



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Marine Bill: Informal Clause-by-Clause
Consideration

7 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 John Dallat
Mr Tom Elliott
Mrs Dolores Kelly
Mr Francie Molloy
Lord Maurice Morrow of Clogher Valley

Witnesses:

Mr Ken Bradley	Department of the Environment
Ms Brenda Cunneen	Department of the Environment
Ms Gerardine McEvoy	Department of the Environment

The Chairperson: I welcome Brenda, Ken and Gerardine from the Department of the Environment (DOE). Sorry to have to take you all the way from Stormont to here.

Mr Ken Bradley (Department of the Environment): No problem.

The Chairperson: It is a change of scenery anyway. Members, you will recall that we stopped at clause 13 at the previous meeting. The issues that were raised about clause 13 included the need to clarify whether the seashore can be included in marine conservation zones (MCZs) and how coastal erosion will be dealt with. It was also suggested that clause 13 include a duty on the Department to assess, manage and mitigate impacts on existing activities resulting from the designation of MCZs. I invite the Department to respond to those issues.

Mr K Bradley: Thank you, Chair. Your first point concerned the inclusion of the seashore in marine coastal zones, and we feel that that is already covered adequately in clause 13(3)(a), which refers to where:

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

Coastal erosion has not been taken into account. The marine conservation zone is primarily a measure to conserve seabed habitats and flora and fauna in the sea. It does not really relate to coastal erosion. There is already a mechanism in place to deal with coastal erosion called the Bateman formula, under which each Department and public body deals with any coastal erosion that

is relevant to its area of responsibility. We believe that the clause dealing with marine conservation areas is not the place to deal with coastal erosion.

Mr Boylan: The Minister has accepted changes to other legislation, so I hope that he will look at this one favourably. The respondents have called for this point to be included in clause 3, and you are saying that it is covered in clause 13.

Mr K Bradley: Yes, it is in clause 13(3)(a).

Mr Boylan: Ken, would it seriously impact on clause 3 to include the seashore in a marine coastal zone? You are saying that it is already covered in different legislation, but surely it would be better to tidy up this Bill instead of having to cross reference each time. Would it seriously impact on that clause to include it?

Ms Brenda Cuning (Department of the Environment): That may be a typo. Clause 3 deals with amendments, so it is actually clause 13(3).

Mr Boylan: Sorry; OK. It says clause 3 in this briefing, but it is actually clause 13(3). Would it seriously impact on the Bill to put that in?

Mr K Bradley: No. If it adds clarification, it is not an issue at all, Cathal, and we would be happy enough to put that in. I just want to clarify exactly where —

Mr Boylan: I am just going on the respondents' point that it needs to be clarified whether the seashore can be included in an MCZ. It says clause 3 in this briefing, but it is actually clause 13(3). You are saying that the seashore is already covered. The respondents suggested extending the clause to include that. So, are you clarifying that it is already covered?

Mr K Bradley: That is right. I am not actually sure what point the respondents are making. Clause 13 is obviously about designating MCZs, and clause 13(3)(a) refers to where:

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

We think that that is clear enough. However, if alternative wording or further clarification is required, we would be happy to look at it.

Mr Boylan: No, that is grand. I am going only on what the respondents said.

Mr Elliott: Just on that point, I am assuming — again, I am not entirely clear — that there is a question about what the idea of the seashore adjoining the sea means. Is that right up close to the sea? How far away can you go? If there is a feeling that it should be designated 300 metres back from the seashore, but it runs right up to the sea, does that mean that it is still adjacent to the seashore? I am assuming that that is what the query is about, but I am not sure. That is certainly my query. How far back can you go?

Mr K Bradley: The seashore is right up to —

The Chairperson: That is the definition of high tide.

Mr K Bradley: Clause 39 defines seashore, as:

"the foreshore, that is to say, land which is covered and uncovered by the ordinary movement of the tide".

In essence, it goes up to the high water mark.

Ms Gerardine McEvoy (Department of the Environment): The interpretation of that Part is under clause 39.

Mr Elliott: Again, I am sorry to come back to clause 13(3)(a), which states:

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

I am trying to establish whether that could be 400 metres or 500 metres back from the sea line.

Mr K Bradley: It really depends on the feature that we want to protect or designate.

Mr Elliott: So, does that mean that it could be?

Mr K Bradley: It could be.

Mr Elliott: If I owned land along an area of shoreline, I would be starting to get concerned and would be asking whether my area of land could come within an MCZ. Although you just clarified it, that would pose a concern for me. I do not know whether that is what the people who made the response were trying to get at, but that is what I would be concerned about.

The Chairperson: The definition is the spring high tide. That is the high water mark.

Mr Hamilton: No, it is not. It goes beyond that.

The Chairperson: Is it not? OK, we will look at clause 39 in more detail.

Mr Hamilton: I want to pick up on Tom's point. How far back do you go? The seashore will be bigger and smaller right around the coastline, and it will concern people who own or use the land. That is a concern that I have. Designating the seashore as an MCZ could have an impact on public access, for whatever means that might be. We were talking about beaches and bathing water a moment or two ago. Could it restrict that type of access or access for other things? You are heading into an unknown in some respects, because it permits the designation of a seashore in certain circumstances, but nobody can predict what those are, so it could be a benign clause. How it is implemented is key. It makes sense to legislate to allow the designation to happen if the conditions are there and if the protected feature or features leading to it are also present on the seashore.

Mr K Bradley: That is right. I think that that is the key; it has to be present. In other words, the feature of the seabed has to extend to the shore. It is not a definition that was made willy-nilly; as you say, it might never be used, but it gives it flexibility.

Mr Hamilton: Are there any examples of that already, or are you envisaging any? When those things are written, there must be some sort of idea of where you would designate in that way.

Mr K Bradley: That is right. You would potentially do it on some geological features of areas of special scientific interest (ASSIs). It is not a true example, but if you take the Giant's Causeway, you will obviously know that it does not stop at the shoreline. The basalt rocks extend —

Mr Dallat: To Scotland. *[Laughter.]*

Mr K Bradley: That is not a very good example, but it is one that everybody recognises. You could designate the seabed for that geological feature but then carry the designation to the Giant's Causeway itself, because that is an extension of that same feature.

Mr Hamilton: The Giant's Causeway is not a bad example for describing what could happen, although we have no problem with getting access to the Giant's Causeway. We can get the Olympic torch on to the Giant's Causeway, so we are OK. It may be that, where a feature is on the seashore, you say that the MCZ, rather than being merely out at sea, extends up to the coastline, and, therefore, public access is denied or certain activities are prohibited or whatever. It is one thing restricting activities at sea, but that becomes difficult if the area potentially extends 100 metres or 200 metres inland.

Mr K Bradley: If a geological feature is involved, it is unlikely that access will be restricted.

Mr Hamilton: It could be —

Mr K Bradley: It could be, but only if that access is potentially detrimental to the feature that is to be protected. Again, that will be looked at; all activities will be taken into consideration. I cannot say that that will never be the case. It will depend on the situation on a site-by-site basis. The provision is really about giving uniformity to protecting a feature and recognising that a feature does not end at the low or high water mark.

All views will be taken into consideration. It is a very flexible designation process, and, as was said the previous week, it is definitely not there to stop socio-economic or cultural practices.

The Chairperson: Very often, it would probably be for the protection of the seabed rather than the seashore. Rather than doing it willy-nilly, it has to be evidence based to safeguard it.

Mr K Bradley: That is correct, Chair.

The Chairperson: We will move on to clause 14. The issues that were raised on this clause included urgent designations and the need for firmer consultation requirements, especially those regarding management measures that are proposed for an MCZ.

Mr K Bradley: Clause 14(4) has an explicit duty for the Department to consult anyone, meaning the Secretary of State (SOS) or any other person who is likely to be interested in or affected by the designation process. The Department is already under an obligation to consult widely with anyone who is either affected or interested. So, we feel that clause 14(4) covers that point.

Obviously, the management measures are part of the designation process. We set out the boundary of an MCZ, its features and the conservation objectives, and that will also lead to setting out the management measures that are required. That is all part of the overall package, which will be widely consulted on. We feel that the Department has legislated fully in that respect. It is a totally open, transparent and inclusive process that has taken account of all views.

Mr Dallat: Apart from a spot of fishing, why would the Secretary of State be interested?

Mr K Bradley: The Secretary of State has responsibility for approving the designation, as it is a reserved function.

Mr Dallat: I thought that it was to do with fishing.

Mr K Bradley: Fishing is one of the few things that is purely devolved to Northern Ireland.

Mr Elliott: A suggestion was made about having a register of consultees. That is a good idea, and such a register could be updated and amended as necessary. How do you feel about that?

Mr K Bradley: I have no problem with that, and I do not think that the Department has either. The problem with a register is that you are either on it or you are not. It has to be flexible.

Mr Elliott: We accept that, but I think that the respondents were saying that if you have a register of people and bodies whom you must consult, and any others are additional, the organisations will at least know whether they are on the register.

Mr K Bradley: It is a totally inclusive process, so I have no issues with that whatsoever.

Mr Elliott: Can that be written into the Bill?

Ms McEvoy: The Department has a consultation list. I think that we agreed that we would keep it updated and ensure that any affected stakeholders would be on it.

Mr K Bradley: The duty on the Department to consult provides the responsibility to have a list. We already have a list of 700 or 800 bodies.

Mr Elliott: Yes, but as officials have told me in other Committees, if it is not in the Bill, it is not there. I assume that it would be a matter of making a simple amendment.

Mr K Bradley: I am not sure. We would need to look at it and see. In legislative terms, and I am not totally au fait with legal speak, having a duty on the Department to consult means a duty to consult anybody and everybody who is interested in or affected by the designation.

Mr Hamilton: Although it is important, I think that it is more an issue of process.

The Chairperson: When you say "interested", do you mean NGOs and environmental groups that may not be affected but may be interested?

Mr K Bradley: Yes, I think that that is mentioned. It means anybody who has an interest in the designation of that particular area.

The Chairperson: So, they may not be affected by it but may have an interest.

Mr Hamilton: I think that Tom's point is a good one, in that some raised it because they fear that they will not be asked for their views because they are not thought of automatically. The Chair mentioned NGOs, and I think there is a list of those that will be thought of automatically, but other organisations that would have an interest nonetheless are not automatically considered to be part of the process. Whether the need for a register is in the Bill is a different matter, but I think there is definitely a need for it, and some assurance on that would be useful.

The general point concerns process. I think that the clause is fine in that it requires consultation, but you cannot really write the nature of that consultation into a Bill. When the Committee visited Scotland, I found it quite interesting that although the Bill there was passed in 2010, they went into the very long process of identifying 31 sites. The area there accounts for half of the UK's territorial waters, and they are designating only 30, so pro rata, we would designate much less than that, I would imagine. I am not sure whether that will happen in practice. They engaged in the fairly painstaking and laborious process of identifying areas that they thought may be useful, and they then brought everybody in and talked and talked and are still talking. So, you cannot put that in a Bill. Given the multiplicity and different number of stakeholders that there will be in certain areas, I think that it would be useful if the Department made clear, either now or particularly during Consideration Stage, that this is the sort of process that it envisages happening. It needs to put the assurance out there that it is not a top-down or a dictatorial process, not that it would be.

Mr K Bradley: That is right. Perhaps we could broaden that and Mr Elliott's point in the guidance material that we will develop and try to make sure that it is as inclusive as possible. We also need to make sure that the guidance sets out very clearly both the process and how people are involved in it.

Mrs D Kelly: Hopefully, unlike the situation with Lough Neagh, no absentee landlords are involved.

Mr Hamilton: The Department needs to have an idea what the consultation will look like, and that requires consultation. That is because the way that it looks and what goes on in practice are important. I know that we were giving off a minute or two ago about having consultation after consultation, but I think that it would be helpful if we went backwards and forwards with the various stakeholders several times.

Mr K Bradley: That is a very valid point, and it is something that the Department was criticised for. When we developed the range of marine spatial areas for consultation under the habitats directive, there was not a great deal of consultation, because that was a purely ecological designation process. As we know, this is much wider than that. I agree that guidance would need to set out very clearly, step by step, what is required and who is involved. As I said, our intention is to be totally inclusive and transparent, because, at the end of the day, we want everybody to be as happy as possible and agreeable to the MCZ and to what it is there to achieve.

Mr Hamilton: You are right; that has to be the objective. Everybody may not be 100% happy at the end of it, but at least nobody can say that they were not involved or that they were excluded. Indeed, maybe everybody can say that they are more content than not.

Mr K Bradley: That is right. At least they can understand why the Department is doing it.

Mr Hamilton: Clause 14 (6) states:

"In a case where the Department thinks that there is an urgent need to protect the area proposed to be designated as an MCZ, the Department need not comply with subsections (2), (3) and (4)(b)."

This is about what happens when an emergency arises, and this question has come up in a number of the evidence sessions that we heard. I think that most people understood that such an emergency could mean a pollution incident or something like that. It would be interesting to hear your interpretation of what would happen in practice. Again, that is probably something for the guidance. I appreciate that you do not need to consult with somebody about whether you are going to close off an area for this, that or the other because of pollution. Consultation in those circumstances may be more like providing information.

Mr K Bradley: Absolutely. As you say, it is more like providing information. Obviously, we could not carry out a 12-week consultation for a pollution incident, but we would ring people up and inform them. There is no point in doing something without telling people why we are doing it. Otherwise, they might do something that is detrimental to the situation, because they are not fully aware of it. So, there will be a mechanism for informally telling the relevant people who will be affected by the designation and why it has been made.

Mr Hamilton: For clarity, when we talk about emergencies or urgent need, I think that there is a bit of concern that this could be used as a back door. We talked about pollution, but what other types of incidents could occur?

Ms McEvoy: Sorry; these emergency by-laws are for unregulated activities. That could mean that a powerboat race, for example, that is going through an MCZ would be subject to them. We would not stop such a race, but we would possibly divert it around the MCZ. So, these emergency by-laws refer to unregulated activities.

Mr K Bradley: It is definitely not the case that the Department would use those emergency by-laws as a back door, because, obviously, it would be subject to judicial review (JR) for not following due process.

Mr Boylan: My question is on the same point. As Simon said, information is important. There is a concern when urgent cases arise. The message needs to get out to explain exactly what it is about — powerboat racing, pollution or anything else.

Ms McEvoy: That is where we would effect the by-laws.

Mr Boylan: That is the information that needs to get out, because there is concern over that.

Mr K Bradley: This is enabling primary legislation, so we are trying to give the Department the powers to address all eventualities. The power might never be used, but it gives the Department power if and when such incidents happen.

Mr Boylan: Just following on from that point, the Department must obviously consult with other Departments, which is grand. However, it gives us the opportunity to tidy up the legislation where the processes and responsibilities are concerned. We have an opportunity there. Obviously, you have thought of taking that on board as well. I know that you referred to legislation that covers other areas, as well as DOE responsibilities. So, this may give us an opportunity to tidy up some of that and be more cross-compliant in the consultation process. Ken, you might look at that as well. However, I do not know whether you might need it just for the information and guidance; it may not be needed in the primary legislation.

Mr K Bradley: I think that you are right about the guidance, Cathal; it is more to do with procedure. We will definitely take that on board.

Mr Campbell: An issue arose from the answer that you gave to Tom Elliott. I am interested in the practical mechanisms that would flow from clause 14. You said that there are 700 to 800 consultees.

Mr K Bradley: Yes. The Department's list of statutory consultees has hundreds of names to cover all eventualities. Obviously, if we were consulting on marine conservation, we would pick relevant consultees; we would not contact all 700.

Mr Campbell: That is the point that I want to get to. Does that mean that, under this provision, some form of consultation about any series of designations would not entail 700 groups being consulted every time?

Mr K Bradley: No. If we were designating an MCZ in north Antrim —

Mr Campbell: You would not consult south Down.

Mr K Bradley: No.

Mr Campbell: Would such a geographic distinction be the only one?

Mr K Bradley: I am trying to think of an example. A marine conservation zone might not be relevant to, say, a health trust or another similar body. We would have to take a view on who we consult and why, and we would expect that to mean the people who are affected by or interested in the MCZ.

Mr Campbell: I want to get to the point that some people want to be reassured that we are not creating a legal mechanism that will end up burdened with inordinate amounts of consultation in 10 years' time. Simon made the point that Scotland is meticulously going through the process two years after its Bill was enacted. The Department is clear that people have to be consulted, but as was discussed earlier when we talked about taxis, actions follow consultations and you do not want to negate those actions by repeating, ad nauseam, inordinate numbers of consultations.

Mr K Bradley: That is absolutely right. We may be slightly lucky with the marine environment, and those who may be interested in or affected by a marine conservation zone in a particular part of Northern Ireland's territorial waters are more clearly defined, shall we say, and that also applies to who we would and would not consult.

I think that it came up previously that the Commissioners of Irish Lights said that they wanted to be included for looking after lighthouses. Obviously, they would have an interest, as would fishermen. Some interested parties are very obvious, such as fishing organisations, NGOs and the renewable energy industry. There are obviously other organisations that also have an interest, but hundreds would have no interest in a marine conservation zone off the Copeland Islands or whatever part of the coast. The Department would decide who to consult based on their knowledge. We would consult more people rather than less and err on the side of caution, but we would obviously not consult 600 or 700 organisations. That would be a waste of time.

The Chairperson: Ken, you said that you will consult people who would be affected by or interested in a marine conservation zone. Clause 14(3)(a), however, uses only the term "affected by". Are we going to add the words "be interested in"? Clause 14(3)(a) states that the notice must:

"be published in such manner as the Department thinks is most likely to bring the proposal to the attention of any persons who are likely to be affected by the making of the order".

Are you going to add the words "or be interested in" the making of the order?

Mr K Bradley: Clause 14(3)(a) is about only the publishing; in other words, it refers to publishing the order to only those people who are affected by it. Clause 14(4)(b) is all-inclusive where consultation is concerned.

The Chairperson: So, that means that the Department must consult.

Clause 14(4)(b) has the words "to be interested in". So, the notice would be published only to people who are "affected by" and not to people who are "interested in".

Mr K Bradley: That is right.

The Chairperson: Fair enough.

Mr Boylan: Unfortunately, I missed the meeting last week, but I just want clarification. It is grand having the consultation with the stakeholders, but obviously any designations in this case will be evidence based.

Mr K Bradley: Yes, absolutely.

Mr Boylan: I am looking at some of the comments that were made on that. How do we ensure that that evidence is clarified and independent? One group could say one thing, while another group could say something different. I am just looking at the fishing industry's comments, and that group expressed genuine concerns. It is grand having all the stakeholders involved, but getting that process right will involve making sure that it is information and evidence based.

Mr K Bradley: That is correct. Any MCZ has to be based on the best available science. The Department will have to demonstrate what is down there, how widespread it is, why it is important and what activities are detrimental to safeguarding that feature. You are correct: we have to show through video footage or whatever what the feature is and why it is important.

The Chairperson: We will move on to clause 15, which deals with the publication of orders. The main issue that was raised in relation to this clause was the need to ensure that all interested parties are included in the process.

Mr K Bradley: That goes back to your previous point, Chair. It is about publication of the orders, not about consulting or informing people. The publication goes to those who are affected by the order.

The Chairperson: Members have no questions, so we move to clause 16. No comments were raised on that clause, so, unless members would like any more information, we can move on.

Clause 17 is on the review of orders designating MCZs. One issue raised was that clause 17 should be extended to enable the Department to amend an order and that the clause should include an obligation to review an order when significant new evidence is made available.

Mr K Bradley: A good point was raised there. The legislation states that the Department may review if informed by the Secretary of State, Scottish Ministers or colleagues down South. On the face of it, the legislation does not appear to allow the Department itself to review. We will clarify that with the draftsman and, if necessary, amend that.

Mr Hamilton: The Secretary of State, Scottish Ministers and the relevant Department in the Government of Ireland can make representation to the Department to review. I presume that Welsh Ministers are not included because we do not have a boundary with Wales.

Mr K Bradley: That is right. Wales is too far away. ROI and Scotland are the most relevant because their waters abut ours.

Mr Hamilton: During one of the presentations — I think from the fishermen — the issue came up that our fishermen had been ignored until a very late stage, even though they were affected by the Scottish and English systems, because they were distant, separate and removed. This is one element that will address those types of issues. Could something happen in Wales that would affect us, even though we have no boundary with Wales? I do not know whether fishermen from here fish there, but I throw that out there.

Mr K Bradley: Fishing is different in that fishermen are licensed to fish and can fish practically anywhere in UK waters, and that is fine. This is down to departmental responsibilities, and Northern Ireland territorial water is restricted to 12 nautical miles unless it abuts another jurisdiction's 12 nautical miles, which happens with Scotland. It is slightly different from the fishing context. It is only if our MCZ were to abut a Scottish MCZ or if our colleagues down South did something. It is just for continuity.

Mr Hamilton: You are right. I am sort of arguing against myself, because you could include the Spanish too. You do not want to put them in it.

Ms Cunning: Also, the consultation arrangements were affected by it.

Mr Hamilton: That is OK. When I saw the omission initially, I thought that it was because we have no territorial boundary with Wales.

Mr K Bradley: The clause is to deal with situations where MCZs abut each other. We will clarify it. Maybe because the Secretary of State is allowed to initiate a review, the Department is allowed, by default, to do so.

Mr Hamilton: What about the Isle of Man?

Mr K Bradley: I think that the Isle of Man is too far away.

Mr Hamilton: I would not have thought so.

The Chairperson: Our territory does not go that far.

Mr K Bradley: I am not sure whether some of our offshore waters do.

Ms Cunning: Our offshore waters do adjoin those of the Isle of Man. That is what delimits our offshore.

Mr Hamilton: That is the Secretary of State's responsibility.

Ms Cunning: Yes.

Mr Hamilton: That is why he is mentioned in that clause. He is not mentioned because he just wants to be; he has a constitutional duty to be included.

The Chairperson: We move to clause 18, on the creation of a network of conservation sites. Issues raised included that it should place a duty on the Department to declare MCZs for the benefit of the Northern Ireland marine region, as opposed to just contributing to the UK marine area, and that it should require the consideration of the cumulative impact of MCZ designations on sustainable economic development activity.

Mr K Bradley: I remind the Committee that the overall context of marine conservation zones is so that the Department fulfils its obligation under the marine strategy framework directive. Part of that directive requires good environmental status by 2020. The UK has taken the decision to designate marine conservation zones, or marine protected areas in Scotland, as well as the rest of the designations we already have, to meet that obligation. We are working to an overall UK target. Our colleagues in the Joint Nature Conservation Committee (JNCC) and Natural England are coming up with a definition of what a coherent network of marine protected areas for UK waters will look like. We are working to that overall target. By default, we will have a range of Northern Ireland MCZs; hopefully, as Simon said, not 30. However, we will have a number of MCZs in Northern Ireland waters, which will add to the overall objective. Our friends in Scotland are very important as they have so much of the UK waters — 50% to 60% — and their large marine protected areas (MPAs) will lead very much to that overall target.

We cannot look at Northern Ireland in isolation. We are looking at it as part of the bigger picture. Sustainable development is obviously very relevant as well. Again, this is a very flexible mechanism for looking at the social, economic and cultural aspects of all our MCZs and not just purely the environmental reasons.

Ms McEvoy: MCZs are for nationally important species. Therefore, we will be looking at species native to here.

Mr K Bradley: I imagine that there will probably be some MCZs in Northern Ireland that are peculiar to Northern Ireland.

The Chairperson: Yes; we must not just think about the contribution to the UK network. What about our own specific areas that we want to protect but which may not form a network with the UK?

Mr K Bradley: As you are aware, sea sponges have been found around Rathlin that have not been found anywhere else. They are unique, so perhaps that area would be an MCZ at some stage.

The Chairperson: Do we need to strengthen the Bill to say that we also need to look at MCZs in our region that may not necessarily contribute to the UK network?

Mr K Bradley: I do not think so. That coherent network still allows for representative species. It does not have to be purely things that are rare or threatened. It is a general enabling power that gives us the flexibility to designate what we feel is important for Northern Ireland.

Mr Boylan: That should be it, Ken. Overall, it is grand, but it is not MCZs for the sake of having MCZs. Let us be clear about that. That is what I support. It may border on other areas that are protected already, but let us be clear about designating our own areas for our own evidence-based reasons and everything else.

Mr K Bradley: Again, it is a balancing act. We have to meet our EU commitments under the marine strategy framework directive. When we do that, we will see what else is out there. Your point is valid: we are not going to designate willy-nilly just because something is nice. There must be a very strong scientific reason for designation. Obviously, we will take into consideration other activities, no matter what.

The Chairperson: You are saying that the Bill allows us to designate because it is important to Northern Ireland alone; it is not necessarily about forming a network with the UK.

Mr K Bradley: Yes, but obviously taking the views of elsewhere into consideration.

The Chairperson: OK. We will move on. Clause 19 deals with reports. The only issue raised in relation to the clause was that the word "restricted" should be changed to "affected".

Mr K Bradley: Again, the word "restricted" was put in by the Office of the Legislative Counsel (OLC). We would probably need to speak to it again to see the relevance or consequences of amending that. The Department feels that "restricted" is fine. "Affected" is obviously a bit wider than that. So, we will speak to the OLC and the draftsman to see what the ramifications of changing the wording would be.

The Chairperson: OK. We will move on. Clause 20 deals with the general duties of public authorities in relation to MCZs. Issues raised were the terminology used and the comparison between public sector and private sector duties.

Mr K Bradley: There is a general duty on all public authorities, when they are going about their activities to regulate or license activities in the marine environment, to take MCZs into consideration and inform the Department if any activity they are licensing would impinge negatively on an MCZ. There are a number of issues raised in this and the subsequent clause. Again, for clarification — we sought a legal view on this — when the Department designates an MCZ, public authorities have their own responsibilities. If a public body licenses something that is detrimental to an MCZ, the Department will obviously ask for explanations and try to mitigate the effect of the activity as much as possible, but it cannot take another Department or public body to court. So, the Department cannot sanction any other public body. I just wanted to clarify that.

Obviously, public authorities have to have regard to any advice that the Department gives them in relation to MCZs, such as the designation feature and that sort of thing. We feel that this clause and even clause 21 go as far as possible, bearing in mind that other Departments have responsibilities to the marine environment in relation to fish and whatever. Again, the Bill is based on sustainable development principles; it is not purely about environmental protection. This clause and the subsequent clause are there to achieve a balance.

The Chairperson: I know what you are saying: you cannot get the other Departments to do what you want them to do.

Mr K Bradley: Just as they cannot get the DOE to do what they want it to do.

The Chairperson: In others words, you do not have much clout with the other Departments. However, can we strengthen the wording? There is one suggestion that clause 20(11) should be strengthened by changing "have regard to" to "act in accordance with". That may give the Bill a bit more power.

Mr K Bradley: Again, that is probably going a wee bit too far. "Have regard to" means that public authorities must pay attention to it, not just consider it and then dismiss it. A public authority must have a very good reason for dismissing the advice, because it could get into the realms of a third party asking for judicial review of its decision. The Department obviously cannot take a public authority to court. However, a third party could ask for a judicial review of a decision taken by a public authority that was detrimental to an MCZ.

The Chairperson: Do you intend to publish a lot of guidance on that?

Mr K Bradley: There are probably four specific pieces of guidance that we will bring before the Committee once the Bill progresses through the Assembly process. Guidance on public authorities will be one of those specific pieces of guidance.

The Chairperson: Without a marine management organisation (MMO), you will have to depend on other Departments doing what you want them to do.

Mr K Bradley: That is correct.

Mr Elliott: I have a query on that point. If there were a marine management organisation, would that not change the issue? Could it not take the Departments to court?

Mr K Bradley: Not necessarily. Departmental structures will still be in place. The Department of Agriculture and Rural Development (DARD) and the Department of Enterprise, Trade and Investment (DETI) and other public authorities with responsibilities in the marine environment will still exist, and their responsibilities will not change. An MMO would probably carry out enforcement and other aspects differently, but it would not change the remit or statutory responsibilities of any other public authority. The DOE would have no greater powers than it has now to regulate any other public authority.

Mr Elliott: If it was found that the DOE was polluting or doing damage to an MCZ and a marine management organisation had the control mechanism of looking after an MCZ, could it take the DOE to court for any act that was doing damage to that MCZ?

Mr K Bradley: I think that the short answer is no; you would not like to think that one part of the DOE had designated a site while another part polluted it.

Mr Elliott: It does happen.

Mr Bradley: You would not like to think that that would happen in the marine environment.

Mr Elliott: It could happen.

Mr K Bradley: I do not think that having an MMO in those circumstances would make any difference. You could argue that, if there was greater integration at that level, that incident should come to light quicker and be dealt with.

The Chairperson: We are just concerned about the difficulties of other Departments co-operating. We have seen the example of Strangford lough.

Mr K Bradley: It is a point well made. Our Minister has his own very specific views on MMOs.

The Chairperson: You may have covered this point already. People have said that the term:

"capable of affecting (other than insignificantly)"

is vague and untested in the courts. They have suggested that the wording "other than insignificantly" should be changed.

Mr K Bradley: In legislative terms, significant means other than trivial or minor. Therefore, that term is fairly robust, and we do not see how we could amend that to make it any stiffer, without going outside what the Department can do. We feel that that probably has the same meaning as any other wording suggested in responses.

The Chairperson: As members are content, we will move on to clause 21, which deals with the duties of public authorities in relation to certain decisions. The issues that were raised about that clause focused on the interpretation and detail of compensatory measures.

Mr K Bradley: Compensatory measures are not mentioned in the Bill. We feel that those measures were taken account of during the designated process, when socio-economics and cultural activities were also taken into account.

Ms Cunning: I think that the query was about public authorities making authorisation decisions and requiring the body doing the activity to carry out compensatory or mitigation measures. That is not mentioned in the Bill, as the authorisation does not come from the Bill but from whatever legislation public authorities use. So, if it were the Department of Culture, Arts and Leisure or DETI giving a licence for something, they have legislation to cover that. They can put conditions on the authorisation, and that is where it would be carried out. This is just saying that if you are going to do an authorisation make sure that you include conditions.

The Chairperson: If members are happy, we will move to clause 22, which deals with advice and guidance by the Department. Issues raised related to the need for guidance to be published and for recipients to act in accordance with it.

Mr K Bradley: There was a bit of confusion among some respondents about what we mean by guidance. It is not guidance that is published by the Department, it is guidance given by the Department to a public body. I think there is a bit of confusion and ambiguity about what is meant.

Ms McEvoy: Clause 22 is just about guidance to do with the MCZs and the public authorities. It is not the general guidance that we would issue on designations and public authorities. I think that some of the respondents got that confused, and thought that the clause dealt with provisions for us to issue guidance.

The Chairperson: OK. Are members happy with that?

Members indicated assent.

The Chairperson: We will move to clause 23. Issues raised were the lack of penalties or sanctions and the need for time limits for compliance.

Mr K Bradley: This is about respondents requiring sanctions against another public body. As I said earlier, the Department cannot take court action against other public bodies; so, in that respect, there is really nothing that we can do.

One of the other points made was that in clause 23(2)(a) the word "may" should be changed to "must" or "shall". There is no reason why the Department could not give ground on that, obviously subject to OLC and ministerial approval. We will look at the wording of clause 23(2)(a) and perhaps change that wording.

The Chairperson: OK. Are members happy with that?

Members indicated assent.

The Chairperson: It just adds a bit more strength to the Bill.

Lord Morrow: On a point of clarification; are you saying that there is no duty whatsoever in the Bill to deal with compensation?

Mr K Bradley: That is correct.

Lord Morrow: So, it lies elsewhere.

Mr K Bradley: Yes.

The Chairperson: Where? With the Department?

Mr K Bradley: It depends on which Department or regulatory authority is responsible.

The Chairperson: So, you are saying that we can change clause 23(2)(a) to include "must" or "shall".

Mr K Bradley: Yes.

The Chairperson: What about a fixed time limit to provide a written explanation? There is no time limit for the Departments to do that.

Mr K Bradley: That would be done on a site-by-site basis depending on the circumstances. It is very difficult to include a time limit when circumstances can be different.

The Chairperson: So, it could run on and on for months before they come back to answer you?

Ms Cuning: Most public authorities actually have an internal requirement to respond to queries. They would be criticised if they did not respond within the time frame.

The Chairperson: What is that time frame normally? A month?

Ms Cuning: No, it would probably be within a couple of weeks, but there could be issues when more information is required. I think that is why Ken is saying that it might be a longer period of time.

Mr K Bradley: They might need more scientific evidence or something else.

Lord Morrow: In relation to that, I can see all of the intricacies of vagueness now beginning to manifest themselves. If someone has a grievance, I suspect that they may be put on the merry-go-round and be told that it is not really yourselves but someone else who is responsible. They may go to DARD and be told that it is not DARD but somebody else again. Is there not an opportunity, when you are drafting a Bill, to be specific and state categorically where responsibility lies? That is not happening here. You may have very good reasons as to why this is the way it is, but I suspect that it is not very clear. It is not clear to me anyway.

Mr K Bradley: I appreciate that. Again, it is a realisation that it is not just the DOE that has responsibility for the marine environment. Other Departments have their own responsibilities and targets. The DOE must request an explanation for failure to comply with the duty. It is the same if somebody asks the DOE for an explanation. We will give an explanation as quickly as we can depending on the issue. We have to accept that other Departments have legal responsibilities and operate under their own legal frameworks. We have to abide by those in the same way as other Departments abide by ours.

Lord Morrow: Will there be any joined-up thinking?

Mr K Bradley: There definitely is. We have very good working relationships with other Departments. We have an interdepartmental group at a relatively senior level, and we are bringing other Departments along with us as regards the Bill. They have agreed its content and that they will abide by the duties. There is no reason why this Bill will not work in practice.

Lord Morrow: So, we can rest assured that what your responsibilities will not allow you to do will be covered by others and that there will be no gaps.

Ms Cuning: Different Departments and public authorities are responsible for different functions. That is one of the reasons why we have talked about the different functions across Northern Ireland. If an issue concerns marine planning or the MCZs, that is very clearly the responsibility of the DOE under this Bill. If it concerns DETI licensing; that is covered by DETI's legislation. If someone has a problem with a decision made by DETI, that person would go to DETI. If the problem relates to a plan, the person would come to us. There are so many different functions that you have to catch them in a generic way.

Lord Morrow: I have listened to what you have said but on that very point; who will compensate the person? This Bill does not deal with compensation.

Ms Cuning: I do not know enough about legislation in other Departments and whether compensatory measures are included there. As regards energy consents, I am not sure whether there is a process whereby somebody who wants to develop a renewable installation can compensate fisheries or whatever. I do not whether that is dealt with in primary legislation. Responsibility should reside where the decision is taken. This Bill concerns marine conservation zones and marine planning that will set the framework for those types of decisions.

Mr K Bradley: I know that DARD, through its legislation, can compensate fishermen for introducing no-take zones, etc. If a fisherman is out of pocket and cannot fish elsewhere for the same species, there is potential for compensation. As far as I know, DARD has not paid compensation to any fishermen in Strangford lough.

Lord Morrow: Should there be something in the Bill to make the relevant Department amenable?

Mr K Bradley: Do you mean another Department?

Lord Morrow: Yes.

Mr Bradley: I do not think that we could do that.

Mr Boylan: Earlier, I mentioned tidying-up legislation. I agree that compensation is one element, but each Department is still operating in a silo and under its own responsibilities. We have an opportunity here, whether it is through guidelines or through some other way, to tie things down. Lord Morrow asked specifically about legislation, and you have said that you cannot do so within this legislative framework. We are bringing forward legislation that will impact on other Departments, and they need to know clearly how it will impact on them. If that work is not under way already, it needs to be started. The rules and regulations on designations and licensing need to be clarified exactly. Regulation is one issue. We have a unique opportunity. Has any thought been put into that process?

Mr K Bradley: You are right: the way in which MCZs will be designated will be in the procedures and the guidance for public bodies. Each aspect is very important, and each body will have its own specific guidance. We will work with Departments in developing the guidance, and they are very keen to do so. We all operate in silos because that is how Departments are set up. Each has its own responsibilities, objectives and statutory duties, and we have to work within those parameters.

Mr Boylan: There is still an opportunity, Ken, to get this right, because it impacts on so many other Departments. The way in which we deal with that should be our first port of call. I know that we will have a separate piece of legislation and I am sure that the Committee would agree to go down that route. That is what we would like to hear coming forward, to be honest.

Ms Cuning: That is why we are engaging with the other Departments in the development of the Bill, on issues such as guidance, and on how MCZs will work and have been working. That is why they have signed up to the Bill, but you have made a good point.

Mr K Bradley: For instance, DETI was concerned about MCZs when it was looking at its next raft of renewables sites. It came to us to say that the science highlighted potential areas and asked us whether they would cause us problems from a marine conservation point of view, but they did not. We are working on issues such as renewables and, obviously, more recently, with the fishermen. That dialogue is happening and, as the Bill and the guidance progress, and other measures are put in place

through the marine strategy framework directive, it will necessitate greater working between Departments, and especially between DETI, DARD, the DRD and ourselves.

Mr Boylan: I do not want to use the taxis legislation as an example, Ken. The guidance needs to be up front and the piece of work needs to be done now, as soon as this Bill is ready to roll. The departmental responsibility should be there. We do not want to go back to some of the previous legislation.

Mr K Bradley: We intend to roll the legislation out in early 2013 and redesignate Strangford lough first of all. Bearing in mind what we said at the start of our conversation, this is all part of a bigger overall picture for an ecologically coherent network of marine protected areas (MPAs). We do not want to drag our heels and allow the UK to fall down on that, because the last thing that we want is another infraction down the line.

The Chairperson: Ken, you said that you can have sanctions against other Departments, but can we strengthen the law to say that, perhaps, you can recommend sanctions where licences have been issued that would result in damage, for example, to an MCZ? One NGO suggested an additional clause that would allow you to recommend sanctions against a Department that has damaged an MCZ through its activities.

Mr K Bradley: Again, "recommend" and "advise" are much the same wording. In legislative language, neither is any more robust. The phrase, "having regard to" means the same thing.

The Chairperson: It would be to recommend that they carry out certain actions or measures to make good the damage.

Mr K Bradley: That would be in the Department's guidance that is given to all public bodies; but again, it can only be a recommendation or a request.

The Chairperson: But this is about having an additional clause in the Bill to say that you can make recommendations for those Departments to take measures to make good the damage that they have done. The NGOs have suggested an additional paragraph 23(2)(c).

Mr K Bradley: I would need to look at that again, Chairperson. I do not think that such a subsection would be any different from what we have at the moment. We will look at that and talk to our draftsmen. We have to bear in mind that if we change something that impinges on another Department, we will have to go back to the Executive.

Mr Hamilton: The reality of government, particularly in Northern Ireland, is that, if Ken recommends to his Minister that a new clause is adopted and his Minister accepts that recommendation, the Minister is then required to take that recommendation to the Executive. The Executive are never going to agree to that. I would love to see something in the spirit of that happening. Other Departments are not going to give the DOE the power to —

The Chairperson: Recommend?

Mr Hamilton: They are not going to hand the DOE the power to say that, whenever someone is a naughty boy, they must compensate x, y and z. That is never going to pass.

Mr K Bradley: No. As we all know, Ministers and Departments are very jealous of their responsibilities. They safeguard them.

Mr Hamilton: It would never pass.

Mr K Bradley: You are right: there is an opportunity to do things better.

The Chairperson: We will look at that.

Mr Elliott: I am not filled with confidence that this will all work in the end. No disrespect to any of the officials here, but I have heard it all before at other Committees. There have been promises of good working relationships between Departments. It is not their fault; it is because, as Ken said, they get

into their own silos and work in their own surroundings. What I have heard today does not fill me with confidence that it will all work.

I am sorry to come back to the question about the marine management organisation, but Ken expertly avoided answering it in the past. If a marine management organisation were in place, could it take a Department to court?

Mr K Bradley: No.

Mr Hamilton: It depends on how it was structured, surely.

Mr K Bradley: Loosely, an MMO would take on the fisheries enforcement powers, which DARD has, the DOE licensing powers, and the enforcement for MCZs. You would have it all in one place, but the powers would not be any different; it would just be done by one body.

Mr Elliott: So, it could not take the DOE or DARD to court on an issue?

Mr K Bradley: No. Potentially, it could be a non-departmental public body of DARD.

The Chairperson: However, they work in a co-ordinated fashion; they would be thinking about conservation together.

Mr K Bradley: That is where the Minister sees the benefits in MMOs; it would be more co-ordinated, rather than three or four bodies —

The Chairperson: That do not talk to one another; they do their own thing.

Mr K Bradley: Rather than three or four bodies doing their own thing, you would have one body doing all three things.

Mr K Bradley: That is the benefit; it would cut down on cost and bureaucracy. There would be better understanding and dialogue, but they would still work within the same legislative parameters.

The Chairperson: Like Tom, I am concerned that the Bill will not give you a lot of teeth.

Mr K Bradley: Well, no. For the first time —

The Chairperson: Or not enough teeth.

Mr K Bradley: For the first time —

Mr Boylan: Sharks' teeth?

Mr K Bradley: For the first time, the DOE will have enforcement powers in the marine environment, which it never had before. The Department has relied on other Departments for enforcement under the habitats directive. Now, the Department has an enforcement power; it can enforce through by-laws and the general enforcement powers, including substantial fines of up to £50,000. That is a big step forward.

The Chairperson: We will move to clause 24. Issues included the potential impact of by-laws, their coverage and how they will be administered.

Mr K Bradley: I will come back to Simon's point about including cultural activities as well as social and economic activities. We have agreed to look at that.

Mr Hamilton: Where would that go?

Mr K Bradley: One of the issues raised was that the by-laws had the potential to restrict cultural as well as social and economic activities. It was not our intention for MCZs to do that. It is really only if

the activity is detrimental to the feature of an MCZ that a by-law would then seek to manage unregulated activities.

The Chairperson: That is the point that Tom made earlier.

Mr Hamilton: Where would it go? There is no scope for the word "cultural" to go in this clause.

Ms Cuning: Ken means that if we include it in the clause we talked about last week, that would help.

Mr Hamilton: Can I butt in at this stage? The words "economic" and "social" are in clause 12. Are you saying that the word "cultural" could be included there?

Mr K Bradley: Correct.

Mr Hamilton: That is great. There is no reference in this clause to economic, social or cultural issues. Are you saying that this is not required because clause 12 deals with it?

Mr K Bradley: Yes. During the designation process, we will iron all that out and clarify the economic and cultural issues. We will then come up with the finished article, and the by-law will protect that finished article.

Mr Hamilton: The first consideration of economic and social, and now cultural, issues would be when you would be designating an MCZ. So, you say that you will consider that by drawing a box. Is there a linkage in the legislation — and I will take a look at it to see if there is — between designating the box and designating the by-laws? Whilst the two are obviously related, they are separate.

Mr K Bradley: They are separate but very much related processes. Remember that, in the designation process, we will set out what the feature is, why it is important and what activities could be detrimental to it. If an activity is regulated, the duty, as we said earlier, requires all public bodies to adhere to it. If an activity is unregulated, we will look to the by-law, and the Department will be responsible for enforcement powers. It is very closely linked, and the process is quite transparent. If an MCZ is designated and somebody says, "Hold on, that will impinge on my activity and will, for instance, stop wild-fowling and fishing", we may keep the feature there but move the boundary, or we might say that what is being done is not that detrimental and we might change it slightly. It is all about working it out and talking to each other. That is the balance. As Cathal said, we are not designating for the sake of designating. It will be based on sound scientific evidence, and we will have to look very closely at the potential detrimental impact and how we regulate that.

Mr Hamilton: I do not see a linkage between them, and that is why I am raising the issue. The first process is the designation and marking out of an MCZ, and you have to give consideration to economic issues, and so on. There is then a second process, which is the application of by-laws within the MCZ. There is nothing in this clause about that, and that is why I asked where it is included.

Ms Cuning: It is to a certain degree. Clause 24(1) says:

"The Department may make byelaws for the purpose of furthering the conservation objectives stated for an MCZ."

It all comes from the actual designation and the objectives that you set for that MCZ. That is why you make by-laws. You do not make them for any other purposes but only for the objectives of the MCZ, which is covered under clause 12.

Mr Hamilton: The first process sets the objectives for designating it as an MCZ and then —

Ms McEvoy: It is a protection measure. Are you saying that if we have a by-law and something is perhaps restricted, there is no economic consideration? Is that your point?

Mr Hamilton: That is exactly it. The consideration has happened at a different point for something much broader.

Ms McEvoy: By-laws will be consulted on as well.

Mr Hamilton: That is OK.

The Chairperson: Ken, how easily can you define "cultural" activities?

Mr K Bradley: We defined it last week. *[Laughter.]* I think that we have covered "cultural", "social" and "economic". It is really any activity. We have to look at the big picture. We have to look at the MCZ boundary and find out what other activities go on and what else happens within that and work with those bodies and those people. It is really anything.

Mr Hamilton: It is inclusive to put it in.

The Chairperson: An anthropologist would tell you that "cultural" means a big spectrum of things.

Mr K Bradley: That is right.

The Chairperson: So, we have our own definition for "cultural".

Mr K Bradley: That is right, yes. I think that I am right to say that that catches up the other: if it is not social, economic, it is cultural —

The Chairperson: It is a catch-all phrase.

Mr K Bradley: — and we are obviously looking at the environmental, so we now have four pillars on it. *[Laughter.]*

The Chairperson: All right. Shall we move on, members?

Mr Hamilton: No. *[Laughter.]*

The Chairperson: OK.

Mr Hamilton: That was just a warmer.

The Chairperson: By-laws?

Mr Hamilton: That was for starters. That is that one off the list; right, OK.

Under 24(2), by-laws may be made to apply:

"to any area in the Northern Ireland inshore region or in any other part of Northern Ireland."

Mr K Bradley: Yes.

The Chairperson: Yes.

Mr Hamilton: Why:

"in any other part of Northern Ireland"?

Mr K Bradley: That is legislative speak. It is to include islands and that sort of thing. It is not to include County Down or County Fermanagh, it is to include —

The Chairperson: The Copelands.

Mr K Bradley: The Copelands; something like that, yes.

Mr Hamilton: Is that made clear?

Mr K Bradley: It is not an interpretation, no.

Mr Hamilton: Yours is a fair explanation, but it could be worded:

"the endangered areas or any other part".

Clearly, this is not going to affect the top of Slieve Donard.

Mr K Bradley: No. *[Laughter.]*

Mr Hamilton: However, it states:

"or in any other part of Northern Ireland."

The Chairperson: The Mournes are running down to the sea.

Mr Hamilton: The legislation will apply to Slieve Donard, even though that is utterly ridiculous.

Ms McEvoy: The legislation applies only to the MCZ. Clause 24(1) explains that the legislation is only for an MCZ.

Mr Hamilton: Which can only be in an "inshore region" and, now, the "seashore" as well.

The Chairperson: Yes.

Ms McEvoy: So, it is only for MCZs.

Mr Hamilton: And an island can be within that?

Mr K Bradley: Potentially, yes, and the Copelands are a good example.

The Chairperson: Would Rathlin Island be regarded in the same way?

Mr K Bradley: What seabed feature would you have in Rathlin Island? It is difficult to imagine because the island is too big.

The Chairperson: It has lots of seabirds.

Mr Hamilton: That is not marine.

Mr K Bradley: Potentially, the seabed feature could be that it forms a feeding ground for those seabirds. I know that puffins feed there, but they are protected anyway so an MCZ would not offer any greater protection. It would not make any difference; it would just be another designation, really. We do not intend to designate Rathlin Island per se as an MCZ.

Mr Hamilton: It just a silly use of terminology.

Ms McEvoy: Regarded as a standalone, it can be.

Mr K Bradley: Maybe we can see if the draftsmen can come up with an interpretation that we can put into clause 24(2).

Mr Hamilton: I am happy enough with that explanation, but it just looks silly. You have to read it in the context of the first subsection of the clause.

Mr K Bradley: You are absolutely right. Even to the layperson, it could potentially mean Slieve Donard. We may see if we can clarify that by including an interpretation.

The Chairperson: By having it state "any other marine area" of Northern Ireland?

Mr Hamilton: That would include Lough Neagh.

Ms McEvoy: That would broaden it and we do not want to do that.

Mr Hamilton: I am happy enough with the explanation.

The Chairperson: John, have you something to say?

Mr Dallat: I have something fairly intelligent to raise. *[Laughter.]* Given that an MCZ can be in the water or, when the tide is out, could be on the land, clause 24(3)(c) provides for by-laws:

"restricting the speed at which any vessel may move in the MCZ".

Will that cover periods when the tide is out and the zone is used by horses, beach buggies, racing cars and all sorts of things?

Mr Hamilton: Donkeys.

Mr K Bradley: Remember that an MCZ is three-dimensional and includes the shoreline. Potentially, we could designate mobile species, a seal haul-out area, or something like that, which, again, the speed of vessel going past could swamp. This is widespread enabling legislation that strives to cater for all eventualities, some of which we might not have thought of today. It may be that, down the line, we think, "Ah yes, we will designate that because it is important". At that point, we may consider the Portaferry ferry as detrimental, or that the HSS, leisure craft or jet-skis are detrimental. So, again, it is a wide enabling power to cover any eventuality. An MCZ could be for a mobile species, a shoreline species or, as we said earlier, for feeding.

Mr Dallat: Is that OK?

Mr K Bradley: Yes. It is fine.

Mr Dallat: If an MCZ was declared for Portstewart strand, would it be protected by the Bill?

Mr K Bradley: Portstewart strand is already an ASSI and receives protection through that.

Mr Dallat: Ken, you have an answer for everything.

Mr K Bradley: I do not know if I would say that. It is also owned by the National Trust.

Mr Dallat: Only the entrance.

Mr Elliott: Concerns have been raised by the fishing and wild-fowling industries about the effects of clause 24(3)(e), which deals with the:

"prohibiting or restricting the killing, taking, destruction, molestation or disturbance of animals or plants".

Mr Bradley: Those by-law powers have been pretty much couched from previous legislation, such as the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985, which sets out the by-law making powers for marine nature reserves. As you know, we are repealing the marine nature reserve powers and replacing marine nature reserves with marine conservation zones. We are also replicating the by-law making powers. Those powers are already in place.

Mr Elliott: So, they are lifted directly from that Order?

Mr Bradley: Yes.

Ms McEvoy: Those have been lifted from article 21 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985.

Mr Boylan: I want to raise one issue. I am a keen angler, and an issue was raised that clause 24(3) is too open and could allow complete exclusion of anglers. I am concerned about the by-law protections for MCZs and how they could affect someone fishing off the shore. Can you assure us about that? As an angler, I would be disappointed to turn up some day —

Ms McEvoy: It depends what an MCZ has been designated and protected for.

Mr K Bradley: It is hard to envisage —

Mr Boylan: I am only reading a response. To be fair, it is grand to say that it all depends on the MCZ, and I understand that completely. I made the point earlier that it is about proper evidence and everything else, but we are trying to work with the industry and protect areas at the same time. Anglers are part of that industry just like fishermen. I am only responding to the comments that were made, and I would like some clarification on that.

Mr K Bradley: It is a valid point. It is difficult to see an example of how sea angling would be detrimental to a feature. Some fishing activity would be. If you took a 20-foot boat scallop dredging, you can see how that would be detrimental, but that would not be the case for a fisherman or a group of fishermen who throw lines out.

Mr Boylan: I agree 100%. I knew that Ken was going to give me a good answer on that. As long as that clarification is there and it is addressed through the angling community, that is grand. That is all that I wanted to say.

Mr Hamilton: For clarity and the benefit of others, clause 24(3) lists six different prohibitions or restrictions. It states that by-laws "may be made". Am I right in saying that that is more a la carte than all you can eat, and that some areas that are designated as MCZs may not require any restrictions, while others may require one, two, three, four or all six?

Mr Bradley: That is right.

Ms McEvoy: All six would be highly unlikely.

Mr Hamilton: There is a fear among some in different sectors that there could be six restrictions, which would restrict virtually everything. Am I correct when I say that one, two or three restrictions could be taken from that list, as appropriate and not beyond what is appropriate? Is that fair?

Mr Bradley: Yes. That is right.

Mr Hamilton: I think that it would be helpful if the Minister were to make that comment at Consideration Stage. That would provide clarity to those who expressed concerns that all restrictions will be in every MCZ, and that we have will hundreds of those things and not be able to do anything. You and I know that that is not the case, but it would be helpful if we clarified that point.

Mr K Bradley: That is a good point. We will take that on board.

Mr Hamilton: Correspondence in the past week in response to comments by one stakeholder that there would be little impact asked what "little impact" meant. Can you define "little impact" or is that too difficult without seeing the context?

Ms McEvoy: We would have to see the context of what was said.

Mr Hamilton: You made the point about it being hard to see how conventional angling would be involved. It would not be affected by anything other than if you could not get your boat into an area. Likewise, shooting something over is hardly likely to be restrictive. Is that a fair point?

Mr K Bradley: Yes, absolutely.

Mr Hamilton: Clause 24(8) states:

"Byelaws under this section may make different provision for different cases"

The point was made about the designation of so-called reference areas within that.

Ms McEvoy: Those are not for designating MCZs. MCZs are designated under clause 12. This is for protecting sites that have been designated.

Mr Hamilton: I appreciate that.

Ms McEvoy: I do not think that can make a highly protected area.

Mr K Bradley: No, definitely not. Again, clause 24(8) reflects the flexibility of an MCZ. Rather than giving carte blanche protection, the site may need protection at only a certain time of the year, for example for breeding fish. The boundary could change and maybe only part of the MCZ has particular features and a protection zone is not needed. That is to allow for flexibility.

Mr Hamilton: So, it is not for highly protected areas or reference areas.

Mr K Bradley: No, nowhere in the Bill are the words highly protected marine areas mentioned. That was deliberate on the part of the Department. Our policy has always been that the conservation objectives will determine the level of protection, based, obviously, on sound science.

Mr Hamilton: OK, that is helpful. Thank you.

The Chairperson: Being evidence based on scientific research is very important.

Mr K Bradley: Absolutely.

The Chairperson: You are not doing it just for the sake of it.

Mr K Bradley: No.

Lord Morrow: That is a valid point. The concern is all around the lack of justification. I am not sure that you have totally reassured us. Wild-fowlers are very concerned about this clause in its totality. I suppose they are asking for a rewriting and rewording of it, whether that will be possible or not, to satisfy them. That may be difficult.

Mr K Bradley: I think you are right. Simon's point is also very valid. Wild-fowlers have very little to worry about with regard to marine conservation designation. Their activities are land based. Marine conservation zones are primarily for seabed features, although they could, potentially, be for other occasions. Anglers and wild-fowlers have very little to fear from marine conservation zones. We already have about eight designated marine special areas of conservation (SAC) and they do not impinge on wild-fowlers or sea anglers. By and large, the sector most affected is commercial fishing. I do not think that those two cultural activities will impact to any great extent on an MCZ, bearing in mind that the majority of MCZs will be in and around existing SACs, I would imagine, because that is where our greatest evidence is.

The Chairperson: We move to clause 25, "Byelaws: procedure". There is only one issue, which is that the clause should include specific procedures for introducing emergency by-laws rather than simply being able to override those in place for the introduction of by-laws under normal circumstances.

Mr K Bradley: Is clause 25(10) the problem?

The Chairperson: Yes.

Mr Boylan: Yes, the words "urgent need".

Mr K Bradley: Clause 25 gives the Department the power to make the by-laws and procedure but clause 25 (10) issues a caveat. The process is not applicable if there is an urgent need to protect an MCZ through an emergency by-law, which, obviously, is the next clause.

Clause 25(10) is saying that we will follow a procedure but that there may be an occasion when there is an urgent need to do something quickly. That means that the Department does not have to comply with that procedure.

The Chairperson: Are Members OK with that?

Members indicated assent.

The Chairperson: We move to the next clause, which concerns the emergency by-laws. Tom, do you want to say something?

Mr Elliott: My point is about clauses 25, 26 and 27. Due to the emergency by-laws, no process has been indicated as to how you actually come to your decision. That is the issue. I would like a wee bit of clarity around how you come to the decision. I and, I think, most people understand that you need emergency by-laws at stages, but there needs to be more clarity around how you get to that stage.

Mr K Bradley: That is right. We said earlier that there will be guidance on the whole by-law procedure. Obviously, emergency by-laws are an important aspect of that. We hope never to use the procedure, but the Department needs the power because there could be unforeseen circumstances in which you need that power. We said earlier that, if there is an emergency by-law, obviously, we have to tell people; they have to stop doing whatever is potentially detrimental. There will be a 12-week consultation. Somebody will ring up somebody else or meet them and talk to them if they will be affected by the by-law. It is an informal consultation. The Department will not decide to do an emergency by-law willy-nilly; it will be as a last resort. It will be only if unforeseen circumstances happen, such as the pollution incident that we talked about earlier.

The Chairperson: Can you clarify, publish or send out a set of guidelines to say what constitutes "emergency"?

Mr K Bradley: Yes. Obviously, the guidance cannot cover every eventuality, but it will give a flavour of what types of emergency situation —

The Chairperson: Like an oil spill?

Mr K Bradley: Yes. A by-law would be required in those circumstances.

Ms McEvoy: It is enabling legislation that gives us the power to make the by-laws, but we will do the operational bit and the guidance.

The Chairperson: Are Members happy with that?

Members indicated assent.

The Chairperson: We dealt with clauses 26 and 27.

Mr Hamilton: Information is probably more important for emergency or interim by-laws because you are telling people to not do something. Consultation and information is probably more important.

Ms McEvoy: Emergency by-laws will be for existing MCZs, such as if something is unforeseen. An interim one is to protect the site that we are thinking of or whatever.

Mr Boylan: A point is made about clause 27 by BASC. Ken, I will take your word that you do not think that it will impact on anglers and wild-fowlers. It is important that the designation does not impact on them by default; there needs to be an understanding.

Ms McEvoy: That will be taken into consideration.

The Chairperson: Clause 28 also concerns by-laws, and clause 29 concerns hearings. There were no comments on those clauses, so we move on to clause 30. The only issue raised was that the maximum fine proposed is insufficient.

Mr K Bradley: A by-law is there to manage unregulated activity, so that activity should be fairly minor if it is detrimental to a site. The by-law comes with a level 5 fine, which is the maximum that you can apportion to a by-law. Currently, that fine is £5,000. It is relatively substantial, but bear in mind that it is for unregulated activities, which should not be major occurrences. The Committee should remember that the Department still has the other, general, enforcement powers, which allow for a much heavier fine for someone who willfully destroys a site or does something that he is not supposed to do. For instance, we have a by-law at present in Strangford lough, as the Committee saw. It is for anchoring, diving and mooring in Strangford lough and it is there obviously to manage an unregulated activity. What an anchor can do may seem fairly innocuous, but, at the same time, it could be detrimental. So it is reflective of that. It is a by-law, because that is relevant to the nature of the problem, and the fine is also relevant to the potential damage that it does. A by-law is for a fairly minor offence, shall we say, but the Department still has the power of general enforcement for something much more problematic.

The Chairperson: OK, are Members happy with that explanation?

Members indicated assent.

The Chairperson: We will move on to clause 31, "Offence of damaging, etc. protected features of MCZ". The issues raised were as follows: to the addition of offences; crossover with the Wildlife Order; and implementation.

Mr K Bradley: Members will remember that the Wildlife and Natural Environment Act (Northern Ireland) 2011, the WANE Act, as it is known, became law a couple of years ago. It is primarily a way of protecting individual species — birds, plants, animals and that sort of thing. Marine conservation zones are primarily intended to protect habitats. We do not think that the two pieces of legislation are in conflict; they complement one another. In the WANE Act, full protection is given to seahorses, turtles, seals and a wide range of marine animals, primarily mobile species. The marine conservation zone conserves habitats, sea sponges, geological features and that sort of thing. The Marine Bill and the WANE Act are intended for slightly different reasons. From that point of view, if someone goes out and kills a seahorse, he is liable under the WANE Act; if he damages the MCZ, the Marine Bill comes into force. We do not think that there is conflict.

The Chairperson: OK. Does it give double protection?

Mr K Bradley: It is not double protection. It depends on the offence. An offence against a specific species is perhaps better dealt with under the WANE Act because the fine is smaller. The maximum fine under the WANE Act is £20,000, but there is the potential for custodial sentences. It would be very difficult to get a custodial sentence. It depends, again, on the individual circumstance, what species has been affected.

The Chairperson: We move on to clause 32, at page 191. The issues are: the cost of a permit scheme, plus a suggestion that the sea-fishing defence applies to the six to 12 nautical miles zone, rather than to the zero to 12 miles zone. I think a number of people and groups mentioned that.

Mr K Bradley: Obviously, the six to 12 mile zone is covered by the common fisheries policy, which gives the fishermen that defence. The Department feels that it is very difficult, and it would not support such an amendment. Fishing activity should be treated equally, irrespective of whether it is two miles out or eight miles out. We feel that we should treat fishermen equally, irrespective of where they are. We will not agree with that amendment.

The Chairperson: OK. The defence is really from six to 12 nautical miles; is that right?

Mr K Bradley: That is correct.

Ms Cunning: The defence is required under the common fisheries policy. A suggestion was made that we do not need it for the nought-to-six-mile zone, but that would create disparity between people fishing in that zone and in the rest of the UK marine area; not even just in our inshore area but the rest of the UK marine area. It could create a problem for Northern Ireland fisheries or other fisheries.

Mr K Bradley: For clarity and for ease of enforcement, it would be better to treat them all exactly the same.

The Chairperson: Are members happy with that?

Members indicated assent.

The Chairperson: We will move on to clause 33, which deals with fixed monetary penalties. Issues raised in relation to the clause were the need for guidance, difficulties in drafting the subordinate legislation and the cost of appeals.

Mr K Bradley: Those issues were raised by the examiner. We have similar regulations for licensing, so we do not think that drafting subordinate legislation will be a problem. Bear in mind that subordinate legislation will be subject to full Assembly scrutiny and affirmative procedure. There will be full scrutiny by the Committee and the Assembly. We feel that that is right and proper. As I say, we already have subordinate legislation for licensing, so it should be fairly straightforward to do something similar for MCZs. As we mentioned in the written response, we have agreement in principle to an appeals body in the Lands Tribunal, again, subject to the number of cases and their complexity. We hope that there will not be too many appeals. Again, fixed monetary penalties are fairly small in respect of monetary value. They are probably going to be on-the-spot fines.

The Chairperson: Are members happy with that?

Mr Boylan: On that point, obviously a few issues have been raised in relation to fines. We do not want duplication, because there is already legislation there. Can we get clarification on those two or three specific points? What already exists in respect of fines? Earlier, you separated regulated activities and unregulated activities.

Mr K Bradley: That is right. The DOE regulates licensing and activities in the environment, and other Departments regulate activities such as fishing and they issue licences for fishing and renewables. Certain Departments are responsible for regulating and enforcing such regulated activities. By-laws can be made only for unregulated activities such as mooring, diving or angling, for which no Department is responsible. Again, because such activities are not seen as a major problem, by-laws and fines are relevant. However, for more serious activities, there is a general offence that has a maximum fine of £50,000. This clause provides for a fixed monetary penalty, which is really an on-the-spot fine that is issued if somebody does something that is detrimental but is not very serious.

Ms McEvoy: They are just civil sanctions.

Mr K Bradley: Yes. Again, the Department will be responsible for enforcing all those. It will be first time that the Department has had that enforcement power.

The Chairperson: OK. There were no issues with clauses 34 and 35.

It is 12.30 pm. I suggest that we stop at this point. Unfortunately, we will have to have an additional Committee meeting next Tuesday, but we should be able to finish the rest of the clauses in an hour or so.

We have other issues to deal with now, and then we are having lunch with the other councillors, so we will let you go home early. We will see you next Tuesday at 12.30 pm. We will find somewhere for the meeting, possibly the Senate Chamber, and let you know. Thank you, members.