Northern Ireland Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Marine Bill: Informal Clause-by-Clause Consideration

31 May 2012

NORTHERN IRELAND ASSEMBLY

Committee for the Environment

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Members present for all or part of the proceedings:
Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Gregory Campbell
Mr John Dallat
Mr Tom Elliott
Mr Chris Hazzard
Mrs Dolores Kelly
Mr Francie Molloy
Lord Maurice Morrow of Clogher Valley
Mr Peter Weir

Witnesses:

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

The Chairperson: I welcome Angus Kerr from the planning policy division in the Department of the Environment (DOE), as well as Ken Bradley and Brenda Cunning from the environmental protection division and Gerardine McEvoy of the environmental policy division. I ask members to turn to the clause summary that has been provided and to the Bill itself.

We will start with Part 1, where clause 1 deals with the Northern Ireland inshore region. Most respondents were content with the clause. Some stressed the importance of clarifying exactly where the boundary lies, especially the extent to which the Bill will apply to Carlingford lough and Lough Foyle. So, I invite the Department to comment on clause 1.

Ms Brenda Cunning (Department of the Environment): Good morning. To clarify that point, I will say that the Bill extends to Carlingford lough and Lough Foyle. Clause 1 sets out that the Bill will apply to all the UK waters that are adjacent to Northern Ireland. I think that there was some confusion, because clause 1(5) mentions a boundary order. That boundary order defines which part of the UK territorial sea is adjacent to Northern Ireland and which part is not. So, that really just carves up the UK territorial sea, but the Bill applies to Carlingford lough and Lough Foyle.

The Chairperson: Do members have any comments?

A number of organisations suggested that Part 1 should be extended to include an overarching aim or general duty that is similar to that in the Marine (Scotland) Act 2010, which states that the Scottish

Government must take sustainable development and climate change into account when they implement their Marine Act. So, I invite the Department to comment on that.

Ms Cunning: The Department believes that we already have a sustainable development duty under the Northern Ireland (Miscellaneous Provisions) Act 2006. That places a duty on all public authorities to carry out their functions in such a way as to best calculate the contribution to sustainable development. As far as we are concerned, at the moment, we have a sustainable development duty; in fact, all public authorities do. Those duties are set out in the Executive's 2010 sustainable development strategy.

The Bill also includes some binding provisions on sustainable development. The marine plan itself, for instance, has to have policies from all the Departments that are connected with sustainable development. That is key, and it is stressed. There is also a requirement for us to carry out a sustainability appraisal, whereby the Department must show that proposals for the marine plan contribute to sustainable development. So, we believe that, at the moment, the Bill is actually strong enough on those points.

Furthermore, the marine plan has to be in accordance with the marine policy statement (MPS). Sustainable development is very strongly emphasised in that, as it comes from the high-level marine objective that has been set for the whole of the UK. That aims to create a vision of clean, healthy, safe, productive and biologically diverse seas. That is the very essence of sustainable development for a marine area.

The Chairperson: What about climate change?

Ms Cunning: There is no explicit duty in the Bill that deals with climate change. However, it is referenced in various areas. For example, it is one of the issues that must be taken into account when you are looking at developing the marine plan. The effects of mitigation of climate change are reflected in the high-level marine objectives that I just referred to underneath the marine policy statement. As the marine plan has to be in accordance with that, of course climate change is going to be one of the issues that you must have regard to moving forward. The marine plan has a list of issues that have to be kept under review, such as changes to the physical or biological aspects of the Northern Ireland marine area. That means that any effects of climate change would have to be taken into account in that way. So, again, we do not believe that a specific duty is required in this case.

The Chairperson: We have spoken to a large number of stakeholders, and we have attended an event. All the major stakeholders are saying that we need to have this issue mentioned at the front of the Bill to give its purpose. Sustainable development and climate change should be included as a high-level aim of the Bill. I know that you said that it is in other documents, such as the Programme for Government (PFG), but would it not be sensible to have it at the front of the legislation so that it can be reinforced and so that the focus can be on it as the purpose of the Bill?

Ms Cunning: I believe that the purpose of the marine plan, because it is so closely linked to sustainable development, is quite clear in the Bill. However, it is something that we can consider. It is not something that we are absolute about, but we think that it is endemic in the Bill already.

The Chairperson: I think that it would be useful to have it stated explicitly at the very beginning of the Bill. The major stakeholders, including the Marine Task Force and the Council for Nature Conservation and the Countryside (CNCC), all commented on the usefulness of having it right at the top. It would make the purpose of the Bill much clearer. What do other Members think about that?

Mr Hamilton: It would be interesting to refer back to some of what was said about the other pieces of legislation that have those duties anyway. It strikes me that there is no point in having a second piece of legislation that says exactly the same thing, because that would be over-legislating. Until we take a look at where those duties on sustainability are in existing legislation, it is hard to come to a conclusion about whether we think it is required in this Bill as well. We could look at that and perhaps come back to it.

The Chairperson: Sorry, you are saying that —

Mr Hamilton: The Northern Ireland (Miscellaneous Provisions) Act 2006 was referenced. If we take a look at that and satisfy ourselves that it is strong enough or otherwise, we can come back to the issue.

The Chairperson: I am strongly of the view that it is important to have it at the beginning of the Bill.

Mr Weir: On Simon's point, I think that looking at the positions and then coming back to take a decision would surely be the sensible approach, rather than making a decision and then going to look at things.

The Chairperson: OK. We will do that. Maybe the Department will bear in mind that this is something that we want included.

Mr Dallat: I am sorry, Chairperson. I am confused. Just for my benefit, what are we going back to find out?

Mr Hamilton: The officials referenced existing legislation that makes sustainability and climate change endemic in the Bill already. There is an existing duty to consider all these things. I would have thought that it would be in the Committee's interests to satisfy ourselves of the robustness of that situation before concluding whether we need to add it to this Bill. If we have legislation that has such provisions already, you have to satisfy yourself that that is either sufficient or not sufficient before deciding whether to slot the issue into another Bill, which could be the second time that it is in legislation.

The Chairperson: Even if it is covered in another Bill, I think that there is value in re-emphasising it right at the top of this Bill. The Committee Clerk suggests that we ask the researchers to do some specific work on the matter.

The Committee Clerk: Yes, I suggest that we ask them to do a specific piece of work on checking the robustness of other legislation and then to bring it back to the Committee in two weeks.

The Chairperson: Are Members happy with that?

Members indicated assent.

The Chairperson: We will wait on further information before we decide on that one.

We will move on to Part 2, namely marine planning, and to clause 2, which covers marine plans for the Northern Ireland inshore region. The issues that were raised about clause 2 included concerns about vague or weak wording, the possibility of more than one plan, and the time that is to be allowed for comment after the launch of a plan. I ask the Department to respond to the issues that the stakeholders raised.

Ms Cunning: One of those issues was whether the Department should have a duty to develop a marine plan. Our view is that we actually have a duty to do so because of clauses 2(1) and 2(2). Clause 2(2) states that, where a marine policy statement is in place, the Department must "seek to ensure" that the marine plan is developed for the whole of the Northern Ireland marine region. There is a marine policy statement; therefore, we will seek to ensure that that happens.

There were queries over the words "seek to ensure". That is a reflection of the fact that marine planning is quite a complex issue. In Northern Ireland's case, it will involve multiple Departments, the Executive, and very many sectors all reaching agreement on a marine plan. I do not think that it would be appropriate to say that we have to do a marine plan; it just might not be possible to cover the whole of the Northern Ireland marine area for whatever reason. It is partly about having a little bit of flexibility to take into account the practical reasons why it might not be possible to do it for the whole Northern Ireland marine area. That is our aim and intention, and it is what we have set out to do.

We have set out to create one marine plan for the whole of the Northern Ireland marine area. You said that people mentioned the possibility of having more than one plan. I think that the Belfast Harbour Commissioners and the British Ports Association in particular brought that up. The idea is that we have one overarching marine plan but that we also have the flexibility to create some more localised and more detailed plans underneath that for any special areas that might require it, such as the loughs or the area around Rathlin Island. Again, there are queries about woolly wording, and that has been done to allow flexibility so that we can in future do everything that we need to do with marine planning. It is not a case of doing one marine plan and then that is it; the process will be developed

over the next 20 years so that we can make sure that we cover all Northern Ireland's waters in the most suitable way.

The other term that was queried was "relevant considerations". I think that we wrote to the Committee about what they would be. Some stakeholders suggested that we put forward guidance on that. That is something that we can, and probably will, do with responsibilities for public authorities and how they react with the marine plan. That would be developed fully as marine planning is taken forward.

We cannot put any relevant considerations in the Bill, because what will they be as we move forward? They will change with time. The plan will be in place for a number of years, and there could be advances in scientific knowledge and new economic priorities, or species could be discovered. All those could be relevant considerations further down the line. The marine policy statement could be amended, so you may want to be able to take that as a relevant consideration. So, there is a wide range of things. Again, flexibility is the key with this issue.

Another concern was reflected in the comments that were made about the marine plan after it is adopted. Some stakeholders suggested that there should be a period between a marine plan's publication and before its formal adoption. Our view is that marine plan development is an inclusive process, and a statement of public participation will be developed to allow that. It could take up to two years to develop a marine plan. We believe that that is long enough to allow everybody to have their say and to come to an agreement at the end of that time. An agreed marine plan would be published and adopted, so we would not need another period of time after that; the two years would be sufficient.

There were suggestions that various bodies should be included as statutory consultees. We would not want to go down the route of starting to list different bodies as statutory consultees. We want the plan to be as inclusive as possible. Therefore, it will be kept open-ended, and all interested parties and the public must be consulted in the development of a marine plan. We think that that is the best way forward.

There was also a suggestion that the marine plan should give primacy to existing activities. Those will, of course, be in a marine plan. That is the whole point of it, and we do not think that anybody would suggest otherwise.

Those are the main issues, unless the Committee has any others.

The Chairperson: Members, you may wish to consult the appendix to the cover note, which is quite useful.

You certainly answered a number of the stakeholder queries. Resolving policy conflicts in accordance with clause 2(8) would be difficult. How will that work in practice?

Ms Cunning: Clause 2(8) states says that, if there is a policy in the marine plan that conflicts with a statement or information in the plan, it must be:

"resolved in favour of the policy."

The stakeholder who raised that query may have been a bit confused about what that means. It basically means that the marine plan will contain supporting information, as well as policies. Clause 2(8) is just saying that the policy has primacy. So, if a departmental policy is listed, even if some of the supporting information conflicts with it, the policy would always take centre stage. The process of resolving policies per se involves consultation with Departments and sectors, agreement with Departments, and getting it through the Executive. That is how we would resolve policies if there were conflicts.

The Chairperson: So, would a policy from the Marine Act take primacy?

Ms Cunning: In the marine plan, yes. So, a policy would have primacy over any supporting information that may be in that plan.

Mr Hamilton: The explanation about the word "may" in clause 2(1) is reasonable. Sometimes, we see the word "may" and believe that it should always be "shall". It is one of the few amendments that we can actually get through in this process.

I understand your point. For clarity, the optimum is a plan for the whole of Northern Ireland, but there may be circumstances in which that cannot be the case. Therefore, you cannot say that you "shall" have it for the whole of Northern Ireland if there are circumstances in which that is not possible. What circumstances are you envisaging in that?

Ms Cunning: It is quite difficult to put forward circumstances. It could be that there is one area, perhaps an area that is close to the Isle of Man, where we cannot resolve an issue about fishing, etc, and we might —

Mr Hamilton: So, it is an unknown unknown.

Ms Cunning: It is, unfortunately. I understand the concerns about flexibility, but we are talking about primary legislation that has been developed over a long time and that will be in place for quite a while.

Mr Hamilton: Unlike you, I am not an expert, but I thought that it might be beneficial to have it for different parts of Northern Ireland, because some areas may have more fishing grounds than others, or some may have more renewables potential than others. Eventually, you might get to the stage of saying that it is desirable to have different plans for different parts of the region, because they are affected by different factors.

Ms Cunning: Absolutely. That is why we want the flexibility to have it for part of Northern Ireland as well, even though we are talking now about doing one for all of Northern Ireland.

Mr Hamilton: A couple of stakeholders suggested that the plan should be agreed 21 days before it is implemented. Perhaps I am jumping into clause 3, which refers to amending the plan. To give some satisfaction to those who are raising that concern, I can understand why they might want to have that flexibility, particularly when you look at who may be suspicious of what is being done to them by government. They might want a bit of time to see whether there are any negative impacts. In some cases, negative impacts will happen to different sectors; that is just a fact of life as far as this issue is concerned. However, if there are egregious errors or omissions or whatever, I take it that they can be covered by clause 3.

Therefore, if something is discussed and agreed before the adoption of a marine plan and is omitted for any reason, will clause 3 will cover that and allow the plan to be changed at any time?

Ms Cunning: It is not quite as flexible as that. Some people would be worried if we could amend the marine plan "willy-nilly", which was the phrase that was used, I think.

Mr Hamilton: So, you would have to get back into the process again.

Ms Cunning: Yes, we would have to consult, so that will reassure some people that we are not just going to change the plan ourselves. We would have to go through the process again of consulting people. If an error were discovered, we would go back and discuss it with people and bring forward an amendment.

Mr Hamilton: I think that the key to this is what happens before there is agreement. That is also key throughout the process, which is extensive and laborious. It is one of the few occasions when we can have legislators telling us that the longer the better we take to get full agreement the better, rather than rushing on and trying to mop things up afterwards.

Ms Cunning: Absolutely.

Mr Elliott: My first point is that this is quite a difficult issue. I appreciate that, at times, it may not be possible to include the entire area. However, almost all the stakeholders, regardless of whether they were more or less enthusiastic about a marine Bill, were saying that you need to take the area as a whole and set your plan accordingly.

I listened to Simon's point that there might need to be separate plans for some areas, such as wind energy development or fishing, etc. However, the key is that people were saying that those things should be in the one, overall plan that says that this is an area for wind energy and that is an area for fishing.

I know that you have gone some way towards convincing me, but I am still slightly concerned that we need that overall plan, because some people, whether they are the harder environmentalists or those who are more concerned with the economic aspects and what is already there, will remain unconvinced. I am not sure how we will get over that.

My second issue was one that Simon raised, and it concerned the opportunity to challenge the marine plan. That is in clause 2(9). I do not see this point in the summary; I think that it was raised separately and may not have been in any of the submissions. However, there was an indication that there should be a challenge period. Clause 2(9) says:

> *"A marine plan comes into effect when it has been published by the Department in accordance with Schedule 1."*

There was a suggestion that there should, perhaps, be a 21-day period in which to challenge that. Given that that provision is different from an amendment, what are your thoughts on that?

Ms Cunning: We will have spent two years developing and discussing a marine plan with all the different sectors, and after that and having produced the consultation draft, we will modify the document, based on people's comments. Simon mentioned that the process is laborious; we go through all that and then we publish the plan. If anyone wanted to open it up again after that two-year process, I would have to ask them whether two years was not sufficient. Our point of view would be that we do not need an extra 21 days at the end of the process.

The Chairperson: It may be that the Department may not have taken some people's views into account, and when the plan is issued, their concern is that the six-week period is too short. I know that we are going to cover this later on, but Tom mentioned it, and I thought that I would jump in. If people are going to take a judicial review, that will be too short a time for them to instigate it. Is that your point, Tom?

Mr Elliott: Yes.

The Chairperson: We will look at that later on.

Mr Weir: To be fair, in an emergency, the courts can move very quickly on a judicial review or an injunction. When it comes to challenges, there will always be some opportunity to question what is there. My one slight concern is about what is meant by a challenge. I would be interested to hear the officials' opinion of a challenge if it means that the plan may not be implemented immediately.

I know that there are a number of aspects to consider on the broader environmental side. In a planning-type situation, if a provision is being brought in that does not impact immediately and is given a stay of execution, as it were, someone could do something wrong in a scorched-earth fashion and exploit any window of opportunity before that provision came in. It is about striking a balance. Would there be dangers in putting things on hold through a challenge?

Mr Angus Kerr (Department of the Environment): That has certainly been a big issue on the terrestrial planning side, because plans and policies can highlight areas that are going to be protected. If that protection does not come into play immediately when it becomes public, it is sometimes the case that landowners and developers take that as an opportunity to take action before the protection comes into effect.

Mr Weir: I suppose that it may be more difficult to do that in the marine planning environment.

Mr Kerr: It is probably less of an issue, although I would not necessarily rule it out as a concern.

Ms Cunning: Also, you would have to ask yourself what the impact would be of allowing people 21 days to make some sort of comment on the marine plan after it has been published and before it has been formally adopted. What would happen if the marine plan is published and we say to someone who had been engaged in the process for two years that they have 21 days to make comments before it is adopted? Would that set us back two years and force us to redo everything? I am not sure what the impact of those 21 days would be.

Mr Weir: Let us take Strangford lough as an example. I know that there are controversies about the reasons for the various kinds of damage that are caused there and that that is not necessarily something on which there is consensus. However, a particular activity in a certain area could be banned if, for example, it had a certain level of commercial advantage but caused environmental damage. It occurs to me that, in that circumstance, there would be a concern that people would view a three-week window of opportunity as their last chance to exploit that activity to the full and people would try to get whatever they could in those three weeks.

A separate issue is how the plan can, broadly speaking, be challenged. I think that we need to drill down on that and make sure that we get it right. I can see why there would not be a good reason for a delay between publication and implementation. There is a danger that people could exploit that, albeit that it could happen in relatively few cases.

Mr Dallat: It seems that this will be a fairly flexible Bill. You make it up as you go along — is that it? *[Laughter.]* I am sorry; my knowledge of Bills is somewhat limited.

The Chairperson: It is a new area for Northern Ireland.

Mr Dallat: We have the largest inland sea on these islands: Lough Neagh. Is that covered by the Bill?

Ms Cunning: No, it does not cover freshwater.

Mr Ken Bradley (Department of the Environment): It covers only saltwater.

Mr Dallat: OK.

The withdrawal of the plan will be published in the 'Belfast Gazette'. That is not on my daily reading list.

Mr Weir: Why not, John? It should be from now on.

Mr Dallat: Is it something that I should rush out and order immediately in case there is a withdrawal? If a plan is to be withdrawn, are people allowed to know when that will happen? Would everybody have to buy the 'Belfast Gazette' to find out?

The Chairperson: We are going to cover that in detail in the discussion on clause 4. That is a good question, but we will look at it later.

Clause 3 is entitled "Amendment of marine plan". No issues on that clause have been raised.

Clause 4 deals with what you have were talking about, John, and is entitled "Withdrawal of marine plan". One issue that was raised was that the clause should be amended to allow for the withdrawal of a marine plan only when a replacement has been published or, in the event of the withdrawal of a marine plan, a new plan should be brought forward within a specified period.

Another issue is whether we should include provisions for appealing against the withdrawal of a marine plan and/or include a formal mechanism for consulting on the withdrawal of a marine plan. Brenda, are you going to answer that?

Ms Cunning: First, I will refer to John's point about the withdrawal of the marine plan. We have to advertise a withdrawal in the 'Belfast Gazette'. However, clause 4(4) states that the Department must take any other further steps to bring the withdrawal to the attention of interest persons. So, the Department has to bring any planned withdrawal to the attention of all the people it has consulted on the actual development plan and to anybody who was involved in it. So, it is not just the readers of the 'Belfast Gazette' who are informed; putting it in the 'Belfast Gazette' is more of a formality that we do for all kinds of legislation.

I know that there are some concerns that we could just withdraw a plan that we have spent over two years developing and not replace it. That is certainly not the intention of the clause. A marine plan is likely to be withdrawn only in very exceptional circumstances where we are about to replace it with another one. That is the purpose of the clause.

We cannot just withdraw a plan "unilaterally" — I think that that was one of the phrases that was used. We have to consult with all other Departments that represent all the other sectoral interests in the marine environment. The Executive will have agreed the marine plan, so we must consult with all the other Departments on whether we are withdrawing a plan.

Clause 4 also allows us to withdraw a plan if the Secretary of State (SOS) withdraws agreement to it if it has retained functions covered under it. We need to have that ability to withdraw it. If, for whatever reason, the Secretary of State no longer agrees to a marine plan, we have to have the ability to withdraw it. Again that would happen only in extremely exceptional circumstances. There is a concordat agreed between the UK Government and Northern Ireland Executive on how marine planning should be carried out. That states that we will seek to resolve any issues between the Secretary of State and the Department before withdrawal of agreement to a plan is considered. So, the purpose of the clause is that we may need to withdraw the plan if the Secretary of State withdraws agreement to it or if we are going to replace it with a new one.

Mr Weir: I have a minor point. I appreciate what you said in relation to the Secretary of State. Perhaps some colleagues around the table would say that even our waters do not run free, but I will leave them to make that point.

I want to pick up on John's point. It is a bit of a side point as regards publication. It is maybe a slightly archaic route in that we are talking about the 'Belfast Gazette' and other methods. It might be difficult to enshrine it in the wording of the legislation, but is there any reason why there is no reference in any legislation for a requirement to publish on the Department's website, without actually naming the website? We are thinking about legislation, and we have a commitment. OK, with the best will in the world, I suppose that people can go and look up the 'Belfast Gazette' or whatever, but, realistically, it will not be widely published. I suspect that the various groups that are directly affected will keep an eye on it. From the point of view of modernising legislation, if there is a requirement to publish, why do we not have reference in the Bill to the fact that it should be published on the Department's website? I assume that it is something that the Department will do anyway.

Ms Cunning: Is that just with regard to the withdrawal of a plan?

Mr Weir: I mean it in a more general sense as regards publication. If the Department is not going to publish it on its website then, to be perfectly honest, there is something wrong with its communications. Given that it is something that will be done, and you will also do it in the 'Belfast Gazette' in any of these circumstances, I was wondering whether there was a more general amendment of that nature. Maybe it goes wider than this legislation. However, is there any specific reason why that could not be included?

Mr Kerr: That is something that we can look at. I know that more recent legislation puts requirements on Departments in relation to electronic communications.

Mr Weir: I am sure that it could be phrased along the lines that it is to be published "on the Department's website". Given the fact that names may change from time to time, I appreciate that a specific website should not be named, but I would have thought that that would give sufficient certainty, and it would make it more accessible to the public.

Ms Cunning: The website is one of the methods of engagement that is put forward in the statement of public participation. However, you are right; we could look at putting that more —

Mr Weir: If John is borrowing my copy of the 'Belfast Gazette', a limited number of the public will have access to it.

Mr Dallat: Chairperson, my colleague has just got it on the internet. The solution is that everybody should have an iPad and check it every day.

The Chairperson: Brenda, are you saying that you would consult the relevant Departments, but not the general public?

Ms Cunning: Yes, if we were going to withdraw a plan. However, we are considering that a plan would be withdrawn as another one is being brought in, and that would involve consultation on the new plan that will be replacing it.

The Chairperson: So people will, obviously, be aware through the process.

Ms Cunning: Yes, that is the idea.

Mr Kerr: If you have the power to make a plan, you should also have the power to take it away. It would not be a case of taking it away and not having anything there in its place for no reason.

The Chairperson: So, if there is a reason for it to be taken away but not to be replaced by a new plan, how can people appeal and say that they do not want that? Would they be consulted about the fact that you were going to take it off and not replace it with a new plan? In those circumstances, how can people object to it?

Mr Kerr: Those circumstances would not arise. The reason for taking it away would not be to have nothing there. It would be the same as it is with all the forward planning policies that the Department brings in: you would be replacing it with a more up-to-date plan or with a process leading to a more up-to-date plan.

The Chairperson: So you are saying that it will not happen. You will not withdraw a plan —

Ms Cunning: I cannot see any reason for abandoning a plan that you have spent time and effort developing.

Lord Morrow: I have a question on the point that Peter Weir mentioned. I remember an experience with a National Trust property. It was published in the gazette. We were wondering why there was so little feedback, until we discovered that it was published in the 'Belfast Gazette', which circulates mainly in London. It was not getting to the Northern Ireland population. The Bill does not say that you shall communicate with others. It is purely saying that you are tying everything in and the Department must publish notice of the withdrawal of the marine plan in the 'Belfast Gazette'. Perhaps only 0·1% of the people of Northern Ireland will ever get sight of it. That needs to be changed. We have moved on, have we not?

Ms Cunning: Absolutely. Clause 4(4) states that where a marine plan is withdrawn, the Department must take further steps to bring it to the attention of "interested persons". Therefore, it is not just the 'Belfast Gazette'. "Interested persons" is then defined as persons who are likely to be interested in or affected by the withdrawal of the plan, as well as members of the general public. Therefore, basically, it is everybody. We have to take steps to bring it to the attention of everybody. Using electronic means is one way in which we would do that, but it is not the only way.

Lord Morrow: Why do you specifically mention the 'Belfast Gazette'?

Mr Kerr: It is a throwback.

Ms Cunning: It is a standard thing that we put into all legislation.

Mr Kerr: It is something that we are looking at on the land use planning side to see whether it is still required through some of the subordinate legislation that we are doing at the moment. It might be relevant to think about that for this legislation. You are right — most people are not aware of the 'Belfast Gazette'. It does not seem to get used. So we are looking into the purpose of it.

Lord Morrow: In relation to the National Trust property that I referred to, it was said then that we would look at that. That was three or four years ago, and we are still looking at it.

Mr Kerr: The 'Belfast Gazette' is only one of the requirements.

Lord Morrow: It is the main one.

Ms Cunning: Yes, it is.

Lord Morrow: My opinion, for what it is worth, is that the Bill should state that we will consult everybody and should not name the 'Belfast Gazette'. You can still go ahead and publish in the 'Belfast Gazette'. If you feel that a publication that is mostly read in London is going to be of some merit to the population in Northern Ireland, that is fair enough. However, when we did the probe in relation to that, it was discovered that it was not the best way to take it forward. The 'Belfast Gazette' is specifically named, and you nailed it when you said that it is a throwback to the way things used to be done. We need to move on.

The Chairperson: I want to return to the point about whether the Bill should be amended to allow only for the withdrawal of a marine plan when the replacement has been published or in the event that it is going to be replaced. You said that withdrawing a plan without having a replacement plan would be rarely done or is not going to be done. Would it not make it clearer for the public if you stated that that is the case?

Ms Cunning: We can look into that. The only thing I will say is that if the Secretary of State withdraws agreement to the marine plan, the marine plan has to be withdrawn. Therefore, we cannot include a provision to say that we will replace it. It would be the intention to replace it with a plan that did not cover retained functions in that case. So, it is not just as straightforward as the Department withdrawing the plan. We would need to take into account whether such an amendment would cover the circumstance of the Secretary of State withdrawing agreement to it.

The Chairperson: Will you have a think about it?

Ms Cunning: Yes, absolutely.

The Chairperson: It is a fair point raised by the public that the Department is not simply going to withdraw a plan because the Secretary of State said so and not replace it. It is just about making it more explicit.

Mr Molloy: If we no longer had a Secretary of State or a Northern Ireland Assembly, where would the plan go?

Mr Kerr: It would still be in place.

Mr K Bradley: Even if there was no Northern Ireland Secretary of State, there would be reference to the Secretary of State, because it is not a devolved matter. Not all of the activities are devolved.

Mr Molloy: I am taking it beyond that stage. Where would the Bill go if it was no longer a devolved state?

Ms Cunning: We will cross that pontoon when we get to it.

Mr Molloy: It is a serious point. The Marine Bill covers Carlingford lough and Lough Foyle. If there was not an equivalent in the South, where would the Bill go? Obviously, arrangements would be made.

Mr Kerr: Presumably, with constitutional change, legislative provisions would be put in to cover how we transfer not only DOE issues but all government policies and plans.

Mr Molloy: So we can tell the Secretary of State that he is not that important to the Bill.

The Chairperson: We will move on, and you can come back with more information on clause 4.

We move now to clause 5, which deals with the duty to keep relevant matters under review. Issues raised were that it should include a time period for review, for example, every five years; that it should use a clearer term than "dependent on the region"; and that the words "maintenance of" should be inserted before "its natural resources" in clause 5(3)(b). Brenda, will you respond to those points, please?

Ms Cunning: I think that it might have been the CNCC that raised the point about the period for review of every five years. Clause 7 gives a reporting period of every three years, and then we have to report to the Assembly on marine plans. That is a much tighter period. Clauses 5 and 7 have to be read together. We must have an ongoing review of issues, as is required by clause 7. Clause 7 specifically says that we have to do a report every three years on the matters that we have kept under review. So, we already have a time period for review within the Bill.

As regards the point about using a clearer term than "dependent on the region", I am not sure what the question on that is, I have to admit. I think that it is with regard to clause 5(3)(b) and the reference to "the living resources dependent on the region." To be perfectly honest, I am not sure how to make it clearer than that. It is about the living resources that are in the sea in the marine area of Northern Ireland, and they are dependent on that habitat.

The final point was about the maintenance of its natural resources. I think that this has been slightly misread. Clause 5 requires us to keep various things under review, and that includes changes to the physical, social, cultural or economic characteristics of the Northern Ireland region. We have to look at any of those changes and at what effect they might have on the natural resources and the living resources. It is not actually the maintenance of the natural resources; it is about what effect it will have on the natural resources, per se. That could be a positive or a negative effect. That is why we do not think that a change is required there.

The Chairperson: Reporting is different from review though, Brenda. You said that you are going to report every three years. That does not mean that you are going to review it.

Ms Cunning: We have to have ongoing review, under clause 5, and clause 7 says that we must keep under review the effects of the plan and what the plan is doing. Those things link together. We have to look at the effects and at what changes are coming about because of the plan. The two things are inextricably linked. It would be unwise to have a report on the plan every three years and to have a report on the review of the plan every five years. It would be somewhat excessive.

The Chairperson: Are members happy to accept that?

Mr Hamilton: I think that there is a problem with these types of suggested amendments sometimes. If we changed it to specify every five years, you can rest assured that the Department would review it every five years only and would not review it at any period in between. Sometimes, flexibility and, dare I say it, ambiguity are actually quite helpful.

The Chairperson: Are members content with the Department's explanation? Do you need any more information? Are we saying that we do not want the clause to be amended in relation to any of those issues?

Mr Dallat: I think that I understand what Brenda said. However, we were told earlier that the Marine Bill applied only to saltwater areas, and yet, this refers to the inshore region. Am I right in saying that that is because of the impact the sea might have on the inshore region?

Ms Cunning: The inshore region, from the high water mark out to 12 nautical miles, is the area that we are talking about. It is where fresh water becomes salt water in rivers. However, you are right: recognition is given to the impact that the freshwater environment might have. So, river basin management plans are one of the things that must be taken into account when developing a marine plan. The link is made between fresh water and the marine environment.

The Chairperson: OK. Are members happy? There are no amendments.

Members indicated assent.

The Chairperson: Clause 6 deals with decisions affected by a marine plan. Issues raised were that it should clarify the terms "relevant considerations" in subsection (1) and "must have regard to" in subsection (3); that it should require any public authority that takes an enforcement or authorisation decision under subsection (2) to consult with affected parties prior to taking the decision and to mitigate or compensate for any negative impact on another user group or the marine environment; and that it should require any public authority that takes a decision that is not an authorisation or enforcement decision under clause 6(3)(b) to state its reasons.

Ms Cunning: I have already spoken a little bit about the relevant considerations and what they might be. If the Department were taking an authorisation or enforcement decision on, for example, a marine licence, it would have to take into account relevant considerations such as new information that has come forward since the marine plan was developed, new statutory obligations from Europe or new technological developments. So, there are different types of relevant considerations. We do not want to pin those down in the Bill, because there is such a wide spectrum. Nevertheless, such considerations would have to be taken into account. They would have to be explained, to a certain degree, by the public authority when making an enforcement or authorisation decision that deviates from the marine plan. They would have to say, "We have done that because, under a revised directive, we are now required to do x, y and z. That is why we have done it". So, that is what we think the scope of "relevant considerations" is.

The term "to have regard to" is quite widely used. We have had advice on that. A public authority must have regard to the marine plan. It must be one of the things that it considers when developing decisions on consultation responses or bringing forward anything that is not an authorisation or enforcement decision. That term is widely used.

On the second point, there were concerns that if enforcement or authorisation decisions deviated from a marine plan, there would not be a mechanism for mitigation or compensatory measures. However, there would be a mechanism for such measures under the authorisation regime. For example, marine licensing allows you to put conditions, mitigation measures, compensation measures, etc, on a marine licence. So that is where such measures would be. Similarly, for fish farm consent or renewable energy consent, mitigation and compensatory measures would be under the authorisation regime. Therefore, such a mechanism is not required under the Marine Bill, because it is already covered.

The final point was that, if a public authority takes a decision that is not an authorisation decision, it must state the reasons why it has deviated. The marine plan will be one of many considerations that it must have regard to. I think that, if asked, a public authority would explain the reasons for deviating from the marine plan. Therefore, we do not think that it is necessary to have that in the Bill.

The Chairperson: Are members happy with the explanation?

Mr Hamilton: The accepted view is that consultation is key to the success of the Bill. Clause 6(2) states:

> *"If a public authority takes an authorisation or enforcement decision otherwise than in accordance with any appropriate marine plan, the public authority must state its reasons."*

That is fine, and it is very transparent to do that. However, it does not flow from that that the authority has to consult or discuss. Maybe you can tie it in somewhere else. Think about it from the point of view of different stakeholders who may be concerned about the implementation or the variance of it when a decision is taken outside of an existing marine plan. That plan was a process in which they had a fulsome role in consultation and perhaps — hopefully — have agreed to. Then a change happens. It is outside of the marine plan. A statement of reasons is given, but there is no back-and-forward. It has been suggested to us that perhaps that clause should be tightened up to include a requirement for consultation.

Ms Cunning: The requirement for consultation will come under the authorisation or enforcement regime that is used. For example, if someone applies for a marine licence, there is consultation on that. Various sectors are asked for their input. Habitat assessment is done, and people get input to that. Again, through the mechanism that gives the authorisation, you would have consultation. The "must state its reasons" is in addition to that. It is, in effect, topping and tailing it for the purposes of the marine plan.

Mr Hamilton: So, you are saying that, if I apply for a marine licence to, for example, put a wind turbine offshore, it could be outwith the marine plan?

Ms Cunning: No.

Mr Hamilton: I am not clear about this point. You have a marine plan that says you do this, that and the other in this particular area. Then something goes at odds to that. It might then have a negative

impact on, say, environmental interests, fishing interests or whatever. If we perceive a negative impact, where does that interest —

Ms Cunning: They would engage through the marine licensing process. If you are seeking a marine licence for that turbine, the public has to be notified that there has been an application. There will be engagement with the public. That is what happens at the moment: there is engagement, and a result is brought forward. However, the Bill is saying that, in addition to that, you must state your reasons if you are deviating from the marine plan.

Mr Hamilton: I understand. That is in a specific set of circumstances where a licensing process is going on. That is quite strict; it is almost a legal process. You go through A to Z to get your licence, and, maybe at point M, someone else from the outside is brought in and asked what they think of it. Are any other decisions affected that could be taken that are outwith a marine plan that would not be within the marine licensing process?

Ms Cunning: If it is an authorisation decision, it is based on there being an authorisation process. So, when the Department of Agriculture and Rural Development (DARD) gives a licence to a fish farm or the Department of Enterprise, Trade and Development (DETI) gives an energy licence, all those licence authorisation regimes will have some element of consultation. There would not be the same consultative arrangements with enforcement, but you would want somebody to be enforced against. The wider public would not necessarily be consulted on that.

The next step down is decisions that are not about enforcement or authorisation, and that is where the public authority "must have regard to". If DETI brought forward a new strategy for something, and it was clear to people that it had not really considered something in the marine plan — or if you thought that it had not considered something — you would challenge it through that and get it to explain how it had taken into account river basin management plans, the marine plan, the development plan and so on in that process.

Mr Hamilton: All right. That is OK for now.

The Chairperson: Are members content with the Department's explanation? We do not need to ask for an amendment.

Members indicated assent.

The Chairperson: We move on to clause 7, which deals with the monitoring of, and periodical reporting on, marine plans. The issues raised were that, under subsection (2), the report should be conducted independently of the Department; and that the reporting requirement should not end in 2030, as is stated in subsection (8). Brenda, will you give us an explanation on those, please?

Ms Cunning: I will address the idea of conducting the report independently of the Department. The Department should bring forward the report on its marine plan and marine planning process. We believe that the independent oversight comes from laying that report before the Assembly. We are content that there is sufficient oversight of the Department's role in marine planning through the Assembly.

As regards the point about the reporting period ending in 2030, there is ongoing reporting. As long as a marine plan exists, it must be reported on every three years ad infinitum. The actual marine planning process is required to be reported on every six years. The idea is that, by 2030, we will have had marine plans in place for 10 to 15 years. By that stage, the process will be well-established. We will know whether it is working or whether there is a need to look at different legislation or mechanisms. So, 2030 is seen as a make-or-break time. We have either done it right or need to look at it again. That is why we want a cut-off period, when we can say that everything is working well and that the process works. We will carry on with reporting on marine plans after that.

The Chairperson: Are members content with the explanation?

Members indicated assent.

The Chairperson: Clause 8 deals with the validity of marine plans. An issue raised about clause 8(2) was that we should limit the grounds for judicial review of a marine plan to ultra vires or where failure

to comply with a procedural requirement is in breach of the Aarhus Convention. Issues relating to clause 8(4) were that grounds for appeal should include that the document, or part of the document, is irrational, incompatible with the European Convention on Human Rights or that there is significant new evidence; that a person aggrieved by a document should have access to an alternative means of challenging than the High Court; and that the definition of a person aggrieved by a relevant document should include natural or legal persons affected or likely to be affected by, or having an interest in, the relevant document, or non-governmental organisations (NGOs) promoting environmental protection.

Other issues raised were that the six-week period for seeking leave for judicial review should be extended to the normal period allowed in common law, which is three months; that a dual challenge could be brought against the plans under this clause and the strategic environmental assessment (SEA); and that the clause should be removed and the validity of marine plans should be challengeable under established judicial review procedures, time frames and grounds.

Brenda, will you address the points in that list, please?

Ms Cunning: Clauses 8 and 9 mirror provisions in the Marine and Coastal Access Act 2009 and the Marine (Scotland) Act 2010. Marine legislation in the whole of the rest of the UK has similar provisions for challenging marine plans. The advice we had is that the clauses form a form of judicial review in respect of the marine plan. There is previous case law that acknowledges that. They define the grounds upon which a person aggrieved by the marine plan may apply to the High Court: either that the plan is not within the powers of the Department or that there is a procedural requirement.

With regard to the definition of an aggrieved person, recent case law acknowledges that individuals or groups of individuals can be aggrieved persons if they want to challenge various decisions by government bodies. So, I do not think that it is necessary for us to amend the clause in that way. Specifically, I do not see it as being necessary to add in NGOs that are bringing forward environmental protection. That is quite limited. Why not expand it to everybody? If you are going to start listing, you would have to list everybody, whereas "aggrieved person" is a catch-all for anybody to bring forward a challenge to the marine plan.

It is, however, on those two specific grounds: that it is outside the powers or has not followed procedural requirement. It is a form of judicial review, and there is previous case law to that effect with similar provisions. The Town and Country Planning (Local Development) (England) Regulations 2004 has a similar provision, and it has not been challenged on those grounds. The rest of the UK marine planning authorities have similar provisions with regard to challenges in order to allow judicial review of a marine plan. As to having an alternative means of challenging a marine plan, I think that the word "challenging" is slightly misleading. The stakeholder said that you should be able to go to the Department, and, of course, that is what we all want. If someone has a problem with the marine plan, they should speak to the Department or the Minister and we should talk our way through it. Going to the High Court should be the last resort when something is very seriously wrong. That is not something that should be written down in legislation; it should just be the way that it is.

I covered the issue of the person aggrieved. We feel that NGOs could challenge a marine plan under that definition.

We will look again at the six weeks in which to seek a judicial review and come back to the Committee on that point. I have been informed that court rules suggest that judicial reviews should be brought within six weeks if possible, although it is practice to allow up to three months, or more in very exceptional cases, but we will come back to that. We feel that six weeks is an adequate period after the two-year process of developing a marine plan. By then an NGO, for example, would know which way the wind is blowing and may know well before the plan is adopted that it wants to challenge it.

Someone can bring a dual challenge to the marine plan under the SEA, as it is challengeable under that legislation, and I do not see there being any conflict with the clause. I think that the clause complements the SEA, to a certain degree. The SEA looks at the environmental impact of a marine plan and whether we have followed the processes that are involved in it. The challenge under the clause relates to whether we have followed the specific steps that are involved in developing a marine plan and whether we have done that within our powers. So, I think that the two complement each other and do not cause any conflict.

The idea was that the clause should be removed so that the plan is challengeable under established judicial review procedures. However, I query whether there is an established judicial review procedure, especially where this matter is concerned. It could also create disparity between the

Northern Ireland marine plans for its inshore and offshore areas and the other marine plans for the rest of UK waters. It could put Northern Ireland marine planning at a slight disadvantage to that in the rest of the UK.

The Chairperson: There was one little bit that I want to follow up on, which is grounds for appeal. Would any significant new evidence be in the document?

Ms Cunning: Significant new evidence would trigger an amendment to a marine plan. It would also be a prime example of a relevant consideration. If we had a new marine plan and if new, startling evidence came forward, we would have to consider that alongside the plan. That is why we need the previous clause. We would then look to amend the plan.

Mr Weir: I have a couple of points to make. I think that it might be worth looking at that six-week period again, because it seems to be a little tight.

Two specific grounds for a challenge have been raised, which, to some extent, may be described as subsets of a normal judicial review and may cover the bulk of potential judicial reviews. There are two issues on that to consider. On that basis, why are other aspects that could be brought into a judicial review not mentioned? For example, the test of Wednesbury unreasonableness would normally form part of a judicial review. Is there a particular reason why other elements that could be brought into a judicial review have been specifically excluded? By not mentioning them explicitly, does that mean that, from a legal point of view, it would not be possible to legally challenge the decision in court if they were to move outside those two grounds?

Ms Cunning: You used the word "decision".

Mr Weir: Sorry; I meant to say "issue".

Ms Cunning: I think that that is where a lot of the queries come from. I think that people are mixing up the marine plan and the decisions that will be taken on the basis of, or with regard to, that marine plan.

Mr Weir: Let me rephrase that: I meant the contents of the document. As regards a legal challenge, you highlighted that a procedural requirement in drawing up the document was not complied with and that the first grounds is actually an ultra vires-type grounds, as it is outside the appropriate powers. Those are effectively drawn from a normal judicial review, but other grounds can be used in a normal judicial review. Why have those not been included? Do you feel that, by explicitly mentioning only those two specific grounds, you are effectively fireproofed from judicial review on other aspects?

Ms Cunning: We will look at that again with our legal advisers. They have told us that because specific grounds for judicial review are in this clause, it is not considered necessary to specify irrationality as a particular grounds for review. However, just to confirm that, I will take your point to them about whether that excludes irrationality or unreasonableness.

Mr Weir: It seems slightly odd in one sense. If challenges could be made on grounds that are not listed, I would question the merits of listing the grounds in the first place. If you are coming back to us about that, we can look at it again.

The Chairperson: We will come back for further information on that point.

Mr Elliott: Brenda said that she questions whether there is an established judicial review procedure. Is that the case? I ask that because I do not know. I thought that there was an established judicial review process.

Ms Cunning: Unfortunately, not being a legal expert, I do not know either. Various different types of judicial review have been highlighted to us. Other types of legislation set out similar types of what are seen as restrictions on judicial review. It has been proven through the courts that this is a type of judicial review and that it is acceptable. I had the preconception that that is a judicial review and that you must tick all the boxes. However, there are different forms of judicial review in other legislation, and that has been upheld by case law.

Mr Elliott: It would be useful if the Department came back with a brief explanation of that.

Mr Hamilton: I initially wanted to make some points that are similar to Peter's. Irrationality is probably the only other grounds that is not included there. My query is similar to Peter's. By including grounds on the face of the Bill, do you exclude those that are well established in law? That is worth looking at. Peter and Tom are both right so say that, if it is a matter of including another grounds for judicial review and if that includes every grounds possible for a judicial review, why have any grounds on the face of the Bill at all?

I want to stress that everybody, particularly some smaller stakeholders — not smaller in stature but smaller in number — were concerned that going to the High Court is a sort of nuclear solution. They would rather have a process in which they talk to the Department or whatever it might be. I agree with you that that should not go on the face of the Bill. However, it would probably be helpful if, at Consideration Stage, the Minister were to stress that that is his desired approach before anybody went to the High Court. It would just give some comfort to those who simply do not want to go to court and who do not want to pay to go to court that another avenue is available to them.

The Chairperson: That would help individuals as well as the department.

Mr Hamilton: Yes.

The Chairperson: OK. If there are no more questions, we will move on to clause 9. There are no issues with that, so are members content for that clause to go forward?

Members indicated assent.

The Chairperson: We are now on clause 10, which deals with the interpretation of this Part. An issue raised was that it should include a definition of sustainable development along the lines of the Brundtland commission report, namely that a development meets the needs of the present generation without compromising the ability of future generations to meet their own needs.

Ms Cunning: We would not necessarily support that amendment. There is sometimes a lot of debate on what sustainable development means, and that is one definition. So, we would not necessarily agree to putting it in the Bill.

The Chairperson: If members are content with that explanation, we will move on to Part 3, which is about marine protection. Clause 11 is on the designation of marine conservation zones, and there are lots of issues with this. Those include the need for firmer and broader consultation arrangements; using the term "marine protected area" rather than "marine conservation zone" (MCZ); integrating MCZ designation with marine planning; interdepartmental co-operation; and protection of shipping and port operations.

Mr K Bradley: I will take over on this Part of the Bill, as it concerns marine nature conservation. You are right: clause 11, which is about the designation of marine conservation zones, gives rise to a number of issues. I will take them in the order in which you read them out. Similar to marine planning, there has been consultation on a marine conservation zone, and the Bill places a specific requirement on the Department to consult on a designation order. Clause 14(4) states:

> *"The Department must consult —*
>
> *(a) the Secretary of State; and*
>
> *(b) any other persons who the Department thinks are likely to be interested in, or affected by, the making of the order."*

That is quite explicit and covers the consultation angle.

Another point was that the Department's duty to designate areas should be that it "shall" rather than "may". As we said, "may" does not mean that the Department may or may not or that it depends on its whim. "May" is quite explicit and requires the Department to do it unless there is an exceptionally good reason not to. "Shall" would throw us out of context with the provisions in the rest of the UK, and there is an overarching requirement to have a coherent network of marine protected areas. "Shall"

would possibly sign us up to designating much more than we potentially want to. So, we are keen to retain "may" as opposed to "shall".

The Chairperson: What about the word "must"? That is stronger.

Mr K Bradley: "Shall" and "must" are the same thing, legally speaking. The term "marine protected areas" (MPA) is a generic term and could mean, for instance, a conservation zone under European legislation, such the habitats directive, or a special area of conservation, a marine conservation zone, a Ramsar site or an OSPAR site. Our DARD fisheries colleagues have no-take zones that are called marine protected areas. Again, the overall requirement is to have a coherent network of marine protected areas. So, rather than confuse issues, we would rather retain the MCZ as part of a specific designation process for nationally important sites in Northern Ireland. That fits in with the situation in England and Wales.

It was felt that MCZs should be in line with the marine plan. That will happen if the Bill goes ahead with a fair wind and comes into force in early 2013. We are revoking the marine nature reserve provisions, so we will then designate Strangford lough as the first marine conservation zone. That is likely to take the majority of 2013, and may even go into 2014, by which stage the marine plan should be fairly well developed. So, we will be in tandem with that. Again, that is a process rather than an explicit legislative requirement. Ideally, a marine plan would be in place before we do anything, but we are where we are.

Another point was that the Department should engage with other Departments. Explicit reference was made to the interdepartmental co-ordination group — the marine group. It is our policy to maintain that group and to discuss and agree issues that come up during this process. Even when the Bill is in place, we will probably carry on with that group so that we can look at issues.

Another point that came under designation was that marine conservation zones should not restrict shipping or port operations. Again, that will not be the case. The Marine Bill is primary legislation, but it does not counteract other legislative requirements, and navigation routes and such are explicit. Marine conservation zones will not interfere with main shipping routes at all. Also, the consultation is in place, so if an MCZ were close to, say, a port, that port would have a large say, because a marine conservation zone has to take socio-economics into account in any designation process. I think that the consultation process will take those elements into account, so ports and shipping lanes have nothing to fear from MCZs.

Again, concerns were raised about fisheries, in that marine conservation zones would not take fishing interests fully into account. In Northern Ireland and further afield, we have a process to engage our DARD fisheries colleagues in all aspects of marine conservation zones. They will also keep their colleagues across the water or in the South of Ireland up to speed on what is going on.

I think that the designation process as set out in clause 11 is fairly straightforward. It is a fairly general enabling power, and, as I go through Part 3, you will see that the detail will probably come through in the guidance material.

The Chairperson: So, are we definitely going to use MCZs?

Mr K Bradley: Yes.

The Chairperson: Does Scotland not use marine protected areas?

Mr K Bradley: Yes. From our policy perspective, we feel that MPAs are a bit confusing. We see MPA as a very generic and overarching term to mean any protection for any reason in the marine environment. The overall UK objective is to have a coherent network of marine protected areas in place by 2020 as part of a requirement under the marine strategy framework directive. That overarching term takes account not just of marine conservation zones but our European and international commitments under the OSPAR and fisheries-type zones. So, it takes in all the conservation elements from a DOE or DARD point of view and is seen as a generic term. I think using MPA as a local or a national designation would take it out of context and lead to confusion.

Ms Gerardine McEvoy (Department of the Environment): I think also that, in the Scottish legislation, MPAs were interpreted slightly differently. They have marine conservation MPAs, historic MPAs, and demonstration and research MPAs, whereas at the moment, we have just one generic one

for marine conservation zones. We would assume that they would be part of an MPA with the European sites, as Ken said.

The Chairperson: Do you think MCZs would encompass historic monuments, architectural artefacts and that sort of thing?

Mr K Bradley: I was going to come to that in a discussion of later aspects of the Bill. We have had discussions on that with our colleagues in the built heritage unit in DOE, and our legislation is slightly different to that in Scotland, because it comes from a different part of a devolution settlement. Scotland was able to amend the UK-wide Protection of Wrecks Act 1973 and put in place its own specific legislation to designate artefacts. That would not be so easy for Northern Ireland to do, and we would probably have to get a sort of reverse legislative consent motion that would allow us to get agreement from the Department for Culture, Media and Sports (DCMS) to amend the GB Act. A time factor is obviously involved in that. As well as that, Northern Ireland has the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995, which allows us to designate for certain artefacts, while Scotland does not have that provision. So, from that point of view there is not the same need to designate an MCZ. However, we are still in discussions with them to see whether there is a real need. One or two people mentioned that in the consultation, but there have not been droves of people saying that we are not protecting our marine artefacts.

The 1973 wrecks legislation is quite robust in that we have only one wreck, the Girona, that is designated, and it is designated because it met the criteria. A few years ago, the agency tried to get HMS Drake designated, but it does not meet the criteria, basically because there was an attempt to salvage it and it has been broken up and parts have been removed. So, the criteria are quite robust.

The Northern Ireland Environment Agency (NIEA) does not feel that there is a problem with specific wrecks or ships down there. There may be more problems with artefacts or seabed features. We are in discussion about that, and we will come back to you at a later date to see whether there is a genuine need and whether there are resources in the agency to take that forward.

The Chairperson: So, will we be getting information back on this clause?

Mr K Bradley: Yes.

The Chairperson: We will move to clause 12, which concerns the grounds for designating MCZs. Issues raised on clause 12 included those that said that MCZs should be able to be designated on historic or archaeological grounds and should include provisions for highly protected areas (HPA). It should also be a requirement to take economic and social consequences into account, as should publishing robust supporting evidence to justify the designation objectives.

Grounds for designation should include consideration of the impact on climate change and energy potential, as well as any requirement for the Department to evaluate the impact of displaced activity outside the MCZ.

Mr K Bradley: This is another clause that raised a fair bit of interest. I will try to take those points in turn as well. We have probably covered the first one, which deals with historic and archaeological grounds. Our NIEA colleagues are also looking at submerged landscapes, which, again, would not be for specific habitats or species. We might look at whether submerged landscapes are worthy of designation.

As far as the creation of HPAs is concerned, these are basically what we call no-take zones, where no human activity takes place within the boundaries of an MCZ. There are many calls, specifically from environmental NGOs, to have a raft of highly protected marine reserves in place. The Department's policy is, and remains, that the conservation objectives of the designation will determine the level of protection, and, obviously, that designation will be based on sound science.

Rather than get into areas or levels of protection, the science will prescribe where the MCZs will be. We will consult everyone who has an interest in that, taking into account socio-economic and conservation objectives of the site; in other words, what needs to be done and what needs to be protected will be put in place. We will not be going for straightforward highly protected marine areas.

On the other side of the coin, we have had calls to say that the Department "must" take account of socio-economic consequences. The Department will resist changing from the word "may" to the

words "must" or "shall", because we feel that we need flexibility. For example, if a conservation zone contains a feature that is not commonly found anywhere else in the UK, the environmental aspects of that zone will be very important. In that case, and if the zone required full protection, we may not want to take account of the socio-economic consequences to a larger degree. Conversely, if the feature is replicated elsewhere in Northern Ireland or the UK, the environmental aspect would be less important and the socio-economic consequences would be more important.

Again, like everything else, it is a balancing act between environmental and socio-economic interests. The Department is keen and willing to work with all other sectors in the designation process.

The word "publish" came to the fore during consultation on this clause, as did the suggested requirement for the Department to publish supporting evidence for the designation objectives. Of course, the Department would do that. The Department may have been slightly at fault in identifying and designating European sites under the habitats directive, but we are very keen to have a much more open and transparent process for these nationally important habitats. We want to ensure that everybody is involved from the outset and that everybody knows exactly where the zone is, where its boundaries are, what its features are and why they are important. We will seek full views on all that. So, yes, we are quite willing to publish that information, and it will be in the guidance material on the designation process.

Another point that emerged on this clause was that its reference to "rare or threatened" flora and fauna should be removed. However, that will not be the case. Under the marine strategy framework directive on achieving and maintaining good environmental status, we are, properly, required to protect rare and threatened species and more representative species that form part of the overall network. So, we would maintain that flexibility.

Have I missed any points?

The Chairperson: Yes. What about having to justify in writing changes to MCZ boundaries as a result of economic or social consequences?

Mr K Bradley: That would be fine. The MCZ process is designed to be flexible about which features are protected, the level of protection that is afforded and the zone's boundaries. We learned from the experience of the European legislation, under which boundaries were set in stone and which, unless they increased, were never changed. The Bill will allow us to take account of any need to change the boundary because of climate change or whatever. In such circumstances we will obviously go through that consultation process as well and publish our findings.

The Chairperson: The next point relates to different legislation. It states that the Marine Bill should not take precedence over the Wildlife (Northern Ireland) Order 1985. For example, if, under schedule 2 to the order, a bird is allowed to:

"be killed or taken ... outside the close season",

there must be no facility under any new legislation to prohibit or restrict such activity.

Mr K Bradley: One piece of primary legislation does not have any greater weight than another. There are obvious synergies between the Wildlife and Natural Environment Act (Northern Ireland) 2011 and the Marine Bill. The Act is more specific about which individual species are either fully protected or protected at certain times of the year. Marine conservation zones will be primarily for habitats, whereas the Wildlife and Natural Environment Act applies more to mobile species. So, each will complement rather than be at odds with the other. That is our understanding and our policy.

A habitats regulation assessment was another point that came up under other requirements. Under the habitats directive, we are required to undertake an assessment of any plan or project that may detrimentally affect a conservation site. That, again, is purely for ecological reasons. As I said, the Marine Bill and marine conservation zones are all about sustainable development, of which socio-economics are obviously a part. So, we would not conduct a regular habitat assessment, because we are looking at it on a much broader scale.

The Chairperson: Finally, should subsections be added to require consideration of a potential energy generation designation along the lines of the provisions in the Scottish Act? Should there also be an evaluation of the ecological consequences of displaced activities on the areas outside the MCZ?

Mr K Bradley: Again, the flexible regime will take account of renewable energy infrastructure, pipelines or power lines that come across the seabed. We will work with all the industries on that issue.

The intention of having a marine conservation zone is not to be disruptive to fishing or any other interests, nor is it to designate large areas of Northern Ireland territorial waters in order to displace other industries. It is not envisaged that that will be the case.

The Chairperson: OK. You are saying that the concern is that you may push something to the next area.

Mr K Bradley: That is correct. At the moment, we have marine conservation areas through the habitats directive, and certain types of activities are not allowed within those boundaries. I suppose that if we designate further zones and increase the area within which certain activities are not allowed, people might feel that they are being pushed out to a smaller area and would have to compete with other people in that area. That is not our intention, however, and socio-economics will be fully taken into account. It is not our intention to displace any other activity or industry. The majority of our scientific knowledge at present is in and around existing marine special areas of conservation. Our first port of call for any new conservation zones will be in and around those existing areas.

The Chairperson: Are members content with that explanation?

Mr Hamilton: I want to pick up on a couple of points about clause 12(7). First, will you define the "economic or social consequences" mentioned in that clause? What are social and what are economic?

Mr K Bradley: "Economic" could mean a fishing industry or a renewable industry, or a pipeline or any other sort of activity. "Social" consequences could mean leisure activity, recreation or that sort of thing. The sorts of things that we will take into account would include cultural activities, such as a boating event, a regatta or some sort of annual event or activity that is particular to that area.

Ms McEvoy: It covers tourism as well, that might be unique to that area.

Mr K Bradley: We are taking account of the activities that are going on at present in the widest possible sphere. This is not a purely environmental designation.

Mr Hamilton: I ask because, perhaps, of the way in which the word "social" has been contorted over time to mean something else. The broad definition of the word "social" would include things that people do socially, such as leisure, tourism and so forth. The omission of the word "cultural" has been raised with the Committee, "cultural" being, perhaps, a broader or a more easily understandable definition in modern parlance of leisure. We have a Department of Culture, Arts and Leisure. Shooting and wildfowling are cultural pursuits. That is a more relevant description than leisure. That fraternity would probably like to think of itself as an economic consideration. It is a generational thing.

Mr K Bradley: That is right. The list is inexhaustible. At the beginning of this discussion, we talked about the fact that the Bill is based on sustainable development principles, which are environmental, social and economic. That is the sort of language that we use in legislative terms, and that is why we have used those two words there. Obviously, it is much broader than that. Any activity that happens will be taken into account. I know that we have had strong representations from the shooting industry, particularly from the Countryside Alliance and the British Association for Shooting and Conservation (BASC), which feels that the MCZ designation process will impinge on its rights. That is not the case. Marine conservation zones will be for seabed features, primarily. Restrictions on waterfowling or similar activities will be very limited. Your point is valid.

Mr Hamilton: I appreciate your point. We may come back to some of the points about why their concerns may not be as legitimate as they think. There are a lot of concerns around clause 24, for example. Would the Department object to the inclusion of the word "cultural" to give a broader definition and to give comfort to sectors that may not think of themselves as being covered? They may think of themselves as being social and economic, but they do not think that others consider them to be social or economic. Maybe there should be an explanation about why "cultural" is being included in the Bill.

Mr K Bradley: Surely, Simon. The Department is very keen in policy terms to be as inclusive as possible and will certainly look at including the word "cultural". We will obviously take advice from the Office of the Legislative Counsel (OLC). We are definitely not averse to amending that.

Mr Hamilton: We will bank that.

I am going back a bit in the sentence to the word "may". We love "may" and "shall". It is one for giving comfort to anyone and everyone, and not any particular group, who might be covered by social, economic and/or cultural. Ken, you said that there would be circumstances in which something was of such importance that you would not have regard.

Mr K Bradley: We would not have the same level of regard.

Mr Hamilton: I am not saying that that should not be the case. If there is something of such international or national interest, it should be designated. It does not matter what the economic or social consequences will be; you are still going to designate it. However, even in those circumstances, where you have a feature of international or national importance, regard should be had for the impact.

Mr K Bradley: Yes, that is right. Perhaps I confused you by saying that we would disregard it. That was not my intention. We would still "have regard to".

Mr Hamilton: Maybe others take it slightly differently than I do, but I was concerned by what you said. If I am concerned, you can be assured that some other people are going to be tearing their hair out. I was concerned that the social, economic or cultural impact would be disregarded. It may not be overriding, be more important or affect the ultimate designation of an MCZ, but regard should be, and always be, given to what the impact would be. Let us take fishing, for example. If by drawing that MCZ and making it highly protected — with a small "h" and a small "p" — fishing was no longer permitted to take place, you have to have regard to that in the designation, because that impacts on people's livelihood.

Mr K Bradley: Absolutely. What I meant to say was that, in such circumstances in which we have a unique feature, the environmental angle will feature highly.

Mr Hamilton: I do not disagree with that, but I think that the wording is loose, because it says "may" have regard to. I think that it "should" have regard to. I am not coming in and saying that it should have and that the economic, social and cultural should outweigh the importance environmentally, but the Department, or whoever is designating, should, at least, consider the impact and quantify it in some way.

Mr K Bradley: That is right. The designation process, which will be set out in the guidance, will show a clear and transparent trail of how all other aspects have been taken into account and why an area has been become highly protected or whatever. There has to be a clear and transparent process. The Department would like to retain the flexibility of "may". In all cases, we will take regard of it, but there may be cases in which the environmental requirements outweigh the social or economic.

Mr Hamilton: I am happy to park it and give it some thought. The guidance is important. It may be that we need to have that point made more explicitly clear during the clause-by-clause scrutiny or when it comes back at Consideration Stage. I do not think that it is wonderfully phrased, at the minute, to give comfort to those, say, in the energy sector, fishing, shooting or whatever leisure sector, that some thought will at least be given to their interests.

Mr Kerr: If you want, we can keep it under review.

Mr Hamilton: I am happy to leave it for the minute. You take a look at it, and we will come back to it when we do the formal clause-by-clause consideration.

Ms McEvoy: Let me add that an impact assessment will be an integral part of the designation process, so we will take them into consideration. They will be looked at.

Mr Hamilton: Ken's first answer caused me concern — sorry for picking on you, Ken.

Mr K Bradley: That is what I am here for.

Mr Hamilton: What you said initially is one interpretation: we may have regard to it, but, in some cases, we will not because it is so important. No one is arguing that there will not be environmental considerations so important that it does not matter about anything else, but we should still, even in those circumstances, say —

Mr K Bradley: I take your point, Simon. When the DOE says "may", some people out there may think that it will probably just disregard it and designate the zone anyway.

Mr Hamilton: Yes. I think that the Department has to be mindful of the type of people who are likely to argue that point.

Mr K Bradley: It is a valid point.

Mr Hamilton: Some of them do not believe that anything done to them by government is ever positive. They think that they are never listened to. I am arguing for it as much to assuage concerns as to have any impact. I want them to know that they will at least be listened to.

Mr K Bradley: We will take it under advice. We will go back to the draftsman to see whether there is any way of tidying that up but still giving the Department flexibility. We should give people a bit more surety.

Mr Hamilton: If that cannot be done for whatever reason, and we can take a look at that, making it explicitly clear in the guidance, and the Committee having some sight of that beforehand, might do the same job by a different means.

Mr K Bradley: We fully intend that the Committee will see the draft guidance. That will be a very important document as well. To be honest, we had the same discussion about the biodiversity duty in the Wildlife and Natural Environment Act (Northern Ireland) 2011. The same conversation took place. We will go back to the draftsman to see whether we can come up with other wording.

The Chairperson: You will come back to us with more information on clause 12.

We will move on to clause 13, which is entitled "Further provision as to orders designating MCZs".

Mr Weir: This meeting is scheduled to last until 1.00 pm. Members have other meetings to go to later. We have got to clause 12. We have correspondence and so on to deal with. I suspect that we may start to lose our quorum if we go on much longer. I suggest that, as we have reached the end of clause 12, that is as far as we should go.

The Chairperson: OK. We will stop there at clause 12 and resume with clause 13 next week. Thank you all very much for coming, and I will see you next week.