

DÁIL ÉIREANN

AN BILLE FORAOISEACHTA, 2013 —AN TUARASCÁIL

FORESTRY BILL 2013 —REPORT

Leasuithe Breise Additional Amendments

16a In page 8, after line 35, to insert the following:

“(2) In performing any relevant function under this Act, the Minister shall have regard to, in addition to any other material matter, the policy of the Minister for the Environment, Community and Local Government on climate change.”.

—An tAire Talmhaíochta, Bia agus Mara.

16b In page 9, line 6, to delete “and” and substitute the following:

“(ii) afforestation,
(iii) forest road works, and”.

—An tAire Talmhaíochta, Bia agus Mara.

16c In page 9, line 10, to delete “, loans, or both,”.

—An tAire Talmhaíochta, Bia agus Mara.

21a In page 9, line 30, to delete “or loan”.

—An tAire Talmhaíochta, Bia agus Mara.

23a In page 9, line 36, to delete “, grant or loan” and substitute “or grant”.

—An tAire Talmhaíochta, Bia agus Mara.

41a In page 14, between lines 10 and 11, to insert the following:

“(4) On proof by the owner of the land concerned that the steps taken in relation to that land by a person authorised under *subsection (2)* needlessly resulted in damage or loss of a significant character to that owner in respect of that land, the person so authorised shall be liable to pay compensation to him or her therefor and, if the person so authorised is not the owner of the trees referred to in *subsection (1)*, the person shall be entitled to be reimbursed by the owner of the trees in respect of any payment the person has properly made to the first-mentioned owner under this subsection.”.

—An tAire Talmhaíochta, Bia agus Mara.

41b In page 14, line 11, after “ “owner” ” to insert “, in relation to land,”.

—An tAire Talmhaíochta, Bia agus Mara.

41c In page 14, line 12, to delete “concerned”.

—An tAire Talmhaíochta, Bia agus Mara.

41d In page 15, between lines 6 and 7, to insert the following:

“(6) On proof by the owner of the land concerned that the steps taken in relation to that land by a person authorised under *subsection (2)* needlessly resulted in damage or loss of a significant character to that owner in respect of that land, the person so authorised shall be liable to pay compensation to him or her therefor and, if the person so authorised is not the owner of the trees referred to in *subsection (1)*, the person shall be entitled to be reimbursed by the owner of the trees in respect of any payment the person has properly made to the first-mentioned owner under this subsection.”.

—An tAire Talmhaíochta, Bia agus Mara.

41e In page 15, line 7, after “ “owner” ” to insert “, in relation to land,”.

—An tAire Talmhaíochta, Bia agus Mara.

41f In page 15, line 8, to delete “concerned”.

—An tAire Talmhaíochta, Bia agus Mara.

50a In page 17, line 11, to delete “and” and substitute the following:

“(c) provide for the publication of decisions made in respect of licence applications, and”.

—An tAire Talmhaíochta, Bia agus Mara.

52a In page 17, line 20, to delete “by notice in writing served on the applicant for the licence” and substitute the following:

“by notice in writing that is served on the applicant for the licence no later than 7 days before the expiry of the period so referred to”.

—An tAire Talmhaíochta, Bia agus Mara.

52b In page 17, line 22, after “date” to insert the following:

“, being a date, unless an environmental impact assessment or other type of assessment or significant further information is required, that is no later than 3 months from the date of the service of the notice,”.

—An tAire Talmhaíochta, Bia agus Mara.

54a In page 18, line 18, after “road” to insert the following:

“and, in the opinion of the owner, is dangerous to persons using the public road on account of its age or condition”.

—An tAire Talmhaíochta, Bia agus Mara.

60a In page 19, between lines 6 and 7, to insert the following:

“(3) Nothing in this section shall be construed as removing any restriction on the felling or removal of trees under—

- (a) the Planning and Development Acts 2000 to 2013,
- (b) the Wildlife Acts 1976 to 2000, and in particular section 40 of the Wildlife Act 1976, or
- (c) any other enactment.”.

—An tAire Talmhaíochta, Bia agus Mara.

60b In page 19, to delete lines 9 and 10 and substitute the following:

“ “urban area” means any area that the Minister prescribes for the purposes of this section and an area that comprised a town or borough under the Local Government Act 2001 before the amendment of that Act by the Local Government Reform Act 2014 may, without prejudice to the Minister’s power to prescribe an area comprising a similar or greater conurbation for those purposes, be prescribed for the purposes of this definition.”.

—An tAire Talmhaíochta, Bia agus Mara.

61a In page 20, between lines 6 and 7, to insert the following:

“PART 5

AFFORESTATION, FOREST ROAD WORKS AND AERIAL FERTILISATION OF FORESTS

Granting of licences by Minister for afforestation and certain other activities

- 22.** (1) Subject to *section 7*, where a person wishes to undertake afforestation, forest road works or aerial fertilisation of forests, he or she shall apply to the Minister for a licence to do so.
- (2) An application under *subsection (1)* shall specify—
- (a) the name and address of the applicant,
 - (b) the name and address of the owner of the lands concerned (if different from the person referred to in *paragraph (a)*),
 - (c) the location of the lands concerned, and

- (d) such other particulars as may be prescribed by the Minister.
- (3) (a) The licence shall be valid for such period as is prescribed by the Minister.
- (b) Notwithstanding *paragraph (a)*, the Minister may extend the duration of the licence for one or more further periods.
 - (c) During the period of the licence the licence shall enure for the benefit of the land and any owner thereof.
- (4) The Minister may at any time attach or vary conditions to any licence granted.
- (5) In considering applications for a licence, the Minister may—
- (a) consult any person whom the Minister considers to be appropriate, and
 - (b) require the applicant to submit any maps or other documentation in such format (including electronic format) as the Minister may require.
- (6) The Minister may require satisfactory evidence demonstrating that the applicant is—
- (a) the owner of the lands concerned, or
 - (b) acting with the consent of, and on behalf of, the owner.
- (7) A person who—
- (a) undertakes afforestation, forest road works or aerial fertilisation, or
 - (b) causes or permits afforestation, forest road works or aerial fertilisation to take place,
- without a licence, or in contravention of a condition of a licence, shall be guilty of an offence and be liable—
- (i) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or
 - (ii) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 5 years or both.
- (8) The Minister may make regulations governing the issuing of licences in relation to—
- (a) afforestation,
 - (b) forest road works, and
 - (c) aerial fertilisation of forests.
- (9) Regulations made by the Minister under this section may—
- (a) prescribe the format of any application for a licence,
 - (b) require that—
 - (i) specific information relating to the site concerned including location, soil type, elevation, aspect, exposure and vegetation type,
 - (ii) details relating to exclusion zones, fertiliser storage areas, all aquatic zones

or abstraction points for known sources of water for human consumption,
and

(iii) such other particulars, if any, as the Minister considers necessary for the purpose,

shall be provided to the Minister,

(c) prescribe the placement of public notices on all sites where afforestation, forest road works or aerial fertilisation of forests is proposed,

(d) provide for the publication of decisions made in respect of licence applications, and

(e) provide for any matters ancillary or incidental to matters in this section.”.

—An tAire Talmhaíochta, Bia agus Mara.

62a In page 23, to delete lines 13 to 38, and in page 24, to delete lines 1 to 8.

—An tAire Talmhaíochta, Bia agus Mara.

65a In page 25, line 19, to delete “loan,”.

—An tAire Talmhaíochta, Bia agus Mara.

66a In page 25, line 26, after “provisions” to insert “(for which contravention an offence is not provided elsewhere in this Act)”.

—An tAire Talmhaíochta, Bia agus Mara.

66b In page 27, line 32, to delete “the addition of, or deletion from, a paragraph from” and substitute “the addition of a paragraph to, or the deletion of a paragraph from,”.

—An tAire Talmhaíochta, Bia agus Mara.

68a In page 30, between lines 2 and 3, to insert the following:

“(7) The Minister may make regulations with respect to the making of grants in relation to an activity specified in any of *paragraphs (a) to (g) of section 5(1)*.”.

—An tAire Talmhaíochta, Bia agus Mara.

71a In page 31, between lines 4 and 5, to insert the following:

“Compensation for refusal of felling licence, etc

32. (1) The Minister shall, as soon as practicable after the commencement of this section, make regulations providing for the payment by the Minister of compensation to a person in a case where an application by the person for a licence—

(a) to fell or otherwise remove trees,

(b) to undertake forest road works, or

(c) to undertake afforestation,

is refused, but only if that refusal has been the subject of appeal and that refusal has been upheld on the appeal, or appeals, being finally disposed of.

- (2) Regulations under this section shall not be made otherwise than with the consent of the Minister for Public Expenditure and Reform.
- (3) Without prejudice to the subsequent provisions of this section, a payment of compensation under regulations under this section shall not be made otherwise than on foot of an application in that behalf made to the Minister, being an application that is—
 - (a) in the form directed by the Minister to be used for the time being for this purpose, and
 - (b) made—
 - (i) not earlier than before such time or the happening of such event as is specified in the regulations, nor
 - (ii) later than such time or the happening of such event as is so specified,and, as respects such an application, the regulations may provide that at the time of the making of it or at any subsequent time (and before the determination of the application) the applicant shall furnish to the Minister such documents or information, or such further documents or information, as the Minister may require.
- (4) Without prejudice to *subsections (9) to (11) and (14)*, regulations under this section may contain a provision that no compensation shall be payable under the regulations where the reason for the refusal to grant the licence concerned falls within any description of reason specified in that provision for the purpose.
- (5) No description of reason shall be specified in such a provision for that purpose unless the description of reason either has, as its basis, a basis set out in *subsection (6)* or complies with the requirement of *subsection (8)* (or both has the foregoing basis and complies with that requirement).
- (6) The basis referred to in *subsection (5)* is one that is reasonably related to any of the following:
 - (a) the protection of the environment;
 - (b) the ensuring of good forestry practice;
 - (c) the preservation of amenities;
 - (d) public health or safety;
 - (e) protection from flooding;
 - (f) preservation of water quality.
- (7) In *subsection (6)(b)* “good forestry practice” means forestry practice that respects the principle that the diverse activities constituting forestry (including afforestation) must be planned and implemented in a manner that prevents, limits, abates or reduces significant adverse impacts or risks thereof on—

- (a) the environment (and, in particular, on significant ecosystems and important habitats for flora or fauna), and
 - (b) the character of the landscape.
- (8) The requirement referred to in *subsection (5)* is that the description of reason concerned is expressed in terms that are identical or analogous to the terms in which a reason appearing in any paragraph of the Fourth Schedule to the Planning and Development Act 2000 is expressed in that Schedule.
- (9) Regulations under this section shall contain a provision that no compensation shall be payable under the regulations where the reason for the refusal to grant the licence concerned was that—
- (a) the application for the licence was incomplete in any material particular, or
 - (b) any environmental impact statement, natura impact statement or other information submitted for the purposes of the application for the licence was, in the opinion of the Minister, inadequate.
- (10) Subject to any reasonable qualification or modification of the following provisions of this subsection that the Minister considers should be provided for in the regulations to meet particular classes of case (and without prejudice to the provisions of the regulations referred to in *subsections (11)* and *(12)*), regulations under this section shall contain the following provisions with respect to determining the amount of compensation payable under the regulations—
- (a) in the case of a refusal to grant a licence to fell or otherwise remove trees or to undertake forest road works, compensation shall be calculated on the basis of the depreciation in the value of the trees that is attributable to the deterioration in the quality of the timber as a consequence of the refusal,
 - (b) in the case of a refusal to grant a licence to undertake afforestation, compensation shall be calculated on the basis of the reduction in value between the antecedent and subsequent values of the land, where—
 - (i) the antecedent value of the land is the amount which the land, if sold in the open market by a willing seller immediately prior to the relevant decision (assuming that the relevant application had not been made), might have been expected to realise, and
 - (ii) the subsequent value of the land is the amount which the land, if sold in the open market by a willing seller immediately after that decision, might be expected to realise.
- (11) Regulations under this section shall contain a provision—
- (a) in relation to a case referred to in *subsection (10)(a)*, that no compensation shall be payable in respect of any deterioration in the quality of the timber that—
 - (i) took place more than 10 years before the date of the application for compensation, or
 - (ii) is due to any unforeseen event of a kind specified in the regulations, or

neglect of the trees, occurring subsequent to the refusal of the application for the licence concerned,

- (b) that not more than one application for compensation under the regulations may be made in respect of the same parcel of land (irrespective of the type of licence under this Act applied for) in any period of 40 years.
- (12) Regulations under this section shall contain such provisions, by way of enabling abatement of sums or otherwise, as appear to the Minister to be necessary or expedient to prevent the result specified in *subsection (13)* where, under any scheme or administrative arrangement, the payment of public moneys to the applicant is provided in respect of an activity to which this Act relates.
- (13) The result mentioned in *subsection (12)* is that in consequence of—
- (a) the applicant's being refused the grant of the licence concerned, and
 - (b) the regulations' operation (if the regulations did not contain the foregoing provisions and the applicant were to be paid compensation under the regulations in respect of that refusal),

the applicant would be in receipt of an amount of public moneys that is greater than the amount of such moneys that the applicant would be in receipt of if his or her application for the licence concerned had been granted.

- (14) Regulations under this section—
- (a) may provide that if the amount of compensation claimed by the applicant, or the amount of compensation determined under the regulations on foot of his or her application, (in each case after the abatement (if any) required to be made pursuant to the provision of the regulations referred to in *subsection (12)*), is less than such minimum amount as is specified in the regulations for the purpose, no payment of compensation in respect of that application shall be made,
 - (b) may contain such incidental, consequential or supplemental provisions as the Minister considers necessary or expedient (including provision for the referral to arbitration of the determination of the amount of any compensation payable or alleged to be payable).”.

—An tAire Talmhaíochta, Bia agus Mara.