



Northern Ireland
Assembly

Committee for the Environment

Report on the Environmental Better Regulation Bill

(NIA 55/11-16)

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Membership and Powers

The Committee for the Environment is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 48.

The Committee has power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister of the Environment

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5. The membership of the Committee since 9 May 2011 has been as follows:

Ms Anna Lo MBE (Chairperson)

Ms Pam Cameron (Deputy Chairperson)¹

Mr Cathal Boylan

Mr Colum Eastwood²

Mrs Sandra Overend^{3 4}

Mr Alban Maginness^{5 6}

Mr William Irwin^{7 8 9 10 11}

Mr Barry McElduff^{12 13}

Mr Ian Milne^{14 15}

Mr Paul Girvan¹⁶

¹ With effect from 10 September 2013 Ms Pam Cameron replaced Mr Simon Hamilton as Deputy Chairperson

² With effect from 18 June 2012 Mr Colum Eastwood replaced Mr John Dallat

³ With effect from 23 April 2012 Mr Tom Elliott replaced Mr Danny Kinahan

⁴ With effect from 04 July 2014 Mrs Sandra Overend replaced Mr Tom Elliott

⁵ With effect from 23 April 2012 Mrs Dolores Kelly replaced Mr Patsy McGlone

⁶ With effect from 07 October 2013 Mr Alban Maginness replaced Mrs Dolores Kelly

⁷ With effect from 20 February 2012 Mr Gregory Campbell replaced Ms Paula Bradley

⁸ With effect from 01 October 2012 Mr Alastair Ross replaced Mr Gregory Campbell

⁹ With effect from 07 May 2013 Mr Sydney Anderson replaced Mr Alastair Ross

¹⁰ With effect from 16 September 2013 Mr Ian McCrea replaced Mr Sydney Anderson

¹¹ With effect from 5 October 2015 Mr William Irwin replaced Mr Ian McCrea

¹² With effect from 08 May 2012 Mr Chris Hazzard replaced Mr Willie Clarke

¹³ With effect from 10 September 2012 Mr Barry McElduff replaced Mr Chris Hazzard

¹⁴ With effect from 07 April 2013 Mr Francie Molloy resigned as a Member

¹⁵ With effect from 15 April 2013 Mr Ian Milne replaced Mr Francie Molloy

Mr George Robinson¹⁷¹⁸

¹⁶ With effect from 16 November 2015 Mr Paul Girvan replaced Lord Morrow

¹⁷ With effect from 18 May 2015 Mr Gary Middleton replaced Mr Peter Weir

¹⁸ With effect from 9 October 2015 Mr George Robinson replaced Mr Gary Middleton

List of Abbreviations

| | |
|----------------|--|
| AFBI | Agri-food & Biosciences Institute |
| DRD | The Department for Regional Development |
| EFM | Explanatory & Financial Memorandum |
| FOENI | Friends of the Earth Northern Ireland |
| L&CCC | Lisburn and Castlereagh City Council |
| NIEL | Northern Ireland Environment Link |
| NIHRC | Northern Ireland Human Rights Commission |
| NILGA | Northern Ireland Local Government Association |
| NI Water | Northern Ireland Water |
| OFMDFM | The Office of the First Minister and deputy First Minister |
| RSPB | Royal Society for the Protection of Birds Northern Ireland |
| The Assembly | The Northern Ireland Assembly |
| The Department | The Department of the Environment |
| UAF | Ulster Angling Federation |
| UK | United Kingdom |

Executive Summary

1. This report sets out the Committee for the Environment’s consideration of the Environmental Better Regulation Bill.
2. The Bill contains 27 clauses and 3 schedules. The main purpose of the Bill gives the Department of the Environment (the Department) powers to reform the existing environmental regulatory framework through the production of new regulations. The regulations to be made under the Bill will introduce an environmental permitting system and rationalise powers of entry. The Bill also amends existing legislation regarding fuels and fire places, air quality assessments and drinking water regulation.
3. The Committee sought a balanced range of views as part of their deliberations of the Bill. It requested evidence from a number of interested organisations and from the Department of the Environment.
4. Stakeholders were broadly supportive of the principles of the Bill; however there was recognition that, as this is an enabling Bill, the detail will be in the regulations.
5. This was a challenge for the Committee, who sought to future-proof the Bill and ensure that the level of scrutiny afforded to the Northern Ireland Assembly (the Assembly) of the regulations was appropriate.
6. The Committee was broadly supportive of the Bill however raised concerns on the following issues:
 - a. As the Bill is in essence a ‘skeleton’ Bill, the Committee noted that it did not know the policy outcome of the Bill, as this would be developed in the subordinate legislation programme at a later date. The Committee ensured that the level of protection afforded to the Assembly in the scrutiny of the regulations was sufficient;
 - b. The Committee expressed concern that the Bill gave the Department broad powers. Therefore it sought the removal of powers provided to the Department in Schedule 1 to further define or modify the definition of “environmental activities” and to specify additional environmental activities. The Committee was satisfied, however, that the Assembly has appropriate scrutiny of the regulations that would be made under the Bill; and

- c. The Committee also ensured that the purpose of the Bill, that of streamlining and reducing the regulatory burden while protecting and improving the environment, was reflected on the face of the Bill.

Consideration of Bill

Introduction

7. The Environmental Better Regulation Bill (NIA Bill 55/11-16) was referred to the Committee for consideration in accordance with Standing Order 33(1) on completion of its Second Stage on 30 June 2015.

8. The Minister of the Environment made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Environmental Better Regulation Bill would be within the legislative competence of the Northern Ireland Assembly.”

9. The Bill is a key element of the Department’s Regulatory Transformation Programme. The overall aim of the Programme is to provide a more streamlined and effective regulatory system for businesses and regulators.

10. The Department has stated that over many years, environmental legislation has become unnecessarily complex and fragmented which in turn has resulted in increased burdens on businesses regulated under the legislation. The purpose of the Bill is to reduce the complexity of environmental legislation so as to lessen the regulatory burdens on business while protecting the environment.

11. The current regimes for environmental permitting and powers of entry are subject to different sets of regulatory controls. Therefore the Bill proposes to coordinate the separate regimes under a single environmental permitting system (Part 1); and a single act for powers of entry following review of existing legislation (Part 2).

12. The rest of the Bill amends existing legislation to: simplify the authorisation process for fuels and fireplaces (Part 3); remove the requirement for councils to make further assessments for air quality (Part 4); and transfer responsibility for regulation of drinking water for public supplies from the Department for Regional Development (DRD) to the Department (Part 5).

Committee approach

13. During the period covered by this Report, the Committee considered the Bill and related issues at 11 meetings. The relevant extracts from the Minutes of Proceedings for these meetings are included at Appendix 1. At its meeting on

17 September 2015, the Committee agreed a motion to extend the Committee Stage of the Bill to 27 November 2015. The motion to extend was supported by the Assembly on 28 September 2015.

14. The Committee had before it the Environmental Better Regulation Bill (NIA 55/11-16) and the Explanatory and Financial Memorandum that accompanied the Bill. Following the Bill's introduction to the Assembly on 22nd June 2015, the Committee wrote to key stakeholders and inserted public notices in the Belfast Telegraph, Irish News, and News Letter seeking written evidence on the Bill by 7 August 2015. A total of 14 organisations responded to the request for written evidence, including one nil response. A copy of the submissions received by the Committee is included at Appendix 3. Prior to the introduction of the Bill, the Committee took evidence from the Department on 5 March 2015.
15. Following the introduction of the Bill the Committee took evidence from: arc21; Northern Ireland Environment Link (NIEL) and Ulster Angling Federation (UAF); and the Northern Ireland Local Government Association (NILGA). The Committee also held a stakeholder event on 1 October 2015, attended by the Agri-Food and Biosciences Institute (AFBI); Asda; Northern Ireland Human Rights Commission (NIHRC); and Northern Ireland Water (NI Water). The Committee discussed the evidence received with the Department on 15th October, 22nd October, and 5th November. The Committee carried out its clause by clause scrutiny of the Bill on 12th November. At its meeting on 19th November 2015, the Committee agreed its report on the Bill and that it should be printed.

Key Issues

16. To inform itself of the key issues in relation to the Bill, the Committee took written and oral evidence from a range of stakeholders. It also held a number of oral evidence sessions with the Department's officials, who provided additional information and clarification on the points raised in the submissions. The negotiations on the major issues regarding the Bill, and their outcome, are detailed below.

PART 1 General Environmental Regulation

Protecting and Improving the Environment - Clause 1

17. Clause 1 sets out the general purpose of Part 1; that is to make, by regulations, provision for protecting and improving the environment and specifies that the purpose extends to provision regulating environmental activities and provision implementing EU obligations or other international obligations.
18. There was broad support for this clause among stakeholders who provided comment. NIEL and UAF both suggested that a purpose of 'Better Regulation' should relate to enhancing industry by adding value and encouraging efficiency; and that this approach should be accompanied by a strong and consistent monitoring and enforcement system. NIEL commented that it would like good environmental outcomes to be the policy objectives of the Bill and that it was not sure that this is the Bill's clear focus. RSPB's main consideration was that the regulatory approach the Bill facilitates will better environmental protections whilst reducing administrative burdens on business.
19. The Committee expressed concerned that the broad purposes of the Bill were not actually outlined in the Bill itself. It noted that the Bill's Explanatory and Financial Memorandum (EFM) states that the overall aim of the Department's Regulatory Transformation Programme, of which this Bill is part of, is to provide a more streamlined and effective regulatory system for businesses and regulators. The Committee felt that this aim should be reflected on the face of the Bill.
20. Members also queried the use of the phrase "including (but not limited to)" in Clause 1(1), which enables the Department to make provision for, or in connection with, protecting and improving the environment, including (but not limited to) the following:
 - a. Regulating environmental activities;
 - b. Implementing EU obligations of the United Kingdom (UK) relating to protecting and improving the environment; and
 - c. Implementing international obligations of the UK relating to protecting and improving the environment.

The Committee was concerned that paragraphs (a) to (c) were already open ended and sufficiently broad, and questioned why the Department's powers should be limited beyond these provisions.

21. The Department explained that this phrase would give it flexibility to deal with any future issues that might arise, for example to cover the implementation of EU and international obligations; and technological and scientific advances that may have environmental impacts. The inclusion of the phrase would allow the Department to deal with those issues rather than having to come back to the Assembly and put primary legislation in place.
22. The Committee noted that, as it is an enabling Bill, it cannot do anything in itself. It will be the regulations that are made under the Bill that will implement and change the law. The Committee is satisfied the regulations will be subject to full consultation and Assembly scrutiny.
23. The Committee did, however, seek an amendment to elaborate on the purpose of the Bill; to address concerns relating to the vagueness of the Bill; and to better define the framework of what will be enforced in the future. The Department agreed to insert a new general purpose clause to address the concerns of the Committee.

Regulations relating to protecting and improving the environment: consultation - Clause 3

24. Clause 3 requires the Department, before making regulations relating to protecting and improving the environment, to consult certain regulators and such other persons as it thinks fit.
25. arc21 suggested an amendment to Clause 3(1)(a) to cover cases where the regulations would also remove functions from any regulator. NILGA also suggested an amendment to reflect the need for consultation in cases where proposals would lead to functions being removed from councils.
26. The Department clarified that no functions will be removed in the environmental permitting regulations. Its purpose is to streamline the system and make it more effective.
27. NIHRC suggested an amendment to: remove the subjective text in clause 3(b) and replace it with "such other relevant persons"; include specific timeframes; and include a provision noting that the consultation outcome will

be taken account as far as possible, reflecting the provisions of the Aarhus convention.

28. The Department advised that it did not consider it necessary to make it a legal requirement to take account of consultation responses, as that is the purpose of the consultation exercise. Also, it wished to refrain from inserting specified timeframes for consultation in legislation. The Department argued that it follows the current best practice from the Office of the First Minister and deputy First Minister (OFMDFM), and that what is considered to be best practice can change over time.
29. Members expressed concern that Clause 3(1)(b) gave power to the Department to only consult such persons “as it thinks fit”. It sought the removal of the subjective text. The Department agreed to bring forward an amendment to remove this phrase.

Definitions - Clause 5 and Schedule 1

30. Clause 5 defines terms used in Part 1 of the Bill.
31. AFBI noted the definition for “protecting and improving the environment”, which includes preventing deterioration of, and enhancing, the status of ecosystems. However, it commented that for this to happen it requires repeat assessments to indicate whether or not change has occurred.
32. NIEL and UAF both suggested that the definition of “protecting and improving the environment” should include provisions for the interference with the functioning of natural systems.
33. The Department responded to these points. In relation to repeat assessments of ecosystems, it argued that it is already a statutory requirement for the regular monitoring of the environment under some of the EU legislation; and that where assessments are updated, regulators need to take cognisance of that. If standards need to be tightened in regulations, then that is the appropriate mechanism for doing it.
34. As “the status of ecosystems” is already in the definition for “protecting and improving the environment”, the Department clarified that this will cover functioning of natural systems.

35. The Committee recognised that there was a need to provide further clarification of “ecosystems” but recognised that the most appropriate place was in the Bill’s EFM rather than on the face of the Bill.
36. The Committee also sought clarification on the definition for “offences to the senses of human beings”. Members were concerned that this definition was too broad and might be used to legislate for purposes for which it was not initially intended. The Department explained that this definition would include, for example, noxious smells, noise and light pollution. The Committee is satisfied that the relevant environmental permitting regulations will be subject to affirmative resolution, but asked the Department to add further information into the Bill’s EFM.
37. The Department agreed to include the below wording into the EFM regarding ecosystems and “offences to the senses of human beings”:

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

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

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

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

(The definitions of “environmental harm” and “protecting and improving the environment” make reference to “ecosystems”. An ecosystem is a very wide ranging term and can be defined as

including all of the living things (plants, animals and organisms) in a given area, interacting with each other, and also with their non-living environments (weather, earth, sun, soil, climate, atmosphere)).

38. Schedule 1 paragraph 1 enables the regulations to further define or amend the definition of environmental activities, or to specify additional environmental activities.
39. The Committee was of the view that the Department already had sufficiently broad powers under Part 1 of the Bill. Therefore it questioned the provision in paragraph 1 that would allow the Department to “further define environmental activities”. The Committee considered the definition of “environmental activities” in Clause 5 to be wide-ranging and all encompassing. The Department argued that something might emerge in the development of the subordinate legislation programme that might not already be covered or which would require further clarity. It believed that the power to further define environmental activities would allow the Department to provide that clarity.
40. The Department was unable to provide examples to the Committee of how this provision might be needed; and the Committee remained concerned that the provision gave the Department too much scope and flexibility. The Committee asked the Department to amend Schedule 1 by removing paragraph 1, which gave the Department powers to further define, modify the definition and specify other environmental activities. After seeking legal advice, the Department was satisfied that there are no implications by removing paragraph 1 for the development of the regulations. The Department proposes to bring forward an amendment to remove this.

PART 2 Powers of Entry and Associated Powers

Rewriting powers of entry - Clause 8

41. Clause 8 gives the Department power, exercisable by regulations, to rewrite powers of entry or associated powers. Such regulations might consolidate a number of powers of entry exercisable for similar purposes. The power extends to rewording related legislation and connected offences.
42. Upon consideration of the Department’s Delegated Powers Memorandum, the Examiner of Statutory Rules suggested a technical amendment to Clause 8(3) to take account of the distinction in the statement of maximum fines as between summary-only offences (not exceeding the statutory limit) and

summary fines (not exceeding the statutory maximum) in the case of offences triable/punishable either summarily or on indictment. The Department intends to bring forward an amendment to address this point. The Committee asked for further explanation to be added to the EFM on this technical point. The wording is below:

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

Subsection (3) provides for the treatment of offences. In general terms, an offence that is tried summarily (usually in the Magistrates' Court) falls into one of two categories: (a) an offence that can only be tried summarily; and (b) one that can be tried summarily or on indictment. Subsection (3)(b)(ii) [as amended at Consideration Stage] makes the distinction between the different formulae for expressing the maximum fines applicable to those offences which are triable only summarily (a fine not exceeding level 5 on the standard scale) and those which are triable either summarily or on indictment (a fine which must not exceed the statutory maximum). While level 5 on the standard scale and the statutory maximum are both currently £5,000, they are two distinct legal concepts and the monetary values may diverge in the future.

43. The Committee also queried whether there could be an increased level of interference as a result of rewriting and attaching an offence that did not previously exist. The Department advised that such issues will have to be fully explored in the review of powers of entry, which will be laid before the Assembly.

Code of Practice in relation to powers of entry - Clause 12

44. Clause 12 places a duty on the Department to prepare a code of practice in relation to the exercise of powers of entry and associated powers under statutory provisions under which the Department has a function related to

environmental activities or protecting and improving the environment. The Department is required to publish a draft code of practice, invite representations on it and consider them. It must also publish the finalised code and review it from time to time.

45. Both NILGA and arc21 suggested that there should be a role for the Assembly in scrutinising the code of practice. Members accepted this suggestion and asked the Department to table an amendment that would give the Assembly a role in scrutinising the code of practice. The Department agreed, and will table two amendments to address this point.

Interpretation - Clause 13

46. Clause 13 defines the terms used in Part 2.

NIHRC suggested an amendment to the definition of “premises” to ensure that no particular group is discriminated against. There was a concern that the omission of “residential premises” was an intentional omission so that residential premises would not be covered under the Bill. As the Bill includes “any tent or moveable property”, the latter of which could be used as residential premises by certain groups, for example by the Traveller community, there was concern that this might impact on these groups in a discriminatory manner. The Department clarified that “premises” is defined using its everyday meaning, and confirmed that it would include residential premises. At the Committee’s request, the Department agreed to clarify this in the Bill’s EFM. The wording is below:

Clause 13 defines terms used in Part 2. The clause includes a definition of “premises”. The definition makes it clear that “premises” includes any land, vehicle, vessel, aircraft or hovercraft, and any tent or moveable property. However, it is an inclusive definition so, in addition to the things listed, the term bears its ordinary, natural and literal meaning and would, therefore, include a wide range of houses or buildings including residential premises.

National Security - New Clause

47. During the latter stages of the Committee’s scrutiny, the Department notified the Committee of its intention to table an amendment at Consideration Stage to confer powers on the Secretary of State to enable interests of national security to be taken into account in relation to environmental permitting. This

will enable the Secretary of State to issue a direction to the regulator that, in the interests of national security, specified information must be excluded from a register.

48. The Department advised that national security, in the context of the Northern Ireland Regulations, is ancillary to a transferred matter for the purposes of section 6(2)(b) of the 1998 Act and therefore is within the legislative competency of the Assembly to confer such powers.
49. The wording of the amendment was only presented to the Committee at its meeting on 12th November. As the Committee had scheduled to undertake its formal clause by clause that day, the Committee agreed that it did not have sufficient time to scrutinise the amendment and agreed to note it.

Summary of Evidence

50. In considering the Bill, the Committee took account of the written and oral evidence received from the range of stakeholders who responded to its call for evidence. In addition to the views expressed in the previous section, below is a summary of that evidence.

Clause 1 - General Purpose: protecting and improving the environment

51. NILGA broadly supported the intent of the clause.
52. NIHRC provided the Committee with further information on the definition of “international obligations”; and welcomed that any exercise of power to introduce regulations under Part 1 of the Bill must be for the purpose of protecting and improving the environment.

Clause 2 - Regulations relating to protecting and improving the environment

53. NIEL and UAF both welcomed the flexibility seen in clause 2(4)(b) in making provision for different cases, persons, circumstances or area. They emphasised, however, that “Better Regulation” should not mean a lowering of standards. They suggest that protecting and improving the environment should be based on a sound understanding of the concept of natural capital.
54. NILGA commented that Clause 2 and Schedule 1 has the potential for wide-ranging impacts on councils, particularly where a single environment permitting regime adds or removes functions to councils. It argued that any

changes that will impact on council provision must be subject to prior consultation with the councils in a timeframe that will allow for the appropriate business planning.

Clause 3 - Regulations relating to protecting and improving the environment: consultation

55. The views expressed are reflected in paragraphs 25, 27 and 29 above.

Clause 4 - General environmental rules

56. NILGA broadly supports the intent of this clause. NIHRC welcomes the comprehensiveness of the public participation provisions within Clause 4; and advises that it is reflective of the obligations within the Aarhus Convention.

Clause 5 - Interpretation

57. NILGA broadly supported the intent of this clause. Other views are expressed in paragraphs 31 and 32 of the report.

Clause 6 - Repealing, etc. unnecessary or inappropriate powers of entry, etc.

58. The National Trust welcomed moves to rationalise powers of entry and associated powers where it will lead to more efficient, fairer and more proactive enforcement.
59. ASDA recognised the potential to reduce the burden on business and the regulator by simplifying and standardising processes and procedures around powers of entry; however good communication is key if and when these powers are needed.

Clause 7 - Adding safeguards to powers of entry

60. There were no specific issues on this clause.

Clause 8 - Rewriting powers of entry

61. The Examiner of Statutory Rules suggested a technical amendment in relation to Clause 8(3), outlined above in paragraph 42.

Clause 9 - Review of powers of entry

62. There were no specific issues on this clause.

Clause 10 - Consultation requirements

63. NILGA broadly supported the rationalisation of powers of entry, but highlighted the need for the Department to consult with councils if council powers of entry change.

Clause 11 - Regulations

64. There were no specific issues on this clause.

Clause 12 - Code of practice in relation to powers of entry

65. The National Trust considered it reasonable that the Department prepare guidance on the exercise of powers of entry and associated powers, to clarify the situation for businesses and other organisations while ensuring consistency across the Department's activities. However, it suggested that any revision of powers and/or new guidance should not rule out the possibility of unannounced inspections, which will still be necessary in some circumstances.
66. Other views expressed are reflected in paragraph 45 of the report.

Clause 13 - Interpretation

67. Comments in relation to this clause are reflected in paragraph 46 of the report.

Clause 14 and 15 - Authorised Fuel / Exempt Fireplaces

68. Lisburn and Castlereagh City Council (L&CCC) supported the proposed approach as it allows for greater flexibility and confirms the most accurate information available.
69. NILGA broadly supports the provisions of Part 3, and noted that district councils will still have enforcement powers under the 1981 Order. It suggested that the provisions in Part 3 could result in market benefits for the private sector in Northern Ireland and that this is welcome.
70. NIEL and UAF both sought clarification on the inclusion of exempt fireplaces, including what is meant by the term "substantial quantity of smoke"; specifically how it can be quantified and whether it will affect air quality.

Clauses 16 and 17 - Removal of Assessments under Article 13 and Amendments consequential on the amendments to Article 13

71. L&CCC supported the proposed changes as it brings Northern Ireland into line with the rest of the UK, although it recognised that these changes are marginal.
72. NILGA welcomed the provisions in Part 4 of the Bill. It stated that local government was, and continues to be, supportive of the policy to remove the requirement to undertake the Further Assessments of air quality to supplement information already held.

Clause 18 - Enforcement Authorities

73. NILGA had no comment to make regarding Part 5, except to note the potential impact that the expected changes to government department structures may have on the eventual wording. The Department for Regional Development (DRD) supported the clause.

Clause 19 - Regulations relating to wholesomeness of water

74. DRD supported the clause.

Clauses 20 - Appointment and powers of inspectors

75. DRD supported the clause.

Clause 21 - Publication of certain information and advice

76. DRD supported the clause.

Clause 22 - Transitional provisions

77. DRD supported the clause.

Clause 23 - Regulations and Orders

78. NILGA noted Part 6 of the Bill.
79. NIHRC welcomed the requirement for affirmative resolution procedure contained within Clause 23(2)(b) and advised the Committee of its importance to enable adequate legislative scrutiny of regulations which will engage a number of human rights standards. It also welcomes the requirement for affirmative resolution procedure contained within clause 23(2)(c).

Clause 24 - Interpretation

80. There were no specific issues on this clause.

Clause 25 - Repeals and revocations

81. There were no specific issues on this clause.

Clause 26 - Commencement

82. The Examiner of Statutory Rules suggested that Clause 26(2) should be expressly limited to give full effect to any provision of the Bill or to the coming into operation of any of its provisions. The Department advised that it can be a provision only in the sense of a commencement order that is consequential, incidental, supplementary or transitional; and that it is narrow in scope and does not give the Department the ability to do anything it likes in connection with the provisions of the Bill. If used in the future to amend primary legislation, it can only do so by the affirmative resolution procedure.

Clause 27 - Short title

83. There was no specific issues on this clause.

Schedule 1 - Specifies matters for, or in connection with, which regulations may be made under section 2

Paragraph 2 Emissions

84. UAF and NIEL state that, while they are supportive of the development of an emission trading scheme in Northern Ireland, they stressed that “Better Regulation” should encourage a change in mind-set in industry towards efficiency and an understanding of the value of natural capital in the long term prosperity of Northern Ireland.

Paragraphs 6, 7 and 8 Permits and registration

85. There was general support for integrated environmental permitting in principle. National Trust commented that this could address many problems with the current system, but only if it was made clear to businesses that there are major economic advantages to compliance and penalties for those who break the law.

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86. ASDA stated that the Bill has the potential to deliver a simpler process for retailers in terms of less applications and standard applications; and that any cost savings should be passed back to businesses.
87. NILGA commented that the regulator needs to have the appropriate skills set if the single permit extends the breadth of work that they are already doing.

Paragraph 13 Offences and Fines

88. Paragraph 13 enables the regulations to confer functions on regulators with respect to compliance with, and enforcement of, the regulations. It enables the regulations to create offences and provide for defences and evidentiary matters and allows offences to be triable summarily only or on indictment. It also provides the maximum punishments for the offences that may be set out in the regulations and enables regulations to provide for a court to be able to order remedial action where a person has been convicted of an offence; and for that person to pay a regulator the investigation costs incurred by the regulator. NIEL and UAF suggested that there is no point in increasing penalties when they are currently not being implemented.

Paragraph 15 Compensation

89. L&CCC welcomed the provision, but suggested that the actual process of successfully recovering compensation by the regulator may be challenging.

Schedule 2 and 3 - Repeals and Revocations

90. There were no issues in respect of these schedules.

Additional Comments

91. The Committee received several comments which were not directly related to any of the Clauses of the Bill.
92. All stakeholders were generally supportive of the broad principles of the Bill. There was recognition that, as the Bill is simply enabling legislation, the detail will follow in the regulations that are made under the Bill.
93. UAF and NIEL suggested that Prosperity Agreements should be included in the Bill. The Department advised that, as Prosperity Agreements are voluntary, there is no need to cover it in legislation.
94. Friends of the Earth Northern Ireland (FOENI) stated that the Bill itself is non-controversial, but it remains to be convinced that it is the right Bill at the right

time. FOENI suggests that the structural constraints to effective performance around governance and enforcement must be resolved. UAF also recommends an open and frank debate on environmental governance, recommending an independent environment protection agency. National Trust expressed concerns regarding the lack of independence in the current structures, as having the regulator and the policy maker under one roof does not reflect the hallmarks of good environmental governance.

95. National Trust expressed concern regarding the implications of planning and departmental restructuring, and there are no assurances as to the ability of the Department to adequately resource associated permitting, compliance and communication requirements.
96. arc21 raise concerns regarding the lack of detail in the Bill's Regulatory Impact Assessment. The Department accepts the need to bring forward robust regulatory impact assessments to accompany the future subordinate legislation programme.
97. ASDA suggested that the approach for better regulation should be widened; and that there should be an integrated permit across all government departments, not just for the environment. It suggested that the extent to which regulation is reduced as a consequence of the Bill should be measured and reported to industry; and that the Department should adopt a one-in-one-out approach to ensure any improvements are not lost due to the future introduction of additional regulations.

Clause by Clause Consideration

Part 1 - General Environmental Regulation

Clause 1 General Purpose: protecting and improving the environment

98. The Committee indicated it was content with the clause as drafted.

Clause 2 Regulations relating to protecting and improving the environment

99. The Committee indicated it was content with the clause as drafted.

Clause 3 Regulations relating to protecting and improving the environment: consultation

100. The Committee indicated it was content with the clause as drafted subject to the following proposed amendment agreed with the Department:

Clause 3, Page 2, Line 32

Leave out 'as it thinks fit, including such' and insert ', including'

New Clause 3A Regulations relating to protecting and improving the environment: objective

101. The Committee indicated it was content with the following proposed new Clause 3A, which sets out the objective of the Bill:

New Clause

After clause 3 insert -

'Regulations relating to protecting and improving the environment: objective

3A. The Department must, in making regulations under section 2, have as an objective reducing the regulatory and administrative burden on persons carrying on regulated activities to the greatest extent possible consistent with protecting and improving the environment.'

Clause 4 - General environmental rules

102. The Committee indicated it was content with the clause as drafted.

Clause 5 - Interpretation

103. The Committee indicated it was content with the clause as drafted.

Part 2 - Powers of Entry and Associated Powers

Clause 6 Repealing, etc. unnecessary or inappropriate powers of entry, etc.

104. The Committee indicated it was content with the clause as drafted.

Clause 7 Adding safeguards to powers of entry

105. The Committee indicated it was content with the clause as drafted.

Clause 8 Rewriting powers of entry

106. The Committee indicated it was content with the clause as drafted subject to the following proposed amendment agreed with the Department to address the technical issue identified by the Examiner of Statutory Rules:

Clause 8, Page 5, Line 35

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

Clause 9 Review of powers of entry

107. The Committee indicated it was content with the clause as drafted.

Clause 10 Consultation requirements

108. The Committee indicated it was content with the clause as drafted.

Clause 11 Regulations

109. The Committee indicated it was content with the clause as drafted.

Clause 12 Code of practice in relation to powers of entry

110. The Committee indicated it was content with the clause as drafted subject to the following proposed amendments agreed with the Department to provide for Assembly scrutiny of the code of practice:

Clause 12, Page 7, Lines 3 and 4

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

Clause 12, Page 7, Line 4

At end insert -

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

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

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

Clause 13 Interpretation

111. The Committee indicated it was content with the clause as drafted.

Part 3 - Amendments to the Clean Air (Northern Ireland) Order 1981

Clause 14 Authorised Fuels

112. The Committee indicated it was content with the clause as drafted.

Clause 15 Exempt fireplaces

113. The Committee indicated it was content with the clause as drafted.

Part 4 - Amendments to the Environment (Northern Ireland) Order 2002

Clause 16 Removal of assessments under Article 13

114. The Committee indicated it was content with the clause as drafted.

Clause 17 Amendments consequential on the amendments to Article 13

115. The Committee indicated it was content with the clause as drafted.

Part 5 - Amendments to the Water and Sewerage Services (Northern Ireland) Order 2006

Clause 18 Enforcement authorities

116. The Committee indicated it was content with the clause as drafted.

Clause 19 Regulations relating to wholesomeness of water

117. The Committee indicated it was content with the clause as drafted.

Clause 20 Appointment and powers of inspectors

118. The Committee indicated it was content with the clause as drafted.

Clause 21 Publication of certain information and advice

119. The Committee indicated it was content with the clause as drafted.

Clause 22 Transitional provisions

120. The Committee indicated it was content with the clause as drafted.

New Clause 22A National Security

121. The Committee noted the following amendment proposed by the Department to confer powers on the Secretary of State to enable interests of national security to be taken into account in relation to environmental permitting:

New Clause

Before clause 23 insert -

'National security

22A.—(1) Regulations made by the Department under this Act may make provision for, or in connection with, enabling the Secretary of State, in the interests of national security, to give directions (whether general or specific) with which persons by whom powers or functions conferred by the regulations are exercisable must comply, or guidance to which such persons must have regard, in exercising powers or functions under the regulations, including—

(a) directions that specified information, or information of a specified description, not be included in a register required to be maintained under the regulations;

(b) directions that specified information, or information of a specified description, not be published or made available to a specified person or public body, or a person or public body of a specified description, or to the public; and

(c) directions that specified powers or functions, or powers or functions of a specified description, not be exercised in relation to specified land or premises, or land or premises of a specified description.

(2) In this section "specified" means specified in the regulations.'

Part 6 - Miscellaneous and Supplementary

Clause 23 Regulations and orders

122. The Committee indicated it was content with the clause as drafted.

Clause 24 Interpretation

123. The Committee indicated it was content with the clause as drafted.

Clause 25 Repeals and revocations

124. The Committee indicated it was content with the clause as drafted.

Clause 26 Commencement

125. The Committee indicated it was content with the clause as drafted.

Clause 27 Short title

126. The Committee indicated it was content with the clause as drafted.

Schedules

Schedule 1 Matters for, or in connection with, which regulations may be made under section 2

127. The Committee indicated it was content with the schedule as drafted subject to the following proposed amendment agreed with the Department to remove paragraph 1 regarding environmental activities:

Schedule 1, Page 14, Lines 7 to 9

Leave out paragraph 1

Schedule 2 Repeals

128. The Committee indicated it was content with the schedule as drafted.

Schedule 3 Revocations

129. The Committee indicated it was content with the schedule as drafted.

Links to Appendices

[Appendix 1 - Minutes of Proceedings](#)

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[Appendix 5 - Research Papers](#)

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