



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Marine Bill: Formal Clause-by-Clause
Consideration

21 June 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell
Mr Tom Elliott
Mr Chris Hazzard
Mrs Dolores Kelly
Lord Maurice Morrow of Clogher Valley
Mr Peter Weir

Witnesses:

Mr Ken Bradley	Department of the Environment
Ms Brenda Cunning	Department of the Environment
Mr Angus Kerr	Department of the Environment
Ms Gerardine McEvoy	Department of the Environment

The Chairperson: I welcome back the officials from the Department of the Environment (DOE). I welcome Angus Kerr, Brenda Cunning, Ken Bradley and Gerardine McEvoy. You are all very welcome.

I will go through each of the clauses and the schedules to seek the Committee's position on them. This is our last opportunity to discuss the Bill. Our decisions will be final, and the Committee Clerk will then produce a report. The officials are here to answer any questions that you might have.

Clause 1 (The Northern Ireland inshore region)

The Chairperson: The Committee was content with this clause, having received clarification on how the Bill would apply in Lough Foyle and Carlingford lough. Is the Committee content with clause 1?

Mr Boylan: I missed the original discussion of the first few clauses; unfortunately, I could not make it that day. I would like some clarification on sustainable development and climate change relate to clause 1.

The Chairperson: Cathal, we are going to come on to that next.

Mr Boylan: Sorry.

The Chairperson: I asked whether members are happy with clause 1.

A number of organisations suggested that the Bill should be extended to include an overarching aim or general duty to take sustainable development and climate change into account when implementing the Act. The Department insisted that that was not necessary, as both those duties are required by existing legislation. The Committee requested more information on that from the Assembly's Research and Information Service. Members have been provided with a research paper that indicates that the Northern Ireland (Miscellaneous Provisions) Act 2006 places a sustainable development duty on all public authorities by requiring them to have regard to any strategy or guidance that is issued on the matter, including the sustainable development strategy. However, the paper notes that, although there are several binding provisions for sustainable development, there is no reference in the Bill to the Northern Ireland (Miscellaneous Provisions) Act 2006 to inform the reader of that duty. The paper also indicates that there is no direct duty in the Bill to deal with climate change and that any connection between the Bill and climate change will be dependent on the regard that is given to sustainable development. It is noted, however, that the sustainable development strategy makes a strong connection to the importance of adapting to and mitigating climate change, and the UK Climate Change Act 2008 places a duty on DOE to develop a programme for adaptation to climate change.

How would members like to proceed? The Bill Clerk is here, and we could ask her to comment on the approaches that we can take.

Mr Boylan: I thought that this was the formal clause-by-clause consideration, but I will stand corrected on that.

Are you saying that the gist of this issue is covered in other legislation?

Ms Brenda Cuning (Department of the Environment): Yes.

Mr Boylan: Obviously, there are some concerns that we are not dealing with those issues properly and that the legislation is not working properly, so there is an opportunity to introduce them in the Bill. Is it a major problem for us to introduce them in the Bill, and what will the consequences be if we do?

Ms Cuning: It would not be a major problem. The Office of the Legislative Counsel (OLC) has advised us that, in some ways, that would be unnecessary duplication, because we already have a sustainable development duty under the Miscellaneous Provisions Act. However, you can have replication in other legislation. OLC said that it could give rise to problems if the provision were phrased differently. For example, if you had two duties, how would they work together, even if there were a slight difference in the wording? You would have to be cautious if you were going to introduce any level of duplication, because you would be duplicating something that is already in existence.

OLC also said that, because there are some specific references in the Bill to sustainable development, you would need to be careful how a general duty might interact with those specific references.

I mentioned the marine policy statement (MPS). I do not know whether the Assembly researcher touched on that in the paper. Under the Marine and Coastal Access Act 2009, the marine policy statement is a statutory binding document, so it is a legal document. It was produced in 2011, and, right from the very first page, it emphasises sustainable development and climate change. For example, it states that marine plans, which must be made in accordance with the marine policy statement, will ensure:

"resources are used in a sustainable way in line with the high level marine objectives"

that set out the whole range of sustainable development. It goes on to discuss how to:

"mitigate the causes of climate change and ocean acidification and adapt to their effects".

That is on the first page of the marine policy statement, but there are references throughout it to sustainable development and climate change. So, the marine policy statement has legal effect on how we produce marine plans. That is why we think that it is not necessary to introduce that level of duplication into the Bill.

Mr Boylan: I am not in favour of duplication. Obviously, the key issue is the management of the process and how it is implemented.

Thank you, Chair. I just wanted clarification, because I missed the discussion of the first few clauses.

The Chairperson: There is clearly a general duty in the Marine (Scotland) Act 2010.

Ms Cunning: I am sorry, I am not aware whether Scotland has the same duty on other public authorities as we do. If you think of it, you will find that the Department already has a duty to carry out any function on sustainable development or to contribute to it. I am not sure what Scotland's position is on that, unfortunately.

The Chairperson: I was looking at the next item. At the end of the meeting, we will be looking at the Planning Bill, which has a clause on sustainable development. If we have the opportunity now to make this amendment to add to the Bill rather than having to add another amendment at some stage, similar to the situation with the Planning Act, I do not see why we cannot put that emphasis at the very beginning to make it much clearer that we want to see sustainable development and climate change. The mitigation of climate change has not been mentioned at all in the Marine Bill.

Ms Cunning: You are correct; the words "climate change" are not used. However, the issues that have to be kept under review include all the physical changes that happen to the marine environment in Northern Ireland, no matter what the cause. So, that means that it acts as a catch-all. The worry is that if we start introducing a specific reference to climate change, should we then introduce a reference to biodiversity, energy security and food security, which are the big issues that face the marine environment? That is why we thought that it was better not to have specific issues listed. If you do that, where do you stop? It is possible to introduce those amendments, but that is just not the Department's position at this time.

Mr Weir: Rather than something mentioned twice, it is always the preferred option to have a single unitary reference. If something is clearly covered, I would be wary of making a second reference to it; it is not good practice to have a second reference. Problems perhaps arise, through no intent, if subsequent or different pieces of legislation that are covered by the overreaching piece do not refer to the matter. At a later stage, such as in a court challenge on a different piece of legislation, some inference could be drawn, because it is specifically referred to in one piece of legislation but not in the other, even though it is meant to cover both. From a legislative practice point of view, that is why they tend not to reiterate something if it is already covered by law. It could lead to unfortunate and unintended inferences that could have some implication if a court were trying to interpret something later.

The Chairperson: The research paper states that there is no mention of the Northern Ireland (Miscellaneous Provisions) Act 2006.

Mr Angus Kerr (Department of the Environment): It is not always practice to cross-reference legislation in other legislation. The assumption is that it is in place and that it applies.

The Chairperson: I am concerned that it is not clear enough that we are bringing in two very important issues that are going to face us in the next decades and that we are not setting that out clearly. That does not strengthen the legislation. We have the opportunity to add those issues now, and we must remember that a large number of responses asked for that. Are we going to ignore that?

Mr Hamilton: I do not support their inclusion, for different reasons. First, they are elsewhere already. Peter's point is entirely right. The only way to deal with this issue is to remove from legislation all other references and include in this Bill exactly the same references, word-for-word. Secondly, there is the added complication, which Brenda spelled out, that if you put those two particular duties into the Bill, you create a hierarchy in the Bill and you almost have a trump card for all the other interests. I do not mean outside interests; I mean public policy governmental interests in the marine, such as energy security and so on. I think that there is the potential to create an unnecessary tension in the Bill if you do not do it by removing the issue from everywhere else. If there is legislation or guidance elsewhere that covers this, that is fine, leave it, because it is too complicated to lift it from there and put it in here.

I do not want to take away from the importance of the issue or the value that those who have raised it have put on it, but I think that that is something that can come out in the debate. It could be put into our report, or you and others could raise it during Consideration Stage. I am sure that the Minister

would respond appropriately to that. We may ignore it as an amendment, but we are not going to ignore the issue.

The Chairperson: A discussion in the House is not the same thing. We are discussing putting it into the legislation.

Mr Hamilton: I agree, but I do not see any practical way in which you could put it into the legislation without causing a different problem somewhere else. That is a personal view, which others share.

The Chairperson: What problems would it cause if we added that general duty?

Ms Cunning: It would raise the issue of duplication. As was mentioned, it could also be confusing. If one thing is specifically mentioned in this Bill but not in another, would that mean that the Bill would seem to be giving weight to one thing rather than all the issues that have to be considered for marine legislation? Also, if the sustainable development duty were in the Marine Bill but not in, for example, the regulations for the water framework directive, would that mean that you would have less of a duty under the water framework directive? No, you would not. You would still have to carry out your functions to achieve the same development. That is the concern. It does not mean that we cannot do it, but it is not straightforward. We do not lift things from other pieces of legislation in case we give more weight to one thing over another.

The marine policy statement has lots of references to sustainable development. The high-level marine objectives on how to achieve sustainable development through a protected environment, economic development and sound science are all set out. Those are covered in the high-level marine objectives in the marine policy statement, which have legal effect in how we produce marine plans.

Mr Boylan: You should not have to reference one piece of legislation in another if other pieces deal with a particular issue. That is basically what you are saying. However, it could be argued that, if there is a feeling that the existing legislation is not being adhered to and implemented properly, in the absence of putting it in this Bill — I mentioned duplication — we should mention in the House that we should marry those pieces of legislation and work together to ensure there is an overall plan. I am not saying that this is the overarching policy, but that sort of message should be getting out, because the fear is that the legislation that is there is not being properly implemented. So, in the absence of not putting the matter in the Bill, I would certainly like it to be referred to in the House. However, I know that you have some reservations about that.

Mr Kerr: If the concern is, as you rightly say, about implementation and the purpose of the Bill and what we are trying to achieve, in a sense, those are a separate from asking which legislation such a clause should go into and what its wording should be and so forth. That needs to be looked at as we go forward with the implementation of the Bill through the marine plan and the guidance and policies that will come forward. We need to try to get a commitment throughout government to make sure that the spirit of this legislation and the same level of duty are brought forward. I am not necessarily sure that that would be any closer if we introduced a separate sustainable development duty in the Bill. There are other challenges for government in trying to achieve that, which, as you say, could be highlighted and which would require work across a number of fronts.

Mr Ken Bradley (Department of the Environment): As well as the sustainable development duty, there is a sustainable development strategy and an implementation plan. Again, aspects of the Marine Bill, such as licensing and marine conservation, would sit in the implementation plan of the sustainable development strategy.

The Chairperson: There is no harm in reiterating and making it clear that all the policies and planning will have sustainable development and climate change mitigation at the forefront of their thinking.

Mrs D Kelly: What would be the point of a Marine Bill if it was not about sustainability?

The Chairperson: It is about sustainable development.

Mr Campbell: We have a straight choice to make. I suppose that we have three choices, but one would be ludicrous. If we were to start to list some issues only to be accused of not listing them all, we have a catch-all situation, which is the current position, or, as you suggested, Chair, we could make a specific reference to sustainable development and climate change, and then run the risk that certain

groups and campaigners would ask why that and not something else was singled out. It seems to me that, however vague the catch-all phrase is, it at least leaves you less open to the accusation of some sort of partisanship.

The Chairperson: Members, I will ask the Clerk of Bills to outline the approaches that we can take.

The Clerk of Bills: Procedurally, it is clearly open to the Committee to recommend an amendment as it sees fit. However, I advise that the approach is quite different in legislative terms to that in policy terms. If you bring forward a policy document on the marine, you would expect it to refer to all the interrelated policies of the Department and the Executive.

In legislation, it is quite different. Typically, the procedural approach with legislation is that the other existing binding duties stand and you do not cross-reference. There are reasons why drafters avoid duplication or cross-referencing in the statute book, notably to prevent any kind of confusion in court, should an issue come to court. The court will want the clearest statement of the legislatively binding provisions. Where there are a number of different provisions that express the duty differently, that can make for confusion or a lack of clarity.

A pre-existing duty in the Northern Ireland (Miscellaneous Provisions) Act 2006 says:

"A public authority must, in exercising its functions, act in the way it considers best calculated to contribute to the achievement of sustainable development in Northern Ireland".

It continues in more detail, but the bottom line is that that provision covers all public authorities exercising all their functions.

You have the option to restate in each piece of legislation that comes before DOE that you are acting in conformity with that provision. However, there is a difficulty. What would happen if that changes and the provision is repealed and you have cross-referenced the Marine Bill to the 2006 Act? If that provision were repealed and, let us say, a sustainable development Act were brought forward, there would be a much greater task for the drafter. You would then have to go through the statute book to check all the cross-references that you made to the 2006 Act. So, it carries dangers.

I appreciate the point about policy and that you would like to see a complete statement of all the relevant material and the interrelationships. In policy terms, that makes sense. You might, therefore, expect to see this reference as part of the contextual background information in an explanatory and financial memorandum (EFM) or an explanatory note, but the situation is different where there is a clear, pre-existing statutory obligation on sustainable development.

The climate change provisions are relevant. Section 60 (1) of the Climate Change Act 2008, which discusses the programme for adaptation to climate change in Northern Ireland, says:

"It is the duty of the relevant Northern Ireland department to lay programmes before the Northern Ireland Assembly setting out—
(a) the objectives of the department in relation to adaptation to climate change,
(b) the department's proposals and policies for meeting those objectives, and
(c) the time-scales for introducing those proposals and policies,
addressing the risks identified in the most recent report under section 56."

Again, those are further details. That is binding at all times and is unchanged by whether the issue is referred to in this Bill. I can certainly produce a draft amendment. The Chairperson referred to the Planning Act (Northern Ireland) 2011, in which, at the suggestion of the previous Committee, there was a duplicated reference to sustainable development. So, the Committee is at liberty to choose to do that again. I just wanted to bring that to your attention.

The Chairperson: It is up to members. I seem to be in the minority.

Mr Hamilton: For ease, may I propose that we support clause 1 as drafted and without amendments?

Mr Boylan: I just want to make a final point about the clause. If the reference was not written down or is not in the other legislation, we could certainly look at it, but the issue is about how we deal with it. We know what is there, and the Bill will start to highlight what we want to achieve. That is what we

need to say in the Chamber. It might have been that it was not drafted anywhere else or that there was no legislation for it, but there clearly is.

The Bill Clerk made a valid point about the difficulty with cross-referencing another piece of legislation that is subsequently repealed. We understand where the issue arose, but the point is in how you implement and deal with the situation.

The Chairperson: Simon recommended that. The Committee could also recommend that, during the debate, the Minister should refer to that Act and remind everyone that it places a duty on all statutory bodies to have sustainable development and climate change adaptation in mind when making policies.

Mr Elliott: Chair, you could make that point. Indeed, any Member could.

The Chairperson: We can ask the Minister to make it.

Mr Campbell: I am sure that the Minister would be happy to comply.

Lord Morrow: At length, I suspect.

The Chairperson: I can reiterate that point in my speaking notes. I am concerned that a large number of organisations made that point. It was made strongly, particularly when we had the workshop with the voluntary sector.

Mrs D Kelly: Perhaps they should read the explanation that has been outlined in Committee. If they did, they would understand the thinking behind it.

Mr Hamilton: Amen to that.

The Chairperson: We will obviously put that in our report.

For clarification and for Hansard, I will put the Question again.

Question, That the Committee is content with the clause, put and agreed to.

Clause 1 agreed to.

Clause 2 (Marine plans for Northern Ireland inshore region)

The Chairperson: We were content with the Department's explanations on vague or weak wording, the possibility of more than one plan and the time period allowed for comment after the launch of a plan. Do you have any questions?

Question, That the Committee is content with the clause, put and agreed to.

Clause 2 agreed to.

Clause 3 (Amendment of marine plan)

The Chairperson: There were no particular comments on clause 3.

Question, That the Committee is content with the clause, put and agreed to.

Clause 3 agreed to.

Clause 4 (Withdrawal of marine plan)

The Chairperson: The Department agreed to consider an amendment to clause 4 that would require it to publish its intention to withdraw a marine plan on the DOE website and to consider rewording the clause so that a marine plan could not be withdrawn unless another plan had been produced or will be produced. The Department's response indicates that it will table an amendment that will require it to

publish the withdrawal of a marine plan on its website. However, it does not intend to amend the clause to require it to withdraw a marine plan only when another plan has been produced, is pending or if there are extraordinary circumstances.

The Department also sent the Committee an e-mail, which states:

"Clause 4 deals with the conditions which must be met for the withdrawal of a marine plan. Clause 2(2) requires that the Department must seek to ensure that every part of the Northern Ireland inshore region has a marine plan in effect. Therefore, if the Department withdrew a plan, a new plan would be required under clause 2(2). A marine plan would likely only be withdrawn for the purposes of replacing it. The Department is content that the provisions of clauses 2 and 4, when read together, deal with the issue of replacing a withdrawn plan."

Are members content with the Department's response?

Members indicated assent.

The Chairperson: Is the Committee content with Clause 4, subject to a departmental amendment to publish its intention to withdraw a plan on its website?

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 4 agreed to.

Clause 5 (Duty to keep relevant matters under review)

The Chairperson: Members were content with the Department's explanations of the inclusion of a set time period for review of the marine plan and the use of clearer terms.

Question, That the Committee is content with the clause, put and agreed to.

Clause 5 agreed to.

Clause 6 (Decisions affected by a marine plan)

The Chairperson: We were content with the Department's explanations of the clarity of the terms used, the requirement for consultation with affected parties, the introduction of the principle of mitigation or compensation for negative impacts and the requirement for reasons to be stated for decisions taken by public authorities.

Question, That the Committee is content with the clause, put and agreed to.

Clause 6 agreed to.

Clause 7 (Monitoring of, and periodical reporting on, marine plans)

The Chairperson: We were content with the Department's explanations about the independent reporting on the plan and the requirement for reporting ending in 2030.

Question, That the Committee is content with the clause, put and agreed to.

Clause 7 agreed to.

Clause 8 (Validity of marine plans)

The Chairperson: The Department agreed to consider the time period and the grounds for judicial review. The Department's response indicates that it will amend the clause to allow legal challenge of the marine plan up to 12 weeks after its publication but that the grounds for a legal challenge should remain as drafted.

Are members content with the Department's response?

Members indicated assent.

The Chairperson: We agreed to consider recommending that the Minister stresses during Consideration Stage that there is a recognised process for engagement throughout the preparation of the marine plans and that the High Court option should not be considered an alternative.

Mrs D Kelly: I am sure that you will be at pains to point that out.

Mr Hamilton: Probably the only one.

The Chairperson: Is the Committee content with clause 8, subject to a departmental amendment to extend the period during which a legal challenge can be made to up to 12 weeks after the plan has been published? The Committee recommends that the Minister stresses during Consideration Stage of the Bill that there is a recognised process for engagement throughout the preparation of the marine plans and that the High Court option should not be considered an alternative.

Mr Hamilton: There is also the opportunity to change a marine plan through the Bill. So, if somebody does not like it, they can make the argument to change it.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 8 agreed to.

Clause 9 (Powers of the High Court on an application under section 8)

The Chairperson: No issues were raised about clause 9 that were not addressed under clause 8.

Question, That the Committee is content with the clause, put and agreed to.

Clause 9 agreed to.

Clause 10 (Interpretation of this Part)

The Chairperson: We were content with the Department's explanation for not including a definition of "sustainable development" in this clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 10 agreed to.

Clause 11 (Designation of marine conservation zones)

The Chairperson: The Department agreed to respond to the possibility of designating historic sites and submerged landscapes as marine conservation zones (MCZ). In its response, the Department stated that the overall protection regime currently operating in Northern Ireland is robust enough to protect Northern Ireland's marine assets. The Department also said that it will not be tabling an amendment to include the possibility of historic sites being designated as MCZs. Do members have any comments on that?

Mr Hamilton: The Department's argument is based entirely on the grounds that there is sufficient protection elsewhere. However, that protection is distinct from marine protection. Is that right? You are not protecting the marine under other provisions.

Mr K Bradley: That is to do with the protection of the artefacts, or whatever they may be, that are in the seabed

Mr Hamilton: It is because the Girona is on the seabed and because it has marine life around it.

Mr K Bradley: Under the Protection of Wrecks Act 1973, the Girona and all the things in it are protected. Anyone who wants to dive it can get a licence from the Department. The Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 allows the Department to schedule any other artefact in the same way as a monument on land can be scheduled. It could schedule a shipwreck or a piece of ship that is sitting on the seabed for the protection of what is in it. The Department has had that power since 1995, but it has never used it to schedule any seabed monument or object that is on the seabed. The Department does not feel that there is any point in adding another tier of legislation to allow it to protect something on the seabed because it has historic or archaeological importance. We feel that that power is there already and that the Department has the power to use it.

Mr Hamilton: I would like clarity on that. Does that mean that there is sufficient legislation to protect a ship of some renown or historic value? I will continue with the Girona as an example. Irrespective of what grows on it, can a ship of that stature be protected under existing legislation because it has such stature?

Mr K Bradley: That is correct.

Mr Hamilton: So, that is covered by existing legislation. If we accept that, the only other reason to make that provision in this Bill would be if there were a shipwreck of, maybe, a small boat that is not of historic significance but on which or in which something starts to live. Am I right in thinking that that ship can still be designated because it has some habitat around it and marine life living in it and not because it is an old boat that has sunk?

Mr K Bradley: It is basically habitat in its own right.

Mr Hamilton: Yes. So, it is immaterial whether it is a rock or a ship.

The Chairperson: The Bill Clerk has suggested that, if we wanted to make an amendment, it would be more appropriate to make it to clause 12.

Mr Hamilton: I was trying to steer away from that.

The Chairperson: We have been lobbied for an amendment on this matter by one of the NGOs. The Bill Clerk will give us a quick briefing on this.

The Bill Clerk: For the purposes of debate at least, if you want to amend, the better and more obvious place might be clause 12, where it gives the grounds for designation. Having said that, I advise members that the design of the Bill is very different from that of the Scottish model. The Marine (Scotland) Act 2010 is much bigger, and the model created under that Act is completely different. It provides for three types of marine protected area, one of which is a nature conservation model. There is a separate section dealing with historic areas and marine protected areas that are of an historic nature. To tack on an archaeological reference to that conservation model might be a little odd in the context of the flow and logic of the Bill. It would be sufficient for debate purposes, but, if the Committee wants to move towards a Scottish model, which represents a much bigger piece of work, you would expect government to have to come back and do a bigger revamp of the related clauses. However, you could insert a reference to archaeological or historic features into clause 12 to make your point.

Another point to consider is the overlap with the other statutes. Article 4 of Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 creates an offence where any actions result in the unauthorised:

"demolition, destruction or disturbance of, or any damage to, a scheduled monument".

That can include any site comprising the remains of any vehicle, vessel, aircraft or other moveable structure. You will recall that the Department was advised that the Scottish Government do not have equivalent powers.

Under article 30 of the same order, intentional or reckless damage to historic monuments can carry a maximum prison sentence of up to two years. That is on the statute book already. I appreciate that

submissions have said that there are potential failings with that, but I am not in a position to advise any further at this time.

Question, That the Committee is content with the clause, put and agreed to.

Clause 11 agreed to.

Clause 12 (Grounds for designation of MCZ)

The Chairperson: The Department agreed to consider changing "may" to "shall" and to include the words "cultural consequences" in clause 12(7). The Department indicated that it is willing to amend the clause to make it a requirement to consider social and economic factors and to include reference to cultural considerations. We have been provided with a further written response from the Department that reiterates its proposed approach for scientifically justified conservation objectives to reflect the purpose of an MCZ and to determine the level of protection that is required for each site, thereby negating the need for highly protected MCZs.

Are members content with the Department's response?

Mr Boylan: Most of the people who responded to the Bill thought that MCZs were a key issue. I am sure that there is legislation to protect the archaeological issues.

Mr K Bradley: The 1995 order.

Mr Boylan: To move on to what Simon said, which is a key element, evidence and research could show that a boat should become a habitat. That means that there could be many boats in that situation. Where that area's designation is concerned, if I were in the fishing industry, I would be looking at a series of such boats so that they could be clearly identified. When we look at this clause, or at this part of the designation, are we saying that, if evidence is brought forward showing that a boat has sunk and become a natural habitat, it will be in statute right away? Are we clearly saying that, once it is identified, it will be designated for protection?

Mr K Bradley: We are looking at the marine conservation zones in the overall content of an ecologically coherent network in the UK. That network will comprise of representative species, as well as rare and vulnerable species. In your example of where you came across a shipwreck that contained a habitat of that species, obviously we would consider that and look at its socio-economic and cultural aspects before designating it. So, just because the shipwreck contains a habitat, that does not mean that it will be designated as an MCZ.

Mr Boylan: That is what I am teasing out.

Mr K Bradley: There are numerous shipwrecks out there, so do you designate each one? There could be dozens or hundreds; we do not know.

Mr Boylan: Exactly. You could have 10 in a small area.

Mr K Bradley: It really depends on what they contain and how that fits in with the bigger picture.

Mr Boylan: That message needs to come out in the Chamber, and it needs to go out to the people who raised the issue.

The Chairperson: Where are you going to place the word "cultural"?

Mr K Bradley: It is going in at clause 12(7), and it will read "may have regard to economic, social or cultural consequences".

The Chairperson: Is it going to be difficult to define "cultural" in law?

Mr K Bradley: No. We do not have to define it. We checked that with the OLC, and it said that it is not necessary to define it. We do not define "social" or "economic", so we do not define "cultural".

Mr Hamilton: Have you agreed to change "may" to "must" in that subsection?

Mr K Bradley: Correct.

The Chairperson: OK, so Simon has won another point.

Mr Hamilton: Yes; I am racking them up.

The Chairperson: Is the Committee content with clause 12, subject to a departmental amendment making it a requirement to consider social and economic factors and to include a reference to cultural factors?

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 12 agreed to.

Clause 13 (Further provision as to orders designating MCZs)

The Chairperson: Members were content with the Department's explanation of the definition of "seashore" and taking account of coastal erosion. We also agreed to consider recommending that, during Consideration Stage of the Bill, the Minister stresses the importance of the MCZ designation process.

Mr Elliott: I still have concerns about clause 13(3)(a), which states:

"the area of seashore adjoins the area of sea".

I know that there was a definitive explanation of that, but I still have concerns.

The Chairperson: You can say that at Consideration Stage. Is the Committee content with its recommendation that, during Consideration Stage, the Minister stresses the importance of the MCZ designation process?

Members indicated assent.

Question, That the Committee is content with the clause, put and agreed to.

Clause 13 agreed to.

Clause 14 (Consultation before designation)

The Chairperson: The Committee was content with the Department's explanation of its duty to consult and the process that it will follow.

Question, That the Committee is content with the clause, put and agreed to.

Clause 14 agreed to.

Clause 15 (Publication of orders)

The Chairperson: We were content with the Department's explanation of how it will identify, inform and engage with stakeholders.

Question, That the Committee is content with the clause, put and agreed to.

Clause 15 agreed to.

Clause 16 (Hearings)

The Chairperson: No issues were raised on this clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 16 agreed to.

Clause 17 (Review of orders)

The Chairperson: The Department agreed to consider an amendment that would allow it to review, revoke or amend an MCZ order itself. The Department's response indicates that the OLC advised it that the current wording is adequate to allow the Department to revoke or amend a designation order. Are members content with the Department's response?

Members indicated assent.

Question, That the Committee is content with the clause, put and agreed to.

Clause 17 agreed to.

Clause 18 (Creation of network of conservation sites)

The Chairperson: Members were content with the Department's explanation of the contribution of Northern Ireland's MCZs to the UK MCZ network target. We were provided with a further written response from the Department justifying its proposed approach to ensuring that the designation of MCZs enabled it to meet its obligations under the marine strategy framework directive (MSFD). However, I think that we raised previously the issue of the Northern Ireland region. We are happy to contribute to the UK MCZ network, but what about our own region? There are species and features here that may not be across the UK. Are we going to forget about the special features in the Northern Ireland region?

Mr K Bradley: No, we are not. Again, it comes back to balance. I will go back to Cathal's point: we are not going to designate every piece of sea. We will look at our overall requirement under the marine strategy framework directive to ensure good environmental status by 2020. That is where the ecologically coherent network comes in. That looks at UK waters and beyond, and we call that a biogeographical area. Northern Ireland cannot look at its own small piece of territorial waters in isolation; it must look at the whole pond, shall we say. After that, if there are unique features that are specific to Northern Ireland that do not exist anywhere else in the UK or further afield, we will look at designating those. Our first objective is to meet our European requirements under the marine strategy framework directive, but that gives us the flexibility to look at other elements. If, as you say, there are specific or unique features, we will look at those, but our first objective is our European commitment. Again, that shows the flexibility of the process. It is a compromise between economic, environmental and cultural aspects.

The Chairperson: Will we also look at our own special features and use those as a building block for the UK network?

Mr K Bradley: Yes, that is correct. In monitoring our European sites, we came across new species of sponges off Rathlin Island that were previously unknown. They could become part of an MCZ.

The Chairperson: There is a concern that there is a risk that our focus will not be on our own network and that we will think of all the UK waters rather than just Northern Ireland waters.

Mr K Bradley: No. We must also be mindful that an MCZ can be designated for a multitude of species. Species that lead to the UK commitment and those that are specific to Northern Ireland could be in the same zone. That is the flexibility of it all.

The Chairperson: Are members content with the Department's response?

Mr Boylan: It all needs to be evidence based. It is all right talking about MCZs and everything else, but the key element is the evidence base.

Mr K Bradley: That is correct.

Mr Boylan: It is grand saying that today as we are going through the Bill, but the main issues are where we are with it, how we will start the process and when we will start to implement it. That is the message that needs to be sent out.

Mr K Bradley: That is a very good and valid point, and, again, it bears out the Department's policy. Any MCZ will have to be based on good, sound, scientific evidence of what is out there. That will be the starting point.

The Chairperson: If the legislation suggests that our primary focus is contributing to the UK network, is there a potential difficulty that we will focus only on that and that we will not think of our own special features?

Mr K Bradley: No, that is our top priority. The flexibility gives us the potential to take other factors and interests into account.

The Chairperson: I know that the NGOs are quite concerned about that point.

Mr K Bradley: We should bear in mind that marine conservation zones will take other factors, activities and responsibilities in the marine environment into account.

The Chairperson: Is there any way that we can assure the NGOs of what you are saying? Can we assure them that we will not just be thinking about contributing to the UK network?

Mr Bradley: At the end of the day, no one knows what the overall network will look like. No one knows what range of species there will be or which areas will be designated. At this stage, we cannot say whether it will be 2%, 10% or 50% of Northern Ireland waters, although it probably will not be 50%. We cannot give such an undertaking until we know exactly what is out there, which leads me back to Cathal's point. That will be our starting point. We have some evidence, but we do not have the full picture of what species or habitats are in Northern Ireland territorial waters.

Question, That the Committee is content with the clause, put and agreed to.

Clause 18 agreed to.

Clause 19 (Reports)

The Chairperson: The Department agreed to consider replacing the word "restricted" with the term "affected" in clause 19(2)(c). However, the Department's response indicates that it believes that the term "affected" would be too broad and outside the policy remit of the clause. Therefore, the Department wants to retain the word "restricted".

Are members content with the Department's response?

Mr Elliott: I would like a further explanation of the Department's response. We are talking about a report, not more specific issues, so I cannot understand why it would be beyond the remit of the clause to include the term "affected" rather than "restricted". I could maybe understand it if it were more specific, but, since it is about a report that is coming to the Assembly, I cannot figure out why the term "restricted" should be used instead of "affected".

Mr K Bradley: The point of the report is to give the Assembly an update or briefing on the number and extent of each MCZ. In designating an MCZ, we also need to set out the levels of protection and how other activities are restricted. That is the point of the report. The Department will identify a site and agree the conservation objectives, which will determine the level of protection. It will also determine what activities can or cannot happen in that site. The term "restricted" is in the clause because, obviously, certain activities would need to be restricted to protect the feature. "Affected" is much wider, and that comes back to climate change. Activities could be positively affected; we would not know how they are affected. So, this element is about what the Department has done in the designation process, what it has achieved, and what activities are restricted. Other Departments can then see what we are doing and why. "Affected" is a broad term, and the areas that it covers would be

very difficult and time consuming to deal with. Another point is that the activity could be affected after we designate the MCZ.

Ms Cunning: Not only that, but we might not know whether it has been affected. A company that is considering laying cable, for example, might look at the map and see that there is an MCZ in a particular area and decide not to lay the cable there but somewhere else. That affects that company's decision-making process, but we would not know about that. We can just say that we have "restricted" cable laying in that MCZ. So, you can assume that it has had an effect, but we would not be able to report on the specific effects, because we would not know about them.

Mr Elliott: I do not think that you would be expected to report on anything that you did not know was affected. You could not do that anyway.

Mr K Bradley: That is the reason why we are not prepared to make a change; "affected" is such a wide term.

Mr Elliott: If you know that something is affected but not significantly restricted, you are not going to report it. In other words, the fishing industry, for example, could be affected in some way, but you are not going to report it because, in the Department's terminology and assessment, it is not "significantly restricted". Again, it will come back to subjective terminology and to what you determine as being "significantly restricted" or "affected". Although fishermen may say that they feel that something is "significantly" restricting them, you may believe that it is not, and, therefore, it will not go in the report. That is what concerns me.

Mr K Bradley: If a fishing activity were restricted, we would obviously have that in the report. The purpose of the report is to set out what activities can or cannot happen in an MCZ.

Mr Elliott: Ken, you are not getting me. That is your interpretation. Your interpretation might be that it is not significantly restricted but affected, so you will not report it.

Mr K Bradley: By "restricted" we mean the restrictions that will put in place to protect the feature. In other words, we may give the latitude and longitude of the area where you may not bottom trawl. That is a physical restriction, and that is what the Department is reporting on.

Mr Kerr: There could always be a dispute about our interpretation of a word, irrespective of what word we were to use. If we were to change the term to "affected", you may think that something is affected, and we may not, or the fishing industry may think it is positively affected, negatively affected, or whatever. So, there is always going to be an issue about interpretation.

Mr Elliott: "Affected" will catch much more than "restricted".

Mr K Bradley: As Angus said, there could be a positive effect.

Mr Elliott: There could be.

Ms Gerardine McEvoy (Department of the Environment): As Ken said, maybe "affected" will be taken up more at the designation stage. This is a report on the MCZs that are designated. Therefore, the designation order would have the restrictions and the conservation objectives in place, so anything that is affected would, hopefully, be teased out in the designation process. As you outlined, fishermen, or anyone else who would be affected, will, hopefully, have been taken through the consultation. This is more the final product.

Mr K Bradley: The finished article.

Mr Elliott: That is no reason for you not to report on the outcomes and on what is happening around it. Just because it is dealt with at the consultation stage, that is no reason for you not to report on it. I have to say that I do not buy that argument.

The Chairperson: I think that the point is that restrictions are so much easier to identify than elements that are affected positively or negatively.

Mr Hamilton: I tend to agree with Tom's argument. Although I understand the point about how much more difficult it may be to designate or conjure up what is "significantly affected" as opposed to "significantly restricted", I think that the language in the clause is unnecessarily negative. We all realise that some people will be "significantly restricted", but that is why it almost flashes in lights. That causes concern, worry and alerts danger and so forth. Tom, I do not think that anyone is arguing about the use of the word "significantly"; it is the terms "restricted" or "affected" that are the issue. "Significantly" means that there must be a high threshold.

Mr K Bradley: In legislative terms, "significantly" means anything that is more than trivial.

Mr Hamilton: There is a lot of trivia in this, but it is not necessarily useful for pub quizzes. I understand Tom's argument, and the term "affected" is more relevant than "restricted". However, I would be keen to hear what others think.

Mr Campbell: I do not have a strong opinion either way. It might help me to formulate an opinion if I could hear two or three examples of issues that would be subject to a report under the term "restricted" but would not under the term "affected" and vice versa. If I could hear some examples of the differentiation through the use of either word, it might allow me to formulate an opinion.

Mr K Bradley: The report will outline the Department's MCZ programme to the Assembly. It will identify where each MCZ is, where the boundaries are, their conservation objectives and what, in the Department's opinion, has to be restricted to protect that feature. That is why the term "restricted" is used. I take the point that it sounds negative, but that is what people will focus on and be interested in.

As Brenda said, we might not know whether an area has been affected. She gave a very good example, and I am trying to think of others. An MCZ may be designated and an order might be put in place, but something could arise later that could have an effect. We would be unaware of that as no one would have told us about it. However, if an area is an MCZ, people would steer clear of it as they would know that the activity would be detrimental. By default, the MCZ would be protected, but we may not know every eventuality.

To repeat, the purpose of the report is to let people know why the MCZ is there, why it is important and what activities have been physically restricted.

Ms Cunning: It will also allow people to respond. They can tell us that we have restricted certain activities and what the impact of that has been. It is almost a discussion. By placing the report before the Assembly, we will tell people what we have done, and they can then come forward and tell us that a factor we considered when we designated an MCZ has had x, y and z effect. It could have led to an increase in costs for a company, meant that it had to change its decisions or affected the fishing industry in a way that was unforeseen when the area was designated. It will enable that discussion.

The Chairperson: So, are you saying that, after the report is produced, people can tell you how the designation has affected certain industries or activities?

Ms Cunning: Yes.

The Chairperson: Tom, are you content with that?

Mr Elliott: Well —

Mr Boylan: Some of the members are restricted and some are affected, but I want to try and tease this out. *[Laughter.]*

Mr Hamilton: Some more significantly than others. *[Laughter.]*

Mr Boylan: We have bounced back and forward on this matter. Clearly, it was highlighted by the renewables sector. I am reading through the arguments, and, after hearing some of the explanations, I would not like to be part of that sector. Will you try to clarify exactly what its point is?

Mr K Bradley: That probably goes back to Brenda's point. Perhaps an MCZ has been designated, and someone may want to put a wind turbine in it later. They might decide to try to get a licence to put the wind turbine in that MCZ, but that would then be detrimental to the feature. So, they may move their plans away from that area. So, obviously, that would have an effect, but the Department would not know about it. The Department may not be able to adhere to that, because it may not have enough information. We could then be criticised for not including in the report an effect that we did not know about. That is where we are coming from. This is not meant to hoodwink anybody in any way. We want the report to basically state the outcome of the MCZ process, where the MCZ is, what its features are, why they are important and what activities we feel we need to restrict to ensure the safety of those features. Those are all within the Department's bailiwick, shall we say, and we can, hopefully, report on them. Something could happen that is outside our control that may affect the area, such as a storm, but we would not know about it.

Mr Boylan: I agree, and I understand that part of it. So many things could happen.

Mr K Bradley: That is right.

Mr Boylan: I agree, and this is wide-ranging. The issue for us is to bring in a piece of legislation that will give everybody an opportunity. Obviously, the renewables sector is one such group. Looking at it from that point of view brings us back to research, identification and everything else. We should also be looking at the renewables sector and at how we consider the whole issue of where that energy can be generated.

Mr K Bradley: That is correct. The comment on that clause got slightly confused, because this is a report on the finished article, but maybe the respondents felt that it would apply during the designation process. I could be wrong, but I think that that is the case.

Mr Boylan: It would be reasonable to think that from that starting point. That is what we should be looking at.

Mr K Bradley: Account will obviously be taken, through the designation process, of the renewables industry and every other activity. So, I think that the issue was slightly confused.

Mr Boylan: Exactly.

Ms McEvoy: Of course, there may be no restrictions on any MCZ. There may even be two or three with no restrictions. At least the process is open and transparent enough for you to be able to say that, for socio-economic reasons, you may have to restrict x or y.

The Chairperson: Socio-economic and cultural issues.

Mr Hamilton: I just want to look at what will happen in practice and at why this is not acceptable to the Department. A report has to be produced that must contain information about what is "prohibited or significantly restricted". Clause 19(2)(c) refers to:

- "(i) any licensable marine activity;*
- (ii) fishing for or taking animals or plants from the sea;"*

So, we are talking fishing, renewables and maybe one or two other activities. It is not massive amounts of activities. The clause is not being specific about the report — I am sort of thinking aloud a bit — but refers to producing a report that contains that information. It does not say how that information has to be formatted in the report. You can take evidence from those sectors about their views and include in the report how they believe themselves to be affected, as well as restricted.

Mr K Bradley: That information would have been readily available during the designation process. We would have consulted widely.

Mr Hamilton: This is a report about the reality of the situation. Say Gregory is a renewables man who puts a lot of turbines off the north coast. He may have a view about the designation of an MCZ in that area, but it does not happen in practice or is worse in practice. The report allows for that situation to be picked up. So, this is about what actually happens, as opposed to Gregory's opinion beforehand.

I do not think that that is covered. You said that it may have been affected in one way or another during the process, but what actually happened? It is an opportunity to pick up all those things retrospectively. Maybe this is a case when the legislation is not necessarily the place to have the answer, but it may be something that comes out elsewhere —

Mr K Bradley: It might come out through the guidance.

Mr Hamilton: Yes; that might show what the report actually looks at. What does the report do? The fishing industry or whoever may put out a whole lot of possible effects that they believe could happen. I am sure that it would be in their interest to put all those effects out before an MCZ were designated, particularly if they think that it is going to restrict their activity. However, what happens in reality?

So, that is how the term "affected" could be used. The clause could say "significantly restricted or affected". If you changed the word to "affected", would restricted be included?

Mr K Bradley: It probably would, yes. Again, this report on the finished article; it is on the MCZ when it has been designated and everything is in place and has been set out.

Mr Hamilton: I think that any report looking back at the relevant period should have a retrospective on what people thought was going to happen.

Mr K Bradley: That is fine, but we could come to the next report the following year, which could show that something that we were not aware of could have affected a site. Somebody might say that the Department designated that site a year or two ago and that a particular thing had since affected it but that we did not put it in the report.

Mr Hamilton: Regardless of whether it was restricted, part of me still thinks that we would want to know what affects the site, particularly if it was unforeseen. I would not be so worried about criticism that something had happened but it was not in a previous report, for instance.

Mr Campbell: Especially if it had been unforeseen.

Mr Hamilton: Yes. I think that we are being unduly sensitive to criticism.

Mr Kerr: The issue here is a concern that there are some benefits in broadening the definition, because you may be able to catch more issues. That can be set against our concern that, as a result of that extension, we may end up missing certain things and not being able to capture or, in fact, fulfil what the clause intends to achieve. I suppose the narrower approach that we had taken to begin with, and with which people are most concerned, related to where MCZs might restrict and have a negative effect. So, it is very important to capture that.

The debate here is about what would happen if we were to broaden that out. You might find out some other useful and interesting pieces of information, but we may not be able to meet our requirements, because we are not aware of all the potential impacts.

Mr Hamilton: If people are not aware of something, they cannot be criticised for not being aware of it. What do you do if those who are affected are not making you aware of it?

Mr Kerr: I only wish everyone were as reasonable. I know that we would be asked, "Why are you not aware of it? Why have you not spoken?" *[Laughter.]*

The Chairperson: I understand the difficulties. How do you measure it, because it is such a broad term?

Mr K Bradley: It would also require the Department to commit resources to carry out further work to find out whether a site is affected, and if it is, how significantly. For example, is it a beneficial or a negative effect?

The Chairperson: I am aware of the time, members. Is the Committee content with clause 19?

Mr Hamilton: Can we see the guidance and have some clarity from the Minister about that between now and Consideration Stage debate? We would also like the Minister to discuss during that debate any guidance on what will be included, how you would look at issues that were raised during the designation process and whether they were factors. We would like the guidance to state how the report would look, what it would look at and how the issues that were raised during the designation process would be covered in a written report, regardless of whether they were restricted.

Question, That the Committee is content with the clause, put and agreed to.

Clause 19 agreed to.

Clause 20 (General duties of public authorities in relation to MCZs)

The Chairperson: We were content with the Department's explanation on how it will implement and oversee the general duty on public authorities. We got a letter about that from the Committee for Agriculture and Rural Development, which was concerned that the 28-day requirement for public authorities to wait before carrying out acts that may hinder achievement of the conservation objectives of an MCZ would disadvantage the Department of Agriculture and Rural Development (DARD). DARD's response indicates that it believes that that period is reasonable.

Question, That the Committee is content with the clause, put and agreed to.

Clause 20 agreed to.

Clause 21 (Duties of public authorities in relation to certain decisions)

The Chairperson: Members were content with the Department's explanation of suggestions for compensatory measures.

Question, That the Committee is content with the clause, put and agreed to.

Clause 21 agreed to.

Clause 22 (Advice and guidance by the Department)

The Chairperson: Members were content with the Department's explanation of the guidance that is to be issued.

Question, That the Committee is content with the clause, put and agreed to.

Clause 22 agreed to.

Clause 23 (Failure to comply with duties, etc.)

The Chairperson: The Department agreed to consider amending the word "may" to "must", which would make it a requirement for the Department to request an explanation from a public authority for its failure to comply with MCZ duties. The Department's response indicates that it is willing to table an amendment that makes it a requirement for a public authority to provide a written explanation for its failure to comply with the duties required in an MCZ.

Are members content with the Department's response?

Members indicated assent.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 24 (Byelaws for protection of MCZs)

The Chairperson: The Department agreed to consider including an interpretation of the term:

"any other part of Northern Ireland".

The Department's response indicates that it does not believe that it needs to include an interpretation of that term, because the boundaries of the by-law will be confined to the limits of the MCZ, which will be defined in the designation order.

Are members content with the Department's response?

Mr Elliott: If an MCZ is to be confined to the marine environment, I have no idea why the Department put that term in the Bill. It is very confusing.

The Chairperson: It is a catch-all phrase.

Mr K Bradley: It is legislative speak.

Mr Elliott: I am really worried now. *[Laughter.]*

Mr Boylan: Is that a catch-all for the anglers?

Mr Hamilton: We got the explanation that it might include small islands and such things. If that were to be reiterated at Consideration Stage, it could take away any confusion.

The Chairperson: The Committee also agreed to consider recommending that, at Consideration Stage, the Minister stresses that the provisions of by-laws will be appropriate to meet the objectives of an MCZ, but will not exceed what is required.

Question, That the Committee is content with the clause, subject to the Committee's proposed amendment, put and agreed to.

Clause 24 agreed to.

The Chairperson: Is the Committee content to recommend that the Minister stresses at Consideration Stage that the provision of by-laws will be appropriate to meet the objectives of an MCZ but will not exceed what is required?

Members indicated assent.

Mr Boylan: I have no problem supporting the clause. However, after seeing some of the comments, I feel that it is important that we get the information and the guidance out to the people whom this will impact. Anglers and other groups are mentioned. I do not know whether the point about the by-laws should be highlighted in the Chamber. However, whatever the case may be, it is vital that those people realise exactly what the situation is.

The Chairperson: We can reiterate that during the Consideration Stage debate.

Mr Elliott: I still have concerns about clause 24(3)(e). I know that it was indicated at a previous meeting that that was lifted directly from the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985. I just want to put that on record.

Clause 25 (Byelaws: procedure)

The Chairperson: Members were content with the Department's explanation on its proposed by-law procedures.

Question, That the Committee is content with the clause, put and agreed to.

Clause 25 agreed to.

Clause 26 (Emergency byelaws)

The Chairperson: The Department agreed to provide information on what will constitute an emergency when introducing emergency by-laws for existing MCZs. The Department's response indicates that an emergency by-law will allow the Department to stop an unforeseen and potentially damaging activity, such as a one-off powerboat race close to a bird-nesting site or an organised spearfishing event on a protected reef. Are members content with the Department's response?

Members indicated assent.

Mr Weir: I am perfectly content. Is there much of a history of spearfishing?

The Chairperson: I would like to see it.

Mr Weir: I know that we get the odd invitation, but I do not know whether mine has gone astray.

The Chairperson: It is quite a skill.

Mr Weir: I do not doubt that. I may show a degree of prejudice, but I tend to associate it with a more tropical climate or Robinson Crusoe. I have not seen a great deal of it in my experience of the north Down coastline.

Lord Morrow: You are not there on the right day.

Mr Boylan: You could send Jim Shannon in; there would be no birds left.

Mr Hamilton: He would not use a spear.

Question, That the Committee is content with the clause, put and agreed to.

Clause 26 agreed to.

Clause 27 (Interim byelaws for MCZ)

The Chairperson: We were content with the Department's explanation of by-laws to protect the MCZs that are under consideration.

Question, That the Committee is content with the clause, put and agreed to.

Clause 27 agreed to.

Clause 28 (Byelaws: supplementary)

The Chairperson: No issues were raised about clause 28.

Question, That the Committee is content with the clause, put and agreed to.

Clause 28 agreed to.

Clause 29 (Hearings)

The Chairperson: No issues were raised about clause 29.

Question, That the Committee is content with the clause, put and agreed to.

Clause 29 agreed to.

Clause 30 (Offence of contravening byelaws)

The Chairperson: We were content with the Department's explanation of proposed fine levels for the contravention of by-laws.

Question, That the Committee is content with the clause, put and agreed to.

Clause 30 agreed to.

Clause 31 (Offence of damaging, etc. protected features of MCZ)

The Chairperson: We were content with the Department's explanation of protection provided by this Bill compared with the Wildlife and Natural Environment Act (Northern Ireland) 2011.

Question, That the Committee is content with the clause, put and agreed to.

Clause 31 agreed to.

Clause 32 (Exceptions)

The Chairperson: Members were content with the Department's explanation of applying the sea-fishing defence to shallower waters. I think that there were issues about confining the limit to 0 to 6 nautical miles.

Question, That the Committee is content with the clause, put and agreed to.

Clause 32 agreed to.

Clause 33 (Fixed monetary penalties)

The Chairperson: Members were content with the Department's explanation of the level and implementation of fixed monetary penalties.

Question, That the Committee is content with the clause, put and agreed to.

Clause 33 agreed to.

Clause 34 (Fixed monetary penalties: procedure)

The Chairperson: We had no issues with clause 34.

Question, That the Committee is content with the clause, put and agreed to.

Clause 34 agreed to.

Clause 35 (Fixed monetary penalties: further provision)

The Chairperson: No issues were raised with clause 35.

Question, That the Committee is content with the clause, put and agreed to.

Clause 35 agreed to.

Clause 36 (Enforcement officers)

The Chairperson: The Department agreed to consider incorporating clarification of the meaning of "member state" as it relates to the Bill. The Department's response indicates that references to "member state" are references to membership of the EU and that it does not believe that a definition is required.

Are members content with the Department's response?

Members indicated assent.

Question, That the Committee is content with the clause, put and agreed to.

Clause 36 agreed to.

Clause 37 (The common enforcement powers)

The Chairperson: No issues were raised about clause 37.

Question, That the Committee is content with the clause, put and agreed to.

Clause 37 agreed to.

Clause 38 (Repeals and transitional provisions)

The Chairperson: I know that Simon wants to make a point about clause 38.

Mr Hamilton: I cannot remember whether it was last week or when we last met to go through the Bill, but I raised an issue about why Strangford lough would become an MCZ. I teased out the point that there is still a process to go through. A letter that the Committee received from the Department stated:

"Strangford Lough will become the first MCZ under the Marine Bill."

Of course, we discussed that it will not become an MCZ. It is likely to become an MCZ, and I anticipate that it will. If Paddy Power were to give me odds on that I would take them, but I daresay that he has probably closed the book. I appreciate that it will become an MCZ, but we need to go through a process. However, that was not the point that I wanted to raise.

In clarifying that, I did not go into the substance of why we are getting rid of marine nature reserves. It is well known that Strangford lough is a marine nature reserve, and it strikes me that that is a good designation. If you were to ask people, they would understand what a nature reserve is; ergo, they would probably appreciate what a marine nature reserve is. It has a sort of a cache and a currency as an entity, so it is almost marketable as a brand for the area in question. With no disrespect to anyone, the term "marine conservation zone" does not really have that, so the use of that term seems to be a regressive step. I appreciate that it is more, if not as much, about the protection of the marine environment. That is a given. However, why are we getting rid of a designation that has some local, national and, perhaps, international, recognition or understanding and replacing it with something that does not? Over time, it may get that recognition, but the term "marine conservation zone" sounds very clinical, and I keep thinking of demilitarised zones. It sounds very industrial or clinical and is not in keeping with what it is there to do. People understand the term "nature reserve".

Mr K Bradley: That is a valid point —

Mr Hamilton: I should declare an interest as a representative of the area, and another member here should as well.

Mr K Bradley: I take the point that the term "MCZ" is not as sexy as "marine nature reserve" (MNR). So, that is fair enough.

The legislation for marine nature reserves came in for Northern Ireland in 1985 and slightly before that in the rest of GB. Only three sites have been designated in the whole of the UK, and Scotland did not designate any. That was because it was felt that, although the areas that have been identified are quite special, through time, the term did not fit the bill. You alluded to the level of protection, and marine conservation zones will do a much better job of providing that protection. The MNR legislation

allowed for only by-laws to deal with unregulated activity, and, with by-laws, you obviously have only very limited fines and other punishments.

You are right. The marine conservation zone legislation will overtake the MNR legislation, really because that is not seen as fit for purpose. It is not strong enough, and there is no point in having two different national designation processes for marine nature reserves and marine conservation zones. As we know, marine conservation zones will be about considering more than just the flora, fauna and special habitats; they will take in other things. Marine conservation zones have evolved from the 1985 legislation and our experience with marine special areas of conservation under the habitats directive. The designation process is set in stone, and the boundaries and the level of protection, etc do not change.

So, although the term "marine conservation zone" may not be as sexy as "marine nature reserve", at the end of the day, it will be a much better product. That is where we are coming from.

Mr Hamilton: I accept that. That looks at the issue from a particular perspective, and I appreciate that. However, there are other perspectives, one of which is that the area has a branding. You said that it is one of three in the whole of the UK, so it has a status beyond the norm.

Mr K Bradley: It is now one of one, because the other two have been abolished.

Mr Hamilton: That is right.

You almost make the counterargument by saying that there will be more MCZs, so it almost dilutes its status as something above and beyond the norm. I am almost making an argument that there should just be something called a "marine nature reserve" and that it be nothing. However, I appreciate that there has to be something applied to it.

We are worried about raising it with the Minister. He might come back and say that he wants to make it a national park. *[Laughter.]* If it puts my property value back, I will have to think about that. However, I worry about raising the issue with the Minister too much.

Lord Morrow: That is in case you get a long reply.

Mr Hamilton: I represent the area, and those of us there understand that it has special status. We appreciate that it is likely to become an MCZ and that, with that, comes greater protection than is the case now. However, the term "marine conservation zone" does not just have that "you know what" or "je ne sais quoi" that says that it is special. It is going to be an MCZ along with I do not know how many other sites around the coastline that are not of the same significance.

Ms McEvoy: Each MCZ will be specific for its own designation. I appreciate what you say about Strangford lough being unique. However, those unique features will still be retained in the MCZ.

Mr Hamilton: It does not sell. It is all about —

Ms McEvoy: How would you cope, for example, with the stakeholder? If you keep it as a marine nature reserve, for example, with the enforcement powers of an MCZ, there could be some confusion should people not understand the by-laws, the offences and the new legislation.

Mr K Bradley: Strangford has a plethora of designations, as you know.

Mr Hamilton: It does. Why can it not have —

Mr K Bradley: One more?

Mr Hamilton: Another one, yes.

Ms McEvoy: That is because, in fairness, they are both for the same sort of provisions.

Mr K Bradley: It is duplication.

Mr Hamilton: I have heard the Minister talk very fondly of Strangford lough, and there is a piece of legislation before us that dilutes its status.

The Chairperson: The fact is —

Mr Hamilton: I am not stupid. I understand that it retains that status and protection. However, as something to market —

Mr K Bradley: I understand your argument, but it is based on something that is slightly different to the purpose of the Bill, which is the conservation of flora and fauna.

Mr Hamilton: Yes, exactly. OK. However, in passing this Bill, no one is offering me anything that retain that status for that area. You are retaining the environmental status of it. No doubt, the marine nature reserve status was not concocted for marketing or branding purposes either. It was made for environmental purposes, and it has proven to be somewhat deficient in that. The marine nature reserve status has, over time, developed a cache that was not the original intention. We are removing it and not replacing it with anything.

Mr Kerr: In a sense, is this not straying into the question of how you market or sell a particular area? Maybe this can be got round in the implementation of the MCZ, how it is launched, the publicity that surrounds it and through interaction with some of the other Departments in how they handle it. I am thinking of the Department of Enterprise, Trade and Industry (DETI) and the Tourist Board and how they try to get that message across.

Mr Hamilton: If we allow the clause to go through, which I suspect we will, —

Lord Morrow: I am not here. *[Laughter.]*

Mr Hamilton: If it were the Fermanagh lakelands — *[Laughter.]* I appreciate that there is a marketing issue. However, you can find speeches by the Minister, other representatives and others outside this place extolling the virtues of Strangford lough as a marine nature reserve, not because of the protections that it offers — far from it — but because it is called a "marine nature reserve". Rightly or wrongly, what it actually is and how it is perceived are entirely different. We are losing that, and we need to be aware that we are losing it. I hope that, in time, the term "marine conservation zone" will be perceived as snappy, snazzy and sexy as "marine nature reserve". However, I am not so sure that it will be, and I remain to be convinced that that will be the case. Other names were suggested for MCZs. The Scots went for "marine protected area" (MPA). However, that does not add to it either, because everybody else would still be a marine protected area.

Mr K Bradley: Do you not think "marine national park" sounds good? *[Laughter.]*

Mr Hamilton: *[Inaudible.] [Laughter.]* I just want to put it on record that someone is bound to say that we have lost something. I am saying that, and I want to recognise that that is happening. It is not what we originally intended from a marine nature reserve, but we are losing it nonetheless.

Mr K Bradley: I fully appreciate and respect your point, and I understand where you are coming from. However, as I said, that is slightly outside the remit of the Bill, which is about conservation.

Mr Hamilton: Angus is right. There is a role for some bodies, and I have pushed the Tourist Board and others on Strangford lough, as I did with Fermanagh, Lough Neagh and other places. In the past, we did not recognise them as a tourism product.

The Chairperson: Simon, I am conscious of the time.

Mr Hamilton: I know. Let me make a final point.

The Chairperson: Can you wrap it up quickly?

Mr Hamilton: None of those features will ever be able to be designated as marine nature reserves. They will be called something completely different that will not have the same international recognition. Thank you. I have made my point.

Mr Boylan: I support some of Simon's comments; although, mind you, he made a good case for a marine national park. You could make a good case for Strangford lough to be conserved by Europe and so forth, because it is a unique case. The Marine Bill does not give it that status; rather, I think that it dilutes it. Not only should you have conservation and protection but you have the promotion and everything else that goes with it. I think that the Minister will need to highlight that. I think that Simon was correct, in that Strangford lough should not be tied in with the other MCZs or whatever other areas we will look at.

Mr K Bradley: I accept that Strangford lough is a slightly different case than all the rest of the marine protected areas. If you look at it, the UK-wide legislation was introduced in 1985, and only three sites were ever designated. That speaks for itself; it did not do what it said on the tin, nor did it offer the necessary protection. As you said, as a default, the term "marine nature reserve" was used as a marketing tool, and that is fine. However, the MNR legislation is not fit for purpose, and that is why we have proposed to repeal it on a UK-wide basis and replace it with something that gives more protection. In marketing terms, an MCZ does not carry the same weight, but the purpose of the Bill is to give protection

Mr Boylan: The issue was not that the legislation was not fit for purpose; unfortunately, there was neglect, and different things should have been looked at and implemented down through the years. The situation in Strangford lough went too far, and it should have been dealt with years ago. I hope that we will be proactive, rather than reactive, in bringing this forward.

Mr Hamilton: The point that I made was not about protection. I have confidence in the level of protection that will be offered by the new designations.

The Chairperson: Strangford lough will be the first MCZ to be designated, which will obviously give it special status. Perhaps that will give you some comfort, if not enough.

Question, That the Committee is content with the clause, put and agreed to.

Clause 38 agreed to.

Clause 39 (Interpretation of this Part)

The Chairperson: Members were content with the Department's explanation of the definition of seashore and of how the inclusion in an MCZ of land that is not covered intermittently by water might be interpreted.

Question, That the Committee is content with the clause, put and agreed to.

Clause 39 agreed to.

Clause 40 (Special procedure for applications relating to generating stations)

The Chairperson: Members were content with the Department's explanation of how the DOE and DETI will work together and of what guidance will be produced for timelines.

Question, That the Committee is content with the clause, put and agreed to.

Clause 40 agreed to.

Clauses 41 to 44 agreed to.

Clause 45 (Crown application)

The Chairperson: We were content with the Department's explanation about consultation with the Crown Estate.

Mr Boylan: Who was consulted with?

Mr Weir: Francie Molloy.

Mr Boylan: When we were in Scotland, there was talk of a coastal fund. I believe that there is a coastal fund here.

Ms Cunning: There is.

Mr Boylan: I agree with the whole idea of a coastal fund and with what Scotland is doing in the absence of looking at the issue of the Crown Estate. There is a coastal fund to support those areas, but, when we were in Scotland, we did not know that there was such a fund here.

Ms Cunning: There is. I think that it is for approximately £450,000, but do not quote me on that. The Crown Estate has put out calls for communities to receive money from it.

The Chairperson: If there are no other comments, I will put the question.

Question, That the Committee is content with the clause, put and agreed to.

Clause 45 agreed to.

Clause 46 (Interpretation)

The Chairperson: No issues were raised about this clause. If there are no comments, I will put the question.

Question, That the Committee is content with the clause, put and agreed to.

Clause 46 agreed to.

Clause 47 (Commencement)

The Chairperson: The Department indicated that it was proposing to introduce an amendment that would allow the whole Act to come into force on receipt of Royal Assent. Are members content with the Department's proposed amendment?

Members indicated assent.

The Chairperson: As there are no further comments, I will put the question.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 47 agreed to.

Clause 48 (Short title)

The Chairperson: No issues were raised about this clause. As there are no comments, I will put the Question.

Question, That the Committee is content with the clause, put and agreed to.

Clause 48 agreed to.

Schedule 1 (Marine Plans: Preparation and Adoption)

The Chairperson: We were content with the Department's explanations of the issues that were raised about schedule 1. However, the Department indicated that it would propose an amendment to introduce a savings provision so that work that is done in preparation for the marine plan before the Bill comes into force will not be lost. The Committee sought information on what work had been done to date and what work was likely to be done before the Bill obtained Royal Assent.

We were also to consider recommending that the Minister commit to a time frame for the introduction of a plan during Consideration Stage. In its response, the Department provides its proposed amendment to introduce the savings provision. The amendment requires that any work that is done on the marine plan in advance of Royal Assent must be done in accordance with clauses 1 to 11. An update of work that has been done to date on the plan has also been provided, and the Department has provided, in confidence, a copy of the statement of public participation.

Are members content with the Department's response?

Members indicated assent.

The Chairperson: The Committee also agreed to consider recommending that, during Consideration Stage, the Minister commit to a time frame for the production of the marine plan. As there are no comments, I will put the Question.

Question put, That the Committee is content with the schedule, put and agreed to.

Schedule 1 agreed to.

Schedule 2 (Further provision about fixed monetary penalties under section 33)

The Chairperson: We were content with the Department's explanation of subordinate legislation raising powers in the schedule and the Department's proposals for tribunal. Is the Committee content with schedule 2?

Question, That the Committee is content with the schedule, put and agreed to.

Schedule 2 agreed to.

The Chairperson: Other issues were raised about the integration and co-ordination of marine functions. Most other issues that stakeholders raised have been addressed to the Committee's satisfaction, including coastal access and appeals. However, last week the Committee asked the Department to provide more information on the work that it has done to date looking at the better co-ordination and integration of marine functions. The Department's response indicates that it continues to chair the interdepartmental marine co-ordination group, which remains the principle forum for ensuring co-ordination between the Departments that have marine functions. A further response from the Department informed the Committee that the group has met six times in the past 18 months. In addition, the Department continues to progress the necessary work on developing a full business case to advance the Minister's view that the full benefits of the Marine Bill can be realised only if they are implemented in an integrated and independent way. The main options that the business case is considering the status quo, a marine directorate and a non-departmental public body (NDPB).

Members, how do you want to proceed with this matter? We could suggest introducing a new clause that would require the Department to review the implementation of the plan after five years to see whether we need to include different options on co-ordination.

Mr Hamilton: I am content with what has come back from the Department. Even though I disagree with the Minister's approach, it is appropriate. He is trying to make a case, and it is up to him to develop it and sell it to others. I am content to leave the schedule as it is and to not suggest an amendment.

Mr Elliott: Chair, will you explain a wee bit more your suggestion to have a review? I thought that legislation could be reviewed at any stage.

The Chairperson: That suggestion involves a review of the Bill that would create the opportunity to look at whether there is a need for different options. Maybe the Clerk of Bills can expand on that.

The Clerk of Bills: We could introduce a new clause that says something along the lines of, "The Department shall, within so many years of the date on which the Bill receives Royal Assent, lay a report before the Assembly on the operation of the Act." In addition, you could, if you wanted, refer to,

"including a report on the effectiveness of measures to co-ordinate the exercise of functions." Such a new clause could perhaps say something like that.

The Chairperson: That would give us an opportunity to look at it in the primary legislation.

Mr Hamilton: The issue is not about the operation of the Act; it is about what can be agreed. You can review it in a week, a year, five years or whatever, and the issues will basically be the same. The issue is whether you can get agreement about a different way. The letter that came back from the Department spelled out that, basically, there are three options. First, there is the Minister's preferred option, which is to have an integrated and independent organisation, as he calls it. That is basically an MMO. The second option is to have a marine directorate, and the third is to do nothing. A fourth option, of course, is to have a departmental working group.

Ms Cunning: That is what we are doing now.

Mr Hamilton: It is not doing nothing.

Ms Cunning: It is doing nothing else.

Mr Hamilton: It is doing nothing different. The issue is about making it work. It is not about how it works in practice, because some people, including the Minister, prefer other options. That position will not change in a week, a year or five years. It is fine to review how the marine plan works in practice, because that will be looked at fairly objectively without political issues being brought to the forefront. This is a political issue, not an environmental or operational one.

The Chairperson: The review could look at the operation of the Bill and at whether the interdepartmental group is going to be effective. Many members expressed concern and doubt about whether the interdepartmental group will have any teeth in implementing the legislation. Rather than being a body that will oversee the Bill's implementation, it is very much a voluntary, almost consultative, group. The Bill covers something like six Departments, so the question is about whether there is a need for a co-ordinating body that is strong enough to enforce the Bill and to make all the Departments do the work that the Bill wants them to. That review may give us the opportunity to say that we should look at it all again.

Ms Cunning: The Bill requires the marine plan to be reviewed and reported on every three years. So, if your marine plan was not working because you were not getting the necessary co-ordination or buy-in from other bodies, the report will emphasise that. We are talking about reviewing and reporting on the plan every three years, and, every six years, the whole marine planning process will be reviewed. That is a big part of the Bill. Obviously, our not having the right co-ordination and structures will be reflected in how the marine plan operates. So, I think that that may be captured in some part through the Bill as it stands.

Mr Elliott: I have always tried to find a practical way to do this. Based on what I heard from officials in the past couple of weeks, and this on the record, I do not think that how they are planning to do it will work. However, we have nothing else on the table. The Bill Clerk may be able to advise us on whether there is any mechanism to put in the Bill that a memorandum of understanding between Departments to achieve a better delivery mechanism must be brought to the Assembly. I do not hold out great hope for any review, because I just do not think that that is workable either. I just wonder whether there is any possibility of building in a memorandum of understanding that will come to the Committee, through the Departments, and then go to the Assembly. Is that possible, or is it beyond the Bill's scope?

The Clerk of Bills: I can certainly look at drafting something like that for the Committee to look at.

Mrs D Kelly: If I am reading my papers correctly, it looks as though the Marine (Scotland) Act 2010 consolidates the functions. I think that such a provision is needed. I mean no disrespect to the officials here, but I would not stake my life on there being collaboration across Departments every three years to review whether there has been significant progress. If you waited three years for a report that just tells us that Departments have not done what they said they would, you may be back to waiting another three years before there is any affirmative action.

Mr Elliott: Oh ye of little faith.

Mrs D Kelly: I know; I am a cynic of bitter experience.

The Chairperson: Yes, and Strangford lough is a good example of that.

Mrs D Kelly: So, if the Bill Clerk is going to look at that, we may want to make some comparisons with the Scottish example. There is a need to tie the process down a lot sooner and more firmly than it is now.

The Chairperson: Marine Scotland is like a Department on its own —

Mrs D Kelly: I understand.

The Chairperson: — that brings in lots of functions. Are members happy for the Bill Clerk to draft an amendment, and if so, in what form?

Mr Hamilton: I think that what Tom said was sensible in the context of where we are. He is asking how we can examine and strengthen what will be in place. The only thing that we are going to be able to legislate for and that is going to pass is what is currently available. How can we strengthen that? I think that that is what Tom was saying. If it is saying, and if the Committee agrees with it, I am happy with that.

The Chairperson: It is about trying to strengthen the interdepartmental group.

Mr Hamilton: Yes. If that is what we are talking about, that would be a positive way forward when this all comes into practice and when something comes back from the Department about what is going to happen and we are discussing with Departments x, y and z how we can better integrate and work together.

The Chairperson: Yes. Perhaps it will give a bit more status to the interdepartmental group.

Mr Hamilton: Yes, the point is to see how it can be worked on and strengthened.

The Chairperson: Members, we need to move on.

Mr Boylan: Excuse me, Chairperson.

The Chairperson: I am sorry, Cathal, I missed you out.

Mr Boylan: I was listening to what Dolores said. The officials could come back in five years, and, to be honest, there could still be no change. It is about implementation and how we go about that process.

I agree with looking at a memorandum of understanding, because there is some merit in that. However, any Committee can call officials up at any point. I would like to see the bones of how we are going to achieve it. It would be a big piece of work to set the targets on a red, amber and green (RAG) system. We need to include such a system. It is about how we test how things are working. All I am saying is that it could happen one, two, three, five or 10 years.

Are we doing this clause-by-clause consideration only for the Bill to sit on the shelf like the others? This Committee has had past experience with certain situations, particularly where the Department and a certain Bill are concerned. We need to find out how that happens. Although it is all right saying that we have set in stone a five-year review or something else, I want to see how it will be implemented. It is not about getting a report that says that things are going well but that we need to do things quicker.

The memorandum of understanding might be useful, because the responsibility lies across four Departments.

Mr Hamilton: Is there an issue there? We cannot legislate to enforce a memorandum of understanding on other Departments. You could suggest an amendment, but that will require Executive approval. That is the potential sticking point.

The Clerk of Bills: If that were a departmental amendment, the implications for other Departments would require it to go to the Executive, but a Committee amendment would require the support of the House. Effectively, however, the Executive would take a position on it.

The Chairperson: There is not going to be a departmental amendment, so it will have to come from the Committee.

Will we try that, and if any —

Mr Hamilton: Rather than just looking at a legislative solution, we should work with the Department to get something that does not necessarily require a legislative change that may not happen in reality. Rather than table an amendment, we should get some assurances about how we can review or enhance it.

The Chairperson: If we put it in the Bill, it will strengthen our hand in achieving that.

Mr Hamilton: It would, but I am just making the point. These things are based in the reality of what will or will not pass. It is not to say that I want to knock the point down, but you may put it as an amendment. You could suggest it to the Committee, but it may not get the Committee's support. If it does not get support here, it may not get broader support.

The Chairperson: We can try that.

Mr Boylan: I understand what you are saying. It is all right saying that DOE will come up for a review after five years, but all the other Departments have a responsibility to do their bit. Trying to get them all to work together to achieve this is the key. DOE can do its bit, but the other Departments need to do theirs. To be honest, that is the issue for us.

Mrs D Kelly: I think that Strangford lough is a case in point. It crosses a couple of departmental responsibilities, and look where we have got to with that.

Lord Morrow: It is a nightmare.

The Chairperson: Members, if you are happy, we will ask the Bill Clerk to draft a form of words that we can look at next week.

Another issue to consider is the common-law right of navigation and fishing. We have been provided with correspondence from the Northern Ireland Renewables Industry Group (NIRIG). In addition to information on the economic benefits of the renewables sector, NIRIG has suggested that clauses be added to the Bill to ensure that offshore renewable energy projects are protected from common-law rights during construction. It suggests that similar provision already exists in the energy legislation for England, Scotland and Wales but that the equivalent legislation for Northern Ireland is not sufficiently robust to override common-law rights.

A written departmental response to this issue is provided. Officials will supplement that orally if you want them to. The Department indicated in its response that this issue is the responsibility of DETI, which is taking action to address it.

Are there any questions on that?

Mr Boylan: I have one. It is all very well saying that this is for another Department, but we have an opportunity to address this issue, and I would like to see greater clarification and concrete proof that it will work. It is all right saying that the issue rests with DETI, but we have an opportunity to address it, as it is a genuine concern.

Ms Cunning: Absolutely. We are not saying that we will hand it over to DETI and that we will do nothing about it. DETI has been in discussions with us and with the marine licensing side of the

Northern Ireland Environment Agency (NIEA) since February or March, and it has published details of that in the offshore renewable energy strategic action plan (ORESAP).

This is a recognised issue, and DETI is bringing work forward to deal with it. It is not just about public rights of access; it involves safety zones, decommissioning and a whole raft of things that are in GB legislation but not in Northern Ireland legislation. It is in the energy legislation, but not on the marine side.

I know that NIRIG mentioned sections 12 and 13 of the Marine Coastal Access Act 2009, but those are about transferring functions from energy legislation to the MMO. However, we do not have those functions or those parts in Northern Ireland legislation. DETI is working to bring that forward and is looking at the gaps that we have. We can probably start decommissioning under marine licensing, but we need to look at legislative options for safety zones and public rights of access. DETI is already working on that. So, that is not really something that we need to put in the Bill, because DETI is already working with us to put it into the energy legislation so that it will be equivalent to the GB legislation. It is not in the Marine Coastal Access Act 2009, so it will not be in the Marine Bill. Given that it is not mirrored there, it should go into the energy legislation, as is the case in the rest of the UK.

The Chairperson: So, it is covered.

Ms Cunning: It will be. DETI is actively working on it.

Mr Boylan: Can you put a date on the completion of that work?

Ms Cunning: I do not know. The ORESAP talked about the possible need to bring forward new primary legislation. Obviously, the energy sector will worry about that when it starts building turbines. However, that will not happen until 2015 or 2016 at the earliest, once it goes through the whole process. So, DETI is working to get the provision in place before then. It is on DETI's to-do list.

The Chairperson: Are members content with that?

Members indicated assent.

Mr Boylan: Obviously, we should write to DETI and let it know that we need to be kept informed on how that process progresses.

The Chairperson: During the briefing from the Belfast Harbour Commissioners and the British Ports Association, members asked that the Department provide an update on the maintenance dredging protocol. The Department has provided a response in which it indicates that the Department for Regional Development (DRD) is taking the matter forward. It points out that the protocol will set out the best practice for maintenance dredging activities by the commercial port authorities in assisting them to fulfil their statutory obligations and ensure compliance with the habitats, birds and water framework directives. The Department indicated that, before a licence is granted for disposal of dredged material, the applicant must demonstrate that sea disposal is the best practicable environmental option. The Department also indicated that it encourages applicants to consider a number of alternative options before considering disposal at sea. Members, are you content with the Department's response, or do you wish to consider an amendment to the Bill about dredging and disposal at sea?

Mr Boylan: I thought that this was a good enough suggestion. This is the issue of having to go seven miles out from Warrenpoint to dispose of dredged material. Other than putting something on the matter in the Bill, is there no way of looking at other legislation that could try to address that?

Ms Cunning: It is already addressed under marine licensing. Our colleagues in the marine licensing team have told us that disposal at sea is the last option. This was raised by the ports authorities, who said that disposing dredged material at sea cost them a lot of money, and they asked whether it could be recycled and reused. When they come to the marine licensing team for a licence for disposal, the team asks whether they have considered other options such as reusing and recycling. On occasions, other options such as beach nourishment have been worked out. So, it is already working. I do not know what else the ports authorities might want on that, because the marine licensing team already asks them to come back to it and tell it what their other options are and that sea disposal should really be the last option. It asks whether they can reuse the material somewhere else. As David Knott from

the Belfast Harbour Commissioners pointed out, dredged material is sometimes not suitable for use. It is mucky material and has to be dumped at sea. If that is the case, that is what happens, but the licensing team encourages the port authorities to try other options. It is not a case of licensing forcing people to dispose at sea.

Mr Boylan: I accept that explanation, but, if that option exists and the port authorities understand that, why did they bring the issue before the Committee? Perhaps we can respond to them to find out. I thought that it was a reasonable suggestion.

Ms Cunning: Absolutely, and we are glad that they brought it to us.

Long title agreed to.

The Chairperson: Referring back to an earlier discussion, is it possible that the long title might be changed to include a reference to sustainable development?

Ms Cunning: No. We asked the OLC about that, because we thought that it was quite a good suggestion. The long title has to be very much to the point so that it shows the Bill's provisions. It provides provisions on marine planning, conservation zones and streamlining of licensing. That is all that it can include. We thought that you could amend it.

The Chairperson: It was intended as a compromise.

Mr K Bradley: We tried that as well, but, unfortunately, we cannot do it.

The Chairperson: I wanted to satisfy myself about that.

That concludes formal clause-by-clause consideration of the Marine Bill. A Committee report will be brought back to the Committee next week. Thank you very much for staying with us throughout the process. Thank you for your expertise and for working with us.