



Northern Ireland  
Assembly

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**COMMITTEE FOR  
AGRICULTURE AND  
RURAL DEVELOPMENT**

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**OFFICIAL REPORT**  
(Hansard)

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**Forestry Bill**

26 January 2010

**NORTHERN IRELAND ASSEMBLY**

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RURAL DEVELOPMENT**

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**Members present for all or part of the proceedings:**

Mr Ian Paisley Jnr (Chairperson)  
Mr Tom Elliott (Deputy Chairperson)  
Mr Thomas Burns  
Mr Willie Clarke  
Mr Pat Doherty  
Mr William Irwin  
Dr William McCrea  
Mr Francie Molloy  
Mr George Savage  
Mr Jim Shannon

**Witnesses:**

Mr David Small )  
Mr John Joe O'Boyle ) Department of Agriculture and Rural Development  
Mr Stuart Morwood )  
Mr Michael McCann )

**The Chairperson:**

We will hear a presentation from the Forest Service officials on the Forestry Bill. I welcome David Small, who is the chief executive, John Joe O'Boyle, who is the director of forestry, Michael McCann, who is from the policy and legislation branch, and Stewart Morwood, who is the director of woodland development and strategies. For ease of reference, we will commence at clause 1 and go through the Bill on a clause-by-clause basis. We will take a break at 12.30 pm

and come back at about 1.30 pm, when we will continue to go through the Bill.

Welcome to today's meeting. This will be the first time that we will have gone through the Bill on a clause-by-clause basis. Given what we are discussing, Mr Morwood, you seem to be the man with the best name here. A folder containing comments on the Department's amendments has been provided for members, which may become relevant as we discuss each clause.

The clause attracting the greatest attention from the Committee and stakeholders is clause 1, which contains the general duty of the Department. Even with the proposed amendment to express the sustainability ethos more strongly, clause 1 is considered to be too narrow. There is a view that it does not impose a duty on the Department to achieve its afforestation objectives, that it is still too light in respect of maintaining the biodiversity of woodland, and that it fails to detail how the Forest Service will promote sustainable management of all forests, whether in public or private ownership. We would like to tighten up that clause so that it represents those issues and makes that point. I invite the departmental officials to comment on that.

**Mr David Small (Department of Agriculture and Rural Development):**

I want to take the opportunity to run through some of the issues that we included in our letter to the Committee last week, in which we proposed a number of amendments. I am happy to start with the issues around clause 1.

We acknowledge that clause 1 is, by far, the most important clause in the Bill: it sets the foundation for the Bill. We were aware of comments from the Committee and from a number of stakeholders that the sustainability ethos was not expressed clearly enough. In our letter, we acknowledged that the Committee wanted to see a more proactive and overt vision for forest expansion and a clearer demonstration of how the Bill will contribute to issues such as biodiversity and climate change. Our proposed amendments to clause 1 are designed to try and address those issues. We propose that clause 1 be redrafted to express more clearly a general duty around the issues of sustainable forestry and forest expansion, and to try to capture issues around biodiversity and climate change. Therefore, clause 1 would overtly refer to biodiversity issues, climate change opportunities, the importance of forest expansion, and to the final duty of sustainable forestry.

**The Chairperson:**

Everyone that the Committee has taken evidence from has said that the Bill offers a huge opportunity that should not be missed. It must address afforestation and the commercial and other opportunities that do not appear to be amplified in the Bill. If the intention on those issues is captured in clause 1, people could be inspired by that, which, I think, is what the Department is trying to do.

**Mr Small:**

I agree. We have listened to the Committee and to stakeholders, and we have looked at the transcripts of the evidence sessions. That aspect came out clearly.

The original general duty in the Bill, as drafted, was to promote forestry. We then went on to define the three aspects of forestry as being economic, environmental and social. We are now proposing that clause 1(1) — the Bill's opening statement — will capture more clearly and more fully the wider issues around sustainability, forest expansion, and the extent to which forestry can contribute to issues such as biodiversity and climate change. Subsequent to that, we will detail more clearly the three aspects of forestry, with a stronger emphasis on the social, economic and environmental aspects.

It was commented that the structure of clause 1(2), starting off with the afforestation issues and the supply and production of forest products, meant that the subsequent provisions around the environmental and social aspects were subordinate in some way. That is not what was intended, but we will address that to give a more equal footing to the three elements.

As well as a more overt reference to forest expansion, biodiversity and climate change, we also propose an amendment that will put a clear duty on the Department to promote sustainable forestry. We have stopped short of making that a statutory requirement on individual private woodland owners. That was largely reflective of the fact that, in many cases, the size and function of a very small forest area, particularly private woodland, may not offer the opportunities to meet all the requirements of the UK forestry standard, for instance. It also reflected some of the Ulster Farmers' Union concerns. It made the point that too onerous a burden on individual woodland owners would almost certainly put farmers off, for example, from creating new woodland. We do not want to create such a disincentive. We want to keep woodland creation clearly on the radar for farmers and keep it as a real option for them.

Rather than imposing a statutory duty around sustainable forestry on the landowner or farmer, we are taking the duty to promote sustainable forestry. In the case of grant-aided woodland, we will do that through the grant scheme and the additional leverage that that provides us.

**The Chairperson:**

Would you include recreation in that definition?

**Mr Small:**

Yes.

**The Chairperson:**

Although I understand the social aspect of it, I think that it needs to be spelt out clearly.

**Mr Small:**

When talking about the public's enjoyment of the land, we mean the enjoyment that they can gain through leisure, outdoor activity opportunities in the forest, recreation and, in particular, tourism.

**The Chairperson:**

Last week, we had a good presentation from Dawson Stelfox's group. I think that Stewart was there. It spelt out positively some of the opportunities that are going a begging. If the Bill captured that, and did not do violence to the commercial aspect that is also required, it would have some purpose and drive. The Committee felt that that was a positive presentation.

**Mr Small:**

The revised clause that we propose would give us the powers, as well as the broader duty, to try and take out the full potential that forests offer. That includes the environmental and economic aspects, as well as leisure-type opportunities, such as social and tourism-related issues. That is our intention and reading of the clause.

Clause 4 is also important in that respect. It gives us broader powers in relation to how we use forestry land. The purpose of that clause is to enable us to have more activity-based tourism and facilities in the forest. The Forestry Act (Northern Ireland) 1953 does not give us the type of broader powers that we feel that we need to fully take out the potential of tourism opportunities in

the forests. The combination of the broader general duty under clause 1, with the clear emphasis on social responsibilities, along with clause 4, gives us all of the powers and provisions that we need to try and realise that potential. That is what we are about. The recreation strategy that we published last July was a statement from the Minister that she wanted to realise the full potential of forests, not only in respect of tourism, but with regard to the wider social benefits, such as health and sporting opportunities.

**The Chairperson:**

Your proposals in relation to the Bill are aspirational; they relate to what you may do. Are you thinking of tightening that to a “shall” do? I know that that puts an onus on the Department and introduces financial issues.

**Mr Small:**

The suggestion has been made that we should assume a statutory duty for tourism. I personally have doubts about whether the Department of Agriculture should be assuming a statutory duty that is a statutory duty on another Department. We could do it for tourism, but we might also be encouraged to do the same for health, education or sport, because those are the broad opportunities that we think the forests offer. We believe absolutely that it is right that we should be making our contribution and facilitating all those potential opportunities.

I am not sure that it is appropriate for DARD to assume a statutory duty for issues such as health, sport and tourism when those duties rest with other Departments. Part of the government approach in Northern Ireland is that each Department should be contributing to the wider objectives of government generally. That is our intended approach. I am just not sure whether we should go as far as assuming a statutory duty for those issues.

However, we are committed to all those wider issues. I was a bit disappointed when I got feedback after the Countryside Access and Activities Network (CAAN) presentation. I accept that Dawson and his colleagues have clear aspirations and hopes for what forests can deliver, and we share those aspirations. I do not think that the presentation fully reflected the changes and the work that we have been doing over the past year or two in publishing the recreation strategy, trying to get the Bill to include the powers we need to help us to realise those wider objectives, and the work that we are doing with the Tourist Board to try to form a much closer relationship whereby together we can identify potential tourism benefits and then work to try to realise them.

We have committed significant time and effort over the past year, and even before that, to try to position ourselves so that we can begin to make those wider contributions. In the context of our recreation strategy, we have been working closely with a number of councils on significant potential recreation products in our forests. Some of those are reaching a more advanced stage, and some have further to go, but we have been working very hard, and I am confident that within the next year there will be very visible evidence of that work beginning to deliver benefits. We have worked with councils, the National Trust and commercial interests, and it is all geared towards realising potential.

**The Chairperson:**

Clauses 1 to 4 cover quite an area. I will ask members for feedback on just those clauses. We will then move to clause 5 and beyond.

**Mr Shannon:**

There is some concern. I declare an interest as a member of the British Association for Shooting and Conservation (BASC). The Committee received a submission from that organisation, and from other organisations. I joined this Committee when the Forestry Bill was starting, so I probably arrived at a fairly early stage with regard to contributions. The BASC put forward the idea — and it was not the only organisation to do so — that there should be a forum for stakeholders. Does the Department accept that that should have happened? The idea is that it is all very well for the Forest Service —

**The Chairperson:**

Jim, that is for later. Let us address clauses 1 to 4. We will come to the issue of stakeholders.

**Mr Shannon:**

Excuse me. I brought that up because I thought that it was part of the introduction, of where we were going, and setting the scene.

**The Chairperson:**

It does come up later on.

**Mr Shannon:**

Well, OK, if it comes up later on.

With regard to clauses 2 to 4, what does the Forest Service understand or mean by the term “sustainable forestry”? We must be clear about what we are trying to achieve. A number of bodies are concerned about what that term means for everyone. It must be clearly defined so that when the legislation is in place, “sustainable forestry” is understood by everyone who has an interest in it so that they know what the Department is trying to achieve. I am not sure whether you have been doing that in your response, particularly paragraphs 4 and 5. What consideration did you give to those organisations that made the point about sustainability?

**Mr Small:**

There are two issues there. One is the definition of “sustainable forestry”, and the other is how we address the issue of sustainability in the Bill.

There are definitions of “sustainable forestry”. ‘The UK Forestry Standard’, for example, has a clear definition of the term. We do not have that to read out to members, but it tries to capture a vision of forestry managed in such a way that the benefits that forestry can deliver are deliverable today, and that those same benefits can be delivered in the future, for future generations. It ensures that we do not take all the benefits out of forestry today and lose the benefits for the future. It requires appropriate levels of felling and restocking and appropriate management. It is also about delivering the wider benefits that forestry offers — economic, environmental and social. That is why we refer to those three pillars; they are caught up in the definition of sustainable forestry. It is about delivering the full range of benefits that forestry offers, and ensuring that our management approaches can deliver those same benefits in the future.

The second issue we have talked about a bit already. We have spoken about trying to address more clearly the sustainability aspects of the Bill. We accept that that is not adequately covered in the current draft of the Bill. We propose to address those sustainability issues much more clearly and overtly in an amended clause. Our proposal is to place a clear commitment or duty on the Department to promote sustainable forestry and afforestation, and also to address such issues as biodiversity and climate change more clearly in the opening clause of the Bill. That will effectively address the sustainability obligations and requirements which were intended to be addressed by the current draft of clause 1, but are not expressed overtly enough. Our intention is



that the revised clause will refer to those items much more clearly.

**Mr Shannon:**

At paragraph 5 of your document, you say that:

“felling licences will be another tool to ensure sustainable management.”

That is what you say. There will be compensation liability attached to any refusal or similar, is it not important that everyone understands how sustainable management will work? I am sure that you have given some thought to this — and I do not mean to be disrespectful — to the contributions that a number of bodies have made. If you say that felling licences will be a tool for delivering sustainability, and if there is a compensation liability as well, we must be sure that we are not at odds and that we understand one another. I am not sure that that is happening. My comments are intended to be constructive and I am not trying to be smart.

**The Chairperson:**

Absolutely.

**Mr Small:**

We feel that the new felling regulation system that we propose, alongside the grant aid system that we operate, will mean that, in any area of forest at felling stage, we will have an opportunity to intervene and ensure that sustainability requirements are met and the requirements of good forestry practice are delivered. Our intention is not to stop felling taking place; it is an opportunity to have a look at the restocking proposals and satisfy ourselves that they deliver sustainable forestry and are consistent with good forestry practice.

**Mr Shannon:**

Some of the bodies are saying that they do not believe that the concept of sustainability has been worded correctly or properly enshrined in this legislation that the Committee will, at some stage, endorse. Is it not important to have all the opinions on that in agreement early on, and have that concept defined at an early stage to the satisfaction of everyone?

**Mr Small:**

I agree, and I agree with you that that is not done in the current draft of the legislation.

**The Chairperson:**

You are going to come back with more details.

**Mr Small:**

We will be providing the Committee with —

**The Chairperson:**

On the issue of felling licences, we will have a much more detailed discussion, probably after lunch, which we are expecting to take at 12.30 pm. That is a huge issue and it has huge implications.

**Mr W Clarke:**

I welcome the promotion of forestry as a means of mitigating the effects of climate change. It is essential that that be at the heart of the Bill. I have argued for it since the beginning of the process of the Bill, which has to take us through another 30 or 40 years, say. Therefore, we need to be forward-thinking.

In order to use forestry for flood management, for biomass opportunities, even for green procurement opportunities, and to offset agricultural emissions, it is essential that mitigation of climate change be at the heart of the Bill. Its absence was a major weakness in the original proposals.

As regards other benefits for recreational tourism, health and well-being, they have to be built into the duty at the start of the Bill. We need to state clearly that that is what we are about. I do not want any wriggle room. Although it might be an aspiration —

**Mr Small:**

It is more than an aspiration. I genuinely believe that we are beginning to deliver.

**Mr W Clarke:**

I agree. I recognise that Forest Service has taken major steps forward into new territory, as I call it, to work in partnership with other organisations, which include councils. That is a sea change. Without going off the subject, sometimes new expertise is needed to deliver. Forest Service needs new thinking on delivery of some of those aspects. Reference to climate-change mitigation is needed at the start of the Bill.

**The Chairperson:**

If the recreational aspect were firmed up, would that have financial implications for the Bill? It could change dramatically.

**Mr Small:**

Yes. If there were a clear statutory duty on us to provide recreation, it would have significant financial implications for the Department. The approach that we have taken during the past year or two has been to try to find a mechanism by which we can realise potential for recreation, leisure and other benefits.

**The Chairperson:**

Last week, Caro-lynn Ferris and Dawson Stelfox from CAAN made a powerful submission. They pointed out that if the Department gets the Bill right, its money-generating aspects have incredible potential. They referred to Dalby Forest as an example. If that comes into it, even if it is potential or aspirational, it has to be covered by the Bill's financial implications. We need to be aware of that and open to it. When you bring back your detailed proposals, you need to have considered that as well. It would be terrible if we were to produce an aspirational Bill without the finances to meet those aspirations.

**Mr Small:**

That has a lot to do with how the wider recreation and tourism opportunities that the Bill might facilitate are delivered. Our approach has been to ensure that we make forest available for those wider opportunities and put in place the infrastructure that allows such opportunities to become more viable. That means that the Department has to readjust some of its own forestry activities to make way or facilitate new development.

Our approach has been to attempt to secure operating partners in the commercial sector. Therefore, rather than Government delivering a facility that could be delivered by the private sector, we will seek to find a commercial operating partner. We have successfully done that for the high trees adventure facility that we hope to open in Tollymore this year, where we have entered into and now operate a relationship with a private company. That has worked well. It is a good model.

We are in the middle of developing a commercialisation strategy, the focus of which is to

commercialise the assets that forests have to offer. We will explore commercial opportunities for tourism, hotel development, holiday accommodation development, and caravan and camping provision. Again, we believe that the private sector can deliver on those types of proposals.

**The Chairperson:**

We heard this morning that there are proposals to cut £94,000 from your commercialisation work.

**Mr Small:**

I am not sure —

**The Chairperson:**

Gerry Lavery was here giving us the finances. It will actually affect a number of posts.

**Mr Small:**

That refers to a delay on our part in taking forward recruitment. We have agreed to delay the recruitment of a commercial director — and one or two other posts that are unrelated to our commercialisation work. We are aware of that issue, and we are simply slowing down the process slightly.

We have had some positive soundings from that commercialisation work, from the market test work that we have been doing, and we believe that the private sector will be interested and will be willing to make some of that investment.

The other approach that we have been trying to follow is identifying operating partners with the likes of district councils. District councils already have an obligation to deliver tourism, recreation and leisure in their areas. We are taking an offer to them and saying that we have an infrastructure that is very attractive for tourism and recreation products, and they may be interested in working with us. The model that we have been developing with two or three organisations so far, including district councils and the National Trust, is looking very positive.

We believe that councils are willing to commit as an operating partner with us. We already have an agreement in principle from the National Trust for a significant multi-purpose recreational product at Castle Ward, and the National Trust will assume the operating costs of that product. We will facilitate it happening in the forest environment. We will adjust our operations

to ensure that it can happen, but, where possible, we are avoiding costs falling to Forest Service. That has been working quite well, and, with a stronger commitment in the Bill, we can continue to pursue commercial models and operating models with other partners, such as the RSPB, the National Trust and district councils. We can work together with them to get products on the ground. If we can do it that way, the financial implications that the Bill might have will be significantly reduced.

**The Chairperson:**

It is a shared partnership. A supplementary point to the legislation could be that further financial considerations could come in at a later stage. However, you need to be aware that the Bill needs to be amended to allow for that supplementary point.

**Dr W McCrea:**

I apologise for not being present to hear your submission. The amending of the general duty is welcome, and I am sure that other changes can be made. Many people still believe that the proposed definition of “sustainable forestry” is too restrictive. There is a general duty on the Department to ensure that biodiversity is promoted, protected and enhanced. However, might the use of the words “as a means of mitigating climate change” not result in biodiversity and conservation enhancement only being carried out when it benefits climate change mitigation? Surely there is a question over whether that would be implemented in an environmentally sustainable manner.

**Mr Small:**

Perhaps the wording is not capturing the full extent of what we are proposing.

**Dr W McCrea:**

It is vital that the wording captures what the Department means, because the legislation is what will stand at the end of the day.

**Mr Small:**

I understand that.

**The Chairperson:**

Can you bring back a different form of words for that?

**Mr Small:**

Our intention is to capture more clearly and overtly the biodiversity commitments. I hope that biodiversity will feature as a clear reference in the Bill.

**The Chairperson:**

You would not want it to become a handicap.

**Mr Small:**

I do not think that it will. Good forest management will offer all sorts of biodiversity opportunities and climate change opportunities, particularly for forest expansion, which is something that we are committed to.

**Dr W McCrea:**

Surely you want to limit it simply to “mitigating climate change”, and not have the overarching purpose of this being in the heart of the legislation? A number of organisations have raised issues in respect of a proper definition of “sustainable forestry”. What does that mean? I think that it is right to say that RSPB and other organisations have included a number of things that they believe should be included in the definition. We have to be careful that it means what we think it means. When changing legislation, clarity is vital. Will you look afresh at the definition and see whether those issues are included? I will not waste time by going through the issues again; you have the list, or if you do not I will forward it to you.

How do you see the Department and the Forest Service promoting the sustainable management of all forests, both in public and private ownership? How will you ensure that all forests are managed in a sustainable manner? It has come down to language, but if that is what you think it means, it has to be done. How will the Forest Service take that forward?

**Mr Small:**

There are a number of critical points in forest management. The first is the establishment of the forest, and the second occurs when felling and restocking are due to take place. Those are two occasions on which we can see the benefit of the Department having some intervention. In instances where we grant-aid forests, we are actively involved in the forest design, the initial planting stages and throughout the growth and development of that forest for about 10 or 15

years.

The next key stage occurs when the forest is due for felling — or thinning — and restocking. The felling licences will give us an opportunity to have a view of how satisfactory the plans are and how consistent they are with good forestry practice.

We acknowledge that there will be some smaller areas of forest that are not grant-aided. We propose that we will have a duty to try to promote sustainable forestry in those circumstances. The felling licences will allow us some intervention at a later stage. We were conscious of some of the comments and concerns that were expressed by the Ulster Farmers' Union about imposing a duty on every woodland owner. Where a woodland owner is in control of an area of one or two hectares, sustainable forestry means something different; there is less scope in respect of the level of sustainable forestry that can be achieved. There will not be so many benefits in respect of social, recreational and environmental opportunities in a very small forest block.

Rather than impose a duty on an individual to sustainably manage his or her forest, we propose that we will take the duty to promote. That would mean sending out literature and trying to make people aware of the benefits of sustainable forestry. Alongside the benefits of the felling regulations system, we believe that we have a comprehensive system for the vast majority of forest cover in Northern Ireland, be that forest that we manage or forest that is grant-aided. We will be able to carefully monitor the extent to which forests are being sustainably managed, and we will be able to promote and encourage sustainable forestry in small areas of privately-owned forest.

**Mr Stewart Morwood (Department of Agriculture and Rural Development):**

A number of months ago, I had the privilege of making a presentation to you in relation to a consultation on the UK woodland assurance standard, which is the Government's approach to sustainable forest management. It encompassed several documents, and it provided a definition of the term and how it was arrived at. The consultation also indicated how the Government and the forest authorities intended to monitor sustainable forest management within a country context. It was accompanied by a suite of guidelines, and the subject matter is quite a tome. It includes issues relating to forests and water and forests and soil, which deal with the basics, and it looks at the social aspects of forestry in a sustainable context by dealing with forests and people. It deals with forests and climate change, and addresses the wider issues of climate change. Although it is

difficult to encompass those definitions within a piece of primary legislation, I feel that we have quite an extensive policy document and one which has been widely consulted on throughout the country.

**Dr W McCrea:**

Will the sustainable forestry duty reflect the Department's aspiration — which, of course, should be more than an aspiration — to double woodland cover in Northern Ireland?

**Mr Small:**

The revised Bill will put a clear duty on the Department to promote forest expansion. The way in which we do that will be largely through incentives, the availability of grants, and the availability of good information about the benefits of converting to forestry. As the Committee knows, at the moment it is proving very difficult to persuade farmers to make that diversion.

**Dr W McCrea:**

Promoting forest expansion could mean promoting it only a little. However, the Department's vision was much wider than that: it was to double the coverage.

**The Chairperson:**

That target is in the Programme for Government.

**Mr Small:**

There is a public service agreement target in the Programme for Government covering the past two years and the year that we are coming into. There is also a wider aspiration, which we have included in our strategy, to double forest cover over a 50-year period. That is very ambitious. As you know —

**The Chairperson:**

Realistically, you are nowhere near that target.

**Mr Small:**

No.

As the Committee knows, we have recently increased the rates of grant incentives available



and, over the next year or so, will be monitoring the response to that and the applications that we receive. However, we acknowledge that that is an area in which we have to invest a lot of time and effort to try to identify what could make a difference. In a lot of cases, we are dealing with agricultural land. Therefore, we have to identify what could make a difference in convincing farmers to make the conversion to forestry. A lot of work has to be done so that we can be satisfied that the current levels of grant incentives, which we have just increased, are adequate and appropriate. Also, other methodologies have to be looked at and considered as to how we promote, encourage and communicate with landowners and farmers, and the extent to which we are able to engage with them. At the minute, we do not have much capacity to do that, and that is something that we are trying to address.

**Mr Savage:**

I would like to see more trees being planted than are currently.

Are the trees sprayed at any time for protection against fungi, and does the Department have a nursery for its own trees?

**Mr John Joe O'Boyle (Department of Agriculture and Rural Development):**

We no longer have a nursery to grow our own trees. That was discontinued two or three years ago, largely for economic reasons. There is more opportunity now to acquire the necessary range of plants through competitive purchasing arrangements. We did have a tree nursery, but its commerciality, as with any nursery, depended on growing trees on a scale much larger than what was necessary in Northern Ireland. The economics stacked up in favour of purchasing plants. We now have contractual arrangements in place with other organisations to grow plants and, in effect, to purchase them on the open market under contract.

Some chemical protection is required, especially when trees are being put into the ground, and, in particular, when trees are planted on sites that have been clear-felled and replanted. Trees planted on such sites can be attacked by beetles or weevils, and, therefore, be damaged and require replanting.

A number of approaches are taken to prevent those trees getting eaten or damaged at the planting stage. Some of the methods involve dipping the plants in a chemical up to and above the root collar and planting the trees. That provides protection for that season and into the next

season. Once you get the trees past that first season of growth, they tend to be sufficiently resilient, and they do not need further protection. That is the general approach and the most common type of application that is needed in afforestation.

**The Chairperson:**

Thank you. The meeting will adjourn until 1.30 pm. We will resume with clause 5, which deals with the controversial issue of the compulsory acquisition of land.

*Committee suspended.*

*On resuming —*

**The Chairperson:**

Gentlemen, you are very welcome back. We will move on to clause 5, which relates to the compulsory acquisition of land. Clause 5(1) states:

“The Department may acquire compulsorily any land which it requires for the purposes of, or in connection with, the carrying out of any of its functions”.

I know that you want to hear the Committee’s views on the issue, and you have indicated in your submission that the Minister is minded to bring forward appropriate amendments to address the Committee’s concerns. The concern that we have picked up from practically everyone who has spoken to us on the issue is that the power is too far-reaching. Although there is a recognition that there is a need to get access to land, it seems that there are two ways to skin a cat in this instance, and there might be a better way of addressing the issue.

Representatives from the Ulster Farmers’ Union suggested that temporary compulsory leasing of land might be an option, with the requirement to reinstate the land afterwards to the original landowner. That is one of the more concrete suggestions to have been put to us on an alternative form of words. However, it has raised the hackles of many people who have given evidence to the Committee.

**Mr Small:**

We were aware of that proposal. One or two groups aside from the UFU have mentioned the idea of having a temporary arrangement through which we could gain access to the forest, do what we want to do and then reinstate the land back to the owner. However, in almost every circumstance, we foresee that we will be taking timber from that block of forest for 15 or 20 years. We cannot envisage a situation whereby we could operate a temporary arrangement; we cannot envisage needing access to a block of forest once and then not needing access again for 10 years.

The other disadvantage is that, in many circumstances, we will already have some form of access. For example, we may have acquired a country lane with the site 30 years ago, but the lane is simply not wide enough or the structure is not strong enough. Therefore, we would propose to make adequate arrangements that would allow us to do the construction work. That would mean widening or strengthening the lane, or both. Having invested big money to do that, we would find it a bit odd to then pass it back and have to renegotiate the whole thing in five years' time.

In most circumstances, we would need to take timber from the forest on a regular basis. The arrangement would not operate every month or every second month, but rather every year. Having made the public investment to make the access appropriate and adequate, we would then want to reuse that access the next time round.

**The Chairperson:**

Such things affect the next generation and can cause hardship if land is being vested and taken forcibly. There are instances in County Antrim, County Armagh and Craigavon where land has been claimed and then never used for the intended purpose. Ultimately, will it be passed back to the original landowners? Surely there is a mechanism that would allow for such an option. People can mount a challenge in court, and, if land becomes surplus to government requirements, they can argue that it should be offered to the original landowners at a reduced rate. However, in order to avoid protracted legal costs, could that option be included in the Bill, but not necessarily as the only option for the way forward?

**Mr Small:**

We will look at that. It is something that we have discussed. Could there be circumstances in which a temporary arrangement might satisfy our needs where we need access only once?

The other example that I was going to mention was a tourism product that would work well in a particular piece of woodland or forest but where the access is simply inadequate. In those circumstances, temporary access would not work; we would want the product to be successful, which means that there would need to be permanent access. In those circumstances, we would need something that would allow a more permanent arrangement to be put in place.

**The Chairperson:**

If it were going to be a commercial success, I imagine that the landowner would want to be part of that and would want to share in the commercial viability of it.

**Mr Small:**

If we were taking a 1 m or 2 m strip along an existing laneway, that would be subject to normal land valuation, and the landowner would benefit to some extent. We were very aware at the outset, when we had our initial discussions with the Committee, that there was a concern that we would be seeking to acquire large areas of land to plant new forest.

**The Chairperson:**

It is essentially access that you are talking about.

**Mr Small:**

Yes, it is. We do not want to take large areas of landowners' land for that purpose.

**The Chairperson:**

That is why I think that you should look at a way leave provision, which would allow the landowner to recognise what the land would be used for, and, if there is a rate to be charged for going over the land, they would get some sort of payback.

I just think that the issue leaves a bad taste in people's mouths. It makes people wonder what the Department's attitude really is. In my view, most of the representations that we have received have been based more on suspicion than anything else, and, ultimately, the Department must counter that. I believe that there is a way to do that.

**Mr O'Boyle:**

We are already dealing with circumstances in which we need to improve access to existing woodlands for the purpose of timber harvesting. We can deal with a lot of those cases by making arrangements with landowners to purchase a piece of land. Our first port of call would always be to seek to purchase land through an ordinary land transaction. What we are trying to do in the legislation is give ourselves a position to fall back on should those efforts fail.

**The Chairperson:**

The fallback position is so wide-ranging. Clause 5 allows the Department to acquire compulsorily any land for the purposes of:

“carrying out of any of its functions under this Act.”

You could look at the clause another way and restrict the function to access to land only, but that would close down the other options that we discussed earlier.

**Mr Small:**

We recognise that the wording in the clause is too broad. That message has come through loud and clear. The Minister accepts that that is where we are, so she is minded to agree some form of amendment. We want to hear the Committee’s views on what that amendment might be.

**Mr Savage:**

Do negotiations often take place with landowners when the Department needs to get access to land?

**Mr Small:**

Our starting point would always be discussion and negotiation with the landowner to try to find some agreed way of dealing with an access problem. We would only ever be contemplating the use of this power, because it would be quite difficult to use. It would be administratively burdensome. We would not want to go down that route unless we absolutely had to. Our first approach would always be to seek an agreed solution to a problem.

Anecdotally, colleagues have told us of cases in which we have negotiated a right of way that we have been satisfied with. In one case, we carried out quite expensive work to get the access route up to the required standard, and then the landowner put up an 8 ft gate at the start of the laneway, frustrating our efforts. In that case, we had been stuck for months and were unable to do anything.

**Mr Savage:**

I do not like the bit about powers of entry. Someone could come along and throw their weight about, and the Department would get right of access whether the landowner liked it or not.

**Mr Small:**

Schedule 1, which sets out how the power would operate, is very much taken from the Local Government Act (Northern Ireland) 1972, which is regarded as the cornerstone of vesting arrangements.

**Dr W McCrea:**

There is no doubt about it; the Department is adopting a draconian measure. I do not think that, in practice, it would be a fallback position. Clause 5 clearly states that the Department:

“may acquire compulsorily any land”.

Chairman, you mentioned people’s suspicions, and given what has happened in the past, people have good reason to be suspicious. There is too much water under the bridge where the Department is concerned. In fact, I would regard this clause with more than suspicion.

To be frank with you, gentlemen, you are talking about landlocked sites and sites with poor access, but the Department should have shown more foresight when using those sites in the first place. It seems that the Department was very short-sighted in the past and is now adopting a draconian measure that could be used or abused. I strongly oppose the Department being given this power. The Department should make genuine efforts to negotiate such matters, bearing in mind that it carried out planting in the first place. It could even use its own land for access purposes.

**Mr Small:**

We would always seek to do that; even in preference to negotiating an agreed settlement, we would take the easier option of using our own land. We are talking about when that is not possible and when negotiations have failed. I take the point that we should have had better foresight 40 years ago.

**Dr W McCrea:**

It is not just about what happened 40 years ago. It has happened down the years since then. Time-limited leases could be considered as an option, but not compulsory acquisition of land, which I oppose strongly.

**Mr Irwin:**

The wording of clause 5 is wide-ranging, as the Chairperson said. The widening of a laneway by

3 ft or 4 ft is a different issue, but how do you differentiate in that situation? The clause must be amended in a way that provides clarification. It is much too wide-ranging as it stands.

**Mr Small:**

If we thought that the Committee could accept a version of the clause that narrowed it down to access for the purposes of the Bill, we could think about appropriate wording and seek advice.

**The Chairperson:**

John Joe put his finger on it earlier. The clause could be worded in such a way that compulsory acquisition was the ultimate last resort, having gone through the initial offer to purchase — if that was appropriate — and discussions on partnership work on the land or other commercial aspects. If the situation drifted to the point that the needs of the Forest Service were being frustrated, that option could be available.

**Mr Molloy:**

I agreed with what others have said. The problem is that there has been a history of suspicion that the Forest Service does not want to deal with its neighbours' access requirements. It works both ways, and the history has been bad. The question is one of negotiating access: the Bill's mention of the obstruction of officers, the compulsory acquisition of land and the threat of prosecution sets alarm bells ringing in all directions.

**Mr Small:**

I can understand why. As I said, however, we picked up a lot of the basic procedures governing compulsory purchase from the Local Government Act (Northern Ireland) 1972, which is regarded as the cornerstone of vesting arrangements. Nevertheless, I can appreciate why a landowner would immediately step back on reading that kind of language.

**Mr W Clarke:**

In a similar vein, the wording in clause 5 scares a lot of people, particularly landowners:

“The Department may acquire compulsorily any land”.

There are benefits to farmers if access and laneway infrastructures are improved. However, you mentioned tourist provision, and there is the issue of renewable energy from wind farms. Who will take on the maintenance of access infrastructure? Will the Forest Service maintain that for evermore?

**Mr Small:**

In a situation whereby we acquire land, either by negotiation or compulsory acquisition, we will assume all related maintenance responsibilities into the future. Our desire would be that we could use the provision to help us to gain access for the full range of our functions, including the tourism product as well as taking timber out of the forests. There could be a site that is perfect for an attractive tourism product, and it would be unfortunate if we could not secure that because of a need for a 1 m strip along the access route to make it acceptable for access purposes. Our starting point would be negotiation with the landowner as part and parcel of something that we are trying to achieve. That would be done with advice from Land and Property Services about valuation and other matters.

**The Chairperson:**

You have heard the general thrust of the argument, and there is scope for you to come back and present a series of options that we can talk about.

**Mr Shannon:**

I do not intend to repeat what everybody else has said. However, I am very concerned about granting unlimited power. There must be ways to stipulate that such powers can be exercised on either an occasional or a temporary basis. You said that you were going to reword the clause, so it would be very helpful if you would come back to us on that. If unlimited power is given to a Department, at some time it will flex its muscles by doing what it wants and refusing to do what we want. That is my concern, and we are all saying the same thing. I am happy with occasional or temporary power, but definitely not unlimited power.

**The Chairperson:**

We now move to clauses 6 and 7. Sorry, Jim, did you want to say something further?

**Mr Shannon:**

I do not want to prolong the discussion, but, unfortunately, I was not present when the Committee was discussing the Department's recommendation that clause 1 be redrafted to express explicitly a general duty to promote sustainable forestry and afforestation as a means of mitigating climate change.



**The Chairperson:**

In one sentence, Jim.

**Mr Shannon:**

It may not be one sentence, but I will try to be as brief as I can. I am not against the idea, but why should it be changed to sustainable forestry and afforestation as a means of mitigating climate change alone? Why could it not be changed to sustainable forestry and afforestation for recreational use, or for social, economic or environmental reasons, which are the three critical factors? I shall not labour the point, but I think that it is important to recognise that many people feel that there are other factors on which to focus.

**The Chairperson:**

Your point is well made; I appreciate that you had to make it, but it has also been made by your Committee colleagues.

Turning to clause 6, “Inquiries, Information, etc.”, and clause 7, “Incidental powers”, it has struck Committee members and a number of those who gave evidence that the Department does not appear to be starting from a factual base of knowing its inventory; in other words, what is actually there. Is there any possibility of including in the Bill an obligation on the Department to carry out an annual or biannual inventory of what it manages and controls? In presentations to the Committee, our inability to establish a factual base for some of the arguments caused confusion.

**Mr Small:**

We recognise that issue. We have very good information about the forests that we manage and the woodland that we have grant-aided, which includes some information on the species and size of trees. That accounts for the vast majority of woodland in Northern Ireland. However, we recognise that there is private woodland that we have not grant-aided and about which our information is less comprehensive, and a number of stakeholders have raised that issue. We accept that that information gap exists, so, in order to address the issue, and as we stated in the paper that we presented to the Committee last week, we propose to include a statutory obligation in the Bill to develop and maintain a woodland inventory.

**The Chairperson:**

Keeping a general inventory is one thing, but it has been suggested to us that producing an inventory to include forest type, composition, condition, biodiversity condition and the area that a forest covers would not place too much of a burden on the Department. Properly segmented information would act as a touchstone; people would know what we have and would be able to measure and target growing programmes. That is a fair point, and it was made to us by a host of groups with widely differing views, whether commercial or recreational.

**Mr Small:**

We propose to include a commitment in the clause to conduct and maintain a Northern Ireland woodland inventory, which would cover forest type, size, cover and species. Extending the inventory to cover biodiversity issues, flora and fauna issues, timber quantity and so on would place a significant burden on the Department.

**The Chairperson:**

I do not think that it would be a burden. It would be incredibly helpful to have that information. In essence, it would involve adding only an extra couple of columns to your research.

**Mr Small:**

We are aware of similarly comprehensive research that was carried out some time ago in the South, and it proved to be a very resource-intensive piece of work. Such effort must be balanced against the value that it delivers.

**Mr Morwood:**

We estimate that there are 86,600 hectares of woodland in Northern Ireland, of which the Forest Service has about 60,600.

**The Chairperson:**

That is my very point: you estimated. You have put your finger on the problem; we just do not know.

**Mr Morwood:**

I use the word “estimate” in almost pure statistical terms. When I measure an area of woodland accurately on a map, I will indicate that I have an estimated area. In other words, I have not, as

an individual surveyor, gone out on that day with the appropriate equipment and surveyed that piece of ground from scratch.

**The Chairperson:**

When you apply the powers in clause 5 to a piece of land, you had better be more accurate than that.

**Mr Morwood:**

That is why I use the word “estimate”. I could say that I measure it from a map and determine it, but those measurements will, effectively, always be an estimate. Forest Service has good information about its own estate. As David said, it has good information on approximately 15,000 hectares of grant-aided woodland. We have less good information on another 10,000 hectares. It is older information.

**The Chairperson:**

Stewart, you are an expert in this. Is it possible to use a geographic information system (GIS)?

**Mr Morwood:**

Yes, we use that for all the woodland areas, both our own and private. We want to use existing data sets that are available on GIS systems to add to our information about woodland, particularly private woodland. I think that Northern Ireland Environment Link made that point to the Committee at the evidence session in Castlewellan. We are aware that a lot of work has been carried out by a variety of organisations: the Woodland Trust has prepared an ancient woodland inventory, and the Northern Ireland Environment Agency has carried out work on designated woodlands in areas of outstanding natural beauty, and in some areas they have good coverage.

**The Chairperson:**

Would it not be more effective to put all that together?

**Mr Small:**

That would be our intention.

**Mr Morwood:**

It is a case of pulling that together.

**The Chairperson:**

Maybe you could come back to the Committee with a cost estimate. Bringing those sources together may cost considerably less than you think.

**Mr Small:**

We are happy enough to pull all that data together, as Stewart suggested. To go further, to the point where we need to go on site to inspect every site and every area of woodland, would be just too much.

**The Chairperson:**

Given its support for that type of thing, the Committee would be more than happy to make a bid to the Department, if you could provide a costing as part of the annual budget process or the invest to save initiative. That is something to which the Department could direct resources. However, the Committee cannot do that unless it sees a costing.

**Dr W McCrea:**

Deciding to make an inventory is a step in the right direction. However, that is only a first step, because it requires only the total woodland area to be recorded. That is not acceptable and is totally insufficient to meet some of the other requirements.

If you are to measure something against, for example, the targets in the Northern Ireland biodiversity strategy or the UK biodiversity action plan, or if you are to gauge biodiversity conditions, you need to start with something factual, otherwise you cannot produce a factual report. That would be essential for targeting grants, for example. Without a proper, meaningful and up-to-date inventory, you get only half the story, and that is unacceptable.

**Mr Small:**

We are committed to having an inventory that includes forest cover and the type of woodland, which includes things like species. On-site inspections would be required to get detailed information on the quantity of timber — production forecasts, the levels of flora and fauna in a particular area.

A woodland inventory that covers the area of the woodland, the type of woodland and the

species, along with our existing information on forests, will give us a very comprehensive woodland inventory which comes very close to the kind of inventory to which members aspire. Paragraph 10 of the letter that I sent to the Committee last week referred to an inventory of forest cover. That is not explained well enough in my note.

**Dr W McCrea:**

If the Department comes back with actual proposals, we will look at them.

**The Chairperson:**

That would be helpful.

**Mr Shannon:**

My question concerns the inventory.

**The Chairperson:**

That is good.

**Mr Shannon:**

I will come straight to the question, because that is what the Chairman always coaxes me to do. What does the Department intend to do with the inventory? Does the inventory give you rights of access to all land — not just forestry, but land adjacent to forestry? If so, is there potential for confrontation between officials and landowners? The inventory will include land that you do not own. The purposes of the inventory must be ascertained, and we need to be completely aware of how the Department will use it.

**Mr Small:**

From our point of view, one of the inventory's primary purposes will be to give us a better baseline from which we can measure further forest expansion. There has been a criticism that there is no real point in setting targets for forest cover if we do not know precisely what our baseline is. The inventory will give us much better information and enable us to move forward confidently. The inventory itself will not give us powers to go onto land.

**Mr Shannon:**

No?

**Mr Small:**

No. However, clause 6 provides us with a range of powers to gather information on forests and take forward inquiries.

**Mr Shannon:**

Does it give you right of access, David? That is the question. Are you seeking that power? I think that you are.

**Mr Small:**

That is already in the initial version of the Bill, in clause 6.

**Mr Shannon:**

There is potential for all sorts of confrontation between the Forest Service and people who own land on which there are trees. Do you not see the potential for confrontation?

**Mr Small:**

I see the potential, but it would become an issue only if we wrongly managed or abused the powers. The powers of entry are set out in clause 31: “an authorised person” is able to enter land “at any reasonable time” to exercise the Bill’s functions. We will only use the powers where we believe that it is absolutely necessary and justifiable. We have no desire to go on to private land unreasonably or unnecessarily.

**The Chairperson:**

We will discuss powers of entry in detail later.

**Mr Shannon:**

We need to have that debate.

**The Chairperson:**

I understand your point, Jim.

**Mr Shannon:**

The Department has said that it has no intentions to that effect, but the legislation will give it that

power.

**The Chairperson:**

We will return to that point.

**Mr Small:**

The point is related to the inventory issue, but it is set out in clause 31.

**The Chairperson:**

Jim, we have form on restricting powers of entry in the Diseases of Animals Bill.

**Mr Shannon:**

This legislation gives the Department power to control deer on adjoining land.

**The Chairperson:**

That is a relevant point, because we will be looking at the control of deer when we discuss Part 2 and the protection of forest trees from damage.

**Mr Small:**

Are we going to look at clause 7?

**The Chairperson:**

I beg your pardon. Clause 7 deals with incidental powers:

“7. — (1) The Department may do anything which appears to it to be conducive or incidental to the discharge of its general duty under section 1(1).

(2) In particular the Department may —

- (a) enter into arrangements with other persons or bodies;
- (b) form, or participate in the forming of, a body corporate;
- (c) invest in a body corporate;
- (d) appoint a person to act as an officer of a body corporate. “

At its meeting in Castlewellan last week, the Committee heard about the possible appointment of a type of forest ombudsman or the creation of an expert-based independent committee of people who could provide views and impartial advice. Is the Department thinking in those terms? Does this clause serve another purpose?

**Mr Small:**

We are considering that issue. Our letter to the Committee last week refers to it at paragraph 29. We are aware that stakeholders have raised the issue. We are looking at what the function of such a group would be. What might that type of mechanism deliver that we cannot secure from our other stakeholder arrangements?

**The Chairperson:**

The only push back that we have got is not so much about the idea of having people do that, but about what they would do. How wide would their powers be? If we can define those points, we can have a healthier discussion about the exactitudes. At the moment, it is a proposal, but one that could, ultimately, confer wide-ranging power.

**Mr Small:**

Is that in relation to the proposal from stakeholders to establish a type of advisory organisation?

**The Chairperson:**

Yes.

**Mr Small:**

At the minute, we are not convinced of the need for that. When we find ourselves dealing with an issue on which we need advice, we already have mechanisms whereby we can go to a range of organisations to discuss that issue and to seek views.

For example, in developing our recreation strategy, we established a dedicated stakeholder forum with representation from, among others, district councils and recreational organisations to help us to consider the issues that we were dealing with. As we considered forest expansion, we established a dedicated stakeholder forum. That is a mechanism that we want to continue so that we can take views from expert organisations on a particular issue.

The Department questions what another, permanent, free-standing organisation or stakeholder forum could deliver that we cannot currently secure from our existing procedures. I am concerned about establishing a quango that must meet twice a year, when we can secure that same advice and information from existing mechanisms. We are considering that as a possibility, but, at this stage, we are not immediately convinced that it would offer any added benefit or



merit.

**The Chairperson:**

Moving to Part 2 of the Bill —

**Mr Small:**

Sorry, I am not sure whether we have dealt with clause 7.

**The Chairperson:**

All right.

**Mr Small:**

Among the criticisms of clause 7 was about the broad, sweeping powers proposed in clause 7(1):

“The Department may do anything which appears to it to be conducive or incidental to the discharge of its general duty”.

A lot of comments were received from stakeholders and Committee members about that power being too broad. In my paper to the Committee last week, I proposed that we would seek to narrow and reduce that power, which, we accepted, was too sweeping. We instead propose to insert a reference to “our general duty” under which we could use the very specific powers provided in 7(2)(a) to:

“enter into arrangements with other persons or bodies”

with whom or which we might be able to deliver a recreational product or an environmental project, but taking out the broad sweeping power of clause 7(1). Essentially, we propose to remove “do anything” from clause 7(1) to narrow those powers.

**The Chairperson:**

Are members content with that proposal?

**Mr W Clarke:**

That would be welcome.

**Mr Elliott:**

I broadly welcome it. For clarification, would that change narrow the powers down to issues around forestry and woodland? There was a clear concern that the power provided in clause 7(1) was much too wide, because it could have incorporated wind farms and other operations outside forestry and woodland.

**Mr Small:**

Can you repeat that, Tom? I missed your first —

**Mr Elliott:**

Sorry, David. I am trying to get clarification. I assume that the reference to clause 1(1) within clause 7 covers that, and that it will be narrowed to operations only for forestry and woodland, or in relation to forestry and woodland, and not matters outside that. I am talking about recreational activities and forest and woodland, but I am not talking about different business ventures.

**Mr Small:**

We want to be able to use the power in clause 7 to enter into an arrangement or partnership on a recreation-type product. The other area in which we know that the Forestry Commission in England, Scotland and Wales has sought to use that sort of power to enter into a partnership or body corporate is that of wind farms and renewable energy. In such partnerships, the Forestry Commission is faced with the option of a straightforward lease, under which a piece of land is leased to a wind company which could go on to make millions of pounds, or, as a possible alternative, establishing a body corporate with the company. In that case, a joint venture is taken forward, whereby the taxpayer will reap a better return. We want to retain that and to secure maximum return from the forest estate for the taxpayer.

**Mr Elliott:**

How does that fit with clause 1(1) and the duty to promote forestry?

**The Chairperson:**

Hopefully, the Department will come back with a redrafted clause 1(1).

**Mr O'Boyle:**

Looking at the market sounding and commercialisation issues, we can clearly see that the companies involved in, for example, the generation of energy through wind farms, are energy companies. Those companies have significant interests in things like biofuel, the collection of wood material and so on. The partnership that we might be involved in, or the body corporate that might be formed, would create an energy company rather than a wind farm company. There would be quite a dovetail between that company's efforts and interests in biofuel and its efforts and interests in generating energy through wind farms.

**Mr Small:**

I think that Tom is questioning the extent to which that kind of arrangement would be consistent with the Department's general duty under clause 1.

**Mr Elliott:**

From what I can see, the intention is the same, but the wording is slightly different. The intention is still, quite clearly, to develop that duty on a much wider basis than just forestry or woodland production.

**Mr Small:**

We see forests as an asset that can deliver against renewable energy targets, whether that is through biomass, wood fuel or wind energy.

**Mr Elliott:**

To be absolutely fair, there is no correlation. I know that Mr O'Boyle tried to make some link, but there is no correlation between wind farms and forestry production.

**Mr Small:**

But there is an obligation on us, as a Department, to secure maximum generation of revenue from the asset, which is a public asset. Forestry is an area in which we could, potentially, do that, and in a way that is consistent with the key DARD objective of wider renewable energy targets.

**Mr Elliott:**

The reality is that the intention of the Bill is to move much further outside woodland and forestry areas.

**Mr Small:**

Only within the forest environment.

**Mr Michael McCann (Department of Agriculture and Rural Development):**

There is a power, under clause 4(1), for the use and development of forestry land for "a purpose other than forestry", and that could include soft energy development uses. Clause 4(2) provides the power to enter into a partnership for that purpose. As you say, clause 7 concerns the general,

traditional forestry powers under clause 1(1) and the power to enter into partnership arrangements to deliver that duty. We see an anomaly, in that the power to have a body corporate should, logically, support the use of forestry land for other purposes.

**Mr Small:**

Tom is probably right. Part of the Bill's purpose is to secure and maintain sustainable management of our forests. The Bill aims to expand forests, create more forests and ensure that we deliver the full potential of forests, including sport, health, recreation and renewable energy opportunities.

**Mr Elliott:**

There is a fourth aim: things and parts outside forests and woodland. Mr McCann is nodding his head. The Bill clearly has a further intention. I was not here during the discussion on clause 4, and I have written down some questions about that issue.

At the moment, I am not saying that I oppose or support the Bill, because I want to be clear about the intentions of the Department and the Forest Service. You have now accepted that the Bill is about more than just forestry and woodland and that it is about other business opportunities that may lie within the portfolio of the Forest Service.

**Mr Small:**

Do you mean land outside the forestry land that we own? Do you mean open land outside our forest boundaries?

**Mr Elliott:**

I am talking about land that Forest Service owns; I do not care whether or not there is woodland cover on it. Your remit on forestry and woodland has, so far, been fairly streamlined, and other groups have been critical that you have not opened it up for sporting activities, social activities and tourism. You are now saying that you are prepared to go further and promote other things outside the remit of forestry and woodland cover. You mentioned wind farms. The reality is that there is no link between wind farms and forestry.

**Mr O'Boyle:**

I am not making the link. I am saying that a market exists and that renewable energy companies are interested in developing wind farms and are interested in the biofuels that forests grow. That

is their combined interest in our estate.

**Mr Elliott:**

You are even talking about setting up a new limited company. I cannot remember what term was used —

**Mr Small:**

It is “body corporate”.

**Mr Elliott:**

I want clarification that the Bill has more intentions than our current narrow view.

**Mr Small:**

It is appropriate to try to achieve renewable energy through our forestry assets.

**The Chairperson:**

Think about those points and come back with a definitive position on intent.

**Mr Elliott:**

I would prefer them to be open and tell us if the Department intends to move into the area of wind farms. Thereafter, we can make a judgement.

**Mr Small:**

In the Forestry Commission’s experience, these opportunities add greatly to the overall viability and economics of running a forest operation.

**The Chairperson:**

You will not have any opposition. People want to know what we are supporting or not supporting.

**Mr W Clarke:**

I welcome the approach that we are taking. We are back to the issue of climate change, the Programme for Government and increasing the use of renewable energy. There are vast swathes of forest land that are owned by the Department which must be used for that purpose. The

forestry sector in the South has gone down that road and has worked in partnership with energy companies. That provides a dividend to the taxpayer. I welcome that approach; it is covered in clause 1 in regard to climate change.

**Mr Elliott:**

When the Forest Service seeks more forestry cover, the question will arise as to why it is not planting forestry or woodland instead of creating wind farms.

**Mr W Clarke:**

Although the area of land in question might be owned by the Forest Service, it might not be suitable for planting. I understand that that is the sort of land that will be looked at.

**Mr Small:**

I was about to make that point. A lot of this has to do with scale; we propose to use a tiny amount of our overall estate.

**The Chairperson:**

Have you finished clause 7?

**Mr Small:**

Yes; we will comment on the issues that have been raised.

**The Chairperson:**

I know that I have been eager to get clause 7 over with; we are definitely finished with it.

We will now consider clauses 8, 9 and 11, which deal with the protection of forest trees from damage. The Department intends to amend those clauses to effect the following changes: excluding the Irish hare from clause 8; removing the list of wild animals protected under schedule 5 of the Wildlife (Northern Ireland) Order 1985 from clause 8; making the taking of animals the first option, as opposed to the killing of animals; redefining the protection of trees and woodlands to apply to all woodlands of 0.2 hectares or more; and retaining the right to enter adjoining land to kill deer but restricting charges to other woodland owners as opposed to landowners. I think that that is the way in which the Department intends to take that forward. Do you have anything else to add?

The industry has spoken to us, and it is generally supportive of those clauses, especially with those alterations in mind. However, we received some communication from the British Deer Society (BDS), which is opposed to the clauses, and which insists that giving Forest Service has carte blanche to cull deer at any time goes beyond its previous pronouncements that it wishes the Bill to promote sustainability. The BDS has offered alternative solutions to the proactive management of the deer population, once Forest Service has established what that population level is. Those are the comments that we have received to date. Do you wish to add anything?

**Mr Small:**

You have captured correctly the areas where we have proposed amendments. During our last presentation to the Committee, I think that it was Mr Shannon who raised the issue of the terminology “at any time” in clause 8(3). As well as referring to the closed period, he referred to night-time killing and the opportunities that that would create for us. We accept that, and we intend to remove any opportunities for night-time killing. That is not something that we would ever intend to do. We intend to remove the protections under clause 11 that facilitate that. That is a further clarification of that point.

On the purpose of clauses 8 and 9, it is not our desire to cull deer for the sport of it. The purpose of clause 8 is simply to enable either us or a private woodland owner to protect forests. Research shows that unless any deer problem is dealt with, the woodland affected will suffer significant damage. The purpose of clause 8 is to enable the sustainable management of forests by taking adequate controls to protect them. Woodland owners are obliged and required to do that, and clause 8 is about facilitating that.

Clause 9 takes it a step further. A lot of private woodland covers too small an area to enable deer protection within that woodland boundary. In those circumstances, deer that move between areas of woodland or adjacent land, whether it be our woodland or private woodland, can cause severe damage to young woodland in particular. Therefore, where it is not possible to control deer in a forest area, clause 9 puts in place a facility whereby we can tell a landowner that there is a deer-roaming problem on his land and that he can either deal with that for us or help us to deal with it. The landowner can do that through any means that he feels are appropriate. For example, he can contact someone who is capable of going onto land and controlling deer.

However, if the landowner fails to do that, we are then faced with a choice: let the woodland be destroyed or take action to try to avoid that. That is the purpose of clause 9, and that is what we are trying to achieve. We do not need the power to cull deer just for the sport of it. The purpose of clauses 8 and 9 is to help us protect woodland. We accept the Committee's concerns that it would be wrong in those circumstances to levy a charge on the unfortunate landowner who happens to have deer roaming on his land. We accept that, and that is no longer our intention. The primary purpose is to protect forests.

**Mr Shannon:**

There are several issues, but the first one that I will address is that of the Irish hare. The terminology should be absolutely correct so that we do not have other issues arising in the future.

You will be aware that there is a large population of Irish hare. There is also a large population of European hare. An additional issue is interbreeding, which results in hybrid hare. To give an example of what I mean, there is a particular duck referred to as the ruddy duck, which is the Casanova of the duck world. Any duck will do, as far as a ruddy duck is concerned, and that destroyed a particular breed of duck.

The legislation needs to be very clear on protections for the Irish hare, the European hare and the hybrid hare. As there is a different Department involved, what are your thoughts on the Wildlife and Natural Environment Bill? I have an opinion on hare, and it is my opinion only.

**Mr Small:**

We have discussed our intentions and cleared those provisions with colleagues in the Department of the Environment (DOE) who are dealing with the Wildlife and Natural Environment Bill. We are trying to keep our handling of issues such as that of the Irish hare and protected species under the Wildlife (Northern Ireland) Order 1985 consistent with what is being done with their Bill. We have tried to maintain that consistency where possible. I think that we have done so, and DOE colleagues have indicated that they are content with our proposals.

**Mr Shannon:**

In controlling the European hare and the so-called hybrids —



**Mr M McCann:**

Even when we wanted to exclude the Irish hare, the wildlife section of the DOE raised some questions, and told us that its habitat species plans and so on were sufficient to protect all hare in Northern Ireland, including the Irish hare. We wanted to take a lead and show that we would give overt or specific protection to the Irish hare as a species in its own right. That was the principle that we worked on. On the issue of ducks, the provision excludes birds of all types from the definition of “wild animals”.

**Mr Small:**

Our understanding is that the Irish hare is protected.

**Mr Shannon:**

Does that mean that the European hare is not protected?

**Mr Small:**

No, and neither are hybrids.

**Mr Shannon:**

Just so that we understand — I am not being pedantic — is it important that the terminology of each species is worded in such a way that clarity will be given? The Deputy Chairperson mentioned clarity earlier, and it is important to have that clarity. We are not just talking for the sake of it; it is important that we get the wording correct.

**The Chairperson:**

Is there an opportunity that you could take advantage of in having a conversation with BDS about the points they raised regarding the deer culling strategy?

**Mr Small:**

We would be happy to meet with the BDS to discuss any thoughts that it has. We have a particular objective in the clauses that we are including, and that is protecting forests. Recent ROI research that examined the issue of deer control and how important it is to ensure that there is adequate control.

**Mr Morwood:**

Recent work produced in the Republic highlighted problems resulting from significantly increased deer populations in particular areas and the damage that that does to woodland and to general biodiversity, including associated problems with public health and road traffic accidents and so on. One issue that the research outlined is that an overreliance on recreational hunting alone may not be the most appropriate way of controlling populations to desirable levels, and that other means of protection — perhaps more concerted means of control of deer numbers — would be required. So they indicated that recreational shooting has a role, but it is certainly not the only means of controlling deer populations to acceptable numbers.

**Mr Irwin:**

I live in County Armagh, which is known as the Orchard County because a lot of apple trees are grown there. In orchards, sections of the trees are wired to prevent wild animals from peeling or paring the bark from the tree. Peeling the tree damages it. Is such a device used in forestry to prevent trees from being damaged by wild animals?

**Mr Morwood:**

Yes. We build tree shelters to protect trees from rabbits, hares or deer. Shelters to protect trees from rabbits may be only a couple of feet in height whereas those offering protection from certain species of deer may have to be more than two metres high and therefore need accompanying supports.

As we protect individual trees in a young plantation, we plant, or recommend planting, approximately 2,500 small trees per hectare. As one applies protection — a two-metre high shelter with a stake — to each one, the costs of such work become disproportionately large. Although it is technically possible, it is a very expensive and uneconomic way of establishing plantations.

**Mr Irwin:**

I understand that with respect to deer, which necessitate a very high level of protection. However, smaller animals, such as hares, would require very little protection.

**Mr Morwood:**

Hares probably necessitate a tree shelter of around 1.3 metres in height. A hare, standing on its

back legs, can do a tremendous amount of damage to a tree which is sheltered by only one of the little spiral guards that one sees occasionally around trees. Hares will happily truncate a row of newly planted trees, and if there are no shelters of significant size, they will do that on a regular basis and prevent growth. The expense of putting a 1.3 metre shelter with a stake on 2,500 stems per hectare is a disproportionate way of dealing with a risk posed by a relatively few hares.

**Mr Shannon:**

I must ask you about paragraph 17 of your paper, which is about the protection of trees. The protection discussed includes commercial woodland as well as amenities, and I wonder why that is the case. I ask the question because some people are happy for animals to roam among their trees. It seems that this amendment will give the Department what I believe to be undue influence or control, even to the point of ignoring sporting rights. I make these comments so that we can get the Bill right and avoid problems in the future. My concern is that this amendment gives excessive influence to the Department and the Forest Service in particular.

You mentioned that you had been in contact with the DOE about the Wildlife and Natural Environment Bill. You are giving people sporting rights over land; and one of the key issues in the Wildlife Bill concerns sporting rights. How can the Department have that right? Should you not draw a parallel between commercial woodland and amenities? Their purposes are completely different.

**Mr Small:**

I am not sure that we are doing that. You are referring to clause 8(2)(a), which refers to areas of forestry over 0.2 hectares:

“which were used for the production of commercial timber”.

When we read that again, we felt that it was too narrow. Our desire is to protect all woodland, not just woodland that is grown for commercial reasons. Clause 8 allows the woodland owner, who could be a private owner, to protect his woodland either inside the woodland boundary or on adjacent land that he also owns. Clause 8 relates only to land owned by the woodland owner, and the suggested broadening of the clause will allow a woodland owner to protect not only woodland that is grown for commercial reasons but woodland that is grown for biodiversity, environmental or social reasons, and that even in those circumstances, he could control and protect his woodland.

**Mr Shannon:**

If he wishes to do so?

**The Chairperson:**

Does that answer help, Jim?

**Mr Shannon:**

If he wishes to do so?

**Mr Small:**

Yes: on his own land.

**Mr Shannon:**

Therefore, whether he wishes to do so or not, he has that option. Do we need to enshrine that in the legislation?

**The Chairperson:**

It is not compulsory.

**Mr Small:**

We are giving the woodland owner the powers to protect his forest.

**Mr Shannon:**

Would that have any infraction on sporting rights?

**Mr Small:**

No, it would apply only to their own land.

**The Chairperson:**

It is not an obligation.

**Mr Small:**

It is not an obligation, and it is only in respect of their own land.

**Mr Shannon:**

Clause 9(2) covers situations in which the Department suspects that trees are, or are likely to be, damaged. Why is the phrase “likely to be” included? Some of the correspondence that the Committee received from various bodies asked whether clause 9 is necessary.

**Mr Small:**

We believe that it is necessary. The clause is intended to deal with circumstances in which the control of deer cannot take place inside the forest boundary. If the area of woodland is very small, there will be no scope to shoot deer in that area. A clear sight is needed to pull the trigger. In some circumstances, it may not be possible to do so in woodland, which means that open space is needed. Only in those circumstances would one need to go on to adjacent land to get a clear sight. The clause is necessary, partly because of the fact that the nature of deer is to roam.

The use of the phrase “likely to be” is to try and avoid damage. If damage has already occurred, it may be too late to do anything. A separate piece of research demonstrates clearly that, when immediate action is not taken against a problem with muntjac deer, whole areas of woodland can be lost very quickly and significant damage can be suffered. The provision “likely to be” is there because we need to make a judgement on whether we feel that the woodland, either private or belonging to the Department, is at risk. We will want to use the powers where we believe that woodland is at risk.

If we use the powers wrongly, if we were to make a poor judgement or if it were later proved that there had been no risk to the trees, we could be subject to judicial review because we would have used the powers wrongly. If we use the power, we need to demonstrate that we have done so in an appropriate and reasonable manner and that we have taken the right judgements.

**Mr Shannon:**

Your briefing paper and your answers indicate that it may be necessary to go on to adjoining land to get “a clear shot” at deer, as I think you put it. Is it possible that that could lead to an infringement on adjoining landowners who have sporting rights and stocking potential on their land? Some consideration must be given to landowners on that matter. Will you consider that? I definitely see an anomaly in the system that must be addressed. If it were addressed now, we could do away the possibility of concern later down the line.

**Mr M McCann:**

Clause 9(5) allows the Department, if it detects a problem, to serve a notice on the adjoining landowner requesting, as set out in clause 9(5)(b), that steps be taken within three months of the date of the service of the notice. If the adjoining landowner were to have shooting capabilities or shooting rights, he could take action under that section, and the Department would not need to get involved. Clause 9(5) is supposed to give scope to people who have the wherewithal and means to remedy the damage or likely damage.

**Mr Shannon:**

Are you saying that the Department would give the landowner the opportunity to take action before it would do so?

**Mr McCann:**

Yes.

**Mr Shannon:**

If that is part of the legislative change, it goes a long way towards addressing the issue. It is important that the owners of adjoining lands have that opportunity.

**Mr Morwood:**

It is worth bearing in mind that our objective is not the eradication of the deer population; it is to manage deer numbers so that damage is kept to an acceptable level. We acknowledge that there will always be damage to plantations; we are not concerned about that. Our objective should not be at odds with someone on adjacent property who has an interest in shooting and has sporting rights.

**Mr Small:**

In fact we would concede that as a possible means of controlling the numbers of deer.

**Mr Morwood:**

It would actually be a more desirable situation. However, we acknowledge that, once the level of damage to the plantation becomes unacceptable, such that the plantation cannot regenerate, that creates a problem for the Department. That is when there may be a potential conflict with the

sporting owner of the adjacent land who may have an interest in shooting as many deer as he possibly can. There has to be an appropriate balance. Our objective is not to reduce the level of damage to the plantation to nil. That is an unrealistic expectation.

**Mr Savage:**

You have just mentioned the issue I was going to ask about; the shooting of deer. I will not go into that now. You also mentioned hares and trees. Are there types of trees that hares do not damage?

**Mr Morwood:**

To my knowledge, hares seem to be fairly general in their tastes, particularly in the spring time when they are more active. Whether it is a species of broadleaf tree or some conifers, hares will go along a row of trees and decapitate them. There does not appear to be anything that they specifically dislike. If pushed, I would say that some of the more resinous conifers might put them off more than a broadleaf tree.

**The Chairperson:**

They do not stick to the roof of the mouth.

**Mr Molloy:**

I have just one question. I know that we are talking about wild animals, but what restriction would be placed on a farmer who is rearing deer close to a forest area?

**Mr Morwood:**

Farmed deer give rise to a completely separate set of circumstances: they are not considered to be wild animals.

**The Chairperson:**

We will now move on to discuss clause 10, which makes provision for the removal or destruction of vegetation on adjoining land. This falls into the issue of suspicion that we were discussing earlier. There are things that the Department could do with Crown land, by establishing protecting buffer zones, for example. Why should the Department take power on to itself to force others to do this? Is there anything you wish to say before taking questions from members?

**Mr Small:**

I would just like to reinforce the purpose of the clause, which is to enable either the Department or private woodland owners to protect their forests or woodlands — in this case from fire as opposed to wild animals. Our experience is that forest fires constitute a real risk to woodlands.

**The Chairperson:**

What is considered to be uncultivated land?

**Mr Small:**

I am sure you will keep me right, but the kind of uncultivated land that we are talking about is land that has whin bushes, gorse or perhaps heather. There is an issue concerning heather, which we will discuss later.

**The Chairperson:**

I would say that most of the glens of Antrim are uncultivated.

**Mr Morwood:**

It is rank vegetation that is not cultivated.

**Mr Small:**

Uncultivated land is land, which, in the past, has presented a threat to areas of woodland and forest. We have suffered major losses in the past. The purpose of clause 10 is to try to put some mechanism in place that we can use to prevent fire from spreading to an area of woodland. We propose to ask the owner of the adjacent land to take whatever action is necessary to remove the vegetation.

**The Chairperson:**

Is it possible for you say that you will only do that when you have exhausted creating buffer zones on your own land? At that point, will you ask other landowners to do the same, if there is still a need to do so?

**Mr Small:**

In some circumstances, due to where forests have been planted, we will have planted to the boundaries and may not have opportunities to create buffer zones. We propose to request the



landowner to take some action to remove the risk. If the landowner chooses not to do so, or is unable to do so, we intend to remove what we regard as the potentially dangerous vegetation.

There is no intention to recover costs from the farmers. We are not adding a burden of cost recovery: that would be inappropriate. However, we propose a mechanism that will allow us some means of protecting the public asset, which, in some circumstances, means dealing with vegetation that we regard as constituting a fire risk.

**The Chairperson:**

If work is carried out on the uncultivated land, will that have a knock-on effect on a single farm payment claim? It may be construed that the land has become cultivated or worked in some way.

**Mr Small:**

It might have a positive benefit.

**Mr Morwood:**

I think that it is unlikely. We would be, effectively, creating a strip of land on which the vegetation cannot burn. It is unlikely that it would be described as cultivated land in the agricultural sense.

**The Chairperson:**

Yes. However, the farmer might face a difficulty if he says that the land is uncultivated. On inspection of the land, it is possible that some bureaucrat will say that it is not uncultivated land, and the farmer will be penalised, lose his single farm payment or have it withheld or challenged.

**Mr Morwood:**

I can imagine a circumstance where the landowner is getting some payment in respect of heather moorland, and a strip of that moorland subsequently becomes absent. We would have to consider such a circumstance carefully in relation to that landowner's single farm payment.

**The Chairperson:**

A landowner's application for the single farm payment can be challenged or rejected on the basis of a narrow strip of land, so it would be useful to have certainty that this would not pose additional burdens or problems.

**Mr Small:**

It is possible that the uncultivated strip is land for which they should not be claiming single farm payment.

**The Chairperson:**

Your proposal might affect those landowners, because their land might be altered to become cultivated land.

**Mr O'Boyle:**

There are potential issues. For instance, a farmer might be getting paid under a countryside management scheme for heather management. If a piece of that land were removed, that may well prejudice the area that he is entitled to claim for. There are some issues around that that we need to look at.

**The Chairperson:**

Will you come back to us on that matter?

**Mr O'Boyle:**

I do not think that it has a bearing on the single farm payment; it is probably more a countryside management issue.

**The Chairperson:**

It would be helpful to get clarity.

**Mr Elliott:**

There is a definition of uncultivated land in the current legislation, and I think that you should tie in with that. Mr McCrea and the Committee Clerk might remember a presentation that we received from Ian McKee. He fought with us for a long time over the definition of uncultivated land, for the benefit of a statutory rule that went through the Committee over two years ago. It is laid in statute. It is not just heather land; it is something like land that has not been drained, reseeded, ploughed or improved for something like a period of 15 years. *[Interruption.]*

**The Chairperson:**

Have you pressed the off switch, Jim?

**Mr Shannon:**

I did turn it off.

**Mr Elliott:**

It is not just the heather land.

**Mr Small:**

I appreciate that.

**Mr Elliott:**

You need to tie into that, because it may have consequences, particularly for the countryside management scheme process. It is perhaps more than the single farm payment.

**Mr Small:**

I think that you are right.

**Mr Elliott:**

My second question is about the buffer zone. In the letter that you sent us last week, you said that the power would be used sparingly. However, you will appreciate that what is in the Bill is in the Bill. I do not notice the word “sparingly” in the Bill. What is there will be there, so it gives me great concern that the Bill will remain the same. I have huge concerns that the buffer zone may be enforced on farmers where it is not necessary; perhaps where the Department or the Forest Service could do it themselves and provide that buffer zone on their own land. I cannot see times when that would not happen.

**Mr O’Boyle:**

Starting from scratch, if we went out today or tomorrow to start to plant a forest, there is great opportunity for us to step far back from the boundary and have a buffer zone. However, we already have forests that have grown and have perhaps been established closer to the boundary, so those limit the opportunity of what we can do until we get to the clear felling stage. We may not be able to do much different within our boundary until we have harvested the trees. It is not

normal practice, and it can be quite detrimental to a forest, to seek to remove the edge trees in order to have a buffer. The whole forest could become unstable and blow down prematurely because it has been opened up to the wind.

We will be able to increase the protection within our boundary, but that opportunity is not currently available to us in all circumstances. That is the purpose of what is being proposed in the Bill.

**Mr Small:**

We recognise that the Committee is concerned that we could take a power like that and, in theory, use it whenever and wherever we choose. We are talking about looking again at the clause. We are considering a test so that we would only use the power in circumstances only in which the vegetation was of a type that constituted a real fire risk. We acknowledge that that will not always be the case, but gorse bushes along the whole perimeter of a forest are certainly a real risk. Willie has referred to the Mourne area, where there is a genuine fire risk. This is an attempt to try and manage those kinds of situations.

We are aware of the concerns about getting the wording right. We will look again at the wording of the clause to see whether, as far as possible, we can include some kind of assurance in respect of how we use the clause.

**Mr Elliott:**

It should only be used after Forest Service explores all of its avenues and options and is totally satisfied that it could not do anything. It may be acceptable in those circumstances. That is the only way in which the Bill will get through. Otherwise, I do not accept the notion of using the power sparingly. You guys, and the people who will come after you —

**Mr Small:**

In fairness, Tom, we have had the power since 1953. We have used it very rarely.

**Mr Elliott:**

Is it only a transfer of the 1953 Act?

**Mr Small:**

It is the 1953 Act carried forward. You may ask why it is needed if it has not been used often in the past, but we face very real fire risks. It gives us the ability to use the provision in extreme circumstance. However, as I said, we will look again at the wording.

**Dr W McCrea:**

It is a fact that what is in the Bill will stand at the end of the day, so we have to get it right. We have to be sure. There is no doubt that there could be implications for countryside management schemes, etc. The countryside is coming down with bureaucrats who point out some of the anomalies and cause a lot of trouble to individuals.

In the briefing paper, you say:

“However, we note the concerns and are considering further the specific circumstances”.

What are those circumstances? Surely, you need to define the circumstances, so that there is no ambiguity and nothing left to conjecture. I am happy that you are considering the specific circumstances, but after that, we will have to see the colour of you money as to those circumstances.

As has been pointed out to you by some of the interested organisations, the importance of dead wood and the management of ancient and long-established woodlands should be recognised. Therefore, we must be very careful, lest the provision is used in a wider range of cases, because the circumstances are not defined in the legislation.

Remember, we are not making legislation for you four gentlemen. We are not making legislation on the basis of the promises that you make today. Others will occupy your seats when you leave. Therefore, remember that we must get the legislation right.

**Mr Molloy:**

I am thinking along the same lines. Although you may be reasonable in how you use the provision, others may not be. Most of the woodland that was wrongly planted up to the boundaries over the past number years should be coming near the end of its term. Surely, therefore, it is easier for you to clear your side of the fence than it is for you to clean your neighbour’s side of the fence. A lot of the gorse originates from forestry and grows on to adjacent land, so farmers could probably claim that the Department is already impinging on their

land. Therefore, you need to look first at what you can do within your own boundaries before you propose legislation that would hand ownership of adjacent land to the Forest Service.

**Mr W Clarke:**

A large number of fires in the south Down area have been caused by whins and gorse bushes, which is a concern. It is not unreasonable for the Department to want to protect its forests, because they are an asset in which the Department has invested a lot of money and has allowed to mature. Hundreds of thousands of pounds can be lost due to forest fires, so it is not unreasonable for the Department to try to protect them.

Large areas of forest in south Down are in water catchment areas, and NI Water no longer holds Crown immunity: therefore, it would also be governed by the provision.

**The Chairperson:**

A lot of the fires are due to criminal acts.

**Mr Molloy:**

People who live close to Lough Neagh are stopped from developing land because of the hedges and trees that have grown along the lough. The land has become designated as an area of special scientific interest. Those people cannot remove the hedges and trees. Legislation and bureaucracy can get in the way. Therefore, although forestry is an investment, it should be planned so that the Department will not need to impinge on neighbouring land.

**Mr W Clarke:**

If the Department is planting woodland, it will want to maximise the footprint that that makes. Although small areas may not sound like much, a lot of timber production could be lost if trees are not planted on them. For example, an area of 15 sq m accounts for a lot of timber.

**Dr W McCrea:**

You cannot impinge on everybody else.

**Mr Elliott:**

Absolutely.

**Mr W Clarke:**

Sure, he loves me. One will still be left with the problem of the gorse and the potential of sparks, so the land should be managed regardless of whether the Forest Service puts in a buffer zone, as it probably should.

**Mr Small:**

We have no intention of going on to adjacent land on which cereals or other agricultural produce are being grown. The provision will only apply in circumstances where vegetation that constitutes a fire risk is being grown on adjacent land. Generally, the problems are whin bushes and gorse bushes, and it is that type of vegetation that we want to address.

**Mr Molloy:**

Do you accept that most of the vegetation grows out from the forest on to the adjacent land?

**Mr O'Boyle:**

I should provide some context briefly. We talked about the legislation being in place for a long time. Under the old legislation, afforestation covered large areas of upland forestry beside heather sites, and so on. At that time, common practice among the farming community was to burn heather. Therefore, the legislation did not cause a burden to the farmer: in fact, it helped farmers when officials went on to land to burn heather, in a controlled way, that was in close proximity to a forest. It freed up the opportunity for them to burn heather without taking the risk of having to manage it at the forest boundary. That is the context from which all of that came.

**Mr Irwin:**

The fact is that it has been on the statute book since 1953, which is almost 60 years. That is longer than most of us have been around —

**The Chairperson:**

Who are you kidding?

**Mr Irwin:**

I said most of us.

I would have thought that it would rarely be an issue. We are probably getting too uptight

about this. It is not an issue when it involves ordinary farmland; only when it involves areas where there are heather or whin bushes. Where possible, a farmer should use his own ground as a buffer. However, that is not always possible, if trees are already planted, and I understand that.

**Mr W Clarke:**

Francie is just angry that he did not slap it the first time round in 1953.

**Mr Molloy:**

I was not in Stormont the first time round.

**Dr W McCrea:**

Will you clarify the circumstances, so that we know exactly what you mean?

**The Chairperson:**

Yes. They will send back that to us.

**Mr Small:**

We will seek to do that.

**The Chairperson:**

We are content to move on to part 3 of the Bill, which covers the felling of trees. Clauses 14 to 29 deal with felling licences. We know that you are aware that we have received a number of representations about fees for felling licences. Last week, when the Committee met ConFor at Castlewellan Forest Park, I was taken by their argument about the perverse impact that fees would have on their ability to do what they want, which is to have a commercially successful business. Given that much of the discussion must bear in mind the commercial necessity to use wood, it would be remiss of the Department not to consider ConFor's representations. It wants the fees aspect to be taken out completely.

As I said, fees would have a perverse impact on that business, which is worth tens of millions of pounds to Northern Ireland's economy. If fees were brought in, that would encourage many people to step out of such business because it would no longer be potentially profitable. That would send out all the wrong signals. It would also create unfair competition regulations on these islands. As I understand it, fees are not charged in GB or in the Republic of Ireland. The



Department should bear that in mind and consider ConFor's representation; of which, I am sure that you are aware.

Licensing is a separate issue, in that there seems to be recognition that it sets a regulatory standard that most businesses understand that they must meet in order to comply with buying, selling and commercial production of wood and timber. Therefore, licensing does not appear to be controversial; rather, it is the associated fees that have caused problems. You may have some comments to make about compensation and encouragement of planting.

**Mr Small:**

We accept your comments about fees. The Committee made strong representations at our previous meeting. Since then, we have looked at the entire issue of fees and the need for parity with England, Scotland, Wales and Ireland. You will be aware of government cost-recovery principles which, in normal circumstances, require an attempt to recover the costs of operating an administrative system. Fees fall into that category. Nevertheless, we are aware of the parity issue and the Committee's comments. We are looking carefully at the whole issue of fees and whether there is an argument for fees to be waived, given the circumstances elsewhere.

You referred to the due diligence issues around marketing timber, which provide another argument in favour of felling regulations as a means of demonstrating that timber brought to market has been properly and sustainably grown and legally felled. That supports the idea of a felling licence system, which we understand is operated virtually everywhere else. Felling regulation through licensing is operated in GB, the Republic of Ireland, Europe and beyond, so we are not proposing something unique. It is something that will bring us into line with other areas. Therefore, we are looking carefully at the whole issue of fees, and, within the next week or so, I hope to be able to report to the Committee on the outcome of those considerations.

Another issue that the Committee and a number of stakeholders raised, which I addressed in my paper to the Committee last week, was the application of the felling regulation system to government. We have thought hard about that and have taken legal advice on the issue. The conclusion is that the principle of the Crown is indivisible in constitutional terms. Therefore, in effect, Forest Service by regulating felling, with it being taken forward by another Department, would equate to an individual regulating himself. We have taken legal advice, which suggests that it is not normal for one Department to regulate another, or to enforce or take penalties against

another Department. The government is regarded as being capable of —

**The Chairperson:**

Will there need to be checks and balances in there?

**Mr Small:**

Yes. The government is regarded as being bound by proper government policy and requirements. Therefore, the requirements of the UK forestry standard, for example, apply to government, and government must meet those obligations.

On foot of advice that we have taken, and following further consideration on the issue, we do not think that it is appropriate to apply the felling regulation system to Government Departments, or ourselves, because we are the forestry authority in Northern Ireland. Michael, what was the term used?

**Mr McCann:**

Quis custodiet ipsos custodes? Who will guard the guards?

**Mr Small:**

I know that sounds a bit odd.

**The Chairperson:**

With that bit of Latin, you are going to kill us. Will you address the issue of compensation? The RSPB and the Woodland Trust made representations to us about compensation. The right to compensation in respect of tree preservation orders was removed, which begs the question: why should the legislation be any different?

**Mr Small:**

The right to compensation was removed for tree preservation orders in certain circumstances. It was narrowed down, but there may still be some form of compensation.

**The Chairperson:**

That is not our understanding of it. Will you come back to us on that specific point?

**Mr Small:**

Yes. At one point, the development opportunity was taken out of the compensation calculation. I do not know if it has moved again since then, but our legal advice is very strong on the matter. If we are to seek to interfere with how an individual uses his private property, we then trigger the provisions of the Human Rights Act 1998, which, in effect, means that some balancing needs to take place and any actions that we take need to be proportionate. In effect, the balancing is taken forward through the offering of compensation, so if we interfere with an individual's right to use their property, we must balance that through the provision of compensation.

**The Chairperson:**

Say you had ancient woodland on your property, and each year you threatened to cut it down in order to get your hands on compensation. That would be perverse, would it not?

**Mr Small:**

We have looked at that in a number of circumstances. That is one example. Another is where felling takes place and we want appropriate re-stocking to take place.

In the case of ancient woodland that was native and broadleaf, we would require that the same kind of woodland to be regenerated. In those circumstances, our advice is that no significant human rights issues have been triggered. However, if the original woodland was conifer, and we required something different to be regenerated — for example, native woodland — then we would be at risk of triggering a compensation provision. I know that the Woodland Trust is concerned that this would limit our intentions and ability to control the form of regeneration. The advice we have taken is that if we interfere in that way, we trigger human rights obligations and we need to consider compensation provisions. We cannot do without them.

The point the Chairman raised is about a threat to raise ancient woodland to demand compensation. Is that one that we have dealt with directly, Stewart?

**Mr Morwood:**

Good forestry practice and the UK forestry standard make it clear that it may be acceptable to fell trees in ancient woodland. The woodland owner will seek to derive benefit from ownership. The forestry standard prescribes ways in which he should consider the felling of that woodland. If his proposal was to fell small groups of trees or thin the trees within the woodland, that might be

acceptable as good forestry practice. However, if he indicated that he wanted to fell all the trees over the whole of that woodland at once; that would not be consistent with good forestry practice. The owner can still derive benefit from the woodland. I think that the clause in the Bill recognises that an owner may be restricted from deriving benefit from the timber value, in particular, for such a period of time that the timber starts to deteriorate. Therefore, he would sustain a specific loss to the value of his crop. However, in implementing good forestry practice, there is no intention to ensure that the owner acted so that a significant amount of his woodland was deteriorating. That is one of the key areas where compensation is intended to be given, in addition to the area that David mentioned.

**Mr Elliott:**

In fairness, there is no overall objection to felling licenses; in fact, they are broadly welcomed. The difficulties are the fees connected with felling licenses and the management plan structure.

We need to protect ancient woodland. However, commercial forest production is a different issue. The process of applying for a felling license should be a very simple mechanism with no fees involved. That would ensure that the Forest Service's own commercial arm would not have an unfair advantage over the industry. That is a concern in the private forestry industry: that it would be unfairly disadvantaged over fees and the drafting of a management plan to satisfy the Forest Service which is in the same business. Strike the balance: protect ancient woodland and allow commercial operators to develop their businesses without too much difficulty. That is the trick, and it should not be overly difficult. Common sense should prevail and there should be a reasonable outcome for everyone.

**Mr Small:**

We have talked separately about the nature of a felling plan, and we have assured you that our desire is to keep the plan as simple as possible so that it is not a burden. That remains our intention.

**Mr Elliott:**

However, I return to the issue that what is in the Bill is in the Bill.

**Mr Small:**

Yes, but the nature of a felling application or plan will be prescribed in subordinate legislation,

and I am not sure whether it would be appropriate to prescribe it in detail in primary legislation. However, we will have to have that debate when we bring forward subordinate legislation. Our intention is to keep felling licencing as simple as possible.

When it comes to the commercial advantage of that, or otherwise, we maintain very robust and detailed forest management plans. However, the proposed felling plan would be tiny in comparison. We keep such robust and comprehensive plans because of the nature, scale and size of the forest estate, our desire to meet UK forestry standards, and our independent certification under the UK woodland assurance scheme. However, that is not what we are proposing for felling licences, or for the planning and application process. Our intent is to keep that as simple and straightforward as possible.

I can give you an example of the type of plan that we have in mind, which is no more than a couple of pages of text describing the forest, the area of woodland, the species type, proposed felling dates and the regeneration proposals. Depending on the size of the woodland, a plan, with a map to support it, could be done on one page. We are not proposing much more than that and we can provide an example.

**Mr Elliott:**

If the Chairman agrees, a draft of that would be useful. Could we talk to the industry about that?

**Mr Small:**

Yes. However, felling plans will need to be properly prescribed in subordinate legislation, and that will be a further opportunity for the Committee to ensure that they are appropriate.

**Mr Shannon:**

Amendment 22 concerns one Government Department applying for a licence from another Government Department. You have stated that you do not believe that that is necessary.

I want to go back to a point that I made earlier, and again it relates to the Wildlife and Natural Environment Bill. There are conditions that people have to meet. If Forestry Service does not apply for a licence, is it still subject to the conditions of that licence. There have been cases, not necessarily within the Department of Agriculture and Rural Development, in which enforcement action was only stopped because it was a Government Department that did wrong. When it

comes to felling licences, I want to make sure that everyone, irrespective of who they are, is subject to the Wildlife and Natural Environment Bill. If those outside government are subject to the law then those within must be subject to the law also.

**Mr Elliott:**

Somebody mentioned that there is financial support available for felling licences and management plans to the private forestry industry in other parts of the UK. Perhaps you can clarify that.

**Mr Small:**

It is not for felling licences or plans.

**Mr Elliott:**

Is there support for management plans?

**Mr Morwood:**

In some parts of the UK, there is support for management plans, but those plans encompass a much greater area of work than the felling proposals. It was designed to provide a small level of support to owners who are producing plans for their entire woodland and which covers all social, environmental and economic objectives.

**Mr Small:**

If we were to impose a duty on every woodland owner to fully meet the requirements of UK forestry standards, owners may be required, throughout the whole rotation of their woodland, to maintain more detailed forest management plans, similar to that which we maintain, but perhaps not as comprehensive. In those circumstances, some support has been given, but there will be no financial support for the simple felling plan that we are proposing.

**Mr Elliott:**

But you are undertaking to look at fees overall?

**Mr Small:**

Yes.

**The Chairperson:**

Gentlemen, that has taken us through the legislation.

**Mr Shannon:**

Paragraph 29 of the paper states that the Department is considering a proposal for the Bill to contain the duty to set up a stakeholder advisory body. What does that mean? Is it lip service?

**Mr Small:**

No, it is not lip service. We discussed the issue earlier, and the point that we were making is that we are considering it on the basis that we would like to give some further thought to what functions such a body might have, its role, its membership, and how often it would need to meet. We are trying to establish what additional role or contribution such a group could make that we cannot currently seek through the normal channels and procedures that we have in place.

If we were taking forward a piece of strategic work, we would normally approach stakeholders or form a stakeholder forum, through which we could take expert views or the views of interested groups to help inform the work that we are doing. We have done that twice in the past year in respect of a recreation strategy and the work we are doing around forest expansion and how to create better incentives and promotion to persuade woodland owners to convert to woodland. Therefore, we have normal channels and approaches through which we can secure that kind of expert advice or input. We are considering what additional contribution such a body, which would have to meet once or twice a year, would actually make that we cannot currently secure through another format. If we are going to establish another kind of advisory body or quango, we need to ensure that it is needed and that it has a specific role to play.

**Mr Shannon:**

I am not in favour of the creation of quangos for the sake of it, but there is one example of such a body in my neck of the woods — the Strangford Lough advisory and management committee. It brings people together, and that body and all the other bodies that use it help to formulate government opinion. Therefore, it is very beneficial and effective. Such bodies make people feel that they are part of the process, and that is crucial.

**The Chairperson:**

We would like you to give serious consideration to an advisory body which draws on expertise. We talked earlier about the inventory, and you are going to draw on that expertise anyway from other groups; therefore, it is something that you should consider and come back to us on.

We will forward comments to the Bill team just to amplify some of the points that have been raised today. We also suggest that the Bill team liaise with the Committee Clerk on Wednesday to discuss next Monday's meeting, where we will take the Bill forward to the next stage. We normally only meet on Tuesdays, but we will meet on Monday next week as well.

**Mr Small:**

I appreciate that we are still in the middle of the Committee Stage, but, at some point, we would like to achieve some understanding of areas where we may be reaching agreement, so that we can then go to the Office of the Legislative Counsel.

**The Chairperson:**

I have tried to be clear throughout that there are a lot of areas where we are in agreement. It is about difference of emphasis and clarity, and, if we get that clarity, you will get a straightforward view from the Committee on whether we support certain aspects or are against certain aspects of the Bill. However, by and large, we are very supportive of the concepts that have been announced, and, as long as they are emphasised in the right areas, we want to take that forward. However, it has been a helpful discussion today, and I appreciate your team putting the time and thought into that. Thank you very much.