



Northern Ireland  
Assembly

Committee for the Environment

# OFFICIAL REPORT (Hansard)

Marine Bill: Clause-by-Clause Consideration

28 June 2012

# NORTHERN IRELAND ASSEMBLY

## Committee for the Environment

### Marine Bill: Clause-by-Clause Consideration

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

Ms Anna Lo (Chairperson)  
Mr Simon Hamilton (Deputy Chairperson)  
Mr Gregory Campbell  
Mr Tom Elliott  
Mr Chris Hazzard  
Lord Morrow  
Mr Peter Weir

**The Chairperson:** We will now move on to the draft Committee report on the Marine Bill. If members wish, the Committee Clerk will be able to go through the report.

We have also been provided with a copy of a draft Committee amendment on a memorandum of understanding (MOU) among Departments and public authorities on the integration and co-ordination of marine functions. Before we start our discussion, I want to ask members whether they would support an amendment for the introduction of a marine management organisation (MMO). I ask that because I want it on the record.

**Mr Weir:** On the record, no.

**Mr Hamilton:** On and off the record: no is the answer.

**The Chairperson:** Tom has just arrived, so for his sake, I will ask again whether members would support the introduction of an MMO. I want it on the record.

**Mr Hamilton:** No takers.

**The Chairperson:** No takers; Tom, no?

**Mr Weir:** Chair, do you want us to sign an affidavit that you fought valiantly for it? *[Laughter.]*

**The Chairperson:** No.

**Mr Hamilton:** If you want me to, I will say in the debate that you were heroic in your attempts. *[Laughter.]*

**The Chairperson:** Like a broken record.

**Mr Hamilton:** I will say that we were sick to death —

**The Chairperson:** Shut up.

**Mr Campbell:** Unless you want to second it.

**Lord Morrow:** Just say that she was valiant in defeat.

**Mr Elliott:** Chair, I apologise for being late. However, for the record, my concern is that the proposals that will be in place may not work, and I have said so at each of the last three meetings. I would prefer to see some sort of management process, or a better management process. I am not saying that it must be an MMO, because I think that there are too many different forms of those. We have not reached a conclusion even on what form it may take. I would liked to have seen the Department and officials come up with a better structure that is able to better manage the process and the situation because I am not convinced that what they are talking about will actually work. The difficulty is that I do not think that the officials and the Department are convinced either, so I put on record my concern that what we are going to get may not work. I would like to see something but we do not have anything positive to approve. That is the difficulty.

**The Chairperson:** OK. We have certainly taken up your suggestion to look at a memorandum of understanding. May we look at that?

**The Committee Clerk:** The Clerk of Bills was meant to be here. It may be better to wait until she is here to explain the new clause, a copy of which is included in your papers. I know that she looked at the idea of a memorandum of understanding or some sort of approved practice that would facilitate the better integration of marine functions across Departments. She put forward the proposal that is in members' papers. You may want to take a moment to read that. If she is able to get here and talk you through it, we can come back to it. I would prefer it if the Clerk of Bills goes through it.

**The Chairperson:** Shall we wait until she arrives?

**Mr Hamilton:** As you know, Chair, I have to leave at about 10.30 am. In case the Clerk of Bills does not arrive and we do not debate it before I go, I have a concern that can be taken up by you and colleagues when she arrives. I have never disagreed with Tom's point that it will be incredibly difficult for the Department, alongside other Departments and agencies, to make this work as fully as people would want. There are inherent difficulties in achieving that. However, because we do not necessarily see that as a 100% solution does not mean that we want to support another option, namely an MMO that we think is worse. There are possibilities in the middle that may work but, for various reasons, are not possible. Tom's suggestion last week that we should look at an MOU was quite good.

The proposed new clause goes a bit further than requiring an MOU. As I said at the time, I do not think that it is possible to legislate for that anyway. The wording that I am concerned about in proposed new clause 1A(1) is "enter into arrangements". I interpret that as allowing the Department, failing all other things, to get into an interdepartmental working group on what it intends to do. That would be an arrangement. Equally, a marine directorate or an MMO would be an arrangement. I have two issues with that. The first is that that would allow them to do or what they want or propose to do at the minute, and does not oblige them to do something more. The second is that I want some clarity that the creation of an MMO would still require the agreement of everyone, including those on the list. We are talking about the Department of Agriculture and Rural Development (DARD), the Department of Culture, Arts and Leisure (DCAL), the Department of Enterprise, Trade and Investment (DETI), the Department for Regional Development (DRD), etc. I and others would not agree to that.

I am saying that I do not want it to be so rigid that it inhibits them from doing what is likely to become the ultimate reality: the creation of an interdepartmental working group. Equally, I do not want it to be so flexible that it allows the creation of an arrangement without the agreement of all those public authorities. Shall I briefly recap?

**The Chairperson:** Yes.

**Mr Hamilton:** As I said last week, my concern was that I did not think that we could legislate for an MOU to be created. You cannot say that a memorandum of understanding should be created when somebody is saying that we cannot do it. So, the word "arrangements" is the only sort of hang-up.

However, that may be too strong a word. I am content with it and the spirit of it, but, as I said, I do not want it to be so rigid that it prevents the Department doing what is likely to happen, which is to set up an interdepartmental working group. Given the circumstances that we are in, 99 times out of 100 that will be worked through and that is what will come. As long as the proposed new clause allows the Department to do that, it is fine, and I think that it does. Equally, I do not want the proposed new clause to be so flexible that it permits the establishment of something else or some other type of arrangement without the agreement of departmental stakeholders that are listed in proposed new clause 1A(3).

**The Clerk of Bills:** As Simon said, it would not really have been feasible to draft an amendment that would legislate for the creation of a memorandum of understanding. It is hard to see the logic of requiring people, in law, to agree to something. The proposed new clause was designed to create a degree of flexibility, so that it would elevate what is going on with the statutory duty to take steps to promote co-operation. However, it also leaves the appropriate degree of flexibility, so that Departments and the Department can work it out with its stakeholders how exactly they wish to proceed. It is designed to give that enhanced flexibility and to ensure that what is going on at present can be put on a statutory footing of sorts in an attempt to meet its other obligations.

I greyed out proposed new clause 1A(2) to distinguish it. I did not feel that you would necessarily ask me to do that, but I wanted to bring it to your attention that that is one way that would potentially give the Assembly an opportunity to examine what is being done more clearly, and to see whether the Department is meeting its requirements on co-operation and co-ordination. If you were to exclude proposed new clause 1A(2), it would restate and give some statutory underpinning to what is going on at present. If you add the reporting requirement, it would potentially create a little more scrutiny.

I draw your attention to the use of "shall". That was drafted as a one-off, but it could easily be further changed if you wanted to have a longer potential status. If I were to change "shall" to "may" and indicate that the first such occasion that that would happen would have to be within one year, that would give it a longevity that it does not presently have. However, again, I felt that your brief was really to do something for the immediate and short term. Likewise, the report is drafted as a one-off report, but you could require that to be published at intervals of three years thereafter, unless or until some other arrangements were put in place.

**Mr Hamilton:** I am content with the way that it is drafted. I want to seek clarity. One of the other arrangements that could be entered into is a marine directorate, which the Minister could set up today if he wanted to. It would not have full authority for all the marine aspects, unless he got certain powers from other Departments, and if those Departments did not agree to that, it would not happen. Given that I know that the Minister has a very strong view on something on which I have an equally strong opposing view, my concern is the proposed new clause is not sufficiently broad to allow him to enter into arrangements with relevant public authorities. He cannot go away on the basis of this and create an MMO.

**The Clerk of Bills:** Absolutely. The type of legislative amendments that would be required to create a marine management organisation would be quite significant. As the member said, it would also require the appropriate approvals from the various Ministers who would cede authority to any kind of non-departmental public body (NDBP). To be established, an NDBP requires its own legislation and interdepartmental agreement. It would also be cross-cutting in nature and, presumably, formal Executive approval would be required for all those mechanisms. So, there is no question of anything happening without co-operation.

**Mr Hamilton:** Yes. There would be a financing issue as well. In that spirit, I think that the proposed new clause is good. It captures exactly what Tom has said consistently, which the rest of us agreed with. We know that the likely arrangements are not as satisfactory as people would want them to be, but it underpins the Committee's and the Assembly's intent that something should be done that is as broad and agreeable as possible across all the stakeholders.

**The Chairperson:** They can still say that we already have an arrangement in the form of an interdepartmental group. How much does this strengthen the current interdepartmental working group?

**The Clerk of Bills:** If, for example, an interdepartmental group was abolished, this would maintain a continuing obligation to create some sort of arrangements, so it underpins it to that extent. Secondly, the addition of clause 1(A)(2), if members were content with that, would add an additional element in

the form of a report for scrutiny, which would enhance the degree to which the Assembly might be able to look at the arrangement and examine whether it meets the needs of all concerned.

I would caution that this is drafted as a one-off situation, so, once those arrangements are entered into, the Department would have exercised its duty under this amendment and would no longer be under that duty. If you are looking for any kind of longevity, you would change that "shall" to "may" and we would then create another obligation to do it the first time within a year of Royal Assent.

**Mr Campbell:** I want to clear up a distinction, if there is one. It is just a "shall" and "may" distinction. I imagine that there would probably not be a difficulty, whichever route we agreed to go down, within a year. However, let us say that there was a problem within the 12-month timescale. What would happen under "may"? What would happen if the "may" cannot be enacted within 12 months?

**The Clerk of Bills:** It usually works with a "may" followed by a "shall" somewhere else, in this instance, so the first thing that you would do is to give the power to the Department to do something. That is why you often use "may"; you are saying that the Department has the power to do something. Then, you may say after that that the Department "shall", within 12 months, enter into those arrangements for the first time and "shall" review those within so many months. The "may" makes it look like a possibility, but when you read on down, that is where you make it clear that it is an obligation.

**Mr Campbell:** It becomes an imperative.

**The Clerk of Bills:** Yes, when you take the bits together. We could do that, if members would like to.

**The Chairperson:** It is a start. I am happy with that.

**Mr Hamilton:** I am content with it.

**The Chairperson:** "Shall" is stronger than "may".

**Mr Hamilton:** We have some certainty that they will enter into an arrangement. There is an existing arrangement that they can carry on with. I know that some people are not necessarily satisfied with that. I do not think that there is any risk in putting a "shall" there.

**The Clerk of Bills:** It will bind them once, to do it the first time, after which it has lapsed, effectively, and has no more legal effect. I did that, because I understood that, from what the Committee was saying, the Minister was already looking at various approaches, and that this was a short-term measure until the Minister concludes his current work. That is why it is done in that way. I just wanted to bring to your attention that there are other options to give it longevity if you wished.

**The Chairperson:** The Minister may be preparing a paper, but it may not be accepted by the Executive. There is a big question mark there. The status quo may stand as it is, or as is proposed in the Bill. Maybe, in the long run, we should secure that better in the wording of this Bill. What would that wording be changed to?

**The Clerk of Bills:** It would say that the Department may enter into arrangements, followed by a new subsection saying that it shall enter into those arrangements for the first time, or within one year. You might put in a repeating duty to review those arrangements every so many years, if you wished.

**The Chairperson:** That would copper-fasten it a bit more.

**Mr Hamilton:** Either/or, Chair, I am happy enough.

**The Chairperson:** Tom, what do you think?

**Mr Elliott:** It is going some way. I know that it is probably impossible to do, but it is important that the Committee is kept informed. I know that there is no way of building that into the legislation. The new clause 1A(2) is vital, because we need to know after a time how it is functioning and operating. That is crucial, and the Assembly and the Committee need to know exactly how it is working. I am struggling to think of a mechanism that would make it work or would ensure that it will work. I suppose that this is probably the best attempt that we can make.

**The Chairperson:** Anybody else? There are no queries.

**The Clerk of Bills:** I will adjust that slightly to reflect the longevity.

**The Chairperson:** Are members happy with that? Will we come back to it next week?

**The Clerk of Bills:** We need to produce a final report for you to agree at next week's meeting because it is the day before the deadline for the Committee Stage. If you are absolutely sure that that is what you want done with this amendment, I will incorporate the revised amendment into the report. You will have an opportunity to see it next week. I could circulate it by e-mail in advance of that.

**Mr Weir:** That seems sensible.

**The Chairperson:** That is quite useful. I agree with Tom: it is important that we keep 1A(2) in the review.

Members, do you need the Clerk to go through the report, or are you happy with it as drafted?

**Mr Weir:** We have the draft in front of us. I think that we are happy with what the report covers. We will do the formal sign-off next week.

**The Chairperson:** OK. I had a quick glance, and there is nothing new in it. It is very well done. It captures what we have been saying.