

**From the Office of the Minister
Michelle O'Neill MLA**



Department of
**Agriculture and
Rural Development**

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AN ROINN

**Talmhaíochta agus
Forbartha Tuaithe**

MÁNNYSTRIE O

**Fairms an
Kintra Fordèrin**

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William, a chara

FISHERIES BILL

Thank you for your letter of 2 December 2015, in response to the letter I sent to you on 24 November concerning the Fisheries Bill.

I am grateful to the Committee for having taken the time to discuss the timetabling of the Bill's Assembly Stages at its meeting on 1 December, and I accept that the points raised at the meeting, and reflected in your letter, are all very valid and well considered. However, I think it is incumbent on me to stress the importance of certain key parts of the Bill and indeed to point out the urgency in bringing these forward without delay.

The Committee may not be fully cognisant of the extreme importance of a small number of provisions in the Bill which seek to ensure that both DARD and DCAL meet EU commitments and statutory obligations. The most urgent provision within the Fisheries Bill is clause 6 [j293] concerning an amendment of section 30 of the Fisheries Act 1981 to allow the direct application of "enforceable EU obligations" as well as enforceable EU restrictions. This would allow the Department to enforce most EU fisheries legislation as soon as an EU regulation comes into operation. This is something that the EU Commission is insisting upon following inspection visits to the north.

Following an inspection in January 2015 of procedures to enforce the EU fisheries control system in the north, EU inspectors reported that there was no legislative provision to directly apply the EU Fisheries Control Regulation. In response to that report, my officials explained that we were in the process of bringing forward a Fisheries Bill that would have the effect of directly applying most EU fisheries Regulations as soon as they came into operation. We indicated that the Bill, subject to the various approvals, might be passed by April 2016.

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Subsequently (July 2015), the EU Commission opened a pilot case (7774/15/MARE) against Britain and the north of Ireland, and specifically the north, for not being able to directly enforce the EU Control Regulation EU 1224/2008. The Commission stated that the suggested timeline for remedying the application of Union law by April 2016 “sounded excessively late”. The Department replied to the Commission in September 2015 explaining that we had been aware of the problem with direct application of EU rules and had taken action to include necessary provisions in a new Bill and this had been included in policy provisions for a Bill that were consulted on in late 2014 and included in proposals agreed by the Executive in March 2015.

In October 2015, my Department submitted supplementary information requested by the Commission but we have not heard from them since. However, given the concern that the Commission has already expressed regarding the time scales, there is an increased risk that the Commission would immediately start formal infringement proceedings and issue a “letter of formal notice”

In the event of a letter of formal notice being received, we would be required to deliver the required amendment to Section 30 of the Fisheries Act 1981 within two months. If the current Bill falls it is unlikely that a Bill (in the next mandate) could be enacted much before the end of 2016. This additional delay could result in a “reasoned opinion” and we would have a further two months to comply before the Commission would refer the matter to the European Court of Justice (ECJ).

At the time the matter is referred to the ECJ, the Commission will recommend the penalty that should be imposed. The size of penalty depends on an assessment of the impact of the non-compliance and the Member States ability to pay. Often a daily penalty is applied that starts from the date the matter is referred to the ECJ and ends when the non-compliance is rectified.

There are also other consequences aside from formal infringement procedure such as suspension of payments under the European Maritime and Fisheries Fund Regulation in the case of serious non-compliance with our obligations under the Common Fisheries Policy or an increased level of EU audit inspections.

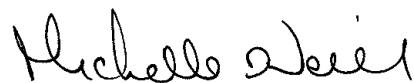
Recent EU missions have also expressed strong concern over an apparent lack of co-ordination of control throughout the regions in Britain and the north. The adoption here of the enforcement powers afforded across Britain (under Clause 4 [j35]) of the Bill) will significantly reduce differences in approach between here and Britain and will leave us less exposed to accusations from the Commission that control and implementation are weaker here. The EU has also undertaken a recent mission to the north to look specifically at sanctions. The fact that penalties here are considerably lower than in Britain also exposes the Administration here to further criticism and potential punitive action.

Similarly, my Ministerial colleague in DCAL has noted that it would be preferable to proceed with the legislative changes within this current mandate because of the need to meet EU obligations.

I recognise I am asking a lot of the Committee, but as I said previously I do wish to take this Bill forward in this mandate given its importance. I would therefore ask

again that the Committee does what it can to help ensure that this important Bill can complete its passage in the time that remains.

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