



THE FORESTRY BILL

The current legislation relating to the management of forestry in Northern Ireland is acknowledged as being antiquated, focussing on the management of forests largely in terms of the supply of timber and the development of afforestation. Contemporary forestry management is a more complex endeavour encompassing economic, social, environmental and recreational issues.

The Forestry Bill contains 39 clauses and 2 schedules which will replace the existing legislation, the Forestry Act (NI) 1953. It seeks to establish new powers that will allow the department to give equal weight to these uses *vis à vis* the more traditional uses such as timber supply and afforestation.

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SUMMARY OF KEY POINTS

- The overall aim of the Bill is to give equal weight to economic, social and recreational uses of the forestry resource in relation to the more traditional use of forestry i.e. the development of afforestation, supply of timber and maintenance of the reserve of growing trees.
- In order to achieve the overall aim of the Bill the Department will be given a range of powers including powers for the compulsory purchase of land, the disposal of any forestry land, the power to provide facilities to improve amenity on forest land and to use or develop land for a purpose other than forestry.
- The Bill also provides a range of powers for the Department to protect forest trees from damage including the right to take, kill or destroy any wild animal that is causing damage to trees and powers to order the destruction of vegetation that poses a threat to forests.
- The Bill also gives powers to the Department in respect of the felling of trees including the introduction of a number of requirements relating to licensing for the felling of trees.

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1. INTRODUCTION

There are 124 state forests in NI¹. These are managed by the Forestry Service which is an Executive Agency of the Department of Agriculture and Rural Development (DARDNI). The Agency's Framework Document sets out the Agency's aims:

"to contribute to the economic development of the entire forestry sector in Northern Ireland, whilst at the same time promoting the sustainable management of forests for multiple use and conserving and enhancing the rural environment".

The Agency does have a remit to *"promote access to and use of Northern Ireland forests"* as well as *"to promote the supply of wood from within Northern Ireland for industrial use"*. However the current proposals could be seen as recognition that there has been greater emphasis on the industrial aspect of forestry management and, therefore, that emphasis on other social, environmental, and recreational issues must be placed on an equal footing.

This paper looks at the key clauses of the proposed Bill.

2. CLAUSES OF THE BILL

2.1 PART 1 - FUNCTIONS OF THE DEPARTMENT

Clause 1 (1) – General duty of the Department

This refers to the "general duty" of promoting forestry and defines forestry land as *"any land held by the department for the purposes of its functions under this Act"*.

This could be considered a narrow interpretation which would exclude land held by others e.g. local councils which, although forming part of the NI forestry resources, would not be covered by this Act.

The concept of "promoting" forestry has not been fully explained. For example, is this promoting the multi-faceted aspects of forestry ranging from timber production to recreation and leisure activities to conservation and enhancement of biodiversity? The lack of explanation may suggest a narrow interpretation perhaps still focussed on timber production.

Clause 2 – Principal Powers of the Department

Clause 2 provides a range of powers for the department to support its activities in afforestation and woodland industries. Perhaps the provision of most concern is Clause 2 (b),

The Department may....(b) dispose of any forestry land.

There is no explanation of circumstances when this, or indeed other powers referred to, would be exercised. For example, although a forestry site might be unprofitable in relation to timber production and therefore potentially disposed of on this basis, there may be other uses that it could be used for e.g. contribute to biodiversity, or development of other public goods.

¹ Links to each of the forests can be accessed [here](#)

Clause 3 – Provision of facilities on forestry land

This clause empowers the department to provide a range of facilities to improve amenity on forestry land e.g. toilet facilities, places for meals and refreshments, nature trails etc.

The department will also be able to impose charges on people who make use of these amenities.

Clause 4 – Use or development of forestry land

This clause allows for the department to use or develop land for a purpose other than forestry. However, it is also clear that this power must be exercised in the context of clause 1 i.e. the general duty to promote forestry.

Clause 5 – Compulsory acquisition of land

This is an important clause which allows the department to compulsory purchase land which it requires for the purchase of, or the carrying out of its functions under this Act. This power is necessary when for example forestry is landlocked and no agreement can be reached to access it.

Clause 6 – Inquiries, information, etc

This allows the department to collect and disseminate information on forestry and to exploit any intellectual property arising from this activity. It also makes it an offence for a person not to comply with the department in respect of providing information or permitting the collection of information.

Clause 7 – Incidental Powers

The powers detailed in this clause allow the department to enter into arrangements with other persons or bodies to ensure that it is able to discharge its duty under section 1(1).

2.2 PART 2 – PROTECTION OF FOREST TREES FROM DAMAGE

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Clause 8 – Control of animals in forest

This clause allows occupiers of land to kill, take or destroy any wild animal that is causing damage to trees (other than a bird) on the land or adjoining land which the person also occupies as long as the land is 0.2hectares or more and is either forestry land or land used for the commercial production of timber; or it is land used for the rearing of young forest trees.

Clause 9 – Control of animals on land adjacent to forests

These powers would allow departmental officials to enter land for inspection purposes to ensure that wild animals in land adjacent to forests are not damaging trees. They will allow the department to instruct the owner of such land to take effective action to prevent damage to trees where it is identified as occurring or likely to occur.

Where the occupier does not take appropriate action within the specified timeframe of 3 months an authorised person may kill, take or destroy any wild animals on the adjacent land and recover any associated cost from the occupier as a civil debt. Where the land is unoccupied then this action shall apply to the owner.

Clause 10 – Removal or destruction of vegetation on adjoining land

This clause is similar to clause 9 in that it outlines the action that the department could take to protect forestry, in this case from vegetation on uncultivated land that constitutes a potential danger to the forest. Again, the occupier will be served with a

notice to destroy the vegetation (within 15 days) and if this is not complied with then the department may within 4 months take action to destroy the vegetation that is within 15m from the boundary of the forest. Similarly, if the land is unoccupied then the owner of the land will be served with the notice.

Clause 11 – Protection for persons under sections 8, 9 and 10

Without the provisions in this clause the authorised officer may be found guilty of an offence under the Wildlife (Northern Ireland) Order 1985 or the Games Preservation Act (Northern Ireland) 1928

Clause 12 – Burning of vegetation

A person is not allowed to burn vegetation within 1.5km of a forest which he does not own unless he has served notice on the owner within a specified time frame (not more than one month and not less than 14 days from the date on which it is intended to burn the vegetation). On receipt of a notice the owner may serve a counter notice objecting to the proposed burning on the basis that it may cause damage to the forest.

Burning of vegetation in contravention of this provision is an offence and a person is liable to a fine not exceeding level 1 on the standard scale.

Clause 13 – Protection of forest trees etc, from pests

This provision amends the Plant Health Act (Northern Ireland) 1967 to provide powers to make subordinate legislation to control the tree disease risk. It is amended by inserting an Order into the Act. This Order allows the Department, with the consent of the Department of Finance and Personnel, to impose fees or other charges

- (a) in connection with applications for and the issue of any licence or certificate which may be issued in pursuance of such an order in connection with the import or export of any article;
- (b) in respect of the performance by the Department of any service without the performance of which any requirement for the issue of such a licence or certificate would not be met.

2.3 PART 3 – FELLING OF TREES

Restriction of Felling

Clause 14 – Requirement of licence for felling

A felling and regeneration licensing system is intrinsic to restricting the felling of trees. This will only apply to land of 0.2 hectares or over as the aim is to regulate forests and woodlands but not the felling of individual trees as this is covered by Tree Preservation orders under planning legislation.

The 0.2 hectare limit is adopted as this also reflects the minimum areas for planting grants under current Forestry plant scheme grants.

There are also thirteen exemptions to this clause e.g. the felling of fruit trees; the felling of trees where it is immediately required to carry out development which has been authorised by planning permission. It is also an offence for anyone to fell a tree where an exemption does not apply and a license has not been granted.

Clause 15 – Application for felling licence

Applications for felling licences will be prescribed through subordinate legislation. Although the legislation doesn't detail what will be required in an application it is expected that an application will require:

- details of the location and the area of the trees to be felled;
- a map of the area, special features or restrictions (e.g. tree preservation orders, ancient monuments);
- plans for the felled area;
- any other information required by the felling management plan.

The plan must be submitted to and agreed by the department

Clause 16 – Compensation on refusal of felling licence

Where an application for felling of trees is refused, compensation will be paid for depreciation of the value of the trees as a result of refusal. Claims may be made for compensation on the value of the trees from time to time in respect of deterioration. The value of the trees will be calculated on the price of the trees current at the time of the claim.

Clauses 17 to 20 also relate to the felling of trees specifically:

- 17 – Operation and conditions of felling licence
- 18 – Deferred decision on an application for a felling licence
- 19 – Appeal against decision of Department on application for felling licence
- 20 – Fees in connection with felling licence

Restocking Notice

Clause 21 – Power of Department to require restocking after unauthorised felling

This clause gives the Department the power to require the person who has committed an offence under 14(3) and on whom the restocking notice is served, to restock the land on which the trees have been felled or on other land as agreed with the Department.

Clause 22 – Appeal against restocking notice

A person on whom a restocking notice has been served may appeal against any aspect of it. The person who hears this appeal is appointed by the Department.

Enforcement of felling licence conditions and or restocking notice

Clause 23 – Notice to require compliance with felling licence conditions or restocking notice

This will apply if any condition of the felling licence is not complied with or any restocking notice served by the Department is not complied with.

A person who fails to take the necessary steps as required by an enforcement notice, without a reasonable excuse, is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Clause 24 – Appeal against enforcement notice

A person on whom an enforcement notice is served may appeal against the enforcement notice on the grounds that:

- (a) the conditions of the licence have been complied with; or
- (b) the steps required by the enforcement notice are not required for compliance with conditions of the licence.

Supplementary

Clause 25 – Appeals under this part

This Clause allows the Department to appoint a person to determine an appeal under 19, 22, or 24.

Clause 26 – Identification of trees

An authorised officer will identify trees e.g. by marking or other means that are subject to a felling licence or in respect of a felling licence which has been refused.

Clause 27 – Regulations as to applications, claims and notices

This part give power to prescribe the manner in which an application, claim or notice is made. This requires, for example:

- (a) that any particulars specified in the application claim or notice be verified in the prescribed manner; and
- (b) the notice of the application, claim or notice be given to a prescribed person or body.

Clause 28 – Application of this part to Crown land

Crown land is land that (a) belongs to Her Majesty in right of the Crown or (b) land an interest in which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.

This part also applies to Crown land and trees growing on Crown land but except with the consent of the appropriate authority

- (a) no conditions shall be imposed on the grant of a felling licence in respect of trees on Crown land;
- (b) No restocking notice shall be given in respect of Crown land.

Clause 29 – Interpretation of this Part

This clause gives definitions of terms used in this Part.

2.4 PART 4 – MISCELLANEOUS AND SUPPLEMENTARY

Rights of access to, and byelaws for, forestry land

Clause 30 – Public right of access to, and byelaws for, forestry land

This gives the public right of access on foot to all forestry land for the purpose of recreation. There are of course restrictions placed on this access, for example this

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does not extend to any building or structure on forestry land or any facility on forestry land in respect of which a charge is applied.

Clause 31 – Powers of Entry

Provides powers for an authorised person to enter land at any reasonable time to exercise their functions under this Act and enable the Department to carry out any of their functions under this Act.

Powers of entry do not include the right to enter a dwelling house.

Offences

Clause 32 – Obstruction of Officers, etc.

This clause makes it an offence to obstruct an officer of the Department in respect of carrying out any function under this Act, an authorised person in the exercise of such functions, any other persons engaged in works in pursuance of this Act.

Clause 33 – Prosecutions under this Act

Proceedings for an offence may be brought within 6 months from the date on which evidence sufficient in the opinion of the complainant to warrant the proceedings came to the knowledge of the complainant.

Supplementary

Clause 34 – Regulations

Any regulation made under clause 14 must be laid before and approved by the Assembly.

Clause 35 – Interpretation

This clause gives definitions of terms used in this Act.

Clause 36 – Application to the Crown

Subject to 14(2) k and 28 (felling licences) and the provisions of this section this Act binds the Crown to the fullest extent authorised or permitted by the constitutional laws of Northern Ireland.