Northern Ireland Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Marine Bill: Departmental Briefing

19 April 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell
Mr John Dallat
Mr Danny Kinahan
Mr Patsy McGlone
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

The Chairperson: I welcome Angus Kerr, director of planning policy division; Brenda Cunning from the marine policy team; and Ken Bradley, planning and environment. You have 10 minutes or so for your briefing. I am sure that members will have a lot of questions after also hearing from the researcher.

Mr Angus Kerr (Department of the Environment): Thank you very much, Chair. As you and the Committee are probably aware, I have recently taken over from Maggie Smith as director of planning policy division. I find myself with responsibility for the Marine Bill. You will be glad to hear that, today, I have with me Brenda Cunning and Ken Bradley, who are the experts in this area. They will kill me for saying that. Nevertheless, compared with me, they are experts.

We have informal and formal clause-by-clause scrutiny coming down the line. Today, if the Committee is content, we will just do an overview of each clause. I think that that is what we have been asked to do. Chair, you said that we have 10 minutes. We wondered what would be the best way to do this. The Bill fits neatly into three areas. Brenda can deal with marine planning, and Ken can deal with the nature and marine conservation aspects. Brenda can then do the licensing aspects and other remaining parts of the Bill. We could have questions at the end of each those three parts, or we could run through them all and take questions at the end. It is really up to you.

The Chairperson: Perhaps section by section would be easier.

Mr Campbell: It may also take longer.

The Chairperson: OK. We will do it all in one go.

Mr Kerr: We will go through it all in one go and take questions at the end. Thanks very much. In that case, I will pass over to Brenda, Brenda will pass to Ken and then we will come back to Brenda again. We will get through it all. Thank you.

Ms Brenda Cunning (Department of the Environment): Good morning. It is good to see you all again. We will rattle through this relatively quickly.

Clause 1 defines the Northern Ireland inshore region. To follow on neatly from what the Assembly researcher said, I have to confirm that it does actually apply to the Foyle and Carlingford areas. It applies to all UK waters that are adjacent to Northern Ireland, inside the sea loughs as well. It also includes loughs that the sea flows into, regardless of whether they are closed. For example, it includes part of the River Lagan — wherever the tidal reach is. Clause 1 defines the extent of the Bill, which is from high water out to 12 nautical miles.

Clause 2 allows the Department to prepare a marine plan. It says that a marine plan must be prepared for any area that is covered by the marine policy statement. The marine policy statement is in effect for all of the Northern Ireland region. Therefore, the Department will have to prepare a plan or plans for all of the Northern Ireland inshore region. It sets out what the marine plan will be, and links in with the idea that other Departments' policies will be included in the plan. It has to identify what the marine plan area is, as it could apply to part or all of the Northern Ireland inshore area. It must also conform with the marine policy statement, and, if it is for part of the inshore region, it must conform with a plan for all of the inshore region. Basically, it sets out how we can actually do the marine plan. The plan must also state whether it applies to retained functions and, if it does, we have to get the Secretary of State's permission or approval, but only in that case.

Clause 3 allows for the amendment of a marine plan by the same procedure as a marine plan is developed.

Clause 4 allows for the withdrawal of a plan. That could either be because the Department, after consulting with other Departments, feels that it needs to withdraw the plan, or because the Secretary of State withdraws permission or approval. In both cases, the Department places a notice and withdraws the plan.

Clause 5 lists various issues that the Department must keep under review. It is not an exhaustive list; it covers things like the physical characteristics of the marine area, social and cultural characteristics and historical marine issues. The Department must also keep the purposes for which the marine area is used under review — for example, energy and transport. After a marine plan is created, a report must be placed before the Assembly, and I will come to that in a moment.

Clause 6 places a duty on all public authorities to take decisions in accordance with the marine plan. The Loughs Agency is a public authority in Northern Ireland, and it applies to the Loughs Agency as to any other public authority. Any authorisation and enforcement decisions must be taken in accordance with the marine plan, and other decisions must have regard to it.

Clause 7 says that the Department must keep marine plans under review. It must place a report before the Assembly every three years on the effects of a marine plan and on whether it is meeting its objectives. Every six years, a report must be made on marine planning in general — how many marine plans have been made, whether it is intended to have any more or withdraw any, etc.

Clause 8 sets out when a marine plan can be questioned in the taking of a judicial review to the High Court, and the researcher touched on that. It is not just aggrieved persons who can challenge the vires of a marine plan; anyone can challenge a marine plan if it is outside the powers. However, the

researcher was right to point out that only those who have been substantially prejudiced can challenge the marine plan on a procedural issue, and the High Court will then take that into account when making a decision to quash the plan or to remit it back to the Department, etc. The powers of the High Court and what it can do if a marine plan is brought to it for judicial review are covered in clause 9.

Clause 10 sets out some definitions of marine plans and the marine policy statement.

That is 10 clauses rattled through quickly in terms of where they apply and how marine plans will be created and reviewed.

Schedule 1 also applies for the purposes of marine planning. It really sets out the whole procedure on how we do a plan. It sets out that we have to consult with various people and create a statement of public participation. A non-exhaustive list of all the things that we have to take into account when we create the final marine plan is set out in schedule 1. I do not want to go into that in too much detail, and you may have some questions on that.

Mr Ken Bradley (Department of the Environment): Thank you, Chair. The marine nature conservation clauses are fairly self-explanatory, and I will go through them very generally.

Clause 11 gives the Department the power to designate a marine conservation zone (MCZ). It is intended that marine conservation zones will be for nationally important species or habitats. That is in addition to our European commitments under the birds and habitats directive to designate sites or habitats for species that are of European importance.

Clause 12 sets out the grounds for designation and the circumstances in which the Department can designate marine conservation zones. Clause 13 gives further provisions for the designation process and provides more detail on the boundary, etc.

Clause 14 requires the Department to consult with all key stakeholders or anyone who has an interest or responsibility in relation to a marine conservation zone. Clause 15 requires the Department to publish a notice before making a designation order. A designation order sets out the conservation objectives, the boundaries of a marine conservation zone and all the detail. Clause 16 allows the Department to hold hearings if anybody objects to a marine conservation zone.

Clause 18 requires the Department to create a network of conservation sites. The researcher referred to a commitment to an ecologically coherent network of marine protected areas by 2012. Obviously, our Bill may not be agreed in this calendar year, so we could not include a 2012 commitment to report on that. We have included a commitment to report between when the Bill comes into force and December 2018. By 2018, we will be in sync with the rest of the UK.

Our overall commitment on marine conservation is the marine strategy framework directive requirement to have good environmental status by 2020. This is part of that undertaking. So, we will then be within the reporting round at 2018. Obviously, we will report prior to that.

Clause 20 places a duty on public authorities to be aware of marine conservation zones and not to do anything when undertaking their activities that would be detrimental to the conservation features of a marine conservation zone. That is similar to the duty that public bodies have under the habitats and birds directive to European sites. We will issue guidance on the requirements of public bodies.

Clauses 22 and 23 go on about failure to comply with that duty and set out various steps. It then goes on to enforcement by-laws. We envisage three types of by-laws to protect marine conservation zones. There will be a general by-law, which we can put in place at any time. That will set out what is permitted or what activity is detrimental to the conservation objective of a site. We also envisage an emergency by-law to stop any potentially detrimental activity straight away when we designate a site, and an interim by-law. Obviously, the designation process is fairly lengthy, with a lot of consultation and engagement. We do not want a potential site to be affected detrimentally, so we can, before the site is designated, put in an interim by-law that is time-bound and gives immediate protection to a potential site until we go through the process of designating that site. Those are the by-laws that we envisage in the Bill, which run through clauses 25, 26 and 27.

Clause 28 sets out the process of hearings if anybody objects to a by-law. Clause 30 deals with the offence of contravening a by-law and sets out a level 5 fine, which, at the minute, is a maximum of £5,000. With regard to general offences, any major damage to an MCZ attracts a fine of up to £50,000. Clause 32 gives exceptions to that general offence. Clause 32(5) sets out how we can repeal those exceptions.

Clause 33 sets out another type of offence, a fixed monetary penalty. It is really more like an on-the-spot fine. Say something fairly minor happens, but that activity is detrimental to the site. The Department can issue a fine on the spot and require the person to stop that activity. The fine on such occasions may be up to £200. The difference is that that is a civil penalty as opposed to a criminal penalty. Clauses 34 and 35 set out the procedure for introducing that regime.

Clause 36 gives the Department powers to enforce any by-laws and sets out that the Department will be the main enforcement authority for marine conservation zones under the Marine Bill. In that respect, it is fairly new because at the moment the Department has no specific enforcement powers in the marine environment for marine nature conservation. In addition, the DOE can delegate that responsibility to another body, for instance, councils, the Department of Agriculture and Rural Development (DARD), fisheries or any other potential body.

Clause 38 repeals the marine nature reserve provisions, in line with GB. It was felt that the marine nature reserve provisions are not really fit for purpose and the marine conservation zone designation process will take that over. So we repeal the marine nature reserves in our provisions and that means, in practical terms, that Strangford lough will fail to be a marine nature reserve. Therefore, taking that into account, by default, Strangford lough will become our first marine conservation zone.

That is really it. I will go back over a couple of points that the researcher pointed out. There is a Conservation of Seals Act 1970, relevant to England, Scotland and Wales, but not to Northern Ireland. Both common and grey seals have been given full protection under the Wildlife and Natural Environment Act (Northern Ireland) 2011. In Scotland, there are a lot of exceptions made for the killing of seals, primarily because there is so much fin-fish aquaculture in Scotland. Obviously, fish in pens attract seals, so the owners of fish farms get licences from the Scottish Government to take out seals which are potentially a threat to their livelihoods. So Northern Ireland is slightly different to the rest of GB.

I should also mention the element of historic shipwrecks, which is not included in the Bill. In the designation of marine conservation zones, archaeological wrecks can included, but we do not designate specifically for maritime wrecks. We already have provision for that in the Protection of Wrecks Act 1973 and the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995. Probably, the most important wreck that we have designated in Northern Ireland is the Girona, which was a part of the Spanish Armada of 1588. That wreck has full protection. Wrecks and maritime archaeological objects are protected through other means.

Ms Cunning: Clause 40 is the one clause that deals with marine licensing in the Bill. It is intended to streamline the procedure whereby a generating consent is needed from the Department of Enterprise, Trade and Investment (DETI) and a marine license from DOE. Basically, the clause says that the Departments can decide and notify the applicant that those applications will be considered together. It is quite a long-winded way of saying it, but that is in effect what it means. The Department can make an order to disapply certain things within the marine licensing application requirements. That is unlikely to happen, but we have it in just in case. The crux of it is that DETI and DOE can say to the applicant that their applications will be considered together, to streamline it, so that only one environmental impact assessment (EIA) is needed, for example, instead of having to do two separate ones which would be more or less the same thing.

The rest of the clauses of the Bill are pretty standard. Clause 41 sets out which of the subordinate legislation proceeding from the Act will be enacted by negative resolution, draft affirmative resolution or administrative means. In clause 42, it is set out that the offences will apply to individuals as well as to companies. Clause 43 disapplies the requirement to seek Secretary of State approval for prosecuting someone who is non-British who is carrying out an offence. Clause 44 is a fairly standard

clause about making supplementary legislation to deal with transitional arrangements, etc. Clause 45 applies to the Crown, and, again, is a standard clause. Clauses 46, 47, and 48 deal with interpretation, commencement and the short title.

The Chairperson: Thanks very much indeed for your presentation. As you know, we just heard from our researcher, Suzie. It was a quick fly-through of what she had found out. I wish that I had had the paper beforehand so that I could have had a good read. Ken has addressed a number of the gaps that she mentioned, but I still want to go back to the marine management organisations (MMO) and marine management schemes (MMS). How do you foresee your Department being able to co-ordinate all of the duties under the Bill between the six different Departments? How are you going to do that? I know that you have the interdepartmental group, but that is a very loose, voluntary set-up. There is no statutory basis for it. Is it going to give you lots of difficulties?

Ms Cunning: It is recognised that more integration of marine management would be a good thing, but we are where we are in terms of the Bill. If we do not have an MMO, we will have to work with the other Departments. That is why there is the requirement to consult with other Departments and the requirement on all public authorities to carry out their functions in accordance with the marine plan or to further the aims of an MCZ. Ultimately, as we said before, the Executive will have to agree a marine plan. That brings together all of the Departments. That is the mechanism that we have without an MMO.

The Chairperson: Is it going to be very protracted because of the fact that you have to consult all of the different Departments?

Mr Kerr: Those are issues that happen in any case because of the nature of government in Northern Ireland at the moment. We have come across them in a number of different areas, such as marine and terrestrial planning and so forth. In many ways they are part of the way that the system of government has been arranged. It is forcing Departments to come together and work together jointly through the Executive. It can, of course, create difficulties and challenges. The Minister has asked us to continue to look at options for how it can be handled in a better way or to the best effect, but, essentially, like lots of those issues, it is agreed through the various Departments liaising with each other before plans and policies get to the Executive, departmental write-rounds and so forth. The integration is achieved in that way.

The Chairperson: I presume that, in each Department, there are officials who are designated to look at marine issues, and that you have counterparts in other Departments who you can liaise with.

Mr Kerr: There is close liaison between the Departments.

The Chairperson: I still think that it is going to be a concern for many people. OK, thank you.

Mr Hamilton: I want to go back to the issue of the designation of historical sites, which is the broad term used. I appreciate the points that Ken has made in respect of other legislation, and I know that there are some references in the Bill to historical reasons, although it appears to be more about the consequences for those. It is not a reason to designate a zone; it is the consequences for that site of designating it as a marine conservation zone. If other legislation is already in place — I presume that Scotland has similar legislation, or that Westminster legislation covers Scotland, whether that is the wrecks Act or the other legislation that you talked about — why did the Scottish see the need to include a section in their Act that specifically stated that the existence of historical sites such as the Girona, or whatever is in Lough Foyle and elsewhere, was a reason in itself to have marine conservation zones? What is your take on that? Why did we not think that it was necessary here?

Mr K Bradley: I am not sure why the Scottish felt that they needed a separate or specific provision for historic sites. Perhaps Scotland has a greater potential need for it than Northern Ireland.

We know of nothing in Northern Ireland territorial waters that requires protection and does not already have it. Therefore, we do not feel that there is any further legislative requirement. As I said, the UK-wide Protection of Wrecks Act 1973 and the Northern Ireland-specific Historical Monuments and

Archaeological Objects (Northern Ireland) Order 1995 give us the powers to designate and thus protect any seabed object. We do not feel that there is any need for further legislation. During the consultation, no one told us that the existing protection was not adequate. If there is a need, we have no problem looking at that again. However, we do not feel that there is any justification for widening it.

In practical terms, if we are designating an MCZ and there is a maritime object beside it, which, for whatever reason, is not protected but is a habitat for the feature, we could include that. However, if it does not stand on its own merits, perhaps it does not need to be protected. If there is merit, we will certainly look at it.

Mr Hamilton: The point is that wrecks have historical significance, and the Girona is an obvious example of that. We are not sure what is in Lough Foyle, and I agree with you that there may not be many other examples. However, we did not know that the Girona was there until a matter of time ago. Wrecks are historical and significant in their own right, and, because of what happens at the bottom of the sea, they also become habitats for creatures to live in and feed off. I would be interested to learn a bit more. On a superficial level, I think that the existence of those wrecks at the bottom of the sea may be a reason to designate such a zone. I appreciate that there may not be a terrible lot of demand, but, in a way, that is not the point.

I would also be interested to find out whether the current legislation is sufficient, particularly to do the job that we want it to do, and whether there might be any tension between the two. It would be worth the Committee looking at that.

Mr K Bradley: We will look at it again and go back to our Scottish colleagues and ask them why they felt the need to have a specific provision. We will see whether there is anything that we have missed or need to include from a Northern Ireland point of view.

Mr Hamilton: It is not a matter of legislating for the sake of it, but it would send out a signal that, if something like the Girona was found, it would be possible to protect it in a particular and special way. That may not happen frequently, but it would send out a signal of intent.

The Chairperson: Do we have any warships hidden somewhere in the sea?

Mr Kinahan: There is one off Rathlin Island.

The Chairperson: That is right. OK. Thank you.

Mr Kinahan: As you can imagine, I have a series of questions, the first of which is on the timescales. In schedule 1, paragraphs 13 and 14 deal with independent investigations, and we can see that there is a possibility of delays. I wonder whether there is a chance of including an end date to force things to be done by certain dates. Is there a mechanism to allow that? Otherwise, we could continue to let the whole thing drift, and it may never be put it in place.

My next question relates to the fines that I asked the researcher about earlier. Is there a good mechanism for making sure that fines are possible within the nought to 12 mile area and the nought to six mile area? Could that be balanced against what Europe is likely to fine us if we do not follow the birds and habitats directive and other directives?

I am intrigued by clause 17, which you skipped over. It seems to state that we have to obey whatever the Secretary of State, the Scottish Ministers or the relevant Department in Ireland puts in place. Does that give them an overriding say in what we must do? A marine management organisation already has such a say, so I wondered whether that clause was there as a safety mechanism.

My next question is on our fining ourselves. If members of the Executive did not like part of the marine plan and decided to breach it by, for example, putting in place lots of wind farms, which may be the right thing to do, would we be able to fine another Department, be that through an on-the-spot fine or larger fine? If so, that seems daft, and I am concerned about it. I see a conflict there. If that is the case, the whole process could go back to the beginning.

My last point is about trying to get agreement from the Department of Culture, Arts and Leisure (DCAL) on regulating the zones through the use of fishing licences, potting licences and others. The Bill does not seem to drive any of that and has left all that alone.

Ms Cunning: You are right that the timescales for the independent investigation are not set out in paragraph 13 of schedule 1. I think that the idea is that when appointing an independent person, you give them the remit to look at all the unresolved issues raised on the consultation draft of the marine plan. In some ways, you would not want to tie that person's hands. However, we can certainly look at that and come back to you. I understand your point, which is that you would not want an investigation to run on indefinitely. Then again, when you appoint an independent person, you give them a clear remit to look at specific unresolved issues and come back with a recommendation. It could be set out in the remit given to the independent person appointed.

Mr K Bradley: I see your point about fines. A £50,000 fine is not in the same ballpark as a fine from the Commission, which may amount to several million euros. In light of that, we are thankful not to have had any fines imposed by the Commission, and we hope not to get any. The process for the fines that we are talking about will probably be much shorter than any European process. A fine will be specific to a person, as opposed to the UK Government. As a result, the process will, we hope, be resolved much more quickly and not drag on for years and years. So this is a different sort of regime entirely. It is about a specific site and a person or body doing something that it should not be doing. We hope that the process will be much more flexible and a lot quicker so that any detriment will not be ongoing.

Mr Kinahan: Will that be superimposed over the provision that seems to say that one need only apologise for having done something wrong?

Ms Cunning: I think that you are getting that slightly mixed up with what public authorities can do. If an activity of a public authority is in some way detrimental to, or not furthering the aims of, an MCZ, it can say, "Look, we have to do it". That is because we give public authorities the power to carry out certain functions.

I think that Ken was talking about the fines levied against individuals or companies that may or may not be authorised to carry out certain activities and that have done something to breach an MCZ. That is where the fines come in: they are against individuals or companies, not public authorities.

Mr Kinahan: You can see my point. We are putting in a provision to say that authorities can do what they like.

Mr K Bradley: They have a public duty. They can carry out their functions, but they have to be mindful of the conservation objectives of a site by not doing anything that would be detrimental to it. In other words, they can carry out their activities, but they must be mindful not to do anything that may be detrimental to an MCZ.

Mr Kinahan: Saying that they have to be "mindful" is wonderfully loose. That worries me.

Mr Weir: Following on from Danny's point about the position of public authorities, I think that clause 23 on the failure to comply with duties seems rather weak, in that a letter of a explanation seems to be the only sanction. I wondered about that, so will you explain the thinking behind it?

Mr K Bradley: That is right. If a public body or Department does something that is detrimental to a site, it has to explain that it is within its remit and that it has an overriding interest. So it must explain the reasons behind its actions.

Mr Weir: I can understand that, certainly as a first step, but should there not be some stronger sanction? If the worst that I had to do every time that I did something wrong was to provide a letter of explanation —

Lord Morrow: I suspect that you would get the words *[Inaudible.]*

Mr Weir: I am tempted to say that, across the board, there is probably much more crime in this country.

Clause 23 just seems a little bit weak.

Mr K Bradley: This is about a public body or Departments doing what they are required to do. Those are the circumstances that we are talking about. If DETI, for example, were to install a wind farm and, through consultation and discussions, it was —

Mr Weir: Strictly speaking, DETI would not build a wind farm. It may be built by a private developer with, perhaps, the permission of —

Mr K Bradley: If a private individual does not abide by the agreement with DETI, he or she is in breach of that, so the activity should stop. Clause 23 applies only if a Department or public body does something that it is required to do, and that something is detrimental to an MCZ. If, through discussion, that cannot be resolved and has to happen, it must be explained. I do not envisage that —

Mr Weir: OK, maybe we can come back to that.

There seems to be a fairly wide scope for by-laws. One issue that has been raised relates to highly designated, or very restricted, MCZs. Are you satisfied that these by-laws would be able to permit that designation should it be needed, or is that the explanation for why there is no specific reference to highly protected or highly designated MCZs?

Mr K Bradley: We took a policy decision not to introduce highly protected marine reserves. Our designations will be based on the scientific evidence. In other words, it will depend on what is on the seabed and whether that allows some activities but not others. So the conservation objectives and nature of a particular feature will determine the level of protection.

Mr Weir: I want to make sure that I have made the correct causal link. Is that why you took the policy decision not to introduce highly protected MCZs?

Mr K Bradley: No, that means that there could well be. We are not just saying that there will be x number —

Mr Weir: Sorry, but that is not the answer to the question that I asked. You said that a policy decision was taken not to include in legislation highly designated, or highly protected, MCZs. You then said that there was, however, a level of flexibility. I am just trying to check whether the two are causally linked and whether the policy decision was taken because you felt that such flexibility gave you sufficient protection. That is what I am seeking to clarify,

Mr K Bradley: Sorry, I probably confused you, so I will go back a step. Wales took the decision to have other MCZs as highly protected marine reserves and underpin its European sites. We took the decision, as did Scotland and England, not to go down that line. We took the decision that all sites would be designated based on scientific rationale and that the conservation objectives of the habitat would determine the level of protection — that may or may not be highly protected. If it is highly protected, the general offence and by-laws come into play.

Mr Weir: Presumably, as well as the by-laws, you at least have some flexibility should there be a change of position. If, for example, an initial examination determined that a certain activity was not creating a problem, but, two or three years down the line, that same activity was found to cause some marine destruction, you could step in to strengthen the designation.

Mr K Bradley: That is exactly it. Marine conservation zones were introduced for nationally important species or habitats. We hope that we will learn from the process of designating the European sites, which are immovable, so we could not change the boundaries, objectives, or species within them except to add to them. This is a much more flexible regime. You are right that it takes into account changes in circumstances. If protection levels need to be changed, they will be. If another activity happens, which was not happening at the time of designation, the area could become highly protected, or vice versa. That is the flexibility that we have built in.

Mr Weir: If I understand correctly, highly protected is almost a continuum, rather than simply a question of some level of protection or high protection. It is a matter of where it potentially goes along that continuum.

Mr K Bradley: That is right.

The Chairperson: I would like to follow up on what you were saying. If another Department, in exercising its duties, has to infringe, or do something that might harm, the protection zone, can its duty to carry out its responsibility override the protection zone?

Mr K Bradley: There is nothing like that set out in any legislation. However, with this flexible regime, we could designate a site today and, in five years' time, there might be a wind farm on that site. It might be beside an MCZ to which the activities involved in setting up that wind farm are detrimental. We would have to take account of something like that and perhaps change the boundaries. If something is detrimental, we would we have to try to reduce or negate its impact.

The Chairperson: If that is to be a matter between DOE and, say, DARD, will someone, somewhere, referee all of that?

Mr K Bradley: Again, it is probably up to Ministers to come up with some consensus so that the remit of both Departments can be met.

Mr Kinahan made a point about clause 17, which was that, if we receive representations from Scotland or from the Secretary of State, we can change or repeal an MCZ. We have to get the Secretary of State's approval for our designation of an MCZ, because marine, nature and conservation matters are not devolved. Clause 17 was included because, potentially, an MCZ in Northern Ireland will be beside, most likely, a Scottish MCZ, or perhaps an English offshore MCZ. The inclusion of clause 17 ensures that we bear in mind that an MCZ, its boundary or something else could change as a result of that. It is really just a mechanism to ensure that our Scottish, English and Welsh colleagues know what we are doing, and vice versa, so that we can take account of that.

Mr Kinahan: If it is just the original designation of MCZs that you are talking about and they see us not doing something correctly or not enforcing something properly, does that clause allow them, or could it be changed to allow them, to come in and pull us on that?

Mr K Bradley: No; it is *[Inaudible.]* the designation.

Ms Cunning: It means only that the Department has to review the order, not that it has to revoke it. It can be suggested only that we amend or review it.

Mr K Bradley: That is under clause 11 on designation.

Mr McGlone: The designation of MCZs leads me neatly on to other issues. I noted that your first designation was Strangford, so, presumably, the Hansard report will be underlined in red and sent out to Brussels. That brings me on to modiolus, and we will hear from the Minister later today about the mess that that has become. The management, or lack of management, by Departments and the lack of cohesion and flow of information interdepartmentally and, indeed, between non-governmental organisations and Departments, has led to quite a difficult situation that might have been avoided. So how can you argue that an extension of the existing method is a good way of doing business?

Mr K Bradley: We learn from our experiences. This national designation process is different in that there is much more emphasis on consultation. When the Department was tasked with providing a suite of particular areas under the habitats directive, there was no requirement to look at other issues — only at ecological issues. There was no requirement to consult or take account of any other activity happening in that area, and that lack of discussion led to problems. This new process, which is much more open and transparent, should overcome all of those problems. It includes an area of consultation, informing stakeholders, hearings, etc, so we should not get into that state of affairs again.

Mr McGlone: I will just stop you there. Openness and transparency is one thing, and I am sure that letters ping-pong between all Committees and their respective Departments. However, what the Departments are really saying to Committees is "Just leave it with us."

I have not heard anything really cogent from you. It is not a matter of the process simply being open and transparent. There can be all the openness and transparency we like, but that is no good if things are not being done. It is about how the process can be managed to ensure that things are done. I still have not got into my head yet how that will be done, because the experience that I outlined left us in a very difficult and complicated situation that will, potentially, cost a lot of money through fines for infractions. I hope that we will obviate that situation and that we will reach a point at which that does not happen. As I said, we must underline in red that the first MCZ would be Strangford lough, and I hope that some of our European colleagues take note of that. However, other than openness and transparency, which should exist at all times anyway, I still have not heard that there will be a better way of managing things.

Mr K Bradley: For the first time, the DOE will have an enforcement capability. Until now, we relied on other Departments to protect our sites through their legislation. As you say, that has not always worked in the past. This legislation will allow DOE, for the first time, to be an enforcement authority in the marine environment. That will require DOE to work very closely with our fisheries colleagues in DARD, the Agri-Food and Biosciences Institute (AFBI), others involved in research and DETI. I think that we have all learned from experience. New mechanisms have been put in place, and no one wants to go back to the way it was before. The DOE exists to conserve; others are there to do something else. If those two conflict, so be it. For an MCZ to be designated, other social and economic activities would have to be fully taken account of. Should it be felt that those activities were more important than the environmental considerations, the MCZ would be located somewhere else. You must bear in mind that our designation process is part of a UK-wide commitment to an ecologically coherent network.

Mr McGlone: I am not talking about making designations; I am talking about the management of designated areas that are already in place. With all due respect to you, Ken, we are getting away off the point. I am still not hearing how this will work or getting guarantees that what was in place before, which was a mess, will work better. I am not hearing that a definite form of management will be in place to ensure that interdepartmental work is coherent, joined-up and delivering what it should. I am still not hearing any reason why that is not in place.

Mr Kerr: I will add to what Ken said. The Minister recognises that integration is important, as, I think, does everyone. Across the piece, integration is important in how the marine environment is managed, how the Bill is implemented, and so forth. The Minister has asked us to look at ways in which that can be achieved. There are a number of ways in which such things can be made to work better in the future. Maybe the answer to your question is that it is an area that we are looking at. It is recognised that, as is often the case, the situation is not perfect.

Mr McGlone: I would not use that adjective.

Mr Kerr: OK, but we recognise that integration is important, and we are looking at it.

Mr McGlone: We are moving towards my getting a wee bit of clarity. At what point will we get details of how that thinking will become distilled into something tangible that we can look at in practice and say "OK. We could work with this. This could do well, or that could do well." When will we hear that?

Mr Kerr: We are doing some work on that, and we need to talk to the Minister about it and take on board his views and those of others. He has asked us to do that work. You will know that the Minister favours an MMO, but there are other ways in which integration can be achieved. So we are working on that and will report back.

Mr Campbell: Is there any ambiguity about the Foyle and Carlingford issue?

Mr K Bradley: No.

Mr Campbell: On a completely separate issue, I notice that clauses 20 and 21, which detail the duties of public authorities, take up more than two pages. I presume that that is quite an important part of the Bill. Is it the case that public authorities will be clear on the progress of the Bill and how it will affect their likely duties?

Mr K Bradley: Yes, that is right. We will also bring out guidance for public bodies on the duty and how to adhere to it. You are quite right that it is an important part of the Bill. As I said, so many people have different responsibilities within the marine environment, and one responsibility has the potential to conflict with another. People need to know what an MCZ is about, what its features are, why it is important, which activities can be allowed and which are detrimental to it. We consult the public bodies, they are mindful of the duty, and I hope that the two activities can co-exist.

Mr Campbell: I can see the sense in that, but maybe you can allay my concern. If we look at the timeline over the next three, four or five years and then at the review of public administration, it becomes apparent that there will be liaison with a number of councils: the coastal councils, starting from the north-west, Strabane, Londonderry, Limavady, Coleraine and right round. However, some inland councils do not currently have a coastal section but will under the review of public administration. Given that the situation will change in the next four years, will those councils be consulted in the same way as councils that are currently coastal?

Mr K Bradley: At present, when we designate a European site, all coastal councils are consulted. That will remain the case, and there is no problem there.

Mr Campbell: Yes, but what I mean is that certain councils do not have a coastline now but will have under the review of public administration. I do not want to single out councils but, for example, Ballymena is currently an inland council that will become part of a council that has a coastline. Will it be consulted?

Mr K Bradley: I see your point. As stakeholders, yes, they would have to be consulted.

Mr Kerr: In moving from 26 councils to 11, it will become more and more the case that most councils will probably have to be consulted.

Mr Campbell: That is what I mean. Will the consultation recognise that?

Mr Kerr: Yes.

Mr Dallat: As I was sitting here, Chairperson, I cast my mind back to the weekend. Anyone who travelled round the Antrim coast last weekend could not have failed to recognise that we need a Marine Bill to protect its absolute beauty — it is beyond words. Yet, in its present form and because of the number of get-out clauses in it, the Bill strikes me as the type of legislation that would turn Alcatraz into an open prison. We talk about local authorities, but we do not even know what the local authorities are.

Earlier, there was light discussion, which I missed part of, on shipwrecks. There is the Girona, and HMS Drake, of course, off Rathlin Island, and other shipwrecks from the Spanish Armada are possibly out there. I raise this issue, because it is topical after all the Titanic exposure. There are big issues about war graves and about what should be left alone and what should not be plundered and so on. That is important.

In a nutshell, I am not convinced that the Bill will dominate other interests, particularly as it is spread over Departments. You mentioned, of course, the role of the politick. I do not think that this legislation is robust enough to deliver what it is supposed to.

I think that Gregory referred to this at the very beginning of our discussion, but what happens if some pig farmer, and I am not picking on pig farming, who just happens to be on one side of the border or the other decides to have 100,000 pigs and all the effluent flows into the Foyle or Carlingford lough? I understand that the Republic's Marine Bill is behind ours, but I am not sure about that. However, there has been no reference to that at all, yet I can bet my bottom dollar that the first major issue relating to pollution or some crisis will involve the Republic and Northern Ireland having to have some sort of commonality on how they enforce and protect the marine environment.

Mr K Bradley: The Marine Bill is, obviously, not the right mechanism to deal with an example such as that.

Ms Cunning: There is the marine strategy framework directive (MSFD), and, indeed, the water framework directive, which covers out to one nautical mile and the loughs. Lough Foyle and Carlingford lough are shared waters between us and the jurisdiction in the South. Therefore, they already have a duty to reach good ecological status under both directives. So, they would not want a pollution incident such as that to happen in their own jurisdiction. Therefore, it would not have an impact on us, and that works vice versa. We also have to work with them as another member state under those directives. That is the driver for environmental protection across borders.

However, you are absolutely right: working with them is key. We are adjoining regions. Co-operation is also key if we have any issues with Scottish boundaries. The marine environment cannot be separated out. Terrestrially, we are a distinct island, and that is fine. With the marine environment, however, we will create impacts from all the waters around us, and we can impact on them. So, yes, co-ordination with other jurisdictions is very important. That is why parts of the Bill deal with giving notification to the adjoining jurisdiction if, for example, we are doing a marine plan.

To come back to your point, however, any cross-boundary pollution would be captured by the water framework directive or the MSFD. At least, we hope that it would be.

Mr Dallat: I asked several other questions.

Ms Cunning: Perhaps we can touch on public authorities. You were a bit worried about that. It is actually defined.

Mr Dallat: It seems that we are being asked to embrace an act of faith because we do not know what the authorities are or what their responsibilities are. How on earth can you consent to a Bill when you do not know who you are sharing it with?

Mr Campbell: Ye of little faith.

Mr Dallat: I know.

Mr Kerr: This scrutiny process will, hopefully, get to the bottom of any issues that you may have. We hope that there will not be blind faith at the end of that process. You will have had an opportunity to dig into some specific issues and, hopefully, we can address them, including whether they need to be changed or amended. Indeed, they may have been already covered in some other way. Obviously, we are keen to do that.

Mr Boylan: Thank you, Chair. I think that Danny asked all the questions, but I will try to squeeze one or two in.

I still have concerns about the absence of an MMO. We were reactionary to the issues with Strangford lough, and the proactive approach would have been to designate, which is fine. The designations will

come from the Department, but what stakeholder involvement will there be? I welcome the statement of public participation, because, although the terminology is "consultation", with previous legislation I found that not much credence was given to information that was given and the contributions that were made. I think that we need to move away from that. Will the stakeholders have any part to play with the designation teams in making the designations ? Will those decisions lie with the Department?

Mr K Bradley: Clause 14 will give the Department clear responsibilities. Before we can make a designation order, we must consult with anybody who is likely to have an interest.

Mr Boylan: It is not just about making designations, because it has to be managed. That will lie in the Department. As I said, the response to the issues in Strangford lough was reactionary. How do we ensure that that does not happen again? That is what I am concerned about.

Mr K Bradley: That is a valid point. Hopefully, we have learned from the Strangford experience and will not repeat it. However, I suppose that time will tell. There is no specific mechanism other than the duty to carry out public consultation. We also need to take into account socio-economics so that everyone knows what has been designated and why, whether some other activity is happening that is maybe more important or whether we need to change the location of an MCZ. I think that that is a better process. I do not want to use the term "openness" again, but it is definitely a more open and transparent process. There should be nothing from the Department that is a fait accompli. We will manage it by consensus. At the end of the day, we should not designate an area if someone is totally against us doing so.

Mr Boylan: Obviously, there are also the European designated sites to consider. How will we marry those up with the local sites? Will there be separate guidelines or timelines for doing all that?

Mr K Bradley: We will produce separate guidance on the designation process. You are right; the MCZs may be beside or even overlap existing European sites. In a way, that is not a bad thing, as people already know where those areas are. Strangford lough is a good example of that, but there are other European sites such as Rathlin Island. If we create an MCZ that is close to or even overlaps part of those sites, there should not be the same problem. We will set out guidance on the designation process, which will be available to all public bodies.

Mr Boylan: OK.

Mr Molloy: Mr Campbell asked you about Carlingford lough and Lough Foyle, and you seemed to indicate that we have total authority over those. Have I interpreted that incorrectly? My second question is about the Crown immunity, which is mentioned in clause 45. Are you saying that there are no measures for which the Crown is accountable? Is the Crown accountable under European law? Could it be charged under that?

Ms Cunning: I am not sure that we have time to get into the jurisdiction issue. The Bill applies to all the waters in the UK that are adjacent to Northern Ireland. What the extents of those will be in Lough Foyle and Carlingford lough — *[Inaudible.]*

Mr K Bradley: In marine nature conservation, we designate in Carlingford lough and Lough Foyle.

Ms Cunning: We also have marine licensing there. Therefore, we already have functions in those areas.

Mr K Bradley: We and our colleagues in the South designate in those areas.

Mr Molloy: Is it shared, then?

Mr K Bradley: Information is shared, yes.

Mr Molloy: The authority is obviously shared as well. Is that right?

Mr K Bradley: DOE manages what we designate, and the National Parks and Wildlife Service manages what it designates.

Mr Molloy: I was concerned that the legislation had changed and that we now had total authority over Lough Foyle and Carlingford lough. *[Laughter.]*

Ms Cunning: As far as the Crown is concerned, you are right: this is a standard clause. The Bill will bind the Crown. It cannot be held criminally liable, but the High Court can declare that an act carried out by an officer of the Crown is unlawful. In fact, officers of the Crown can themselves be held liable. So, within those constraints, it applies to functions of the Crown.

Mr Molloy: Is the Crown accountable under European legislation? That was my second point.

Ms Cunning: Yes, it would be, to the extent that it is as usual, so the status quo would apply in that regard.

The Chairperson: Thank you very much indeed for attending. We will see you again fairly soon.