

# DÁIL ÉIREANN

---

## AN COMHCHOISTE UM THALMHAÍOCHT, BIA AGUS MUIR

## JOINT COMMITTEE ON AGRICULTURE, FOOD AND THE MARINE

---

*Dé Máirt, 21 Iúil 2015*

*Tuesday, 21 July 2015*

---

The Joint Committee met at 2 p.m.

### MEMBERS PRESENT:

|                        |                           |
|------------------------|---------------------------|
| Deputy Pat Deering,    | Senator Michael Comiskey, |
| Deputy Martin Ferris,  | Senator Denis Landy,      |
| Deputy Éamon Ó Cuív,   | Senator Paschal Mooney.   |
| Deputy Willie Penrose, |                           |

In attendance: Deputy Michael McNamara.

DEPUTY ANDREW DOYLE IN THE CHAIR.

*The joint committee met in private session until 14.40 p.m.*

### **Special Protection Areas Designation: Irish Farmers with Designated Land**

**Chairman:** From Irish Farmers with Designated Land, IFDL, I welcome Mr. Liam O’Keeffe, chairman; Mr. Michael Cronin, acting secretary; Mr. Kenneth Fitzgerald, treasurer, and Mr. Jason Fitzgerald. I thank them for attending to discuss issues concerning financial losses to farmers owing to lands being designated as special protection areas for the hen harrier.

Witnesses are protected by absolute privilege in respect of their evidence to the joint committee. However, if they are directed by it to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official by name or in such a way as to make him or her identifiable.

I invite the IFDL to make its opening statement.

**Mr. Michael Cronin:** Irish Farmers with Designated Lands, IFDL, is a group representing landowners in regions designated for the protection of the hen harrier. This designation was given by the Government under Directive 2009/147/EC, or the EU birds directive, which provides for a comprehensive scheme of protection for all wild birds naturally occurring in the European Union. The total land area affected by this designation is 167,110 ha owned by approximately 3,860 landowners. Hen harrier designation sites are situated in counties Kerry, Cork, Limerick, Clare, Tipperary, Offaly, Laois, Galway and Monaghan.

IFDL was set up in 2014 in response to difficulties experienced by landowners in regions designated for the protection of the hen harrier. It is fully supportive of the EU birds directive and the need to protect hen harrier habitats. It is concerned, however, that the land designation restricts commercial farming practice, resulting in substantial discriminatory financial losses which severely impact on the livelihoods of farmers.

When the designation was given, a compensation scheme was available. It was also understood forestry generally would be permitted. Payments for eligible lands located within hen harrier special protection areas, SPAs, were previously made at three rates. The land parcels included in the plan were required to be managed in accordance with the hen harrier prescriptions. Payments for eligible areas up to 40 ha were made at a rate of €350 per hectare; for eligible areas from 40 ha to 120 ha, at €25 per hectare; and for eligible areas in excess of 120 ha, at €5 per hectare. The Property Registration Authority, with the land parcel identification system and the forest inventory and planning system, both managed by the Department of Agriculture, Food and the Marine, were used to identify landowners and land users within hen harrier SPAs that could potentially participate in the scheme. A total of 378 farm plans were approved for inclusion in the hen harrier farm plan scheme. However, more landowners in SPAs could have been eligible for rural environment protection scheme, REPS, and agri-environment options scheme, AEOS, payments.

Funding mechanisms for the hen harrier farm plan scheme did not come under the Common Agricultural Policy, CAP, but the Exchequer. Budgetary constraints in 2010 meant that the National Parks and Wildlife Service, NPWS, was unable to accept further applicants into the hen harrier farm plan scheme, but it did honour previous agreements. In excess of €13 million was paid by the NPWS under the hen harrier farm plan scheme between 2008 and 2013. No specific compensation was paid between 2010 and 2015.

The new green low-carbon agri-environment scheme, GLAS, was introduced in April 2015, with a maximum payment of €370 per hectare, paid on up to a maximum of 18.92 ha, made up of the €5,000 basic GLAS payment and a hen harrier top-up payment to a maximum of €2,000. This effectively means that the only extra payment available to a landowner on hen harrier land is an extra payment above the basic GLAS payment, essentially €2,000. To achieve the maximum figure, a landowner needs to own 18.92 ha. As well as this, afforestation and wind turbine planning permissions are not permitted. This has the effect of decimating the value of land which is protected for the protection of the hen harrier. It is clear that the current compensation scheme is patently unfair and at variance with the land designation principles enshrined in EU legislation.

What is reasonable and adequate compensation? We have two issues, namely, proper compensation for farming in a restricted way because of the designation placed on the land included and the devaluation of the restricted lands owing to the fact that landowners cannot obtain permission for afforestation or wind turbine development. There is a clear injustice. The Government must take the concerns of the farmers affected into consideration and act immediately to correct the issue.

There is a general blanket ban on the planting of trees for forestry purposes in the hen harrier SPA region. This is a particular problem that we believe is unique as regards the designation of lands. In many of the other designations we have studied a scheme is put in place to deal with the loss of income of the landowner. In the case of land value losses, however, we are adamant that the Government must put measures in place immediately to deal with the issue. The fact that all of the designated land for hen harrier protection is situated in upland areas, most of which are disadvantaged, means that forestry is often the only viable farming activity that can take place. Land suitable for forestry is sold for €4,000 to €4,500 per hectare. Where this type of land comes up for sale, bids will generally not be received if it is within the hen harrier regions. This was well checked out. It is causing problems for many landowners who want to sell their land. There are many reasons for selling. Poorer land may be sold to purchase better land that would allow landowners to develop their farm enterprise. Land value can be used as collateral to allow the owner to borrow for the development of their main farm enterprise or for another purpose. A parent may want to sell land to give his or her adult children the chance to purchase a site, build a house or set up a business. Landowners, as they get older, may need to sell their property to allow them to move to a retirement home, for example, or elsewhere. There may be a medical issue requiring a landowner to sell land urgently. These are but some of the many reasons for selling land, and it is only correct that landowners be able to sell their land at any stage when it is required. We have many clear examples from both auctioneers and landowners of prospective buyers who indicated that it was too risky to purchase lands designated for hen-harrier-associated SPAs. At the many meetings we have attended over the past eight months, it was very evident that landowners are devastated by the realisation that the value of their land has in many cases disappeared.

There are some suggested ways of restoring the value of land that has been totally devalued

due to hen harrier designation. Clearly, forestry and wind turbine developments should be generally permitted, as promised when the lands were originally designated in 2008. We should compensate landowners for the financial loss associated with their not being able to plant their land or carry out a wind farm development. I am sure we will have a debate about that later. We could agree to afforestation or wind turbine development requests and then designate equivalent parcels of land from clear-felled State-owned Coillte lands. This could apply on the same farm if all of the landowner's land is not designated. We believe that the amount of land required may not be large; however, it would have the effect of maintaining the value of the land. The State could give a tax credit on hen harrier SPA-designated land. This would ensure that it would sell at a price similar to that of land sold for forestry.

In the United States, there is a state tax credit scheme for conservation land that is similar to our designation scheme. Such schemes were first established in the 1980s, as I understand it, and have been taken up by many states at this point. Under the US scheme, tax credits are given to landowners to deal with the devaluation of land. A tax credit applying per acre per year to land that is designated for the full period of designation should be considered. Another means of restoring the value of devalued land, which may not be a runner, is to give a carbon credit on designated land, which would have an effect similar to that of the tax credit I have described. There are five options, but it is critical to examine the first two or three, particularly that regarding tax.

Let us consider compensation for landowners with hen-harrier-designated land. I refer to the compensation piece. Proper compensation must be available. This must be guaranteed to continue to apply to the lands during the designation period. The payment must be given on every designated hectare, as every hectare has to be farmed in line with the demands of the designation. The scheme formation needs to be flexible, workable and understanding of landowner needs.

The IFDL's proposed compensation scheme is based on the original compensation scheme that was offered in 2008 but was dropped due to budgetary constraints, as mentioned. Components include €370 per hectare in GLAS Plus payment up to 18.9 ha; an equivalent hen harrier compensation rate per hectare in excess of 18.9 ha - i.e., €370 per hectare; a base additional payment of €150 per hectare for parcels up to 13.5 hectares, which would be a top-up and would be front-loaded. The reason for this proposed additional payment is to ensure that landowners with less than 13.5 ha will receive a payment in excess of the GLAS payment, which is available to all qualifying applicants irrespective of whether they are in the designated area. If the amount per hectare is not included, any farmer with less than 13.5 hectares designated would basically get nothing extra.

IFDL is fully supportive of the EU bird directive and the need to protect the hen-harrier-designated habitats. A landowner in this situation is a friend of the hen harrier and will be required to farm his land to ensure its protection, and for this work the landowner will require adequate compensation. Effectively, landowners with designated lands are carrying out a job for all the landowners of Ireland as they farm land that must be protected under EU law, which aims to protect this important species. We are seeking a fair income for owners of designated lands and we want to re-establish a value for our lands equivalent to that of neighbouring non-designated lands of similar type. The current compensation scheme - namely, the one linked with GLAS - is unjust and at odds with the principles of the EU legislation. We believe we are putting reasonable proposals together to resolve the issue. We stress the urgency of finding a resolution to this matter. We will refer to this urgency later.

**Deputy Éamon Ó Cuív:** There is a significant issue here that needs to be dealt with. If I understand correctly, the substance of the issue is that the income per hectare from designated land is now very low. If a scheme had continued with amendments, as existed under the NPWS, such that a decent rate per hectare was available, the delegates would probably be a lot happier than they are today. If a landowner with a lot of land has to protect 100 ha or 200 ha, every hectare is equally important, so his payment per hectare should be based on a flat rate rather than on a system that reduces the payment to €5 for each hectare in excess of 120 ha. One would be doing a lot of work for the State for free. Can I take it that the delegation has no objection to my point?

One of the most sensitive issues is compensation, which is a word the delegates keep repeating. Determining whether moneys are payment for work done or compensation is like counting how many angels can dance on a pinhead. Money is money. As with the previous scheme, I take it that the landowners have no problem with what the payment for actions done to the benefit of the hen harrier is called if they are getting paid over a period, preferably a longer period. Unless they are prepared to adopt this position, they will not make any progress.

**Mr. Michael Cronin:** That is the way it works.

**Deputy Éamon Ó Cuív:** Is the delegation saying it wishes to carry out a plan, agreed with the NPWS, to protect the hen harrier based on payment on a flat-rate basis per hectare and on all hectares equally?

The next issue I am curious about, but in respect of which we do not have the relevant witnesses present, concerns how long a programme would have to be to ensure the hen harrier's protection and the development of its habitat. Would the relevant actions need to be carried out indefinitely to protect the hen harrier? I have a funny feeling that if BirdWatch Ireland or the technical people were to advise us that a long-term scheme were required, the farmers would not exactly object. It could suit both the hen harrier and the farmer. We need some expert witness who could tell us, from an ornithological point of view, the optimum duration of the scheme that would be necessary. I suspect that what bird experts would recommend would certainly be better than a five-year scheme. I have a funny feeling they would state that five years was insufficient when trying to re-establish a species as scarce as the hen harrier. May I take it that what goes for the hen harrier goes for the corncrake and other species in similar circumstances, in that, if a NPWS scheme existed for the hen harrier, it would be logical to recommend it for the corncrake and other equally scarce species? My understanding is that I could have a farm with 100 ha of hen harrier land and 20 ha or 30 ha of non-hen-harrier land and, depending on what is on the non-hen-harrier land, it would be possible for me to obtain a full GLAS payment without ever touching the hen harrier land. My understanding of what the witnesses are saying is that if they join the NPWS scheme at the same time as GLAS, the only clawback from payments on the NPWS scheme would be for GLAS elements relating to hen harriers. If they could get all of the GLAS elements for the parts of their farms that did not relate to hen harriers, such as walls, it should not stop them getting the full NPWS scheme payments also, but if part of the GLAS payment was a hen harrier payment it would have to be clawed back because one cannot receive two payments for the exact same thing on the exact same hectare. Is this the principle being put forward by the witnesses? We need to be clear on what they are saying.

I seek clarification on what the witnesses stated about forestry and wind turbine development being generally permitted, as promised when the designation was originally put on the land in 2008. Do the witnesses have evidence of this or was it just a verbal understanding? I keep asking questions about this, and I understand the forestry interface with the hen harrier



has been examined for a long time and no one is in a hurry to come down in favour of stating that forestry does not interfere with the hen harrier. There is no end in sight to this debate. I am particularly curious about the witnesses' statement that as late as 2008 there was no conflict. One would not get planning permission now for wind turbines in an area designated for hen harriers. If there was evidence of the National Parks and Wildlife Service stating in 2008 that wind turbines would not necessarily interfere with hen harriers, it would be very useful.

In 1997 and 2001 it was a matter of principle that all farmers with designated land should have the choice of a continuous NPWS scheme or a GLAS scheme on the basis I have outlined, and I believe this should be the case. If we do not face up to this problem, resentment will build up against unjust and unfair designations of special areas of conservation and special protection areas, which is likely to boil over. The farmers have been custodians, and there would be no hen harriers or fancy heathers in rural Ireland if it were not for the way we have traditionally farmed in this country. Many farmers are asking themselves why they did not dig up the whole shagging thing before the rules came in. They are asking themselves why they kept it all so pristine. If we want to have buy-in, farmers must be put in a position whereby designations are not seen as a tremendous burden on them and a huge disadvantage. Otherwise, we will build up legitimate resentment to designations. This is not in the interest of the species we are trying to protect, because without the goodwill of the farmers it will get harder and harder to protect very scarce species.

I had reason to be in the national roads development office in Galway yesterday. We must maintain a balance between protecting the environment and the right of people to live in rural Ireland. This balance seems to be getting lost. The people paying the price are those who protected the habitats for hundreds of years.

**Deputy Martin Ferris:** I thank Mr. Cronin for his presentation and I welcome the witnesses. This outstanding issue which has not yet been resolved is an awful injustice. The number of people initially envisaged to be affected was 4,400, and 378 have received compensation for part of the period involved. It is an awful injustice to farmers on very marginal land, who have no income from it whatsoever. Their lands are effectively paralysed. They are prevented from gaining an income from it.

The suggestions put forward by the witnesses to try to resolve the situation involve GLAS payments of €370 up to 18.9 ha and equivalent compensation in excess of this. The witnesses also mentioned €150 up to 13.5 ha on a flat rate, because not everybody owns 13.5 ha. This is all very reasonable. I assume the witnesses have had discussions with the Department at some level. Has the Department given the witnesses any indication that it is prepared to meet them on these requests? Has it given them any indication that it understands the gravity of the situation? Does it realise farmers such as the witnesses are being discriminated against? Has it made any proposals to them other than GLAS and GLAS Plus? It is very important that the committee, collectively and without any ambiguity, supports the very reasonable and well thought out proposals of the witnesses by asking the Government to move on these issues by whatever method it can.

Since IFDL was formed it has done a fantastic job. I must say this because I live in an area quite close to people who are affected. IFDL has presented a very reasonable and well thought out proposal and it has not been confrontational. It has done it well because it is quite clear from the statements made by the witnesses today and from other presentations I have seen from the group that everything it does is in support of the hen harrier, is well thought out and is in the interest of the common good, which is to ensure farmers and others live up to their responsibilities.

ties in protecting wildlife. It is very commendable. I hope the committee can give the farmers the support to which they are entitled and make representations on their behalf to try to bring about a resolution. I and my party will fight for this.

**Mr. Michael Cronin:** I will answer Deputy Ferris's last question first, with regard to communication with the Department. We are in the middle of discussions and we will speak to the Department shortly. We have had discussions with the Minister for the Arts, Heritage and the Gaeltacht and the Minister for Agriculture, Food and the Marine. What we are hearing so far is that the GLAS payment scheme is a payment. In my view, the €2,000 extra payment if a farmer is in a hen harrier designated region is not adequate.

The second response is that there is a threat response plan in action at the moment and that process is being worked through as to how forestry is affecting the hen harrier habitats. However, our issue is that this is taking a long time. As mentioned by Deputy Ó Cuív, it has been in place for a number of years. A survey is being carried out. There will be further debate in October followed by a period of consultation. We are concerned that this could take a number of years and at the end of that we could still be back here in three years' time dealing with the same issue. That is our response on what we are hearing from Departments. We have further work to do and we will be working with the Department as we move forward.

I will ask Mr. Fitzgerald to deal with Deputy Ó Cuív's point about the GLAS payment.

**Mr. Jason Fitzgerald:** Ideally, if we were starting from scratch, we would prefer if there were a separate hen harrier scheme similar to what previously existed. The difference is that previously, the information we received said that afforestation would be generally permitted. We have plenty of documentation about approvals that ran out where, in general, forestry would be permitted on these grounds. However, this GLAS scheme was announced earlier this year and it has been approved by the European Commission, as has the rural development plan. A letter which we received from the Minister, Deputy Coveney, stated that there was a further fund of €70 million available through the local environmental scheme. We suggested that this was probably our best way of getting further compensation. That is why we came up with this figure of €150 on the first 13 hectares, as these farmers are not getting anything extra for the land being designated. Under the old REPS, there was a top-up for a farmer in the scheme who had hen harrier designated land. That would bring a payment up to €520 for the first 13 hectares and then €370 a hectare thereafter. We see that as being very fair and reasonable but one solution on its own will never sort out this issue when forestry has been taken out of the picture.

To replace that issue would require something like a tax credit or the possibility of a farmer who might want to sell a portion of his land for forestry. This could arise if the farmer was elderly or sick, a farmer who might need to sell a portion of his ground or who might want to sell all his farm, who might want to help set up one of his children in a business or thereafter. One solution on its own will not resolve it but we believe that if there was an improved scheme with a system whereby a farmer could swap parcels of eligible ground for forestry, with non-productive Coillte ground. In addition, there is the possibility, as the Minister suggested at a meeting, that one could then also look at the tax credit system for people who did not want to farm or who did not want to go into forestry. At the moment and previously, the only option is forestry if a farmer wants to sell land. A lot of people who did not really want to forest their land would have preferred to sell it. As things stand, it is creating a demand for forestry applications, whereas if they had another alternative perhaps the people who really needed to plant their land could avail of any permitted afforestation.

**Mr. Liam O’Keeffe:** Deputy Ó Cuív asked about the time period of the scheme. This could be looked at. There will be an issue with any length of time whether it is five, ten or 15 years. Initially there will be a value on the land but as a farmer goes into a scheme for ten or 15 years and in the latter half of the time period, there will be value on the land again for farmers and we will be back to where we were initially. The banks will say there are only so many years remaining.

In our view the scheme will have to be linked to an annual payment. One of our suggestions would be that it would be part of the ANC, the areas of natural conservation. Seeing as the hen harrier is a naturally occurring wild bird, if it was linked to an ANC annual payment to farmers then from the point of view of the banks that would put value back on the land versus going with a scheme that is of an indeterminate length of time and will start running out. Banks will not want to hear about the value of a farmer’s land.

Deputy Ó Cuív made a point about forestry and wind farm development. Initially, the documentation received by farmers on their designation listed three ways of claiming money, including a top-up REPS payment and the hen harrier scheme, but also a farm compensation scheme. This was to compensate the farmer for developments that could not be carried out on the land because of its designation. Forestry or wind farm is a development from what a farmer was doing with the land previously. We do not know what it covered in applications or how much was paid out, but the documentation states it was for developments of the farm.

**Deputy Éamon Ó Cuív:** That is very unusual if that were so. I have seen hundreds of these but they always say that any compensation payable was only for a curtailment of current practice. For example, 80% of Connemara is designated so I have seen many hundreds of these but not for anything for which planning permission is required or for which a grant is payable. It is the State’s prerogative to refuse a grant. For example, many places in the country will not get a grant for scenic reasons. I ask the members of the delegation to provide the committee with a copy of where they said that they would compensate farmers for a potential refusal of planning permission. I would be very interested because it would be unusual but if it is there, then we will follow it up.

**Mr. Liam O’Keeffe:** It did not say anything about planning permission but it said a development on the farmer’s land was the way it was worded. It did not mention planning permission.

**Deputy Éamon Ó Cuív:** It was not based on current activity because it normally was that only if it curtailed current activity would they compensate the farmer. It was nothing to do with development because they always believed it was their right, under notifiable actions. In every other SAC sheet I have ever seen - I have seen a lot of them - the whole issue centred on whether they curtailed what the farmer was doing. They paid compensation but they did not pay for -----

**Chairman:** It would be helpful to have a copy of that documentation.

**Mr. Liam O’Keeffe:** Yes, we can forward a copy to the committee.

Deputy Ó Cuív mentioned the corncrake. From our point of view, we represent farmers with designations who are facing the direct loss of their asset and the curtailment of what they can do on the farm. If farmers with land designated for the corncrake would fall into the same situation as we find ourselves, we would support them.



**Chairman:** An optional GLAS scheme provides cover for corncrakes, partridges and other birds but it does not have the same level of restrictions as a designation.

**Mr. Liam O’Keeffe:** We are not very familiar with those issues.

**Chairman:** It details crops and activities but it is a voluntary scheme, in so far as I am aware.

**Senator Brian Ó Domhnaill:** It is not voluntary.

**Chairman:** Deputy Ó Cuív had another question. He asked how long the witnesses think a designation should last in order that the hen harrier can achieve a sustainable number.

**Mr. Michael Cronin:** We do not know the answer to that.

**Deputy Éamon Ó Cuív:** Let me put it another way. Did the discussions with any of the wildlife organisations give any indication of how long they think it will take for the hen harrier to recover? Did the witnesses ever discuss that with them? We will have to try to get that information.

**Mr. Michael Cronin:** It is not something that will be resolved overnight.

**Senator Michael Comiskey:** I thank the witnesses for their presentation. We have met them several times and know they are making a fair case. People who are restricted from doing anything they want to do on their land should be compensated. The fairest way to go about it might be through the GLAS scheme, with a top-up.

There was a reference to planning permission. If people have planning permission for a site close to where the ESB is putting up lines, it will compensate them because they cannot build there. Maybe something like that would work. I know the witnesses have a letter to the effect that if people are restricted from planting or putting up wind turbines they would get extra compensation. There should be compensation for people who are restricted from using the land as they want.

**Deputy Willie Penrose:** I welcome the witnesses and thank them for their contributions. I concur with them and applaud them again for formulating well-argued and reasoned proposals to deal with an undoubted injustice. We all hope we can contribute to a resolution of this continuing situation, which effectively is a means of sterilisation without compensation. While we all must take cognisance of environmental concerns and ensure the protection of species that are declining, vulnerable or under threat, it is invidious that the load is unfairly borne by one section without being appropriately considered in a balanced way. In respect of the EU principles, one cannot be compensated for a future or potential development that would require having planning permission. That is the legal situation. I am not very fond of wind turbines and have made my arguments very strongly about them. The witnesses might be surprised at how many people see them as a development that could cause a lot of problems when the public gets in on it. I would not be putting all my eggs into that basket if I were them. It is one of the weaknesses of their case. If they were living in the midlands, they would know that horse will not run, or would run in a very restricted fashion.

Taking into account the EU proportionality principle, legitimate expectations and the well-known principle of appropriate and adequate compensation which has existed since *O’Callaghan v. Commissioner of Public Works and ESB v. Gormley* and other cases, this is important in the

context of the effective sterilisation of land and the impact of this loss on farmers' financial security. Anything that is an impediment devalues the land but that devaluation has consequences for the land as a secured asset, beyond normal sale or resale.

Several things can be done in respect of the schemes and we have to explore them all and try to get top-ups to deal with the situation. One of the alternatives in terms of treatment of gains pursuant to the taxation schedules and in the form of tax credits is an interesting proposal and should not be dismissed out of hand. That would require specific legislation dealing with a cohort of people which can sometimes be difficult to implement. It is like bringing something new onto a farm or bringing something onto a farm for the first time. It might look well in Grange and Moorepark but when it is brought down to the farm, it might not be as simple to apply. That is an area that could be examined because a balance could be achieved in respect of income forgone and compensation by that mechanism. It behoves us all to try to resolve this. I applaud the witnesses for the way they have set about it because it causes great angst for those impacted on. The witnesses have behaved in a very reasoned and reasonable way and many other lobby groups could consider the way they have advanced their case to us. I compliment them on the way they have set about it. We could all take a lesson from that.

**Deputy Pat Deering:** Although I do not have a particular issue with the hen harrier in my part of the country, I welcome the delegation today and concur with what everyone else has said. Unlike many groups, the IFDL has come up with potential solutions, which is a good way to go. The way the witnesses have gone about their business is very important. They mentioned the forestry issue in their submission. We received an e-mail recently from BirdWatch Ireland which is very negative about going down the forestry route again. It says it is not the way to go. Do the witnesses have any views on that matter for someone who is not *au fait* with the situation? It is essential that if there is an injustice in the system, there has to be compensation. That goes without saying. Having land that is valueless for any purpose at the moment is totally unjust. Like Deputy Penrose, I am not a fan of wind turbines. A situation has to be created whereby people can make use of their land and get some value out of it or, as the witnesses said, to sell or exchange it to help a family member get a site or set up in business. The idea of tax credits is a valuable and worthwhile proposition. I compliment the witnesses on their proposals. It is to be hoped this committee can play a part in resolving the issues.

**Deputy Michael McNamara:** I compliment the witnesses. I know they have been working on this for some time. I met them at a big public meeting at Kilbeacanty. It obviously affects many people in north east-Clare, south Galway and across Mount Callan. The crux of the matter is the distinction between compensation for income forgone and for lack of development potential. Deputy Ó Cuív asked what exactly the witnesses were told. There is a general concept that one is not entitled to compensation if one is refused planning permission. There is a difference between seeking to develop land in a particular way and seeking to plant a crop on it, such as forestry. Technically it is not planning permission for forestry, it is a permit, which acts in a somewhat similar way. Forestry is just another crop, albeit one for which one needs a permit because it is long-term and has a particular environmental impact. Were the witnesses told specifically that not being able to plant forest would be covered and that they would be entitled to compensation? We are focusing on lack of compensation for activities in the future but what is the loss of profit on a year-by-year basis for IFDL's members, not because they cannot plant forest but merely in terms of the impact on day-to-day agricultural practice? What kind of loss does that result in for people in designated areas?

**Chairman:** I wish to raise a couple of points that nobody else has mentioned. What is the

estimated overall cost of a compensation package? A tax on carbon credits adds value. Does the organisation envisage that people could buy carbon credits? If one is assigned so many credits, can another organisation buy them? In the States, some organisations buy such credit. It would form part of an income as well as increasing land value.

What is the justification for a blanket ban on forestry? Ireland has an ambitious afforestation programme of 10,000 ha per annum or higher, but we have not got that far. There is 169,000 ha of land that is generally suitable for afforestation but we are being denied the ability to do so. Notwithstanding anything that BirdWatch Ireland has said, I am surprised that a blanket ban is needed to protect any species of bird. Animals and birds have adapted to the changing climate and evolved for years and, therefore, do not need the protection provided by a blanket ban. They need to be protected from guns, but that is a different matter. I am not being facetious; that is the reality. To me, everything else needs fair and reasonable rules applied. Afforestation was generally accepted. I would not be so negative about wind turbines, for example, because everything has its place and appropriateness is a more important aspect. At what point did afforestation go from being generally acceptable to being totally banned? These are key issues. I hope we can agree on a submission to the Minister.

Earlier, it was stated that €13 million had been paid by the NPWS for the hen harrier farm plan scheme from 2008 to 2013, while no specific compensation was paid from 2010 to 2015. Where did that money go? It was hardly all spent on 378 farmers. The Department of Agriculture, Food and the Marine will end up having to figure out a way to compensate for a designation issue that originated in the Department of Arts, Heritage and the Gaeltacht.

Senator Ó Domhnaill will return, I hope, to make his contribution. In the meantime, I ask the delegation to respond to all the questions.

**Mr. Liam O’Keeffe:** To our knowledge, the blanket ban on forestry was imposed after a decline in hen harrier numbers was revealed in the last hen harrier survey. The EU imposed the ban, which was to remain in place until the reason for the population decrease had been discovered.

**Chairman:** Is it a holding measure?

**Mr. Liam O’Keeffe:** Yes. The threat response plan is assessing whether forestry, wind turbines or intensive farming caused the decline. The plan is ongoing and seems to be a long way from finishing or producing results.

On the overall cost of the compensation package, the IFDL does not have enough information to accurately estimate compensation. We reckon, for example, that 60,000 ha should lead to €22 million. Again, we do not have an accurate figure but we reckon that somewhere around €15 million is being paid under the GLAS scheme to farmers with designated land. Therefore, we think the compensation package will amount to between €7 million and €10 million. We do not have access to enough information to give a more accurate estimate.

**Chairman:** Before the rest of the delegation responds, I call on Senator Ó Domhnaill to comment.

**Senator Brian Ó Domhnaill:** I wish to make a few points. We have had a good discussion on designated lands. Around 30% of all designated land in the country has been designated for hen harriers. It has been mentioned that out of 540,000 ha or 570,000 ha, 167,000 ha have been designated for hen harriers, which is a significant amount. Obviously, designation comes with

restrictions and constraints that mitigate against normal farming practices or ways to make a living from the land. As a result, there is a need for some form of compensation scheme.

I wish to talk about the manner in which designation takes place. I am not sure how the designation of land for hen harriers took place and I do not know whether the IFDL is concerned about such designation. I do know there is a major issue with the designation of special protection areas, SPAs, because it has affected large swathes of County Clare, and also my own area in Donegal, where 5,400 ha of land was designated in 2011 and 2012 for corncrakes without prior consultation.

I also have reservations about the crossover of schemes, with the Department of Arts, Heritage and the Gaeltacht designating lands without the proper knowledge or resources, from an agricultural point of view, to deal with farmers adequately. One Department should deal with land designation instead of two Departments that have competing demands. Very often it is agricultural lands that are designated, and there is very little land in Donegal that is not agricultural land, drawing down a single farm payment or being actively farmed.

Earlier the Chairman mentioned that the designation of land for corncrakes was voluntary, with which I disagree. It is decreed by a statutory instrument, which means the designation has a legal standing. It means that normal farming practices are constrained by between 37 and 41 constraint measures, which include restrictions on building a road to provide access to land; removing or building new ditches; grazing activities at certain times of the year; and the cutting of silage, hay or other forage. In addition, there is a ban on all sorts of reseeding activities. As a result, the ability of farmers to generate income from the land is severely restricted. I appreciate where the organisation is coming from, as it is deals with restricted income from land. Should the taxpayer compensate for same? The jury is out on that matter. Should the European Commission designate land without prior consultation with landowners? I do not think it should. What happens in other member states should happen here. In Portugal, France and Spain, lands are designated only after prior consultation, and an agreement is reached with landowners. If there is intensive farming on some of the lands then other lands may be chosen to avoid using good agricultural lands. We need to examine the type of land that is designated, because there is a food shortage in the world.

Lands across Europe have been designated in order to protect the corncrake. When the poor corncrakes return to Africa they are caught in nets and served as a delicacy in restaurants. People in Africa view the corncrake as a source of food. I am not saying we should not recognise the special attributes of the corncrake, but there is a need to provide compensation. In view of the Common Agricultural Policy, if we are going to designate lands in order to protect species - birds, in this instance - then we must provide the landowners who use the lands to make a living with some form of compensatory payment. The GLAS scheme is an insufficient way to meet the level of compensation required. The tier above the basic GLAS payment is €2,000, which means that a farmer with 50 ha would receive €40 on average, which is drastically different from the proposal put forward by the IFDL today. The GLAS scheme would not compensate sufficiently. A mechanism must be found. While the money does not grow on trees there must be an agreement between the European Commission and member states on providing a compensatory pot for farmers, particularly those who are dependent on the lands in question.

In terms of future development, particularly wind turbines and the like, I agree with what Deputy Ó Cuív said. Regarding wind turbines in high lands, there are national planning guidelines, but it depends on each county's development plan. In our own county, it would be extremely difficult to get planning permission for wind turbines on nationally designated lands,

whether special protection areas, natural heritage areas, or whatever, without the prior removal of those lands, which would be a matter for the National Parks and Wildlife Service to agree with the local authority. Future development in terms of providing an agricultural income from forestry is an issue. There is no question about that. That is a farming activity, in essence, because it is funded under the Common Agricultural Policy.

I agree that we have to find a mechanism. The condition of any compensation would have to be a plan agreed with the landowner to protect the species that are constraining farming activity, whether it is the corncrake, the hen harrier, or any other species. It is a major issue. Given that the farmer had no control over the designation of the land in this country, in contrast with other countries, there is a need for the governing Department to provide compensation. In future designations there must be prior consultation with all landowners, which would best be carried out by the Department of Agriculture, Food and the Marine rather than by the National Parks and Wildlife Service, an official of which has openly said that it does not have the staff or the resources to go and meet with the farmers. If it does not, that should come under a different body. I have been saying that for some time. I am not sure what are the view of the witnesses on that or on the designation process itself.

**Mr. Michael Cronin:** May I answer Deputy McNamara's question?

**Chairman:** Mr. Cronin can go ahead, all questions have been asked.

**Mr. Michael Cronin:** Deputy McNamara asked what is lost to the farmer. We have put a lot of time and effort into the compensation issue and our view was that the €370 per hectare payment is justified to pay the farmer for what he has to do to ensure the hen harrier habitat is kept in place, as Senator Ó Domhnaill mentioned. There are many restrictions and the €370 per hectare payment is reasonable for that.

On the forestry issue, the farmer will not get anything as such from that. The argument we are making on that is about holding the value on the land. The big points I keep making, with the lads as well, is that if a farmer has a farm of 100 acres and has land that is suitable for forestry, in normal circumstances, 100 acres would sell for €400,000 or €450,000. If he happens to be in the catchment area for the hen harrier, it is valueless or close to that. He cannot sell it for forestry. That is the issue we are trying to solve on the forestry side.

**Mr. Liam O'Keeffe:** Deputy McNamara asked how much less profit a farmer would make with a designation. That is a very difficult question to answer because every farmer has a different type of land and does a different type of farming and it is hard to put a figure on it.

To get back to Senator Ó Domhnaill's remarks on compensation, he asked how the designation was done. That is something that frustrates many farmers because they look across the ditch and see the same land they have but without a designation. It causes a lot of frustration. We have no answer to it. It is a bit of a mystery. The Senator mentioned that it would make huge difference if one body were to deal with this. Since we started, we have been trying to deal with different bodies. We have been sent from one to the other and no one seems to want to take responsibility for anything as far as we can see. If the issue is not resolved, there will be land abandonment, which would be a very serious issue.

There are already people struggling to live in severely disadvantaged areas. That must be taken into account. These people do not have very productive ground and it has been a struggle for them. As a result of farming smallholdings, higher ground and disadvantaged lands, many



farmers have struggled for so long that they did not have life assurance policies, health insurance policies or pensions. Their pension was their land and now they are in a position where they cannot sell it. They might have gone into a home or had health issues. It is different to someone on productive ground who has a good pension behind them and has built up these resources over the years. This needs to be taken into consideration. It is very urgent, because of all those situations, if a farmer in those areas needs to sell land for a health issue a way can be found to do that.

Senator Ó Domhnaill also mentioned the need for agreement with farmers on the designation. Another matter that has caused a great deal of frustration occurred in November 2007 when the proposed designation documents were sent to the farmers, who got a three-month window to appeal a designation. In that three-month window, Department officials from the National Parks and Wildlife Service were coming into the communities, telling them how good the scheme was and how much money they were going to get. People accepted it. They read down through it and forestry was supposed to be generally permitted, which was an issue for many fellows. They said, "I can drown my hen harrier area and a portion of my land and I can plant another portion". As the scheme went on, they found the forestry had stopped and so did the scheme they were promised. If they had known no forestry would be allowed and there would be no compensation scheme, they would have put in an appeal. It was only fair to tell them things as they were, so that they could then make a decision on whether or not to appeal it, but they were led to believe they were going to get money and that they could still plant. However, it all fell apart.

Today we have people who lost out on a payment of €13,000 or €14,000 a year for five years. We have even come across people who paid inheritance tax of €20,000 to €25,000 to inherit a property and they now find their property is worth nothing and they did not get the schemes they were promised. That is a great deal of money for an individual to be down and find they have an asset that is worthless. That is where land abandonment will come in. They are left with a tax bill and with an asset that is worth nothing and they will walk away from it. That needs to be resolved immediately.

Deputy Willie Penrose mentioned the wind farm. As a group, we are not pro-wind farm but we find that many farmers had wind development companies interested in their land. They were being offered money either for rental or sale and they find now that it is gone. We do not expect them to be compensated for whatever money they were going to get but it is an issue. Farmers thought they had an asset and now they do not.

**Mr. Jason Fitzgerald:** Many of these areas are very suitable for wind turbines. In the mid-lands there are many populated areas and it is a different scenario. Coillte has land neighbouring the areas we are talking about and it seems to be able to get access to wind turbines because it has additional land that it can swap for the areas in which it is putting up the wind turbines. Farmers would not have access to that. From BirdWatch Ireland's point of view, wind turbines are the lesser of the two evils. However, it is also concerned about the hearing of the hen harrier, which finds its prey not only by sight but also by hearing. Our argument is that the wind turbines are neighbouring us. If they are going to affect the hen harriers' hearing on Coillte land they will do the same on our land. On the views of BirdWatch Ireland on forestry, we do not think there is enough evidence to support its claim that forestry is detrimental to the hen harrier. I understand it does not oppose early stage forestry but objects to mature forestry with a closed canopy. I do not think there is enough proof to impose a blanket ban on forestry. The impact it has on farming is detrimental to the areas.

The Chairman also asked how the tax credit would work. When we are talking about designating land for a specific purpose and trying to protect a species, we have to make it work. If the farmers are not consulted at all levels, if the impact on them is not taken into consideration, then the designation will have little chance of working. While forestry is one aspect, we feel there must be an independent solution, separate to forestry. If there was a tax credit attached to every hectare of designated land, a farmer could benefit from that the same as if he got tax relief on planting the land. It would also make the land attractive to a purchaser, who would get tax relief but would have to farm the land in accordance with the designation. Several opportunities could arise. There could be a tourism aspect, if it was stated that it is an important part of Irish culture to have a tax credit on these. It would be of huge benefit to communities if there was investment in these areas. Ultimately, it comes down to the protection of rural communities in isolated areas where these designations are in place. It is about keeping farmers on the land in these areas and incentivising them to stay.

**Deputy Martin Ferris:** I am looking through the questions and answers, I think there are 21, from the National Parks and Wildlife Service prior to the scheme. In one of them, a person asks if he is entitled to any compensation for the designation. The response is that the Government is committed to the payment of a fair and proper level of compensation. A landowner may seek compensation for actual losses incurred as a result of restrictions imposed on the land. They have torn that up.

**Deputy Éamon Ó Cuív:** That is actual losses from current practice.

**Deputy Martin Ferris:** This is what they were given and what they signed up for.

**Chairman:** This is a three-month period. We have to move on.

**Deputy Éamon Ó Cuív:** We need clarification. If we want to succeed, we have to look at what was said and what can be compensated. "Actual losses" is taken to mean those which interfere with current practice, not potential losses. Forestry and wind - anything requiring planning permission - are seen as potential losses.

**Mr. Liam O'Keeffe:** There is something attached with that which addresses the development of land - will we get to that?

**Chairman:** In a way, the more relevant point is that when the window for appeal was open-

----

**Mr. Liam O'Keeffe:** There was false information.

**Chairman:** There was an expectation that there was a scheme available and that wind turbines and forestry were generally permitted. That changed and has undermined the whole thing, leaving all but 378 of the 3,800 farmers with no compensation. It has curtailed their ability to farm the land to make a living. The only thing they have going for them is whatever basic single farm payment entitlements they had built up prior to that.

**Mr. Liam O'Keeffe:** They are also left in a position where they cannot farm the land as they used to prior to this designation.

**Chairman:** Correct.

**Deputy Éamon Ó Cuív:** What I would like the Department to look at is payment for actions done. That was what the previous scheme was; it was technical, not based on compen-

sation. It is absolutely given that they want to save the hen harrier. The farmer does certain actions and gets paid. Everyone wins - BirdWatch Ireland, the Department and the farmers.

The second idea that makes a lot of sense to me and seems to be feasible is recognising that the designations are effectively creating areas of natural constraint, ANCs, and the rate of payment under the ANC should be relative to the constraint. They are imposing constraints which have to do with natural habitats. If a farmer took bog or whatever and was allowed reclaim it, it would not as constrained as it is in this case. I have always argued that if we are going to give a payment for natural constraint, the payment should be relative to the constraint. The farmers represented here today are much more constrained than others getting the disadvantaged areas scheme, DAS, payments, as we used to call them. This is a rational matter that can be addressed within the terms of the scheme.

My understanding over 15 years - nobody has legally challenged this to my knowledge - is that one cannot get compensation for the loss of a planning permission because of a designation. Whether it is a house, wind farm or anything else, they will not give compensation for a refusal. There are wind farms being refused all over the place for archaeological reasons, special area of conservation, SAC, reasons, scenic amenity reasons or whatever and none of those farmers are getting compensation. I would be less than honest if I backed that.

**Mr. Michael Cronin:** To be fair, going back to the forestry point, all we have been saying is that we want farmers from within this region to be treated the same as farmers outside the region when it comes to planning. We accept that not everybody will get forestry planning or whatever, but at the same time farmers inside the hen harrier designated regions have no hope of getting planning. For that reason there must surely be some way of compensating farmers for the complete loss of their land from a forestry point of view.

**Chairman:** Forestry is slightly different to commercial development because someone can get a planting licence. If every other measure was put in front of that land, and the farmer was granted a forestry licence in error, for example, and then the authority realised it was in a hen harrier designated zone, it would have to say, "Sorry, we cannot allow it go ahead". That is really what the witnesses are referring to.

**Mr. Michael Cronin:** Yes. We have letters, refusals on paper.

**Chairman:** We have had a difficulty in Wicklow, as the gentleman in the Visitors Gallery will know, with native woodland species because of deer. It qualifies under all other aspects but because of the deer threat it has not been quite so straightforward. The Forestry Service has started granting them again but it has been very difficult.

A locally-led environment scheme on its own is not going to do it. There is a €70 million pot there and even if it is €7 million over five years, that means half of it is gone. There is the freshwater pearl mussel, the Burren and couple of other projects lined up. On its own, no one thing will sort this out. The afforestation programme is allocated €116 million or €118 million a year. Is all of that money being spent? Some of it could be spent to deal with this issue, but that is not permitted. There is a raft of options we should examine, including land values. If the committee is to make a submission, we need to know how to go about dealing with the issue. The delegates have done a good deal of work on it, but it will require the introduction of primary legislation, or at least an amendment to the Finance Act. I believe it is a good idea.

**Deputy Éamon Ó Cuív:** Forestry is not profitable unless there is a grant available for it.

We accept the principle that there is a public interest in growing trees because of all of the benefits. I agree strongly that the preservation of the hen harrier is in the public good. Therefore, if the Department wants farmers to farm in such a way, as happens in forestry, why not pay them to do so? It is a slightly different way of saying the same thing and conditional on something the delegates have already accepted, that they would have to carry out certain actions to achieve something in the public good. We can call it what we want, but it is a payment. It should be made at a flat rate, irrespective of the factors to be considered. What is 100% sustainable is a payment based on natural constraints. All CAP payments are for a period of seven years. There is a time limit on everything - nothing is forever - but the principle of a payment based on natural constraints, in other words, the more constrained farmers are, the bigger the payment, also makes sense to me because they would fall neatly within the parameters of the way the world is, not the way one would like it to be. A parallel argument could be made for the payment of a grant for hen harrier designated land in the same way a grant is provided for forestry. We should be honest and admit that no one would plant a forest without receiving a premium. I am coming at the issue using slightly different wording, but it is the same game. We have a statement on the achievement of a public good and the position is similar in areas of natural conservation.

I believe the delegates would hit a wall on the planning aspect because its application is so wide. Every week, in many areas, planning permission for windmills is refused for a myriad reasons, many to do with natural ecology, archaeology or visual amenity. I could give examples, but none of the people involved are being compensated. I will be straight with the delegates and say I do not believe it will fly. That is not on what I base my argument because it will be slapped down in two seconds. We should not bring forward proposals just because they sound major if they will not work. I would rather get results than make that case.

I see the devastation being caused by curtailment of the activities of those who want to earn a living. People want the environment to be protected, but they are not willing to pay those who have become the custodians of the environment. If we want the environment to be maintained, we must pay those who have become its custodians. That principle, whether in the case of hen harrier designated areas or any other, must be accepted. Otherwise, land will be abandoned in areas of major ecological importance.

**Chairman:** I presume most of the lands were included in the old disadvantaged areas scheme, DAS, and are now in ANCs.

**Mr. Liam O’Keeffe:** Many people seem to have a difficulty in entering the green, low-carbon agri-environment scheme, GLAS. It is not as smooth as-----

**Chairman:** No. I am referring to the disadvantaged areas scheme.

**Deputy Éamon Ó Cuív:** They are included in ANCs.

**Mr. Liam O’Keeffe:** Yes. Most of them would have that classification.

**Chairman:** Most of the land would be classified already. Most of it seems to be in the classic category of mountain land or uplands.

**Deputy Éamon Ó Cuív:** The word “constraint” is very different from “disadvantaged”. The measure should be the constraints on land; therefore, the payment should increase accordingly.

**Mr. Liam O’Keeffe:** Obtaining an annual payment that will not be paid for a certain length

of time will be important in resolving the issue, although I am not sure how difficult it will be to achieve this. However, a scheme covering only so many years will not offer a resolution when it comes to the value of land or dealing with banks.

**Mr. Michael Cronin:** Time is of the essence. This issue has been ongoing for almost seven years. We could be talking about it again three years from now. Therefore, we need to get the process moving fast.

**Chairman:** I thank the delegates for attending. I also thank members. It is a fair point, especially in terms of anything that would affect the tax code in the upcoming budget. We all agree to work on a submission to the two Ministers. There may be merit in inviting officials to come before the committee, but, notwithstanding this, we have to do something about the concept of tax credits.

A point made last week by a gentleman in a presentation on inheritance tax was that if somebody inherited even 100 acres of land with a nominal value of €3,000 an acre, on which there was a house worth €100,000, he or she would fall below the 80% asset rule and, therefore, would not qualify for agricultural relief, which was never the intention. If it was to be given a value by way of either a tax credit or compensation, it would increase its tradeable value. It was an unforeseen consequence. Rather than have a derogation, the land should be given a value to bring it back up to what it would have been prior to designation. There are two aspects to the matter, namely, land value and compensation. A two-pronged approach is needed. We will work on that issue.

As this is our last meeting before September, we will circulate material to members and work on feedback-----

**Deputy Éamon Ó Cuív:** The Chairman is not waiting until we return.

**Chairman:** No. We have to put something together shortly on the taxation code. I thank the delegates for making the presentation.

The joint committee adjourned at 4.10 p.m. *sine die*.