



Committee for Agriculture and Rural Development

# Report on the Fisheries Bill

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# Membership and Powers

## Powers

The Committee for Agriculture and Rural Development is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of Strand One of the Belfast Agreement and under Assembly Standing Order No 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Agriculture and Rural Development and has a role in the initiation of legislation. The Committee has 11 members, including a Chairperson and Deputy Chairperson, and a quorum of 5.

The Committee has power to:

- consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of relevant primary legislation;
- call for persons and papers;
- initiate enquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister for Agriculture and Rural Development.

## Membership

The Committee has 11 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows

- Mr William Irwin MLA (Chairperson) <sup>12</sup>
- Mr Seán Rogers MLA (Deputy Chairperson) <sup>3, 18, 19</sup>
- Mr Sydney Anderson MLA <sup>8,15</sup>
- Mrs Jo-Anne Dobson MLA
- Mr Declan McAleer MLA <sup>1,4</sup>
- Mr Kieran McCarthy MLA <sup>9,10,13</sup>
- Mr Ian McCrea MLA <sup>17</sup>

- Mr Oliver McMullan MLA
- Mr Ian Milne MLA <sup>2,7</sup>
- Mr Edwin Poots MLA <sup>14</sup>
- Mr Robin Swann MLA <sup>6,11,16</sup>

<sup>1</sup> With effect from 23 January 2012 Ms Michaela Boyle replaced Mr Conor Murphy

<sup>2</sup> With effect from 08 May 2012 Mr Chris Hazzard replaced Mr Willie Clarke

<sup>3</sup> With effect from 19 May 2012 Mr Joe Byrne replaced Mrs Dolores Kelly as Deputy Chairperson

<sup>4</sup> With effect from 10 September 2012 Mr Declan McAleer replaced Ms Michaela Boyle

<sup>5</sup> With effect from 03 December 2012 Mr Danny Kinahan replaced Mr Robin Swann

<sup>6</sup> With effect from 21 January 2013 Mr Robin Swann replaced Mr Danny Kinahan

<sup>7</sup> With effect from 15 April 2013 Mr Ian Milne replaced Mr Chris Hazzard

<sup>8</sup> With effect from 16 September 2013 Miss Michelle McIlveen replaced Mr Trevor Clarke

<sup>9</sup> With effect from 01 October 2013 Mr Trevor Lunn replaced Mr Kieran McCarthy

<sup>10</sup> With effect from 27 January 2014 Mrs Judith Cochrane replaced Mr Trevor Lunn

<sup>11</sup> With effect from 04 July 2014 Mr Tom Elliott replaced Mr Robin Swann

<sup>12</sup> With effect from 23 September 2014 Mr William Irwin replaced Mr Paul Frew as Chairperson

<sup>13</sup> With effect from 29 September 2014 Mr Kieran McCarthy replaced Mrs Judith Cochrane

<sup>14</sup> With effect from 06 October 2014 Mr Edwin Poots was appointed to the Committee

<sup>15</sup> With effect from 06 October 2014 Mr Sydney Anderson replaced Miss Michelle McIlveen

<sup>16</sup> With effect from 30 June 2015 Mr Robin Swann replaced Mr Tom Elliott

<sup>17</sup> With effect from 5 October 2015 Mr Ian McCrea replaced Mr Thomas Buchanan

<sup>18</sup> With effect from 31 December 2015 Mr Joe Byrne resigned as Deputy Chairperson of the Committee

<sup>19</sup> With effect from 11 January 2016 Mr Seán Rogers was appointed as Deputy Chairperson of the Committee

## List of Abbreviations and Acronyms used in this Report

ANIFPO	Anglo - North Irish Fish Producers Organisation
DARD	Department of Agriculture and Rural Development
DCAL	Department of Culture, Arts, and Leisure
NIFPO	Northern Ireland Fish Producers Organisation
NIMTF	Northern Ireland Marine Task Force
IFSA	Irish Federation of Sea Anglers

# Executive Summary

1. The Fisheries Bill as introduced makes provisions regarding the regulation of sea and inland fisheries. It includes powers to allow fisheries offences to be dealt with through fixed administrative penalties and to align sea fisheries enforcement powers with those already in place in Great Britain.
2. Given that the Bill was introduced late in the parliamentary cycle the Committee had concerns about whether it would complete its legislative passage before dissolution of the Northern Ireland Assembly for elections. In such a scenario the Bill would fall and not become law.
3. Discussions on this possibility revealed that the urgency in introducing the Bill was the fact that the EU Commission had opened a pilot case based on concerns that there was no direct application of enforceable EU legislation as per England, Scotland and Wales. Clause 6, which amended section 30 'Enforcement of EU Rules' of The Fisheries Act 1981, was the method chosen by the Department to address this concern.
4. Certain clauses in the Bill dealt with inland fisheries matters which are within the remit of the Department of Culture, Arts and Leisure. The Committee, recognising that it was not familiar with the matters and provisions in these clauses, requested that the Committee for Culture, Arts and Leisure undertake scrutiny of this part of the Bill. However, that Committee, also concerned that the timeframe did not allow time for proper scrutiny, declined.
5. The Committee, taking all these matters into account and following correspondence with the Minister, agreed that it would only undertake scrutiny of and report on clause 6 'Enforcement of EU Rules' and clause 19 'Short Title'.
6. It agreed to place notice of intent at Consideration Stage that all clauses except clause 6 and clause 19 would not stand part of the

Bill. In effect the Bill would become a two clause Bill rather than 19 clauses as introduced.

7. Further information on the legislative stages for a Bill can be found *here*.



## Introduction

8. The Fisheries Bill (NIA Bill 74/11-16) was referred to the Committee in accordance with Standing Order 33 on completion of the Second Stage of the Bill on 11 January 2016.
9. The Minister for Agriculture and Rural Development made the following statement under section 9 of the Northern Ireland Act 1998: “In my view the Fisheries Bill would be within the legislative competence of the Northern Ireland Assembly.”
10. The stated purpose of the Bill is to make provisions regarding the regulation of sea and inland fisheries. It includes powers to allow fisheries offences to be dealt with through fixed administrative penalties and to align sea fisheries enforcement powers with those already in place in Great Britain.
11. During the period covered by this Report, the Committee considered the Bill and related issues at 4 meetings. The relevant extracts from the Minutes of Proceedings for these meetings are included at *Appendix 1*. Also included in this Appendix are the Minutes of Proceedings highlighting the discussions the Committee undertook prior to introduction, and also between introduction and Second Stage.
12. The Committee had before it the Fisheries Bill (NIA 74/11-16) and the Explanatory and Financial Memorandum that accompanied the Bill. Following the introduction of the Bill on 07 December 2015, the Committee wrote to key stakeholders and inserted public notices in the Belfast Telegraph, Irish News, and News Letter seeking written evidence on the Bill by 12.00 p.m. on 06 January 2016.
13. A total of 3 organisations responded to the request for written evidence and a copy of the submissions received are included at *Appendix 3*.

14. The Committee commissioned the Northern Ireland Assembly Research and Information Service to provide research on the content and implications of the proposed Bill. These papers are included at *Appendix 5*.
15. After the Bill completed its Second Stage on 11 January 2016, the Committee arranged to take oral evidence on the Bill from relevant stakeholders and the Department. These sessions took place on Tuesday, 12 January 2016. The Committee heard from the following bodies:
  - Department of Agriculture and Rural Development; and
  - Anglo-North Irish Fish Producers Organisation;
16. The Committee had discussions with Department officials on the key issues of the Bill at its meeting on 26 January 2016. Informal clause by clause scrutiny and formal clause by clause scrutiny of the Bill were completed at the same meeting. The relevant Minutes of Evidence of these meeting are included at *Appendix 2*.
17. The Committee considered its draft report at its meeting on 02 February 2016. At the meeting of 02 February 2016, the Committee agreed its report on the Bill and ordered that it should be printed.

# Committee Consideration of the Bill

## Background

18. The Fisheries Bill, as introduced, contains 19 clauses. The Bill makes provision for the regulation of sea and inland fisheries and includes powers to allow fisheries offences to be dealt with through fixed administrative penalties. It also aligns sea fisheries enforcement powers with those already in place in England, Scotland and Wales.
19. The Fisheries Bill amends the Sea Fisheries (Conservation) Act 1967, the Fisheries Act 1981 and the Fisheries (Northern Ireland) Act 1966.
20. The Bill has two distinct remits, namely, inland fisheries and sea fisheries. Four clauses are specific to inland fisheries.

## Concerns around timing

21. The main concern of the Committee was that the Bill was introduced to the Assembly so late in the Parliamentary cycle. The Bill was introduced to the Assembly on 07 December 2015, with Easter Recess on 19 March 2016 and the end of mandate on 29 March 2016. The timeframe for the Bill to complete all its legislative stages, including Committee Stage, was therefore extremely tight. There was a high risk that the Bill would fail to complete its legislative passage before the end of the 2011/16 mandate.
22. The Standing Orders of the Northern Ireland Assembly allow the Committee 30 working days, from the date of referral, to consider and take evidence on the provisions of the Bill. Before the conclusion of that period, a motion may be moved in the Assembly by the Chairperson of the Committee to extend the period until a date specified in the motion.
23. However, in this instance, if the Committee took 30 days, it would not produce a report until 22 February 2016. Such a timescale

would not allow the Bill to complete all its other legislative stages as Final Stage would not be reached before Easter Recess and subsequent dissolution for Assembly Elections. The Bill would therefore likely fall.

24. To allow the Bill a reasonable chance to complete its passage to Final Stage before Easter Recess, the Committee would need to complete its scrutiny and report by 15 February 2016 i.e. in less than 25 working days.
25. The Committee also took into account that a section of the Bill deals with issues around inland fisheries. These are matters that currently fall to the remit of the Committee for Culture, Arts and Leisure.
26. The Committee for Agriculture and Rural Development therefore requested that Committee to consider and report on those sections as per Standing Order 64A.
27. However, in order to consider and incorporate the findings of the Committee for Culture, Arts and Leisure into its own report, that Committee would need to report in a much shorter time frame i.e. 20 working days.
28. The Committee for Agriculture and Rural Development had concerns that rushing scrutiny of the Bill would result in poorer legislation. Ultimately, this would not be in the interest of the fishing industry or those communities that rely on that industry.
29. The Committee was also concerned at the urgency with which the Bill was introduced. It wished to understand why the Minister was seeking to introduce this Bill given the high risk that it would fall due to lack of time. The Committee was aware that the Bill could be introduced in the next mandate. Indeed it would make more sense to do so as all the provisions, including those relating to inland fisheries, would fall to a single Committee - the new Committee of Agriculture, Environment and Rural Affairs.

30. Additionally, the Minister took the decision to omit certain clauses relating to aquaculture when she introduced the Bill. This was an attempt to allow the Bill a quicker and smoother passage. The Committee concluded that these clauses could also be included in any Fisheries Bill introduced in the new mandate.
31. Recognising that some time had elapsed since the initial consultation on the policy provisions of the Bill in 2014, the Committee noted that introducing the Bill in the new mandate would allow the opportunity for the new Department to ensure that the fishing industry and other relevant stakeholders would have ample and proper consultation on the provisions in the Bill. The Committee wrote to the Minister expressing these concerns and asking for an urgent reply.
32. The Minister in her response indicated that the most urgent provision within the Bill was clause 6 (see *Appendix 4*). This clause concerns an amendment to section 30 of the Fisheries Act 1981 to allow the direct application of enforceable EU obligations, as well as enforceable EU restrictions.
33. The letter indicated that there had been an inspection in January 2015 of procedures to enforce the EU fisheries control system. As a result EU inspectors reported that there was no legislative provision to directly apply the EU Fisheries Control Regulation as soon as they came into operation. The Minister stated:-

*“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.”*

34. In an effort to address the concerns of the European Commission, the Department explained that a Fisheries Bill was being developed. This would have the effect of directly applying most EU fisheries regulations as soon as they came into operation. The Department had indicated to the Commission that the Bill, subject to the various approvals, might be passed by April 2016.
35. While this correspondence allowed the Committee to identify what is urgent in this Bill, it was also a source of serious concern that despite having received numerous briefings from fisheries officials, it had never been made clear to the Committee that a pilot case had been opened against Northern Ireland.
36. The Committee questioned officials from the Department of Agriculture and Rural Development and the Department of Culture, Arts and Leisure on this at the meeting of 8 December 2015. Members explored whether it was possible to resolve the urgent matter of clause 6 by means of subordinate legislation or indeed in other ways.
37. The Committee agreed to write to the Minister to ask her to consider other options for dealing with this matter.
38. The Department outlined the Ministers position on the Committee's concerns at an additional meeting held on 14 December 2015. The Committee considered correspondence from the Minister (at *Appendix 4*) in which she indicated that she had explored alternative ways of addressing the Commission's concerns, but none had proved acceptable.
39. In the same letter, the Minister proposed, with the consent of the Committee, to take forward at Consideration Stage only those clauses that the Committee was content that it had time to thoroughly consider. The Minister stated that if that is only the provision contained in clause 6 then she will be grateful for the Committee having assisted in removing the threat of infraction.

40. At the meeting on 14 December 2015, the Committee agreed that it would consider only clause 6 and the associated general clauses. It arranged its work programme for the Bill accordingly.
41. The Committee also wrote to the Committee for Culture, Arts and Leisure to inform it of this decision and confirm whether it still wished to undertake scrutiny of the clauses relating to inland fisheries. That Committee met on Thursday 07 January 2016 and decided it would be unfair to the inland fisheries stakeholders to attempt to rush its scrutiny of the relevant clauses (correspondence included at *Appendix 6*).

### Consideration of Clause 6 and 19

42. Clause 6 Enforcement of EU Rules amends section 30(1) of the Fisheries Act 1981 so that it applies both to enforceable EU restrictions and enforceable EU obligations. The clause makes it an offence to catch fish in contravention of any such restriction or to fail to comply with any such obligation. The clause provides that these restrictions and obligations are directly applicable and enforceable against all relevant fishing boats and to persons in Northern Ireland. Clause 19 is the short title
43. The Committee communicated its decision only to focus on clause 6 to the stakeholders who had responded to the initial consultation requesting written evidence on clause 6 specifically (included at *Appendix 3*). It received two written responses, one from the Northern Ireland Fish Producers Organisation and a submission from the Northern Ireland Marine Taskforce. Both responses indicated that the relevant stakeholders had no concerns with clause 6 (included at *Appendix 3*).
44. The Committee took oral evidence from the Department and from the Anglo-North Irish Fish Producers Organisation on 12 January 2016. The Irish Federation of Sea Anglers were also invited to provide oral evidence but had to cancel due to unforeseen

circumstances. It provided a short written submission (included at *Appendix 3*).

45. The Committee noted and expressed no concerns with the Memorandum of Delegated Powers.
46. During oral evidence, the Department informed the Committee that there was little or no discretion available to implement EU fisheries rules and that clause 6 would bring Northern Ireland into line with England, Scotland and Wales. The Department stated (see *Appendix 2*):-

*“...and there is little or no discretion available to the Department to implement the legislation in a way that would be less restrictive than the EU regulations, bound, as we are, to operate in a way that is fully compatible with EU law. Clause 6 would therefore allow the Department to enforce EU fisheries legislation as soon as the new regulation comes into effect, as we are statutorily required to do. Clause 6 will bring us into line with England, Wales and Scotland.”*

47. On 12 January 2016, the Committee questioned the Department on the potential for gold-plating and noted the following response:-

*“...the impact of this would be to reduce any risk of gold-plating. It is the EU rules as they came in. There is nothing else that we can do beyond that.”*

*And*

*“If an EU regulation said, “A member state may do something”, we would still need to bring forward subordinate legislation to require our fishermen to do that. You could argue that “may” might be gold-plating. If we decided to bring forward something that was optional, before it would be brought in, there would be consultation and we would have to bring forward regulations. The Committee and Assembly would have a chance to have a say on that.”*

48. In connection with the general provisions in the Bill at clauses 16 to 19, the Department clarified that:-



*“If only clause 6 is progressed, there is no need for clause 16, as none of the terms defined in it relate to clause 6. If the only substantive clause being considered is clause 6, there is no need for clause 17, as we cannot envisage any consequential amendments being required to clause 6 or related to clause 6. If the Bill is reduced to clause 6 only, we believe that clause 18 will not be needed. The Act as a whole would commence at Royal Assent. Finally, with respect to the long title at clause 19, the reduced Bill – clause 6 only – the name of the Act could be changed, but there is no strong case to do so either way, so it is proposed to keep it as it is.”*

49. As no substantive matters were raised in connection with clause 6, the Committee completed its scrutiny requiring no amendments.
50. At its meeting on 26 January 2016 the Committee completed its formal clause by clause scrutiny of the Bill. It agreed to table notice of intent that clauses 1 to 5 and 7 to 18 not stand part of the Bill. The Committee noted that clause 19 - the short title - was required as a General Provision. The Committee also requested that the Minister co-sign the notice of intent that the agreed clauses not stand part of the Bill.

## Clause by Clause Consideration of the Bill

51. This section gives the decisions on the Committee's scrutiny of the clauses of the Fisheries Bill. Members and other readers of this report may wish to refer to the previous section so as to gain a full understanding of the Committee's consideration and deliberations on the individual clauses alongside the decisions set out below.
52. The Committee undertook its clause by clause scrutiny of the Bill on 02 February 2016. The Minutes of Evidence for this meeting are included at *Appendix 2*.

### **Clause 1 - Sea-fishing**

53. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 1 stand part of the Bill.

### **Clause 2 - Size limits for sea fish**

54. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 2 stand part of the Bill.

### **Clause 3 - Grant of licences subject to conditions imposed for environmental purposes**

55. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 3 stand part of the Bill.

### **Clause 4 - Powers of British sea-fishery officers to enforce sea fisheries legislation**

56. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 4 stand part of the Bill.

**Clause 5 - Section 4: interpretation etc.**

57. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 5 stand part of the Bill.

**Clause 6 - Enforcement of EU rules**

58. The Committee indicated that it was content with clause 6 as drafted.

**Clause 7 - Penalties for certain offences under the 1966 Act**

59. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 7 stand part of the Bill.

**Clause 8 - Penalties for certain offences under the 1967 Act**

60. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 8 stand part of the Bill.

**Clause 9 - Offences by directors, partners, etc.**

61. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 9 stand part of the Bill.

**Clause 10 - Fish dealer's licence: no need for certificate of Justice of the Peace**

62. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 10 stand part of the Bill.

**Clause 11 - Restriction on removal of material from bed of lake**

63. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 11 stand part of the Bill.

**Clause 12 - Dams in rivers: fish passes etc.**

64. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 12 stand part of the Bill.

**Clause 13 - Gratings in certain watercourses**

65. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 13 stand part of the Bill.

**Clause 14 - Fixed penalty notices**

66. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 14 stand part of the Bill.

**Clause 15 - Fixed penalty notices: effect on prosecution**

67. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 15 stand part of the Bill.

**Clause 16 - Interpretation**

68. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 16 stand part of the Bill.

**Clause 17 - Power to make consequential amendments**

69. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 17 stand part of the Bill.

### **Clause 18 - Commencement**

70. The Committee agreed that it is content to give notice of its intention to oppose the question that clause 18 stand part of the Bill.

### **Clause 19 - Short title**

71. The Committee indicated that it was content with clause 19 as drafted.

## Links to Appendices

Printable version of Report can be accessed [here](#).

Appendix 1 - *Minutes of Proceedings*

Appendix 2 - *Minutes of Evidence*

Appendix 3 - *Written submissions*

Appendix 4 - *Memoranda and Papers from the Department of  
Agriculture and Rural Development*

Appendix 5 - *Research Papers*

Appendix 6 - *Other Papers*

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