



Northern Ireland
Assembly

**COMMITTEE FOR
AGRICULTURE AND
RURAL DEVELOPMENT**

**OFFICIAL REPORT
(Hansard)**

Forestry Bill

22 February 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 George Savage
Mr Jim Shannon

Witnesses:

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

The Chairperson (Mr Paisley Jnr):

I welcome David Small, who is the chief executive of Forest Service in the Department of Agriculture and Rural Development (DARD); John Joe O'Boyle, who is Forest Service's director

of forestry; Michael McCann, from DARD's policy and legislation branch; and Stuart Morwood, who is Forest Service's director of woodland development and strategies. I suggest that we go through the Forestry Bill one clause at a time, and if we want to ask you a question or if you want to impart any information to us, we will deal with each matter as it arises.

Clause 1 (General duty of the Department)

The Chairperson:

Clause 1 has been discussed extensively to take account of the fact that the Bill must be forward-looking and provide opportunities that did not exist previously. We were concerned about the establishment of delivery plans, which, although not in the Bill, the Department stated, and the Minister will reiterate at Consideration Stage, its commitment to publish. Access to the delivery plans in advance would help the Committee to ensure that there are no surprises and allow us to properly interpret clauses. The Department's commitment to that level of co-operation would help us to reach an affirmative view.

For example, the equine industry is not mentioned in the legislation, but would it be a fair

interpretation to say that the Bill will provide opportunities for that industry? In addition, forests could be made available to people with other sporting and recreational interests, such as mountain biking or motorbike scrambling. I am reluctant to list all the interests that could be involved because, inevitably, I will omit some incredibly important pursuit that should be accommodated. We want to ensure that the Bill is flexible and that the Department will not be draconian in preventing people's access to and use of forestry land. Such provisions will not be in the Bill, so perhaps you could include something in the delivery plan to reassure the Committee that those pursuits will be embraced.

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

We avoided including in the Bill every form of recreation that we will be able to facilitate through the new legislative framework. However, you are right to say that the framework will give us scope to address and accommodate all sorts of recreational, sporting and tourism activities. That, I suppose, is what lay behind the decision to widen the Department's general duty in clause 1. The delivery plan could refer to some of those specific areas, but it is also relevant to say that our business planning process happens every year, so, each year, the Committee will have an opportunity to witness the new areas that we are beginning to address.

Our recreation strategy does refer to those various types of recreational and sporting activities, and it commits us, through a three-year implementation plan, to exploring sporting, outdoor learning, leisure and recreational opportunities. That strategy was brought before the Committee, and, each year, we will commit to delivering subsequent strategies' implementation plans. The Bill definitely gives us the necessary scope and powers to deliver on those commitments, and our business planning process and the delivery plan can help to capture some of that.

The Chairperson:

Our issue is with where the Department considers it appropriate to do those pursuits. I specifically asked that the Committee have early sight of the delivery plan because we want to know exactly what we will be voting for and that as liberal an interpretation as possible has been applied.

Mr Small:

I think that we can do that, because, as I said, we have already made a series of commitments in our recreation strategy. We can mirror some of those commitments in the delivery plan.

Obviously, we will not be able to indicate precisely which initiatives we will take forward each year, because we need to decide what opportunities are available at a given time and what partners are available to work with us. I think that we will be able to say something positive in the delivery plan.

Mr Shannon:

I wish to develop the Chairperson's point. Membership of the Ulster Rural Riders Association is at its highest and most active in north Down and Ards, part of which is in my constituency. Private enterprise has helped riding at Rosemount near Greyabbey become very successful. In a way, you confirm that in clause 1. However, in my constituency, only a couple of forests are suitable for horse riding. Will zoning be used there? Can the land be used for horse riding but not for other sports? Are the forests to be used only for walking? How will the process work?

People from the Ulster Rural Riders Association have contacted me. Killynether Wood may not be the most suitable location in which to develop a rural riding track, but, if the organisation wanted to use that site, or Ballysallagh Forest at Craigtlet, which is the other forest in the north

Down and Ards area, for that purpose, would you view that as an opportunity for the equine industry? The Ulster Rural Riders Association has more than 46,000 registered members, the value of the sport is £121 million, and its revenue is £7.7 million a year.

The Chairperson:

You have obviously produced those figures off the top of your head.

Mr Shannon:

Yes; absolutely. My knowledge of horses is limited. All that I know is that King Billy rode one at the Battle of the Boyne, but I represent many people who have a real interest in horse riding. They are very keen to ensure that the opportunity is there for them to ride horses in forests, and I want to ensure that they have that opportunity. Will the legislation provide that opportunity? It would not be satisfactory if those people were told to do their rural riding in Cookstown, Limavady or Fermanagh — no disrespect to those places.

The Chairperson:

The horses would be exhausted by the time that they got there.

Mr Shannon:

Opportunities should be available where there is the greatest number of people. How can you assure me, a representative of those people, that that will happen?

Mr Small:

There are opportunities. We already facilitate significant pony-trekking and horse-riding opportunities in our forests. We determine where it might be appropriate for those activities to take place through our forest planning process, which is cyclical. We consider each area in an area-wide context. We determine what the existing provision is in the forest block and consider what more may be possible. We also consult with local groups on our forest plans. Out of that process, we hope to identify opportunities with potential partners. One example of our doing that is at Castle Ward, where we work in partnership with the National Trust to develop a multi-purpose trail network, which will include mountain biking and pony-trekking, as well as walking.

It is through that combination of our forest planning process and our work with partners that opportunities will materialise. There are real opportunities in the forest estate, and I do not think that we would ever contemplate having provision for pony-trekking only in the north of the Province. Our expectation is that it will be well spread out.

Mr Shannon:

You mentioned the relationship that you have with potential partners. If, for example, an organisation were to suggest that it wished to develop with the Department a rural riding pathway or a bridle path, would you be open to suggestions and negotiations?

Mr Small:

Yes; I think so. We may not be able to do so in every circumstance, because it may not always be suitable, but we are willing to consider possibilities. John Joe has been leading work with the British Horse Society Ireland, which has considered our recreational provision for pony-trekking and horse riding across Northern Ireland. We are trying to find a way in which to deliver that at a strategic level.

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

Our aim is to establish a strategy to provide the necessary facilities and strategically to consider specific areas of forest that could meet local demand.

Mr Shannon:

It is about determining the demand for such facilities and deciding where the people want them.

That is a key issue.

Mr O'Boyle:

We recognise that where that demand is can be part of a strategic demand to which quite a lot of people in a particular area want access. We realise that, in some cases, there is a more local, geographic demand, and that we also need to provide for local need that is not connected to a more strategic demand. For example, the demand from people who want to ride horses now and again in a local wood that is not too far away from them is different from that of people who want to participate in 10 or 12 events a year in Northern Ireland. We want to try to make provision for people who want some access to local woodlands as well as for those who want access to a more

strategic need for pony-trekking.

Dr W McCrea:

I am concerned that the number of vehicles that are on the roads these days makes it difficult and dangerous for people who go horse riding. We need to look at the alternatives.

I seek clarification on clause 3(2)(d), which states:

“such other recreational, conservational or educational facilities as the Department considers appropriate.”

Do you think that horse riding and carriage driving should be considered recreational activities?

Is that a proper interpretation?

Mr Small:

Yes. We already make good provision for pony-trekking.

Dr William McCrea:

Therefore, those activities would come under that definition?

The Chairperson:

We want absolute clarity on that.

Mr Small:

Clause 3(2)(c) also refers to bridle paths.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 1, subject to the Department's proposed amendment, agreed to.

Clause 2 agreed to.

Clause 3 (Provision of facilities on forestry land)

Mr Savage:

Before we agree to clause 3, I seek some clarification from Mr Small about viewing points and
bridle paths in clause 3(2)(c). Will the horse fraternity be included under that paragraph?

The Chairperson:

To be fair, David has just drawn our attention to clause 3(2)(c), which states that facilities may
include:

“viewing points, bridlepaths, nature trails, arboreta, wildlife enclosures, interpretative centres, conservation areas and
scenic drives;”.

For the record, because the meeting is being recorded for that purpose, when Mr Small was asked
by Dr McCrea whether the clause included the equestrian fraternity, he said yes.

Dr W McCrea:

He did say yes.

The Chairperson:

There is clarity on that paragraph. I am not going to open it up for discussion again.

Mr Savage:

I am happy enough.

Question, That the Committee is content with the clause, put and agreed to.

Clause 3 agreed to.

Clause 4 (Use or development of forestry land)

The Chairperson:

Do members have any points to put to the departmental officials on clause 4? The Committee

Clerk will summarise the clause for members' benefit.

The Committee Clerk:

Clause 4 combines with clause 7 to allow for bodies corporate, and so, to be included for the purpose of those functions. The Department's proposal is to delete subsections (2) and (3) will be deleted from the Bill, and clause 7 will refer back to clause 4. Members agreed that at earlier meetings.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to*.

Clause 4, subject to the Department's proposed amendment, agreed to.

Clause 5 (Compulsory acquisition of land)

The Chairperson:

The clause was discussed in closed session before the departmental officials entered the meeting.

The Committee Clerk has recommended acceptance of the clause based on the legal advice received. Do Members have any specific questions or comments that they wish to put to the Department?

Mr Elliott:

I accept that the Department has moved quite significantly on the clause, but I still have concerns.

I assume that that is of no major surprise. As we have sought legal advice, is it possible to insert a subsection that states that the compulsory acquisition of land would occur only after all other avenues had been exhausted?

Mr Small:

We considered that as well, Tom. However, I am not sure that we put that to the Office of the Legislative Counsel (OLC) on the basis that we could anticipate with a fair degree of certainty how it might respond. We are pretty sure that the OLC's response would be that clause 5 powers are the powers of last resort. The Department would not even contemplate using clause 5 powers unless the clause 2 provisions had been exhausted. They would require us to negotiate with a landowner to seek to develop a lease arrangement or a right of way.

We could not go straight to clause 5, because we would fail on the Wednesbury reasonableness test under local law, and we would fail the human rights test of reasonableness

and proportionality. Clause 5 powers could not be used unless a proper, reasonable process of seeking to acquire land by agreement had been followed. We felt that the OLC would not even contemplate the inclusion of such a subsection, because —

The Chairperson:

You are stressing to us that those powers are a last resort.

Mr Small:

Yes; absolutely.

The Chairperson:

I draw members' attention to clause 2(1), which we have already agreed to, which states:

“The Department may—

(a) acquire by agreement any land which it requires”.

The operative words for us are “by agreement”.

Mr Elliott:

Although David says that the powers would be used only as a last resort, there is nothing in the Bill to indicate that. Although the Department may feel that legislation or the courts may be against it if it used clause 5 powers not as a last resort, there is nothing in the Bill to indicate that that would be the case. The legislation still allows for the compulsory, permanent acquisition of land, and although I am not happy with that, I may be able to live with it if something was included in the clause to state that the powers would be used only a last resort. I keep coming back to the point that if the wording is not in the Bill, it is not in it.

Mr Small:

My feeling is that if we go to it with that suggestion, the OLC will say that is taken as read that clause 5 powers cannot be used unless all other reasonable steps have been taken. We can put your concern to the OLC, Tom, if you so require, because we have not yet formally done so.

The Chairperson:

It is fair that we raise the issue with the OLC in order to get a definitive position.

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

We have not yet put it to the OLC, but we will do so. The OLC said that we are obliged to explore the alternative before we use that power, and the Departmental Solicitor's Office (DSO) said that we can engage in compulsory acquisition only if we first take steps that constitute the lowest level of interference.

The Chairperson:

It is only fair that we ask you to take the point to the OLC to get advice. Our legal advice is clear. It states that what we have been able to negotiate with you over the past month brings us closer to the position that we want. However, that line is not included in the Bill. The trajectory is good, but if you put that point to the OLC, that might be sufficient to alleviate all concerns. What I am particularly struck by is that the proposed power is about right to access now, whereas previously it was a much more open issue. If we can have clarity on the point that the Deputy Chairperson raised, it would help members considerably.

Mr Small:

We will check that point.

Mr Elliott:

If the OLC were to say that it is taken as read that it is a last resort, it would be useful if it could give us some explanation of why it is taken as read. If there is some other piece of legislation that

—

Mr Small:

I think that it is in domestic common law. The Wednesbury reasonableness requirement requires the Department to act reasonably. Moreover, human rights legislation, which requires the Department to have exhausted all other reasonable approaches first, would apply.

The Chairperson:

That means that we will have put the Question on clause 5 tomorrow. I am just giving you notice of that.

Mr Shannon:

Last Monday, we discussed the idea of the lease process. In other words, before the Department

can compulsorily acquire land, there is the possibility of the Department's seeking a long-term or short-term lease. I know that it does not say that in the clause, but can we have some indication that the Department is agreeable to that term and methodology of coming to an agreement with the landowner, should there be any problem?

Mr Small:

I think that the Department would be agreeable to that. A further amendment to clause 5 has been suggested to indicate that that could be for a limited period. The OLC has suggested the inclusion of a new subsection (1A), which states:

“The power of acquiring land compulsorily under subsection (1) includes power to acquire, by the creation of a new right, an easement or other right over land.”

What we are being told is that the compulsory power provided for in clause 5 allows the Department to do any one of those combinations. The Committee's concern until now has been that the Bill does not state that. However, the OLC's view is that it does not need to, because, again, it is taken as read.

The Chairperson:

It is by agreement. In other words, there must be negotiation.

Mr Shannon:

I appreciate that.

Dr W McCrea:

I understand the first part of what you say, whereby clause 2(1) states that any land acquired must be done by agreement, but we are not talking about something that is done by agreement. The compulsory purchase of land is not by agreement. It takes us into a completely different field.

I stress what Tom said. I would like clarification that that does mean that compulsory purchase should be used as a last resort. I appreciate that the powers will be narrowed, and that they are in the Bill to improve access to land, and therefore the capacity to use those powers is narrowed. However, it is vital that the clause be made clear. If it cannot be included in the Bill that the power will be used only as a last resort, we want to know why not. If what you are

saying is correct, we need a very clear statement from you of what exactly the clause means.

That way, the Department can be reminded of what it is saying: that it is a power of last resort.

A major power has been handed to the Department, although it has limited scope. It is important to realise that, although its usage will generally be fine, it may not be fine for people whose land is going to be taken from them.

Mr Small:

We appreciate those concerns.

The Chairperson:

We need to have clarity on that point by tomorrow. I know that the OLC normally works in months, but if it could work in hours, that would be handy for us. I am sure the OLC is not listening to this. I stress that, originally, the proposed power provided to the Department was of an absolute right to acquire, and it will be reduced to being a limited power. We have done some good work on clause 5, and commendations are appropriate all round, both for Committee members and departmental officials, for getting the provision limited to powers to improve

access. If we could get that definition clear, it would go a long way to satisfying the Committee.

You have your work cut out for you with the OLC. Therefore, we will postpone putting the

Question on clause 5 until tomorrow.

Clause 5 referred for further consideration.

Clause 6 (Inquiries, information, etc.)

The Chairperson:

An amendment has been proposed to clause 6 to include the keeping of a woodland inventory,

which will be reviewed at 10-year intervals, following a baseline assessment in the first year.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 6, subject to the Department's proposed amendment, agreed to.

Clause 7 (Incidental powers)

The Chairperson:

An amendment has been proposed to clause 7 to allow similar procedures to be introduced under clause 4.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to*.

Clause 7, subject to the Department's proposed amendment, agreed to.

Clause 8 (Control of animals in forests)

The Chairperson:

An amendment has been proposed to clause 8 to exclude animals listed in schedule 5 to the Wildlife (Northern Ireland) Order 1985 and to remove the potential for night shooting. The Committee has done some good work on the clause.

Mr Savage:

Are badgers protected in the clause? That is an important issue.

The Chairperson:

Only deer and hare.

Do you want to be able to shoot badgers at night? [*Laughter.*]

Mr Savage:

I think that we should be able to.

It is important that we have something in the clause that —

The Chairperson:

We are not allowed to shoot them at any time.

Mr Savage:

I know; I would not do that.

The Chairperson:

I will not be facetious. The issue that George raised is covered by the Wildlife and Natural Environment Bill, which is the responsibility of the Department of the Environment.

Mr Savage:

I ask because it could be important if there were a big outbreak of bovine TB or brucellosis, and a set of badgers needed to be rooted out. I hope that that situation does not arise.

Dr W McCrea:

Have we dealt with the correspondence from the British Deer Society?

The Committee Clerk:

That will be covered when the Committee moves on to clause 9.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 8, subject to the Department's proposed amendment, agreed to.

Clause 9 (Control of animals on land adjacent to forest)

The Chairperson:

Clause 9 is a substantive clause. The Committee asked Forest Service to reserve the clause and proposed the option of enabling the clause by subordinate legislation, or the appropriate legal trigger, when deer populations pose a greater threat than they do at present. Thankfully, Forest

Service agreed to an amendment, and clause 9 will be retained in the Bill in dormant form.

That means that an amendment has been proposed to clause 38 that provides for clause 9, or any of its provisions, to be activated if they are ever required, but only if a draft Order is laid before the Assembly and approved by a resolution. Therefore, the Department would have to come back to the Assembly to trigger the provisions in the clause.

A further amendment has been proposed to the clause to remove the liability for charging adjacent landowners for kills, but the ability to charge other forest owners has been retained.

Dr McCrea asked about the correspondence that we have received on deer from the British Deer Society. Members have that correspondence in their blue folders. We plan to have clause 9 remain dormant so that the Department has to come back to the Assembly to activate it if the provisions in it are required. Therefore, we have probably addressed the society's concerns.

Mr Elliott:

Is there no need to refer to clause 38 in clause 9?

Mr Small:

Clause 38 is not mentioned in clause 9 because of drafting protocol. Clause 38 clearly indicates the dormant nature of clause 9.

Mr Elliott:

I know that, but if one reads clause 9 on its own, no reference is made to clause 38.

Mr Small:

You will probably find a lot of cross-references, even on regulations that are to be made. There is no indication of how they will be made until one gets to the clause 34, which talks about making regulations. That clause refers back to earlier clauses. If we were to do what you ask, we would need to include cross-references in quite a few clauses.

Mr Shannon:

The British Deer Society wrote to us to ask who would cull deer. I mentioned in Committee previously that there is tourism potential and sporting potential here, which could be used as a method of control. I do not think that that is mentioned anywhere in the clause, although I may have missed it.

I have never shot a deer in my life, but it is one of my ambitions before I pass away. I am aware of the recreational value, the tourism potential and the money that can be generated from shooting deer. Does the clause mention recreational deerstalkers? If it does not, perhaps it should.

The Chairperson:

The clause will lie dormant, but if, at some time in future, the population increases and there are galloping wildebeests and wild deer running across the plains of Ulster that require to be shot and put down at will, we will be able to address the issue then. The Department has conceded considerable ground and recognises that it is not a problem at present, but, when it becomes a

problem, we will have to address it.

Mr Shannon:

There could be some potential at that time.

The Chairperson:

An Order will need to be laid in the House that will be subject to affirmative resolution.

Therefore, it is not a minor thing.

Mr Shannon:

I am perfectly satisfied with that.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 9, subject to the Department's proposed amendment, agreed to.

Clause 10 (Removal or destruction of vegetation on adjoining land)

The Chairperson:

The Department has proposed an amendment to clause 10, which will now contain a new paragraph to allow scope and flexibility, and measures other than removal or destruction of vegetation. The OLC has also attached a caveat to the clause for those who are committed to agrienvironment schemes and whose grant may be compromised by any clause 10 actions. The OLC was of the view that it would be unreasonable for the Department to seek to claw back grant on the grounds that a landowner had done something required by the Department under statutory powers and that nothing express will be required to that effect. The Department can also confirm that the principle of force majeure applies to those schemes. That will also offer protection in those circumstances. Is that a fair summary?

Mr M McCann:

Yes, it is. We asked the OLC to write a caveat into the Bill, but it said that there was no need because of the force majeure principle and because of the fact that it would be unreasonable for the Department to claw back any money from compromised agrienvironment schemes by virtue of another wing of the Department's serving a notice on the landowner. That is more or less as

you summed up the case, Chairperson.

The Chairperson:

We came across that as a result of the early scrutiny. Again, it indicates the good work that the Committee has done in identifying issues along with the Department.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 10, subject to the Department's proposed amendment, agreed to.

Mr Elliott:

Has the definition of "uncultivated land" been taken from the Department?

Mr Small:

It has been taken from the dictionary. We discussed it at last week's meeting. We asked the

OLC whether it would be possible to define “uncultivated land”, and the advice was that it was unnecessary. It is the dictionary definition, which is “land that has not been cultivated”. It was as simple as that. There are other statutory definitions, but they confuse matters more. The OLC’s strong view was to use the dictionary definition, and that it was not necessary to give a further definition.

Mr Elliott:

I can see huge problems in that area in the future.

The Chairperson:

I hope that you are wrong, because we have just agreed to the clause.

Clause 11 (Protection for persons acting under section 8, 9 or 10)

The Chairperson:

Clause 11 is not as live as the others. An amendment has been amended to provide protection for officers who are undertaking official duties as detailed in clauses 8 and 10 in particular.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 11, subject to the Department's proposed amendment, agreed to.

Clauses 12 and 13 agreed to.

Clause 14 (Requirement of licence for felling)

Mr Elliott:

We were shown a draft of a felling licence.

Mr Small:

It was a felling plan.

Mr Elliott:

A felling plan, yes. I think it was a management plan. There is no legislative basis for that, and no legislative basis would be needed to change it. I appreciate that we were shown a simple plan

that would be acceptable to everyone, but I am concerned about changes to that if they are required.

Mr M McCann:

The content of the management plans will be prescribed by subordinate legislation. The Committee will have an input into the development of those plans.

Mr Elliott:

So the plan requires subordinate legislation?

Mr M McCann:

That is correct.

Question, That the Committee is content with the clause, put and agreed to.

Clause 14 agreed to.

Clauses 15 and 16 agreed to.

Clause 17 (Operation and conditions of felling licence)

The Chairperson:

An amendment has been proposed to include a reference to the maintenance of ancient woodlands, although the Bill provides no definition of “ancient woodland”. The Department will, hopefully, be able to apprise members that it intends to use the definition that is provided by the UK forestry standard and other documentation. Is that right?

Mr Small:

That is right. OLC took the view that “ancient woodland” is a well-understood term in forestry circles and that it is unnecessary to apply a definition in the Bill.

The Chairperson:

At least now we can turn to a recognised authority on that.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 17, subject to the Department's proposed amendment, agreed to.

Clauses 18 and 19 agreed to.

Clause 20 (Fees in connection with felling licences)

The Chairperson:

The Committee has taken a very strong line on clause 20. We do not want to see fees anywhere near it. Given that we are nearing the eleventh hour, do you have anything to say about fees?

Mr Small:

We have taken account of the Committee's views and have recently secured the Department of Finance and Personnel's agreement to waive fees for felling licences.

Now, the Committee had also expressed concern about the retention of the clause. Our position is that it is Executive policy that Departments should seek to recover costs where appropriate. We accept the Committee's concerns and do not feel that fees are appropriate at this stage. We reached that determination largely on the basis that the main benefit of the felling licensing system is a wider public benefit rather than any private individual gain.

However, if in five or 10 years' time the situation changes slightly, we will need the discretion to review it, perhaps at some future date. That means that some sort of clause like this needs to be retained. We know that the Committee is concerned about having that kind of clause in the Bill, and we propose that the clause remain in the Bill, but that any fees regulations that subsequently come forward should have to be approved by affirmative rather than negative resolution procedure.

The Chairperson;

Is that similar to what we have agreed for clause 9?

Mr Small:

Yes. It is so that the fees can be set only with the full consent of the Assembly.

The Chairperson:

That goes an awfully long way to meet the Committee requirements. Organisations such as ConFor, which try to make a living out of forestry, will be delighted. I welcome the fact that you are waiving the fees, and that, if the Department wants to bring them in at a later date, you will first get the Assembly's authority. I do not think that we can ask for much more, except a cherry on top.

Question, That the Committee is content with the clause, put and agreed to.

Clause 20 agreed to.

Clauses 21 to 33 agreed to.

Clause 34 (Regulations)

The Chairperson:

This clause refers back to clause 20, and makes it subject to affirmative resolution procedure.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to*.

Clause 34, subject to the Department's proposed amendment, agreed to.

Clauses 35 to 37 agreed to.

Clause 38(Commencement)

The Chairperson:

This clause refers to clause 9, and makes it subject to affirmative resolution. The Committee sought that protection.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 38, subject to the Department's proposed amendment, agreed to.

Clause 39 agreed to.

Schedules 1 to 3 agreed to.

Long title agreed to.

The Chairperson:

That concludes the clause-by-clause scrutiny, with the exception of clause 5. If we can get answers on that by tomorrow, we will be able to complete the process; if we can get over that bump in the road, we will have done a fairly good piece of work collectively on this Bill. I appreciate that you and your colleagues have been in listening mode for this Bill. We have kicked some of these issues about, but we have got over the line with them. The Committee appreciates the hard work that has gone into it.

Mr Savage:

It is important, when all is said and done, that there is a living forest. That is in everyone's interest.

Mr Shannon:

It is refreshing to have worked with officials who are responsive to the Committee. We all appreciate the Department's co-operation.

The Chairperson:

You will be getting an OBE if you are not careful, David.

Mr Small:

I just want to raise one issue before we finish.

The Chairperson:

Maybe you already have one.

Mr Small:

We talked about clause 9. The Department has accepted that it should remain dormant in the Bill with an enabling provision for some later date. We put a proposal to the Committee on Friday paper to add another clause to the Bill. That clause would be similar to clause 9 but, rather than having a compulsory nature, its provisions would only be used with the consent of the landowner. Our reasoning is that, although we were content to allow clause 9 to remain dormant at this time, on the basis of the Committee's comments, we feel that there would be circumstances in the future in which it would be helpful if the Department could go onto adjacent land with the landowner's agreement. *[Interruption.]*

Mr Shannon:

Vote?

The Chairperson:

That is possibly a vote.

Unless we see it, we cannot do anything with it. Can you bring it to us tomorrow?

Mr Small:

We presented it on Friday. Perhaps the Committee Clerk and I can have a chat about it.

The Chairperson:

We will look at it tomorrow.