



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Marine Bill: Informal Clause-by-Clause
Consideration

12 June 2012

NORTHERN IRELAND ASSEMBLY

Committee for the Environment

Marine Bill: Informal Clause-by-Clause Consideration

12 June 2012

Members present for all or part of the proceedings:

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

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 back Ken, Brenda and Gerardine from the Department of the Environment (DOE). Thank you for coming.

We are at clause 36, which is on enforcement officers. Members will find details on that clause two thirds of the way through our summary table of responses.

The issues raised about clause 36 concerned the Department's discretionary duty to appoint an enforcement officer and the meaning of the term "member state". Will you respond to those concerns, Ken?

Mr Ken Bradley (Department of the Environment): Thank you very much. It is good to be back.

The Chairperson: Are you sure? *[Laughter.]*

Mr K Bradley: In clause 36, "member state" has a much wider international meaning than the definition that is applied for being a member state of the EU. The UK is a signatory to the UN Convention on the Law of the Sea. "Member state" is in the Bill with a lower case "m" and "s" so that it is not taken out of context. The call —

The Chairperson: Should that point be clarified in the Bill?

Mr K Bradley: I am not sure; I can check that out.

The Chairperson: OK.

Mr K Bradley: The definitions can evolve, of course.

The Chairperson: It is just that many people may assume that "member state" refers to EU member states.

Mr K Bradley: I appreciate that that would be the automatic response.

The other issue concerned the Department's mandatory duty to appoint specialist persons for enforcement. That situation is a bit strange, because, for the first time, the Department is the enforcement officer in the marine environment. So, if the Department is the enforcement body and clause 36 gives it the discretionary power to appoint any other persons for that purpose, such an appointment would mean that it is no longer the enforcement officer. So, it is a bit strange.

The Chairperson: Does that mean that that is additional?

Mr K Bradley: Yes, the Department will be the enforcement body in the marine environment. We also have to have the discretionary power to appoint others for that purpose.

The Chairperson: Are members happy with that explanation?

Members indicated assent.

The Chairperson: We will move on to clause 37, which concerns common enforcement powers, and clause 38, which concerns repeals and transitional provisions. There were no comments on those two clauses, so we can move on to clause 39. The issues raised on this clause concerned the location of definitions in the Bill and the definition of "seashore".

Mr K Bradley: There is a concern that the definition of "seashore" is a bit vague. The legislation stipulates that, for a marine conservation zone (MCZ), "seashore" means:

"any natural or artificial break in that continuity."

So, if we designated an MCZ off Portrush, we could obviously not take it all the way down to Fermanagh. It applies only to where the natural geological feature or whatever appeared. An example that I gave previously was the Giant's Causeway. That feature starts away out in the middle of the sea somewhere. We would not need to designate the Giant's Causeway, because it is protected through its world heritage status. However, taking that as an example of a geological feature, you would designate the seabed and perhaps come on shore and no further; we would not go miles inland, because, obviously, the feature does not extend any further than a few hundred metres inland.

Mr Elliott: I think that I raised a similar issue the previous day. I am thinking of a special area of conservation (SAC) that is obviously on land. It may be designated as an SAC, so that means that you are very restricted in what you can do on a large proportion of the land around it simply because of what may be the spin-off. For example, there could be a flow of whatever it may be, or there could be ammonia or something in the air. Could the situation be the same for an MCZ, meaning that the area around it could also come under more scrutiny?

Mr K Bradley: We would not have buffer zones or anything of that sort. The idea is to protect the feature that is on land. With an area of special scientific interest (ASSI) or an SAC, you designate an area of land or a particular feature. You are right: if something outside that boundary potentially detrimentally affects the site, the Department would not be overly happy with it. It is probably something similar for the marine environment. We would not have a buffer zone as such, but, if a regulated activity happened outside that area that might impinge on the MCZ, we would look closely at that. I cannot think of an example off the top of my head. We are talking primarily about seabed features, and it is difficult to think of a land-based activity that would be detrimental to a seabed feature.

Mr Elliott: It has the opportunity to come on to land, so, clearly, you have the difficulty of it possibly prohibiting some sort of development or proposal around it.

Mr K Bradley: If it extends on to land, it is probably a geological feature, so it could not mean sea sponges or anything like that. It is difficult to think of what you would not authorise or license in that feature that is detrimental to it. You are talking about a sandbank, sand dunes or sandbars under the water or something like that. So, it is difficult to see how that would affect development.

Ms Brenda Cuning (Department of the Environment): The ways that parts of the seashore can be designated as part of an MCZ are slightly restricted. There are conditions under clause 13(4) that have to be met for that designation. One is that it would be impossible or impractical to designate the MCZ without that part of the seashore. That ring-binds how you can do it. You cannot do it just because you want to; you have to show that it would be impossible to designate the MCZ without that piece of seashore.

The Chairperson: So, is that definitely beyond the definition of the spring high tide? Does it mean the area beyond that?

Mr K Bradley: Potentially, yes. If a geological feature is involved, it can be extended. However, we are not talking about going miles in land, because that would not make sense.

Ms Cuning: That is where the interpretation of "seashore" comes in. Clause 39 states that it means any land that can be covered by water but is adjacent to the foreshore as far inland as any natural or artificial breaks. That break could, in fact, be a wall. Physically, it could not be miles in land.

The Chairperson: To avoid ambiguity, can you tell us whether there is any way to make it more definite and clear that you are not talking about miles?

Mr K Bradley: The difficulty is that it depends on each feature and where it is and what you see as the natural break. It is difficult to state that it has to be within x hundred yards. For flexibility, it would be very difficult to define it more accurately.

Mr Campbell: We have talked about inland issues, but I have a query about those offshore. Let us say that there is a potentially significant MCZ offshore. A ship or some sunken vessel, which was not obvious at the time of designation but becomes obvious thereafter, may be discovered. Thinking about recent events, it may or may not prove to be something substantial. What provision would there be in the Bill to create sufficient bureaucratic flexibility to allow whatever needs to be done to apprehend, discover or try to recover something that materialises beyond the point of designation and to ensure that someone could not use the designation as a defence for non-interference?

Mr K Bradley: The good thing about the MCZ is that it is totally flexible in its level of protection, boundaries and things like that. You are right: if a shipwreck or some other feature were discovered, that could be taken account of. People would be allowed to dive and to try to recover it or whatever. An MCZ is not like an SAC, which Mr Elliott mentioned, because those are pretty much set in stone and the boundaries and features cannot change. The good thing about the MCZ process is that it is totally flexible to allow for such an eventuality.

The Chairperson: OK. Are members happy?

Members indicated assent.

The Chairperson: We will move on to Part 4 and clause 40, which is about special procedure for applications relating to generating stations. The main issues raised concerned the need for effective management of the streamlined process and timelines for decisions on big projects.

Ms Cuning: That is my area — we are back to marine licensing again. I absolutely agree that there is a need for effective management processes. That is why the Department of Enterprise, Trade and Investment (DETI) and DOE have been working on a memorandum of understanding (MOU) of how they work together, especially where this clause is concerned. In fact, this clause has really come out of the fact that they are working together. They want to be able to put in statute that, if they need to,

they can develop a process whereby two applications can be taken together, one of them can be deemed to have been made etc. We absolutely agree with that, and we will be delivering it.

We considered timetables for a decision on strategically significant projects when we were looking at marine licensing under the Marine and Coastal Access Act 2009. We decided at that stage that we did not want to put a timetable on a decision. Many different activities can take place in the marine environment. We did not want to either restrict a timetable for decision-making or leave it for too long a period. Under the Marine and Coastal Access Act 2009, which delivers marine licensing, it was decided not to have a timetable for decisions under those powers.

The Chairperson: Can there be some guidance on the target time?

Ms Cuning: Absolutely. The Environment Agency has set out targets for marine licensing. We can promote that on our website and make sure that everybody is fully aware of it. I think that the agency discusses targets with developers who approach them because they are thinking of making an application. The agency will give them an idea of how long the process might take. So, that is not a problem.

The Chairperson: That will give people some certainty when planning ahead. Are members happy with that explanation?

Members indicated assent.

The Chairperson: We will move on to Part 5, which deals with supplementary. There were no issues with clauses 41, 42, 43 or 44. So, we can move on to clause 45. The only issue raised about this clause was departmental consultation with the Crown Estate on the Bill.

Ms Cuning: As you are aware, the Bill was not consulted on, except through the Committee process. I think that the Crown Estate had the opportunity at that stage to comment on the Bill. The Crown Estate was, however, one of the consultees for the policy proposals and throughout the development of the Bill.

The Chairperson: So, it has been consulted throughout?

Mr Boylan: You have not asked it to hand it back?

Ms Cuning: No.

The Chairperson: Good try, Cathal.

Mr Boylan: That is recorded, so we will see how it goes.

The Chairperson: There were no comments on clause 46. So, we will move on to clause 47, which deals with commencement. The main issue was that Part 3 should come into force with the rest of the Bill rather than at the Department's discretion. Can someone remind me what is in Part 3?

Mr K Bradley: Part 3 has the main conservation provisions. At the time of drafting, we felt that it would be good to give ourselves flexibility, particularly for Strangford lough. As you know, there are a plethora of designations, including the marine nature reserve (MNR) designation. We are repealing the MNR provisions under the Bill, as you know, so we did not want to be in a sort of limbo. That is why we thought that we would give ourselves the discretion to commence Part 3 at a different time. On reflection and from speaking to our legal advisers, we feel that we can probably enact the Bill in its entirety, because it will allow the marine nature reserve in Strangford lough, for example, to become an automatic marine conservation zone on the day that the Bill becomes law. So, we do not need any individual commencement dates. We, therefore, feel that the entire Bill can come into force on the one date.

The Chairperson: Including Part 3?

Mr K Bradley: Yes.

The Chairperson: So, there will be an amendment to this?

Mr K Bradley: Yes.

Mr Boylan: I agree with that. Following on from that point, is there any indication of what secondary legislation will flow from this? Do we have any ideas about that at present? We have seen other primary legislation coming through, but there has then been a gap of two, three or four years. We do not want that to happen again. I would prefer it if everything were within our scope and vision before we decide to go about this.

Mr K Bradley: There is very little subordinate legislation for this Bill. Such legislation is just on the appeals, and we would set up an appeals body only as and when we need it. There is no subordinate legislation that requires the Department to have a designation or anything like that. So, the entire Bill will become law on the one date, and we will just hit the ground running. We will look at Strangford lough as an MCZ and take that forward through full consultation.

Mr Hamilton: I want to pick up on the point about Strangford lough, because it has been mentioned a couple of times. Clearly, I have a particular interest, since I represent that area, but the point would still be relevant if we were talking about Lough Foyle, Carlingford lough or Lough Neagh. I want clarity on this point. You said that Strangford lough will automatically become an MCZ. Rehearse that with me. How will that happen?

Mr K Bradley: As set out in the Bill, Strangford lough will become an MCZ, because, at the minute, it is a marine nature reserve. It is the only one in Northern Ireland, and there are provisions relating to its protection as a marine nature reserve. So, we do not want to lose that protection and have a gap before we can designate it as an MCZ, because, obviously, the process to take that forward is fairly lengthy.

Mr Hamilton: Where in the Bill does it say that Strangford lough will automatically become an MCZ?

Ms Cuning: Clause 38(2).

Ms Gerardine McEvoy (Department of the Environment): That clause will also repeal the provisions of the marine nature reserve.

The Chairperson: Is Strangford lough the only marine nature reserve?

Mr K Bradley: Yes, but that does not negate our responsibility to take it through the full MCZ designation process.

Mr Hamilton: Yes. You anticipated my next question. You cannot automatically designate something and have a consultation inherent in the Bill. When do you start that process? You cannot start a process that has not been legislated for before the legislation is enacted.

Mr K Bradley: You are quite right. Once the Bill becomes law, it gets the power to designate an MCZ. When it becomes law, the lough will no longer be a marine nature reserve, but it is still afforded the protection. At the minute, for example, we are taking forward a by-law under the marine nature reserve legislation against diving, mooring and anchoring. Given that that by-law is made under the MNR legislation, it will not be repealed. It will be taken forward and carried on by default, for want of a better word. We will then enter into the process of designating Strangford lough as an MCZ. That is a very lengthy process, because it is a different rationale to a marine nature reserve, as it takes in social, economic and cultural aspects.

Mr Hamilton: For clarity, I am not saying that it should not be an MCZ; I am saying that there is a process. I want to make sure that I get this right. It is a chicken-and-egg question. On enactment of the Bill, the marine nature reserve is gone. You are saying it automatically moves to becoming an MCZ.

Ms McEvoy: Until we do the formal designation, that will happen in name only.

Mr Hamilton: So, it is not an actual MCZ, and you are saying that it is a designation of intention to make it an MCZ.

Mr K Bradley: Yes, because you still have to do a designation order to make it an MCZ.

Mr Hamilton: You have to follow the process.

Mr K Bradley: That is right.

Mr Hamilton: So, I think that it is a terminology issue. It is much easier to say that it is an MCZ in name or that it is an intention to have one.

Mr K Bradley: It is a candidate.

Ms Cunning: The wording of the Bill is that it is "to be treated" as if it were an MCZ. Rather than making it an MCZ, you will be amending that MCZ. You treat it like an MCZ, but you will then look at the objectives, because I am sure that the MNR has different objectives to those that you would want for Strangford lough as an MCZ. That is where the process will come through. The MNR will change to MCZ and is to be treated as such. You will then go through the process of looking at the objectives for it, what you might need for it and what its extent might be. It will become a proper MCZ at the end of that process.

Mr Hamilton: That is fine. I just wanted clarity.

Ms Cunning: That is why we had difficulty getting our head round that.

Mr K Bradley: That is right. We talked about having a commencement order, because we did not want to have any gap. The same process happened in England with Lundy Island.

Mr Elliott: I would like clarity on that as well. Will it have the protection during that period?

Ms McEvoy: It will have the protection of an interim by-law, because it is a potential site. It can, therefore, be afforded the protection through an interim by-law.

Mr K Bradley: An existing by-law that we have for anchoring, mooring and diving will continue.

Mr Campbell: Is it correct that that protection is no less or no more than the existing protection?

Ms Cunning: Yes.

The Chairperson: That was a good question, Simon.

Mr Hamilton: It struck me when I heard Ken mention automatic designation last week. I have been thinking about it, and my memory was sparked. I appreciate the explanation given; that is where I thought the original process of getting it enacted and then having commencement orders probably made more sense superficially with what we are going through. It probably requires a bit of clarity, too, during the remaining stages of the Bill. I am worried about spooking people if there is an MCZ and all the attendant bylaws are in place.

Mr K Bradley: That is a valid point.

The Chairperson: It is just a holding position, in the interim really; is it not?

Mr K Bradley: That is correct, yes.

The Chairperson: Are members happy with that?

Members indicated assent.

The Chairperson: We move on then to the last clause, clause 48, which is the short title. There is no comment there. Are members happy with that?

Members indicated assent.

The Chairperson: OK. We move to schedule 1; "Marine plans: preparation and adoption." A number of issues were raised in relation to schedule 1. These are listed in the cover note and given in more detail in the schedule 1 table in members' packs. Ken and Brenda, I believe you also have copies of that. There is a list of issues there.

Ms Cunning: I will go through them.

The first is that the Commissioners of Irish Lights asked to be included in the list of relevant authorities to be given notice about a marine plan. We do not think that is necessary. It will be one of the major consultees, but paragraph 1 of schedule 1 is really about giving notification to other marine planning or terrestrial planning authorities. Its purpose is to make sure there is a tie-up between marine planning and terrestrial planning. Obviously, the Commissioners of Irish Lights has a role, but it would be seen as a consultee, so we would not include it there.

We have noted another couple of points: that trade forecasts within the UK national ports policy statement should be taken into account when looking at the marine plan, and that we should take into account the ports policy statement and individual port master plans, which we can do when we are doing the plan.

Next:

"The consultation provisions should also include a specific requirement for consultation to be carried out with the relevant departments in Scotland, England, Wales and ROI."

I am not sure that I see the purpose of that suggestion in some ways. They will be consulted as needs be, but they are also already notified through paragraph 1. We do not think they need to be included twice.

Another issue is:

"DETI should be explicitly listed as a department to consult with."

It is, by way of clause 2 or possibly clause 4. It is explicitly listed.

Will there be an overarching statement of public participation for each plan? Yes, there will. There will not be one overarching one, but there will be one for each plan. An SPP will be done for each plan or even the amendment of a plan. Every time you do or amend a marine plan, you will do a statement of public participation.

The Chairperson: But is it the same each time?

Ms Cunning: Not necessarily; it might change. That is why we are not doing one generic one that will cover us for marine planning for the next 20 years. Every time you go to do a marine plan or amend a plan, you will start again by doing your statement of public participation. That is the first thing you will do each time.

The Chairperson: Is it really just the list of consultees that will be different?

Ms Cunning: Yes, exactly; or the way that you want to engage with them in the SPP. It might be that, for a more local area, you might want to engage on a more face-to-face basis, and, if it was more national bodies, you might want to have teleconferences. Things could change within the SPP; that is why we would do a new one each time.

The details relating to the SPP:

"should be set within a wider Departmental framework of quality standards".

The Department does have a publication schedule, and I think that is fine. We note that.

Next:

"explicit commitment to consulting communities on the content of an SPP".

We are not consulting on the SPP: it is not like it is a one-off document that we will do and never touch again. It should be a living document. The SPP will change as you go along, and communities will be part of that process. In fact, the draft SPP that the marine plan team has created has already gone out to stakeholders for comment, even though that is not required. So, communities will definitely be involved in the evolving nature of the statement of public participation.

Next:

"retain a register of interested persons".

We touched on that last week. The Department has a very extensive list of consultees. Outside the framework of the SPP, the Department has total discretion over the time frame for consultation and what it considers to be reasonable. You will be fully aware that consultation with the Department is usually carried out over 12 weeks as a minimum. That is the kind of framework we will be working in. We do not need to put anything on that on the face of the Bill, because we do not usually have to do that. It is pretty generic that we consult for at least 12 weeks. There might be a very minor amendment and maybe a consultation would be a bit more flexible, but that will all be put down in the SPP, which will be discussed with stakeholders. So, it is inclusive enough that we do not need to put something on the Bill.

Next, the optional provision for holding meetings should be made a requirement, and also the optional provision for the Department to seek advice should be made a requirement. Schedule 1 covers the creation of a marine plan, but it also covers the amendment of a marine plan. Again, this is flexibility: we do not want to make anything overly bureaucratic. So, if, for example, we were going to amend a marine plan, we would not necessarily want to have public meetings on that. It could be a very minor amendment, and you might want to target who you are engaging with. To always have to have public meetings on something would be above and beyond. The same goes for seeking advice and guidance, which should be an optional thing that we can do, and will do as we go through the process of developing the plan.

Next, the discretion given to the Department for consulting is "too broad" and should be "more formalised". We need to have a pretty flexible system, because, again, we are not just talking about when we bring in a plan; we are talking about when we amend the plan, and we are talking about the possibility of doing localised plans. We need to be flexible so that we are not stymied by a very long-winded and bureaucratic process.

Next, the matters to which the Department should give regard to in preparing a marine plan include contribution to sustainable development and mitigation of and adaption to climate change. As we have said before, sustainable development is inherent in a marine plan, because it has to contain the policies that lead to sustainable development. So, part and parcel of reviewing the plan would be seeing whether you are actually adhering to those policies. The same goes for climate change. When you are reviewing the plan, you have to take into account any changes to the physical, environmental or socio-economic characteristics of the Northern Ireland inshore area. That is already covered.

Shoreline management plans do not apply in Northern Ireland, but obviously they would be something that we would consider if there were developments on those at some stage. Economics is already contained in the plan, and the strategic energy framework and offshore renewable energy action plan are already caught by the requirement to consider other plans that would be relevant to the inshore region.

The Chairperson: Are we going to consider including climate change mitigation in clause 1, as well as sustainable development?

Ms Cuning: No, we have talked about that and will come back to you in writing.

The Department can appoint its own independent investigator. That has been queried, but we think that it is valid that we should be able to do that.

The Planning Appeals Commission (PAC) has not been identified to undertake examinations, which should be held in public. The PAC might not always be the best-placed body to carry out an investigation of a plan, especially if it is an amendment of a localised plan. The PAC also has, as we know, a very heavy workload, and you would not want something to get bogged down in a very bureaucratic system, so you might want to appoint somebody local, for example somebody in university, to carry out an investigation if it was on a particular part of the plan. That is why we need flexibility there.

Mr Hamilton: It has not always been my experience that it is the best organisation to look at planning appeals even, never mind anything else. Sorry; that was unnecessary. *[Laughter.]*

Ms Cuning: We have not named anybody on the face of the Bill, because it should be flexible who is appointed. We have to have regard to the recommendations. We also need to explain why. So, if we do not follow the recommendation of the investigator, when we are publishing the plan, we have to give an explanation of why we have not taken on board what they have said or of how we have modified the plan.

Again, this idea the lack of a duty on the Department to produce a marine plan within a set time frame: it is a process. It is not just a one-off plan. We need flexibility to decide what all the issues are. We could not say that you must do a marine plan in six months or two years. It is an unknown to us. We do not think it is rational to put a set time frame on the Bill.

The Chairperson: Is it not good to have a target for when we are going to do this?

Ms Cuning: Yes, but the provisions of the Bill also cover amending a plan. If we put it in the Bill for "a plan", would we then put in a time frame for when we would need to amend that plan or bring forward a localised plan for a particular area of Northern Ireland? It would be too restrictive. The Bill sets out how we will do marine planning for the next 10 to 15 years. Do we really want to hammer that down to "you must do a plan within x amount of time"? We have never done a plan before. We have no idea what kinds of issues we will come to when we start to do one. We are aiming to develop a plan in two years. Will that be feasible? Will we get it done faster? We do not want to go down the route of putting in a fixed date for when we need to do a marine plan.

The Chairperson: It is the Committee's experience that, sometimes, it takes years to implement legislation and see action. We are all a bit wary of and worried about delay after delay and seeing nothing done.

Ms Cuning: This might be an opportune time to raise something with you that I was going to throw in at the end. The Department has actually already started developing the marine plan. We want to be able to include an amendment to the Bill to put in a saving provision because we have started the work. That is how keen we are to do this plan. It is not even the case that you will have to wait for years after the Bill is enacted. We have actually started now. So, we will be coming forward with an amendment to say that any work we have done now on the SPP and on notifying other authorities will count after the enactment of the Bill. That is the commitment the Department is giving to this. We are actually already working towards a marine plan, without it being on the face of the Bill.

The Chairperson: What do members think?

Mr Hamilton: Chair, that provision probably makes some sense. However, I think that the Committee will want to satisfy itself as to what work has taken place beforehand. That will need to be catalogued in some way before we could say that that was fine. I do not know way that can be done without being too laborious.

Mr Campbell: On the issue of the SPP, I want to look at paragraphs 5 and 8. Maybe it is standard format, but it says "an interested person". Paragraph 8(a) makes sense but paragraph 8(b) appears to simply state that whoever wants to be an interested person is an interested person. That is how that appears to me.

Ms Cuning: Basically, it is a catch-all.

Mr Campbell: Why, then, is there a need for paragraph 8(a)?

Ms Cunning: To make sure that it is specific. You are not going to go out to everybody, and then say: "It is OK, because we have got the general public." It is to make you think about who is or could be affected by the plan and who would be interested in it. I know what you mean. The "general public" should capture everybody affected or interested. However, it is to make you consider that specifically. Also, you might just consult the general public of Northern Ireland, but you could be affecting somebody in a fishing fleet from England or Scotland, so you would need to consider them as well.

Mr Campbell: A catch-all.

Ms Cunning: Yes.

The Chairperson: Are members happy with that? Do we want to think about asking for a time frame, or do we not think it is necessary? Will we leave it?

Members indicated assent.

The Chairperson: OK, we are now on to the last one.

Ms Cunning: Oh, yes:

"publish any reasons for modification".

That is already required under one of the clauses. Paragraph 15(4) of schedule 1 states that the Department:

"must publish the marine plan ... together with statements of each of the following ... any modifications that have been made ... the reasons for those modifications"

and if you have not taken on board everything that the investigator has said. That is already required. You do publish reasons for your modifications.

The Chairperson: OK. We are now on to schedule 2, "Further provision about fixed monetary penalties under section 33". Brenda again?

Mr K Bradley: That is back to me again.

The Chairperson: You divide them up well between the two of you.

Mr K Bradley: That is right. We have covered most of that when dealing with clause 33. We have taken into account the Examiner's comments. We feel that the procedure is fairly straightforward. It is very similar to the marine licensing provisions, so we do not see any problems there. An appeals body is mentioned at clause 33; we have agreement in principle on an appeals body to do that work. Obviously it depends on the number of appeals and the complexity of appeals. The final point is that the Commissioners of Irish Lights is to be consulted. We have dealt with that point as well. That is agreed. The provision on the fixed monetary penalties is by affirmative resolution of the Assembly, so, again, there is openness and transparency there.

The Chairperson: Sorry, Ken, can you say that again? The second query in the cover note states:

"Were these provisions to be enacted as the Bill stands, the resulting Order would not be easy for the Department to frame".

What is your answer to that?

Mr K Bradley: We have already undertaken similar provisions on the marine licensing side of it. This is obviously for marine nature conservation and fixed monetary penalties under a by-law. We have already got similar legislation for marine licensing. That is the point there. It would not be easy for the Department to frame it. We have already dealt with the provisions in previous legislation.

The Chairperson: OK, that is all of the schedules. There are other issues that may not be in the stated clauses but have been raised by a number of stakeholders, so we will go through those. A number of organisations have mentioned coastal access. The rambling clubs and others have said that Wales and other parts of the UK have greater coastal access and we are falling behind. How can we address that? I think this is the opportunity for us to do something constructive about opening up our coastal access. It is also seen as a good means of promoting tourism through walks around our coastline.

Mr K Bradley: From our point of view, coastal access, like all access, is dealt with at local councils. They have provisions to open up routes for hillwalkers or whoever. As a Department, we have not been inundated with calls about restrictions on our coast. A lot of our coast is under public ownership or that of environmental NGOs such as the National Trust. There are a number of waymarked ways, for instance, in north Antrim and east Down. The coast is well opened up, as far as we are concerned. Obviously there are bits that are in private ownership, and those are restricted. We feel that there is no real need to legislate for that. We do not see coastal access as a problem in Northern Ireland. That is why we have not legislated for it. We have not been inundated by people saying that there is a problem or that they cannot get access to any part of the coast. As a hillwalker myself, I have walked the majority of Northern Ireland's coastline, from Annalong and Kilkeel, Newcastle and north Down right the way up to north Antrim. I have found that there is no restriction. All our most scenic —

Lord Morrow: Why have you not come to Fermanagh and South Tyrone? *[Laughter.]*

Mr Elliott: There is no coastline there.

The Chairperson: Their concern is that it stops and starts. It is not a through road, like in Wales, where you can go right around the Welsh coast.

Mr K Bradley: A good part of the Welsh coastline is like that, but you cannot get access to all the coast of Wales. Yes, there are large tracts accessible and there is the Wales Coast Path. That is right.

However, there is provision here for councils to work together to designate such paths. That has happened, Lord Morrow, in County Fermanagh, where additional waymarked ways have been developed. There are provisions giving councils the opportunity and a discretionary power to enter into agreements with landowners to designate waymarked ways. The Countryside Access and Activities Network provides public liability insurance for those waymarked ways. So opportunities are there in existing legislation, and we do not feel that the Bill requires additional access clauses.

The Chairperson: What do you think, members? Are you happy with the explanation?

Mr Hamilton: Yes.

Mr Campbell: You said when you started that you had not been inundated with such requests. Does that mean that you did not have any requests?

Mr K Bradley: I cannot think of any. Obviously, that was not a part of what we consulted on, but people were not commenting on it. Obviously, the Ulster Federation of Rambling Clubs (UFRC) used the opportunity to lobby for it. As the Chair has pointed out, access powers were granted in the English Bill. We have not been inundated by requests from anybody. There is, obviously, the odd occasion when someone is aggrieved that access was denied him, or something like that. Such cases are obviously referred to the local council. However, we have any such representation except from the UFRC. It is the policy of the National Trust, which owns a lot of the coast — such as Murlough Bay and north Antrim — to open it up to the public.

The Chairperson: Members, is it the case that we do not want to pursue this?

Members indicated assent.

The Chairperson: We move to the next item, the provision of a limited right of third-party appeal.

Ms Cunning: Can we clarify what this is in relation to? Third-party appeal is something that the Department has talked about previously with respect to planning. It is usually raised when it comes to authorisations but, as the Bill does not deal with authorisations, we do not see the relevance of it.

The Chairperson: Is it not to do with designation of MCZs and planning?

Ms Cunning: There is no appeal process, such as an appeal in a licence application. That is where third-party appeal is usually raised. There is an appeal in that anyone can take a judicial review. So I am not sure what the reference is to.

The Chairperson: I have this to hand. It is from the Strangford Lough and Lecale Partnership (SLLP), which stated, under paragraph 2(3) with reference to appeals on monetary penalties:

"reference to a tribunal is vague and suggests that convening such a body would be a rare event. We suggest that this will be frequent enough to require a permanent Appeals Commission properly and appropriately trained."

Ms Cunning: That is what Ken referred to.

Mr K Bradley: The Examiner's point about the appeals body was that it would be hard. We said that we have agreement with the Lands Tribunal to do the appeals. It is very ad hoc. We envisage that they will be few and far between. Obviously, there is no point in setting up the mechanism for an appeals body that might never sit. We have agreement in principle with the Lands Tribunal that it will undertake any appeals.

The Chairperson: We are talking of third-party appeals.

Ms Cunning: If it is the SLLP, it seems to have raised that here:

"SLLP recommends that in the view of diverse ... ecosystems ... scientific and technical complexity ... all bodies and persons have the right third party appeal."

Yes, but the word "appeal" is wrong. Anybody has the right, if they feel aggrieved by a marine plan, for example, to take a challenge to the High Court. We talked about that. The definition of "aggrieved person" would include anybody — NGOs or anybody. We are content that that is what it referred to. The third-party right of appeal is not really the real context of what we are talking about. The terminology is a bit wrong.

Lord Morrow: Are you simply saying that, rather than a third-party appeal, anybody and everybody has the right to appeal here?

Ms Cunning: "Right of appeal" is the wrong wording. I think that we mean "challenge" — to be able to challenge a plan or challenge the MCZ. An appeal is usually when somebody has made an authorisation decision. We are content that that is covered by "aggrieved person".

Lord Morrow: Fair enough. So they can air their grievances.

Ms Cunning: Yes.

The Chairperson: Are members content with that explanation?

Members indicated assent.

The Chairperson: The third point is the integration and co-ordination of marine functions. I know that you talked about the interdepartmental group. However, that does not convince us that that group has enough legal status or good terms of reference. We do not even know the terms of reference. It seems to be very ad hoc. We would be very keen to see a mechanism or body whereby there would be co-ordination of the marine functions to implement a Bill, although maybe not as much as a marine management organisation (MMO). Marine Scotland is a good model. Can we not think of something like that that would be situated in government to deal with this? We are not talking about a quango; we are talking of something within government.

Ms Cuning: Absolutely. Chair, you are aware that the Minister would actually prefer an MMO. However, the marine directorate option is being looked at. We have confirmed that we will take forward whatever we can. That option still requires Executive agreement and agreement from the other Departments. Therefore, we cannot write that on the face of the Bill, but we can definitely work towards it. We are working towards developing all the different options for increasing the integration of marine management, with MMO being at one end, the current status quo at the other, and any other option in between, including a new directorate. That is actively being pursued.

Mr K Bradley: Or even more integration within DOE itself.

The Chairperson: Would members be happy if we asked our secretariat whether we could look into that ourselves to see whether we could put in an amendment? It might strengthen the hand of the Minister in future if the Committee asked for that at this stage.

Mr Hamilton: We have to be very clear about what we are asking for. What do you propose we ask for?

The Chairperson: We could ask for an organisation that is similar to Marine Scotland.

Mr Hamilton: This is a vexed issue for us all, and the various parties and individuals have taken positions on a marine management organisation. I do not think that those positions are going to shift between now and the Bill's Consideration Stage. In my view, the model that we looked at when we were in Scotland has more merit than an MMO, but establishing such a model is fraught with difficulties.

You could set up a marine directorate in the Department tomorrow morning if the Minister so desired, but it would not tie all marine responsibilities together. That point goes back to the core problem that we identified. In fact, setting it up would require a transfer of functions from one or several Departments. That is where it gets complicated. That requires Ministers to give up power, which they do not like to do. There are former Ministers here, who, I am sure, were not rushing to give up power when they were in their Departments.

There is a political aspect to it as well, because it would require a Minister from one party to give power to a Minister from another, which would only complicate the matter further.

Brenda is not able to say what we as politicians can say about this, but that is the political reality. Short of a wholesale reorganisation of Departments in Northern Ireland, the Department can look at options and have discussions with relevant colleagues around the Executive table about what can be done.

The Chairperson: We are looking at a review of the Departments, so perhaps it is timely to look at that.

Mr Hamilton: I am happy to have that discussion. *[Laughter.]*

Mr Campbell: On another occasion.

Mr Hamilton: For the record, I do not need to state my position on that; I think that it is very clear.

Who knows whether wholesale reorganisation will happen? It may, and it may produce a new Department in which a marine directorate with all responsibilities could easily be created, so there would be no problem. However, we are not there, and it is not easy to get there.

You could put any amendment that you wanted into the Bill to create anything like that, but it is not going to create what you want. You are not going to get agreement to create an MMO; that is perfectly clear. You are not going to be able to create a marine directorate. You do not need legislation to do that, anyway; it could just be done. Even if you tabled an amendment or put it as a recommendation in the report, it would require the Minister to get other colleagues to transfer the functions to him, which is not going to happen that easily either.

I do not know whether the Committee, when it is looking at preparing a report, will want to discuss having a section that explores the options. Brenda spelled out the range of options, and the Committee can decide on or encourage the exploration of those options.

Mr Campbell: I do not disagree with Simon at all. The political and practical realities are that, whatever about the proposition or the amendment that might be tabled, the inevitable outcome will not be what we might like it to be. However, when we come to formalise the position, I presume that the matter could be raised in the subsequent debate.

You are going to get to that conclusion only if the possibility is engendered and if there is some discussion about whether there is a possibility of this happening over the first five years after the Act's enactment. If not, so be it. The problem is that an amendment will not carry any practical weight or have any practical outcome. You would be raising an issue, but it would be like a straw man, in my view.

The Chairperson: That is a means to raise the issue, however.

Mr Campbell: It is, yes. The alternative is to suggest something that you would hope would have some strength. My view is that it would not have any, because the practical reality is somewhat different to what you would like it to be.

Mr Elliott: It is an extremely difficult issue. Having listened to what the officials said last week, I think that it is going to be quite difficult to get a manageable system in place and on which all Departments, agencies and sectors are at one. I did not raise it at the time, but I noted the responses to schedule 1. The response from the Committee for Agriculture and Rural Development shows that it is not very confident about DOE and the Department of Agriculture and Rural Development (DARD) singing from the one hymn sheet. It was concerned that, even though DOE would be asking for guidance from the Department of Agriculture, there was nowhere to suggest that it had to take that guidance on board; in fact, DOE could just ignore the guidance. I am assuming that it is the same for other agencies or Departments.

Lord Morrow: It is probably the same for all the Bills as well.

Mr Elliott: That is right. So, it is an extremely difficult issue to get over. Since I am relatively new to the Committee, I have not seen the different options for a marine management organisation, so I am not totally clear about it. Are we talking about something that is fully blown with all the required statutory powers? Or, are we talking more about an advisory board that has some statutory powers or an advisory board that has no statutory powers at all? That is what I am trying to get to. I do not know whether there is a better system that we could put in place that would force the Departments to work and manage the process together. I think that I said this last week, so it is no shock to the officials, but they did not fill me with confidence that it would work as it stands.

The Chairperson: Marine Scotland is a department in its own right. It takes in a number of functions, including licensing for fishing and aquaculture. So, it certainly takes in some of the functions that affect marine issues.

Mr Elliott: So, is it a stand-alone department?

Mr Hamilton: No. It is a directorate of the Department. It is under their Departments that deal with the environment and agriculture. Scotland has only six Departments, and since it has fewer Departments, it can do that.

Mr Elliott: OK. So it could be similar to the likes of the NIEA.

Mr Hamilton: No, it is separate altogether. They have the Scottish Environment Protection Agency (SEPA); Marine Scotland is independent.

Mr Elliott: I mean in the sense that the NIEA is an agency of DOE. In other words, it would be an agency.

Mr Hamilton: Yes. It is like Planning Service, I suppose.

Mr K Bradley: You could argue that the function would sit easier under DARD, since it has a greater responsibility in the marine environment.

Ms Cunning: Not with us having planning and, then, the marine conservation zones. That is another of the issues. Sorry, Ken; I am more aware, because we are looking at such issues. For example, who would the sponsor Department be if there were an MMO and everyone were giving up functions to it? We have to look at practical things such as that. Who would be paying the money towards it? Who would have the sponsor team that is responsible for it? Which Minister or Ministers would be responsible for it? That is what we have to look at for the MMO.

With regard to the marine directorate, we have to look at which Department it would sit in, for instance. If the Departments were reviewed, maybe the Departments of Environment and Agriculture would be combined, and it would sit more naturally there. There are a range of things to be considered.

Mr Boylan: Thank you. We could go round the houses on this issue. From my point of view, we are bringing forward legislation, and, in the absence of an MMO, we want to see how we are going to manage the issue properly. We need to see what is coming forward on paper. I would like to see that. I am not in favour of going down the route of having another quango for the sake of it. There is expertise in the Department. We might call for and need expertise from outside the Department at times, but I would like to see on paper exactly where we are going to go with it. There is no point in merely looking at a piece of legislation.

We were over in Scotland, and that is fair enough. That was grand, but I do not think that a similar body is an issue for us at the minute. We are looking at it at the moment, but I would like to see something that shows how we are going to manage all this, and I also want to see who might be involved in it all. Last week, we had the debate about Departments operating in silos. It is right that that happens, because they have their own responsibilities. However, this is definitely a major cross-departmental issue. So, to be honest, I would like to see all that information before we make any decisions. Any Member is entitled to bring an amendment to the House, if they wish, but I would like to see all that information first.

The Chairperson: We will bring that issue back.

I am looking at some questions that an NGO forwarded to me, one of which was: in the absence of an MMO, how will clause 23 act as an effective sanction against a public authority when it fails to comply with its duties?

Mr K Bradley: Irrespective of whether there is an MMO or another system, one public authority can take another to court. Irrespective of whether that public authority is DOE, a regulatory authority or an MMO, it will still have the same problems and issues.

Mr Elliott: I asked that specific question twice last week. I asked whether an MMO could actually take a Department to court over a particular issue or a breach of an MCZ. The clear answer that I got was that it could not. That concerns me, because I thought that such a body would have the powers to do that.

Mr Hamilton: It depends. You could establish it and give it those powers. It depends on the legislation.

Mr Elliott: Not if it is an agency.

Mr Hamilton: No, that is a different beast altogether. "MMO" is a phrase that is used in this debate to describe something that is outside government.

Mr K Bradley: It is an arm's-length body.

The Chairperson: Brenda, will you give us some information about the interdepartmental group? None of us is feeling very confident about it. What about its terms of reference? For example, how often has it met in the past year, and what has it decided on?

Ms Cunning: I thought that we provided you with the terms of reference, but I will check that.

The Chairperson: I know that it does not have any legal status.

Ms Cunning: No, there is no legal status. It is just a mechanism that we have used with other Departments so that we can co-ordinate our activities. I would have said that we have been doing that for about two years, but, actually, it has been going on since about 2008. The group came together when we were working on the Marine and Coastal Access Act 2009. So, we will liaise with the Clerk and, if we can provide more information on the group, we will.

The group usually meets quarterly. It has no legal status, and it is quite ad hoc. The idea behind it is that everybody brings any marine issues to the table. For example, DETI brought its strategic environmental assessment (SEA) to the table, and we discussed that. We brought the Bill to the table, and we discussed that. It is just officials talking and trying to work out any issues before they become problems. It is not a legal body, but it is the best mechanism that we have at the moment.

The Chairperson: What about transparency? Does the group circulate minutes?

Ms Cunning: No, and that is because we have done it on a very ad hoc basis. The minutes are usually action points. A question on this was raised, because some of the stakeholders had the perception that we were suddenly proposing the group as a new body that would somehow take over. That is not what it is. It is a mechanism that we have at the moment, and we use it to help to co-ordinate between Departments. We are not saying that it is a legal body or that it exists in place of an MMO; it is just how we work together at the minute.

Mr K Bradley: Being able to thrash out issues rather than having to go through a formal process has worked very well in consultations.

Ms Cunning: Yes, rather than writing to a Department, we can actually have a discussion.

The Chairperson: So, it is very much a group of consultees.

Ms Cunning: No. It is more about working together.

Mr Elliott: Could a mechanism be put into the Bill to provide for a memorandum of understanding between Departments? Although I am not disagreeing with you when you say that the group is a good forum for airing your views and getting issues into that domain, I hear from officials in DOE and DARD about other matters, which I will not name at the moment, that there does not seem to be that same level of co-operation. Unless we have something pretty firm to allow — rather, to insist on — that co-operation, from what we have heard today, it may not work.

Ms Cunning: In the Bill, there is a requirement that we consult other Departments on the marine plan. There is a requirement for those Departments to have their policies in a marine plan, and there is a requirement that they abide by that marine plan. That is as legal as the Bill gets at the moment. Underneath that, we will try to work together on it. As you say, MOUs are developing between DETI and DOE, for example.

Mr K Bradley: That applies to duties as well.

The Chairperson: Have we lost our quorum?

I will just go over some of the questions that have been put forward, as this is our last chance to ask them of you. What guidelines and principles will Northern Ireland be following or using to achieve an ecologically coherent network of marine protected areas of the Northern Ireland inshore region at a local scale?

Mr K Bradley: That is a strange question, because you need scale to create an ecologically coherent network, and after that, you can ask how you can do it on a local scale. It is slightly strange.

Northern Ireland and the rest of the UK are working towards having an ecologically coherent network of marine protected areas by 2020. How do we define what such a network will look like? What

species and habitats will it have, and how much of those will make up a network? That is obviously open to debate, because the project has to be scientifically led.

The school of thought in the UK, as well as further afield in the likes of France and the South of Ireland, is that we should work in biogeographical areas. In other words, a species is not pertinent solely to the UK, France or the South. We are looking at a bigger picture and are asking what makes a coherent network. That network may include parts of France or parts of French or Belgian waters. That is the sort of conversation that we have had with the Joint Nature Conservation Committee (JNCC), Natural England and the Department for Environment, Food and Rural Affairs (DEFRA).

We are trying to come up with some sort of scientific rationale, and that will probably be based on the OSPAR agreement, which sets out eight different principles of ecological coherence. So, it is about how we can take that to a local level. We may have habitats or species that are unique to Northern Ireland, but that would not make a coherent network. It is a difficult question.

The Chairperson: OK. I am worried about our quorum, because Simon needs to go. If we have any further questions we will put them to you in writing. Do members need any more information from the Department?

Mr Boylan: We need information about costs and resources. Did we get any information about that?

The Chairperson: Yes. We will now conclude the informal clause-by-clause analysis of the Bill. The Department will be asked to respond to any outstanding questions and to provide draft amendments over the next week, after which the Committee will undertake its formal clause-by-clause consideration of the Bill. That is scheduled for 21 June.

I thank the three officials for coming along over the past two weeks. I remind you that we need your responses by 15 June.