee amendment. At this stage, it is Mr Weir's amendment, although it may become a Committee amendment. The suggested amendment is to be sent out to consultation by the Committee, yet it is clearly not a Committee amendment.

**The Committee Clerk:**

If we send it to those who responded to our consultation on the Bill, and it was clear at that stage that it was a departmental Bill that the Committee had been asked to look at closely, we can make clear that we have now been tasked with looking at additional amendments. We could do this in the same light, so it would be very clear that we are not looking at potential Committee amendments, but merely seeking comment on them as amendments that were drafted by someone who merely happens to be a Committee member.

**Mr McGlone:**

That is OK. Thank you.

**Mr Weir:**

Do you want me to deal with amendment No 24? I should point out that a slight change is needed to amendment No 24, because it contains a slight typo. Instead of "any additional", it should read "any addition".

Amendment No 24 relates to article 50 of the Environment (Northern Ireland) Order 2002, which amends schedule 11 to the Land Registration Act (Northern Ireland) 1970. That schedule

lists all the matters that are required to be registered in the statutory charges register. The existing wording states that

“any management agreement ... or any waiver ... and any management notice”

relating to the ASSI must be recorded on the land register. The amendment would extend that so that any variation of the ASSI, including addition or denotification would have to be registered on the land register. Amendment No 24 complements clause 28 of the Bill because it would help landowners and the Department to know what ASSI declarations apply to land. It would give them a complete picture.

In its discussions on clause 28, the Committee expressed concern about whether the clause was needed at all, because such details ought to be recorded on the land register anyway. Unfortunately, the indications were that the Land Registry system is not completely up to date, and that supplies the logic behind the need for clause 28. In effect, amendment No 24 will ensure that all the relevant information is recorded on the land register. The present wording means that only the bulk of the information is included; for example, the amendment would require any addition to an ASSI to be recorded. Thus, it would bring clause 28 into line. By its nature, amendment No 24 is a wee bit more technical than the others.

**Mr McGlone:**

There are many environmentally conscious farmers who are not too enamoured by the idea of part of their property being designated an ASSI. Would the amendment propose further land registration charges on them? Many such farmers nurture the ground exceedingly well and may welcome the ASSI designation. However, if the designation is further varied, will the cost fall on them rather than on the Department, which makes the ASSI designation? I am trying to get a handle on that.

**Mr Weir:**

We can seek clarification of that. Who bears the cost of registration may be one of the issues to be looked at in a wider context. Amendment No 24 would make whatever registration takes place consistent across the board. At present, probably around 90% of registration would be

covered by clause 28, but the other 10% might not be.

**Mr Kinahan:**

Is there a time lag between a matter going to Land and Property Services and registration? If one buys a house or a piece of land and sends the details up to Land and Property Services, it can sometimes take two years for the ownership to be noted. I am concerned about the potential time lag.

**Mr Weir:**

If there is a problem with that, the same would apply to any notification to do with an ASSI. I do not have the legislation before me. However, the issue of a time delay may have led to clause 28 being put in place, because, by definition, the land register is not up to date. I cannot remember off the top of my head whether that is the case.

**The Chairperson:**

Clause 28 deals with the notification of change of owner or occupier. The explanatory and financial memorandum states:

“This clause places a requirement on the owners of land within an ASSI to notify the Department of change of ownership or occupation of the land. The notification should include details of the date of change and the new owner or occupier.”

**Mr Weir:**

At Further Consideration Stage, if there is a feeling that the amendment would place an additional burden on the landowner, I am sure that, because of the relatively limited circumstances, something could be added to the amendment to state that notification should be made through the Department, or something of that nature. There should be no major issue on that. We will work around it and get clarification.

**The Chairperson:**

We will seek clarification on that point for you, Mr Kinahan.

**Mr Beggs:**

If we are going to consult on the proposed amendments, at what point does the full picture become clear? If the other amendments are acceptable, do we go consult on them all at once, or do we do them one or two amendments at a time and then go out with the other one, which has yet to reappear?

**Mr Weir:**

My understanding is that we have a particular duty as a Committee. The amendments are pretty much ready to go when a time frame is authorised. My understanding is that, on the bylaws issue, the Department will consult with various groups and come up with a form of wording. That would be more delicate and longer term. It is not going to happen in a few days; a bit of space should be given. I know that we have a broad explanatory document, but I could draft an accompanying explanatory letter or something of that nature for next week, if we agree next week to go out to the bodies that we have already consulted on proposed amendment Nos 22 and 24. The indication I have given on proposed amendment No 23 is that it has been left in the Department's ballpark. It will draft something, and it will be its responsibility.

**The Chairperson:**

Thank you.