

DÁIL ÉIREANN

AN ROGHCHOISTE UM THALMHAÍOCHT, BIA AGUS MUIR

SELECT COMMITTEE ON AGRICULTURE, FOOD AND THE MARINE

Déardaoin, 6 Márta 2014

Thursday, 6 March 2014

The Select Committee met at 09.30 a.m.

MEMBERS PRESENT:

Deputy Tom Barry,	Deputy Martin Heydon,
Deputy Richard Boyd Barrett,*	Deputy Michael McNamara,
Deputy Pat Deering,	Deputy Éamon Ó Cuív.
Deputy Tom Hayes (Minister of State at the Department of Agriculture, Food and the Marine),	

* In the absence of Deputy Thomas Pringle.

DEPUTY ANDREW DOYLE IN THE CHAIR.

Forestry Bill 2013: Committee Stage (Resumed)

Chairman: We have a quorum so we are in public session. I have received apologies from Deputies Pringle and Ferris. Deputy Richard Boyd Barrett has been nominated as a substitute for Deputy Pringle, but I have not yet had any contact with Deputy Ferris. Deputy Heydon has nominated Deputy McEntee to substitute for him at 11.30 a.m. if we are still in session. Deputy Deering is running a little late, but we have a quorum. I remind committee members and people in the public Gallery to turn off their mobile phones.

We are resuming with our deliberations on the Forestry Bill 2013. I wish to advise committee members that there is a typographical error in amendment No. 72, which should be addressed to page 16 of the Bill, rather than page 15. I welcome the Minister of State and his officials. We will resume where we finished on section 13. A grouping list of amendments has been circulated for the information of committee members.

Amendment No. 55 is in the name of Deputy Pringle. As the Deputy is not present the amendment cannot be moved.

Amendment No. 55 not moved.

SECTION 13

Chairman: Amendments Nos. 56 to 62, inclusive, are related and may be taken together.

Minister of State at the Department of Agriculture, Food and the Marine (Deputy Tom Hayes): I move amendment No. 56:

In page 13, to delete lines 21 to 30 and substitute the following:

“(a) the owner or manager of a forest, requiring him or her to furnish to the Minister within 28 days or such longer period as may be specified in the notice, such particulars in relation to the forest, including the area, species, numbers and volumes of trees felled during a specified period, and such other information as may be specified in the notice;”.

This section is important for the collection of statistics and information on the national forest estate and it will complement national and European Union reporting requirements. The collection of information on forests will also provide information to the Minister on how forests are being managed and will help to determine the direction of future policy, including the provision of financial support and incentives.

I have listened to stakeholders' comments and I am introducing amendment No. 56, which highlights the main information that forest owners may be required to supply. The collection of data will mainly relate to information on timber felled. I believe that the amendment while not addressing all the issues of concern to landowners does go some way to reducing the burden on them. I do not propose to accept amendments Nos. 57 and 58. I reiterate the importance of the legislative provision in this regard for the collection of statistical information on the national forestry estate which complements national and EU reporting requirements. For this reason I cannot agree to the removal of the section. Although owners or managers may be required to furnish such information within 28 days, a longer period will be specified in such notices depending on the practicality of complying with such information. For example, when a licence is issued to fell timber the forest owners may be required to provide information on the trees

actually felled and confirm that replanting has taken place as specified in the licence. This information is important to determine the level of felling activity and replanting that has taken place in connection with the licences that have issued. The timelines required to provide such information will depend on several factors, such as the level of felling activity or the size of the property. I emphasise that any timelines specified in any notice will provide sufficient time for forest owners to compile such information.

I acknowledge the Deputy's intention in amendments Nos. 59 and 60 to limit the 28 day requirement to investigate the alleged offences. My preference is to stick with my amended wording for the section. Although owners or managers may be required to furnish information within 28 days, I assure Deputies that a longer period will be specified in notices where the practicality of complying with such information demand it. It is not my intention to place unreasonable demands on anyone and the timescale for receipt of information will reflect the complexity and the need to collate the information required.

I believe the proposal in amendment No. 61 to limit the requirements to information that is readily available is far too loose and would make the provision of information discretionary rather than mandatory. Under the proposed wording a person could, at any time, claim that the information was not available.

The amendment in respect of commercial sensitivity of information supplied is also subjective and could obstruct the investigation of alleged offences or compliance with the relevant statutory provisions by authorised officers. In the circumstances I cannot agree to this amendment.

Under amendment No. 62, I am reducing the fine which applies to a person who fails to comply with a request under the section from a class A fine to a class E fine, that is, a reduction from €5,000 to €500.

Deputy Éamon Ó Cuív: My amendments are Nos. 58 and 61. I often wonder what happens to all the statistics collected and whether decisions really get changed based on all the mounds of statistics collected. I also often wonder whether the Minister has the staff to deal with all the statistics collected or has the information become something that gathers in rooms and dark places and keeps mounting more and more as more and more detailed information is sought?

It is interesting that when the State wants something there is a time limit but when a person wants something from the State there is rarely a time limit. There are times limits on some things. One must appeal within 28 days but the appeal may not be decided on by the Department for a year. One must provide information within 28 days but when one is looking for a decision on a felling licence or whatever it is not half as time-limited.

Will the Minister of State get me some detail on the absolute minimum European requirements that a person must collect before Report Stage? He may tell me that I could find it myself and I probably could but he knows where it is. It is rather like looking for a particular tree in the forest in that if the Minister of State knows where the tree is, he may as well save me the time of examining every tree in the forest.

The Minister of State said that the my proposed provision regarding commercially sensitive information is too loosely worded. However, it seems strange that he will know the volume, the potential end product and the variety of timber sawn, converted, processed, bought, sold or otherwise disposed of within a specific period. Sections 13(1) states that the Minister "may"

do such and such. However, what will happen is that every relevant person, whether the owner or manager of a forest or the owner or manager of a timber mill, will have to provide all of this information as a matter of routine. I often wonder what the Department will do with all of it. Does the Department have the staff to collate all of this and use it in any meaningful way? I take it that the provisions mean the information will have to be provided and that it is not only a question of how frequently the Department seeks all the information but that it will demand it.

The Minister of State said something that every Minister in his position tends to say. He said that he has no intention of doing X, Y and Z. We pass laws in the House on the basis that we do not know who will be in the Minister of State's position in future or what attitude that person will take to the legal provisions. Therefore, the attitude of a particular Minister who might be before the committee does not really count when we are making legislation because we are legislating for the eventuality that different people will hold ministerial office and they might do what it is legally possible to do although it may not be the Minister of State's intention to do those things. Therefore, it is not any defence for the Minister of State to say he will not do it. I accept the good faith of the Minister of State but that is irrelevant because this is law, it is not simply what the Minister of State might do.

Chairman: Deputy Boyd Barrett, you are nominated as a substitute for Deputy Pringle. We are discussing amendments Nos. 56 to 62, inclusive. Amendment No. 59 is in the name of Deputy Pringle. If you wish to speak to any of the amendments you can speak now. Deputy McNamara is indicating as well.

Deputy Richard Boyd Barrett: Will we get a chance to speak on the section as well? I missed my first amendment.

Chairman: The first amendment is gone.

Deputy Richard Boyd Barrett: I can raise the issues at the end of the section. Is that not so?

Chairman: Before that we decide on whether the amendments stand.

Deputy Tom Hayes: We will get an alarm for Deputy Boyd Barrett.

Deputy Richard Boyd Barrett: I can raise the issues at the end of the section. Is that correct?

Chairman: A precautionary principle applies in this case, but go ahead. Have you anything you wish to say?

Deputy Richard Boyd Barrett: I can speak at the end of the section.

Chairman: I take it you do not wish to speak to amendment No. 59 and that you simply wish to speak at the end. Is that correct? That is fine. I will let you back in.

Deputy Richard Boyd Barrett: Some of the amendments are mine and some are those of Deputy Pringle. Amendment No. 59 is Deputy Pringle's amendment. Should I move it now?

Chairman: Not yet, you can do that when we come to it, we will deal with it at that stage. You can speak at the end before the section is completed.

Deputy Michael McNamara: I wish to raise a point on section 13(1)(b) rather than the

amendment. Should I address it now or at the end?

Chairman: It is better to do it at the end.

Deputy Tom Hayes: Deputy Ó Cuív raised the issue of the views of a future Minister and I take his point. It is a concern but the reality is that no legislation can tie a future Minister as it is up to the people in the future to select their government.

Deputy Éamon Ó Cuív: However, we can restrain the Minister.

Deputy Tom Hayes: Deputy Ó Cuív commented extensively on EU data. I will ask the officials to make the information available to him as soon as they possibly can.

Deputy Éamon Ó Cuív: I appreciate that.

Deputy Tom Hayes: Deputy Ó Cuív will get co-operation in that regard. I would not like the impression to be given that this is new information because it is already contained in the original legislation. The required information is the area, the species, the numbers and the volume, in order to ensure good forestry management and to determine the amount of wood available. That is the only information required.

Deputy Éamon Ó Cuív: When was the previous Act enacted?

Deputy Tom Hayes: In 1946.

Deputy Éamon Ó Cuív: I have no recollection of ever being required by the Department with responsibility for forestry to make any return as is provided for in section 13(1)(b).

Deputy Tom Hayes: The provision exists.

Deputy Éamon Ó Cuív: They must not have been looking for the information because I cannot remember making any return to the Department of the timber sawn, converted process bought or sold or otherwise disposed of during the specific period. I would have known if I had to do it because I would have been told. In those days we were buying from the Department, which was more than well aware that we existed. There was never any requirement to give all that information. Is the Minister of State absolutely sure that there is an equivalent section 13(1)(b)?

Deputy Tom Hayes: I am advised by my officials that this is the situation.

Deputy Éamon Ó Cuív: They must not have bothered to collect this information.

Deputy Tom Hayes: I do not know. That is the situation.

Deputy Éamon Ó Cuív: I am referring to a time before Coillte when all the purchases were from the Department and yet they did not look for the information.

Deputy Tom Hayes: That is what I am advised.

Deputy Éamon Ó Cuív: Can that advice be checked?

Deputy Tom Hayes: There is no need; I have been told the information.

Deputy Éamon Ó Cuív: Perhaps the Minister of State could ask for an explanation as to why this information was never sought. They took the word, “may” as meaning, “may” and

did not bother.

Deputy Tom Hayes: We can get that information for the Deputy.

Deputy Éamon Ó Cuív: They were obviously reading it as “may” and did not bother because they did not have to look for it.

Chairman: We can ask if data was requested and the reason it may not have been requested.

Amendment put and declared carried.

Amendments Nos. 57 to 59, inclusive, not moved.

Deputy Richard Boyd Barrett: I move amendment No. 60:

In page 13, line 33, after “days” to insert “, if investigating alleged offences,”.

Amendment put and declared lost.

Deputy Éamon Ó Cuív: I move amendment No. 61:

In page 13, line 39, after “notice” to insert “provided this information is readily available and is not commercially sensitive”.

Amendment put and declared lost.

Deputy Tom Hayes: I move amendment No. 62:

In page 13, line 48, to delete “class A fine” and substitute “class E fine”.

Deputy Éamon Ó Cuív: What is the difference between a class A and a class E fine?

Deputy Tom Hayes: The fines are €5,000 for class A fine and €500 for a class E fine.

Deputy Éamon Ó Cuív: Is it the case that one could go to prison for six months for non-payment of €500?

Chairman: This amendment has been discussed already so I cannot allow further discussion.

Amendment agreed to.

Question proposed: “That section 13, as amended, stand part of the Bill.”

Deputy Richard Boyd Barrett: This section needs some additional elements because it deals with protection of the forests. The Minister should have the authority to carry out ecological surveys of forests to ensure the ecological integrity of forests with a particular focus on ancient woodlands and native species. There should be a provision to allow citizens who are concerned about the ecological integrity of forests to petition the Minister for such surveys to be carried out if they are concerned that ancient woodlands, native species or biodiversity are being adversely impacted upon in any way. I am proposing an environmental protection measure and a public consultation measure.

Deputy Michael McNamara: The Minister of State has stated that legislation would not be binding on future Ministers. The purpose of legislation is to bind future Ministers and citi-

zens alike; that is why we pass laws here. We live in a republic and Ministers are bound the same as officials and ordinary citizens. It is important to bear this in mind.

Is firewood included in the provisions of section 13(1)(b)? There is a big market for firewood in Ireland. We are very careful to ensure that the beef market in Ireland is regulated and is supplied by people who engage actively in the beef industry. The same applies to the milk industry. This committee debated whether raw milk should be allowed to be sold. Many people have wood-burning stoves and the market for firewood has increased dramatically across the country. That market should be supplied by active wood-farmers, people who grow a crop and want to sell it. Does the definition of an owner-manager of a timber processing business or a dealer in timber include a dealer in firewood? It would be very wrong if people who go to the trouble of growing a commercial crop - thinnings can be sold for a number of purposes including firewood - were to be put on the back foot by unlawful or illegal felling.

With regard to the amendment which changes a class A fine to a class E fine, a fine of €500 is not a lot of money. It will entail a criminal conviction but people might make a commercial decision just as people make a commercial decision under the 1946 Act to cut now and ask later and pay the relatively derisory fine that can be imposed by a District Court. I am sure that will happen in the future with regard to the fine of €500. My question is whether the definition of a dealer of timber includes a dealer in firewood.

Deputy Tom Hayes: I refer to Deputy Boyd Barrett's question about the ecological survey. The European Communities Forest Consent and Assessment Regulations 2010 is the established framework. It is the responsibility of the inspectors to decide on the necessity for an ecological survey. It is not possible for a citizen to decide he or she wants an ecological survey because this would make the process very cumbersome. The Bill is designed to encourage people to work in forestry. The answer to that is "Yes".

I take the point with regard to the €500. In our consultations with those in the industry, however, they made a very strong case for the reduction. I made by decision on the matter in view of what they stated and by virtue of the fact that the case they made stood up to scrutiny.

Deputy Richard Boyd Barrett: Are we allowed to respond?

Chairman: Very quickly.

Deputy Richard Boyd Barrett: This matter does not involve people, in a rather whimsical manner, seeking surveys. What we are seeking is that people should be allowed to petition for such surveys if they have concerns. Ultimately, the decision on whether a survey would be carried out would lie with the Minister. There should a procedure whereby people with concerns would have the opportunity to indicate that they want action to be taken. The details of what would be involved in the context of the criteria relating to petitions, etc., could be discussed but provision should be made to allow people to seek surveys. There are many individuals who have concerns about the environment in general and, in the context of this matter, adverse impacts on ancient woodlands and problems relating to biodiversity. These people should have an avenue whereby they could petition the Minister to have surveys carried out in circumstances where they raise legitimate concerns. I am of the view that the amendment is very reasonable.

Deputy Tom Hayes: The Minister already has the power to request ecological reports, including environmental impact statements and Natura impact statements, under the EU forest consent regulations and the EU birds and habitats regulations. These regulations also provide

for members of the public to make submissions to the Department in respect of applications for ecological reports.

Chairman: The Minister of State is saying it is provided for.

Deputy Tom Hayes: Exactly. It is provided for.

Question put and declared carried.

SECTION 14

Question proposed: “That section 14 stand part of the Bill.”

Deputy Michael McNamara: I referred to the issue of compensation on the previous occasion on which we debated the Bill and indicated that I have doubts about whether the refusal of a felling licence without compensation in circumstances where a commercial crop that has been grown with the approval of the State in one form or another is constitutional. I have similar doubts with regard to this section in the context of the removal of vegetation. I am not arguing that the removal of vegetation is for the common good. It is obviously a legitimate exercise, particularly in view of the fact that it protects forests. In order to be lawful at all, any interference with private property must be for the common good. The removal of vegetation, as envisaged, would be for the common good, but I am concerned about the absence of compensation. I accept that what is contained in the Bill mirrors the provisions of the 1946 Act and that there is a presumption of constitutionality in both instruments. However, there have been such presumptions in respect of many matters and these have been overturned by the Supreme Court. I flagged this matter on the previous occasion. When the Minister of State is seeking advice from the Office of the Attorney General on whether it is possible to refuse a felling licence and not offer compensation, perhaps he might also have section 14 examined.

Deputy Tom Hayes: We will do that.

Question put and agreed to.

SECTION 15

Chairman: Amendments Nos. 63 and 64 are related and will be discussed together.

Deputy Tom Hayes: I move amendment No. 63:

In page 14, line 34, after “destroyed” to insert the following:

“so far as it is reasonably practicable to do so”.

Section 15 deals with the control of species such as grey squirrels and rabbits where they pose a threat to forests and generally restates an existing provision in the Forestry Act 1946. It allows the Minister to serve a notice on a landowner requiring him or her to take specified action to protect trees from damage by vermin. Where land is unoccupied or the owner fails to comply with such notice, the Minister may authorise a person to enter the land and deal with the particular species. In the majority of cases landowners behave responsibly and do not need to be compelled to remove vermin from their land. The purpose of this provision is to deal with situations where either the owner does not co-operate or where the land is unoccupied.

A number of stakeholders have questioned the practicality of removing vermin and amend-

ment No. 63, which inserts the words “so far as it is reasonably practicable to do so”, is an acknowledgement of that difficulty. It is important that the power to remove vermin which present a threat to forestry remains within the legislation, but such power should also be reasonably applied and recognise the difficulties involved in removing the threat completely. The remaining amendments are technical changes designed to ensure the removal of protected species such as deer, which pose a threat to the forest, will be controlled in accordance with a licence granted by the Minister for Arts, Heritage and the Gaeltacht.

Amendment agreed to.

Deputy Tom Hayes: I move amendment No. 64:

In page 15, to delete lines 11 to 15 and substitute the following:

“(c) subject to *subsection (5)*, a species protected under the Wildlife Acts 1976 to 2012 or the Habitats Regulations.

(5) Notwithstanding *subsection (4)(c)*, where the power under subsection (1) is exercised nothing in this section shall be construed as authorising or requiring, on foot of the notice concerned, the destruction of, or the taking of any other steps in relation to, species falling within *subsection (4)(c)* otherwise than in accordance with a licence granted by the Minister for the Arts, Heritage and the Gaeltacht under□—

(a) the Wildlife Acts 1976 to 2012, or

(b) the Habitats Regulations.”.

Amendment agreed to.

Section 15, as amended, agreed to.

SECTION 16

Deputy Tom Hayes: I move amendment No. 65:

In page 15, between lines 21 and 22, to insert the following:

““Authority” means the Property Registration Authority;”.

Amendment agreed to.

Section 16, as amended, agreed to.

SECTION 17

Chairman: Amendments Nos. 66 and 67 are out of order and cannot be moved.

Amendments Nos. 66 and 67 not moved.

Chairman: Amendments Nos. 68 and 69 are related and will be discussed together.

Deputy Tom Hayes: I move amendment No. 68:

In page 15, line 36, to delete “5 years” and substitute “10 years”.

One of the matters repeatedly raised on Second Stage and in the consultations with the various

stakeholders prior to the introduction of the Bill was that of timelines in respect of the issuing of felling licences. Many stakeholders stressed the importance for their industry of short response times that would facilitate the flow of wood onto the market. I note the proposals made by Deputies for response times of varying lengths and I appreciate their input in this regard.

However, I am bringing forward my own amendment, No. 79, which I believe goes some way to addressing the issue raised by stakeholders. For this reason, I am not in a position to accept amendments Nos. 66, 74, 75 or 76.

Regarding amendments Nos. 74 and 75, these will restrict the period within which the Minister may consult third parties. The Minister must be empowered to consult any persons who may be affected or have an interest in a matter for which an approval or licence is being sought. If an issue comes to the Minister's attention during the course of his consideration of an application and the Minister believes consultation on the issue is warranted, the Minister should not be restricted in this regard. While the Minister has an obligation to treat the applicant in a fair and reasonable manner, the Minister has the same obligation to all citizens of the State, especially those who may be directly affected by forestry operations for which approval and licences are being sought.

Amendment No. 79 provides for the introduction of a timeline of four months within which the Department must process a felling licence application. This timeline reflects the need to consult other environmental authorities such as the National Monuments Service and Inland Fisheries Ireland. If the Department is not going to meet the deadline, it must provide the applicant with an explanation before the expiry of that period. This amendment must be viewed in conjunction with the amendment of section 17 in amendment No. 68. This allows for the doubling of the length of licence from five to ten years, with provision for further extensions of up to five years. Both of these amendments are intended to facilitate the timely and speedy processing of applications. I am confident the contribution of these two measures will contribute to a much-improved turnaround time for the processing of felling licences.

Chairman: There is some confusion. We are dealing with amendments Nos. 66, 74, 75, 76 and 79. Amendments Nos. 74 to 76, inclusive, are in the name of Deputy Pringle and amendment No. 79 is in the name of the Minister. I call Deputy Boyd Barrett to address-----

Deputy Richard Boyd Barrett: These are Deputy Pringle's amendments. It is about having a speedy timeline for getting the licence, and Deputy Pringle believes there are too many get-out clauses in the Minister's amendment. There are qualifications on his requirement to grant or refuse the licence within a particular timeline. His amendment is straightforward in that it states the timeline and that the licence will either be granted or refused within that period.

Deputy Éamon Ó Cuív: My amendment No. 78 is ruled out of order for the usual reason, namely, the second part of it would impose a charge on the Exchequer. It is one of the bizarre rules of this House.

Chairman: That amendment is not in this group but go ahead.

Deputy Éamon Ó Cuív: However, I had proposed a period of eight weeks from the time the applicant would submit the final information. If we look at what the Minister is doing here, there are two approaches. The first is what I would call the legislative approach to which county councils have to adhere in planning. It is the eight weeks approach, that is, eight weeks from the time one put in the last information. If there is a further information request, it is eight weeks

from the time the further information is submitted. That works. If the National Parks and Wildlife Service, NPWS, or anyone else wants to make an observation, they simply have to get it in on time. It is not a big deal. The citizen is owed that duty from the State, namely, people can come back in a timely manner and give their opinion. If it can be done for all planning permission applications, I cannot understand why it cannot be done here for a felling licence application.

The second approach is what I would call the An Bord Pleanála approach. As the Minister is probably aware, An Bord Pleanála has a statutory objective, similar to the Minister's proposal, to do this within four months but that is observed assiduously in the breach on every occasion. An Bord Pleanála appeals, even on a single house, can take up to a year or more to decide and there is no sense of urgency on its part. It sends out a letter stating it cannot do it within the guidelines of the statutory objective, that it is sorry, and that it will take as long as a piece of string, so to speak, before it is addressed. After six months it might send out another letter stating it still cannot do it within the statutory objective, that it cannot do it without the statutory objective and that it will extend the period again. I understand the Minister's good intention in this measure but in legal terms what he is proposing is worthless because it adds more to the bureaucracy and people will continue to get these letters stating the period will be extended again.

I am opposed to this and I will table an amendment to my amendment No. 78 on Report Stage stating that all licence decisions will issue within eight weeks of the required information being provided by the applicant. I cannot understand why it is not possible within a two month period to make such a decision if it is possible to grant all the planning applications in the country within that timeframe.

Chairman: I call the Minister to discuss amendment No. 68.

Deputy Tom Hayes: Regarding amendment No. 68, a number of stakeholders in submissions have stated that the duration of a felling licence should extend beyond five years and questioned the need to apply for an extension. I have considered the submissions made by the stakeholders and I am tabling an amendment to increase the duration of a felling licence from five to ten years. The Bill will still allow for further extensions of up to five years in effect providing the possibility to have a licence for a period of 15 years in total. That will allow a number of thinning operations to take place. This is a significant change to the Bill and will provide greater flexibility for forest owners to carry out multiple harvesting events over a longer period in accordance with good forest practice. I am also conscious of the need to strike a balance between long-term forest management and the need for sufficient safeguards to cater for a change in environmental circumstances. Other sections of the Bill, such as section 7(2), provide these safeguards. In extreme cases a licence could be suspended where unforeseen circumstances have occurred, for example, a large siltation event impacting negatively on a water course. However, as I have stated previously, forest owners who require the flexibility to manage their forest over a long period would need to adopt changes if required. I believe the provision in this Bill provides these safeguards to allow felling licence duration to be extended as proposed.

All forestry harvesting operations, including thinning, have the capacity to cause significant environmental damage and some level of control over such activities must be in place. I believe my amendment to this section allowing the Minister to issue a felling licence for up to ten years is fair. In addition, the provision of licences for thinning and clearfell will facilitate growers in forest certification and other traceability systems. I therefore reject amendment No. 69.

Deputy Éamon Ó Cuív: The idea in my amendment No. 69 is that one will get permission

to do all the felling, including standard thinning, and that one would not need to apply continually for licences at every stage of the process. Thinning is silviculture. It is not viable economically, but it is good silviculture practice.

Deputy Michael McNamara: It goes back to the point on firewood. It is the only area in which there is no distinction in the Department's policy between passive and active farmers. We are talking about benefiting active farmers, with the exception of forestry, where we think anyone should be able to supply a market on equal terms.

Chairman: Does the Minister of State wish to respond?

Deputy Tom Hayes: No.

Amendment agreed to.

Deputy Éamon Ó Cuív: I move amendment No. 69:

In page 15, between lines 36 and 37, to insert the following:

“(b) Notwithstanding *paragraph (a)*, licences for thinning operations up to clearfell stage shall be issued to include all standard commercial thinning which accords with good forestry practice;”.

Amendment put and declared lost.

Amendment No. 70 not moved.

Deputy Richard Boyd Barrett: I move amendment No. 71:

In page 16, line 8, to delete “replanting” and substitute “reforestation”.

Amendment put and declared lost.

Chairman: There is a typographical error in Amendment No. 72. This amendment should be addressed to page 16 of the Bill, rather than page 15, as published in the list of amendments.

Deputy Richard Boyd Barrett: I move amendment No. 72:

In page 16, line 10, after “species” to insert “and provenance”.

Amendment put and declared lost.

Deputy Éamon Ó Cuív: I move amendment No. 73:

In page 16, line 14, after “specified” to insert the following:

“as long as such conditions are in line with good forest practice and generally concur with the forest management objectives of the forest owner”.

Amendment put and declared lost.

Deputy Richard Boyd Barrett: I move amendment No. 74:

In page 16, line 30, to delete “, and” and substitute “within 28 days of receipt of licence application,”.

Amendment put and declared lost.

Deputy Richard Boyd Barrett: I move amendment No. 75:

In page 16, line 33, after “require” to insert “within 28 days of receipt of licence application”.

Amendment put and declared lost.

Deputy Richard Boyd Barrett: I move amendment No. 76:

In page 16, between lines 33 and 34, to insert the following:

“(6) The Minister shall make a decision on a licence application, with or without conditions, within a period not exceeding 90 days.”.

Amendment put.

The Committee divided: Tá, 2; Níl, 5.	
Tá;	Níl;
Boyd Barrett, Richard.	Barry, Tom.
Ó Cuív, Éamon.	Doyle, Andrew.
	Hayes, Tom.
	Heydon, Martin.
	McNamara, Michael.

Amendment declared lost.

Deputy Éamon Ó Cuív: I move amendment No. 77:

In page 16, between lines 39 and 40, to insert the following:

“(i) to a fixed payment notice as provided for in *section 23*,”.

Deputy Tom Hayes: I am informed by the Parliamentary Counsel that the amendment is unnecessary. Section 23(1), which provides for fixed-payment notices, is cross-referenced with section 17(6). There is no need for further amendment or clarification. The option of imposing a fixed-payment notice, where the authorised officer has reasonable grounds for believing that a person has committed an offence under section 17(6) that is liable for summary prosecution, is clearly provided for within section 23.

Deputy Éamon Ó Cuív: If that is the view of the Parliamentary Counsel, I will accept it.

Amendment, by leave, withdrawn.

Chairman: Amendment No. 78 has been ruled out of order.

Amendment No. 78 not moved.

Section 17, as amended, agreed to.

NEW SECTION

Deputy Tom Hayes: I move amendment No. 79:

In page 17, between lines 26 and 27, to insert the following:

“Time period for decisions on applications for felling licences

18. (1) It shall be the objective of the Minister to ensure that every application under *section 17* for a licence (a “felling licence application”) is determined within a period of 4 months beginning on the date of receipt by the Minister of the application.

(2) Where it appears to the Minister that it would not be possible or appropriate, because of the particular circumstances of a felling licence application or because of the number of such applications which have been submitted to the Minister, to determine a felling licence application within the period referred to in *subsection (1)*, the Minister shall, by notice in writing served on the applicant for the licence, inform the applicant of the reasons why it would not be possible or appropriate to determine the application within that period and shall specify the date before which the Minister intends that the application shall be determined.

(3) Where a notice has been served under *subsection (2)*, the Minister shall take all such steps as are open to him or her to ensure that the application is determined before the date specified in the notice.”.

Deputy Michael McNamara: May I-----

Chairman: The amendment has already been discussed.

Deputy Éamon Ó Cuív: Can I just say-----

Chairman: I will come to amendment No. 80 in a moment, which is in the Deputy’s name.

Deputy Éamon Ó Cuív: Okay.

Chairman: Is the amendment to insert the new section agreed to?

A Deputy: It is not agreed.

Deputy Michael McNamara: It is a whole new section. Do we just discuss it as an amendment or can we discuss-----

Chairman: The amendment was already discussed with amendment No. 66.

Deputy Éamon Ó Cuív: Can we discuss the section? As with the previous amendment which was just defeated, I ask the Minister of State to consider this issue again on Report Stage, because what is there in print contains plenty of lines but is a toothless tiger. I ask him to consider coming back with something that gives a firm timeline and without numerous get-out-of-jail clauses.

Chairman: I will call Deputy McNamara very briefly; I should not be allowing any discussion.

Deputy Michael McNamara: I appreciate the latitude. Would the Minister consider changing section 18(1) to specify a period of three months beginning on the date of receipt by

the Minister of the application? Section 18(2) states:

Where it appears to the Minister that it would not be possible or appropriate, because of the particular circumstances of a felling licence application or because of the number of such applications which have been submitted to the Minister, to determine a felling licence application within the period referred to in subsection (1), the Minister shall, by notice in writing served on the applicant for the licence, inform the applicant of the reasons why it would not be possible or appropriate to determine the application within that period and shall specify the date before which the Minister intends that the application shall be determined.

Is it possible to specify within a period of three months beginning on the date of receipt by the Minister of the application?

Chairman: If the Minister of State is willing to consider something on Report Stage, I suggest the Deputy makes that amendment.

Deputy Michael McNamara: I believe I am required to raise that here in order to table an amendment on Report Stage. Will the Chairman allow me to read it out for the rules and procedures?

Chairman: The amendment was technically already discussed.

Deputy Michael McNamara: I appreciate that.

Chairman: I am only making the technical point.

Deputy Michael McNamara: I will hand it to-----

Chairman: Regardless of whether the Deputy raises it-----

Deputy Michael McNamara: I will put it in writing, of course.

Chairman: Raising it now does not validate it.

Deputy Richard Boyd Barrett: He could discuss it in the discussion on the section.

Deputy Michael McNamara: I cannot because it is a new section; that is the difficulty. I am proposing that the reply be within three months. I welcome the Minister of State's amendment. However, if within the three months the Minister determines they cannot be considered within the time period provided under section 18(2) he should be required to write back to the person within that initial period and there would be no longer than a further three months to deal with it.

Chairman: The Deputy is stretching it.

Deputy Michael McNamara: I will put it in writing. Basically I am proposing that the Minister would come back within three months to say that it will be the objective-----

Chairman: The Deputy has made his point.

Deputy Michael McNamara: I have not-----

Chairman: When it was being discussed with amendment No. 66 the Deputy had the opportunity. I have given latitude here. The Deputy has repeated himself twice, so can we-----

Deputy Michael McNamara: I just want the Chairman to be happy that I raised it on Committee Stage.

Chairman: I do not know whether it stacks up because it was not raised when it was being discussed with amendment No. 66, but-----

Deputy Michael McNamara: It is not at any particular time.

Chairman: ----- it will be part of the transcript of the meeting.

Is it agreed that the new section be inserted?

Deputy Richard Boyd Barrett: It is not agreed.

Chairman: On amendment No. 79, the question is that the new section be-----

Deputy Michael McNamara: If the Chairman is saying that we are going to vote now on whether it is agreed that a new section be inserted, then I believe I have a right to discuss-----

Chairman: No. It was discussed with amendment No. 66.

Deputy Michael McNamara: The amendment was discussed.

Deputy Richard Boyd Barrett: The amendment is to insert the new section; that is the problem.

Chairman: There is a series of amendments to section 18 to follow. I already made the point when we discussed amendment No. 66 that amendments Nos. 74 to 76, inclusive, and 79 were related. When the Minister of State contributed he addressed all those amendments. Amendments Nos. 74 to 76 were put and declared lost.

Deputy Éamon Ó Cuív: On a point of clarification-----

Chairman: I will take a point of clarification.

Deputy Éamon Ó Cuív: If this section is introduced into the Bill, will we be able to table Report Stage amendments to the section?

Chairman: I think so.

Deputy Tom Hayes: At all times since we started to discuss this, I have tried to bring forward a reasonable solution. One of the main points that was made was the length of time it was taking. I gave it a great deal of consideration with officials and worked with the Office of the Parliamentary Counsel. We came to a conclusion on what was the best approach. We wanted it to be as tight as possible. However, if it helps and represents a better solution, we can bring it in on Report Stage.

Chairman: I appreciate the genuine intentions of everybody involved. When we come to finalise Committee Stage, the Bill will be published as amended. On Report Stage, there is an option to put down amendments. Members are not precluded from doing that.

Deputy Michael McNamara: One can only put down a Report Stage amendment if it has been raised on Committee Stage. That is why I wanted to raise the matter explicitly now. Having raised it, I can put down an amendment.

Chairman: It had been raised by Deputy Ó Cuív.

Deputy Éamon Ó Cuív: We should quit while we are ahead.

Amendment put and declared carried.

SECTION 18

Amendment No. 80 not moved.

Deputy Richard Boyd Barrett: I move amendment No. 81:

In page 18, line 25, to delete “10 metres” and substitute “5 metres”.

This amendment is intended to change the distance in respect of the protections which apply where it is intended to cut down a tree. There are safety issues where trees are close to roads. One cannot have an extensive bureaucratic obstacle where a tree near a road raises health and safety issues. It is a practical consideration but it need not be 10 m. When one goes that far in from the road, one is talking about giving a free hand to cut down trees which should not be cut down and where protections should apply.

Deputy Michael McNamara: Regarding distance from a road, the 1946 Act already provides that where a notice is issued, one can cut down a tree. It is a necessary provision. The Bill proposes that no felling licence would be required where in the opinion of the planning authority a tree is dangerous on account of its age, condition or location. That is very sensible. There is a further provision that no felling licence is required where a tree is removed by a public authority in the performance of its statutory duties. That is also sensible. However, I do not accept that every road within 10 m of a public road poses a risk to the public. If that is the case, the NRA has wasted a great deal of money over the last ten years. If one drives from Galway to Dublin on the M6 or from Limerick to Dublin on the M7, one sees a great many trees which have been planted at taxpayers' expense along the motorways. Every tree within 10 m of a public road either poses a risk or it does not. Some trees clearly poses risks. Many trees which are standing should be got rid of. However, as I said on Second Stage, I have seen many trees cut down beside public roads in Clare which posed no risk to anyone.

I question the purpose of the provision. Are we talking about cutting down trees because they pose a risk to the public or are we talking about cutting down trees for firewood? I have seen many more trees cut down for firewood near public roads than have been cut down because of a risk to the public. I have no qualms about the fact that trees must be cut down if they are dangerous. I do not consider, however, that every tree within 10 m of a public road poses a risk.

Deputy Tom Hayes: The section is being introduced to allow landowners to manage trees adjoining public roads without the requirement for a felling licence. It is important that a landowner can fell trees without a licence where they are dangerous because of their age or condition in the interests of public safety. The 10 m width criterion takes into consideration that the majority of roadside trees are found within this zone and the potential of a tall, mature tree to fall across a public road creating a dangerous hazard. In all afforestation schemes, it is a requirement of grant aid not to plant within 10 metres of a public road. While I accept that roadside trees have a landscape and amenity value, I must balance the needs of landowners to manage roadside trees in the interests of public safety. One cannot have a situation where a landowner who must remove a dangerous tree urgently is forced to wait for a felling licence before he or she can proceed. I cannot, therefore, accept the amendment.

Deputy Richard Boyd Barrett: There is a balance to be struck. The point has been made. However, what we have here does not capture the balance. Deputy McNamara made the point well. It is not simply an issue of distance. I might raise something that was mentioned to me by someone from a different constituency who happened to be passing through Dún Laoghaire. Where trees are overhanging a road and there is a requirement on the property owner to cut them down on foot of a health and safety risk, it is virtually impossible for that property owner to act. He or she would have to stop the whole road. It should really be the local authority which has the responsibility for doing it. A complicated balance is involved. Certainly, the idea that one could have free rein to cut down any tree within 10 m of a public road means trees that should not be cut down will be. They will not be cut down just for legitimate health and safety reasons but potentially for other reasons. I have further amendments in the same vein with respect to hedgerows. We must reconsider the provision.

Deputy Michael McNamara: The Minister of State said it is important that landowners be able to cut down trees which are dangerous because of their age and condition. I could not possibly argue with that. This section, however, does not facilitate landowners to cut down trees which are dangerous because of their age or condition; it facilitates them to cut down all trees within 10 metres of a public road whether they are dangerous or not or young or old. A tree could be 800 years old, 1,000 years old or 10 years old. It would not matter that it was planted for commercial purposes or by Brian Boru on the way to the Battle of Clontarf. It applies to every single tree within 10 m of a public road. I have no doubt that the great majority of trees which will be cut down pursuant to the legislation will not be due to dangers on foot of age or condition. I agree that every tree beside a public road which poses any risk due to age or condition should be cut down. We have no dispute on that. My problem is that the legislation applies to every tree. The majority of trees that will be cut down will be cut for firewood to compete with legitimate, active farmers who grow a crop for money. The majority of dangerous trees will still be left standing.

Deputy Tom Hayes: One can argue it every way. There are trees along the roads beside which we all live that have been there for generations and they have not been cut down. People cut them down. I have trees on my own land at home which I will not cut down unless they are a danger. I was very fearful that some of them would fall during the last storm.

Deputy Michael McNamara: As was I.

Deputy Tom Hayes: They did not fall. I am happy to leave them there and that is the general view among people who have trees. One can pick out extreme cases.

This is about road safety. We all saw the large trees that fell around the country recently. There were cars parked in the car park of the Hotel Minella in Clonmel during coursing week, and the night of the bad storm, trees crashed down and badly damaged those cars. Lives would have been lost if there had been people in those cars. We cannot be careful enough regarding the strength of a falling tree, and we cannot underestimate the danger to the public. That is the reason I cannot accept this amendment. It is about road safety.

Chairman: I have allowed two supplementary questions but I have to move on. How stands amendment No. 81?

Deputy Richard Boyd Barrett: I am pressing it.

Amendment put and declared lost.

Chairman: Amendment No. 83 is an alternative to amendment No. 82 and the amendments may be discussed together.

Deputy Tom Hayes: I move amendment No. 82:

In page 18, to delete lines 28 to 32 and substitute the following:

“(iii) on an agricultural holding and removed by the owner for use on that holding, provided—

(I) it does not form part of a decorative avenue or ring of trees,

(II) its volume does not exceed 3 cubic metres, and

(III) the removal of it, by the owner for the foregoing purpose, when taken together with the removal of other such trees by the owner for that purpose, would not result in the total volume of trees, on that holding and removed by the owner for that purpose, exceeding 15 cubic metres in any period of 12 months,”.

Concerns were raised in consultations with certain stakeholders, namely, the Environmental Pillar and Woodlands of Ireland, about the need to retain larger established trees and hedgerows as well as individual old or veteran trees by not exempting them from the felling licence system. Under amendment No. 82, a farmer or other landowner can still remove 15 cu. m of timber in any period of 12 months but the size of any individual tree must not exceed 3 cu.m. To remove a tree larger than 3 cu. m will require a felling licence.

Despite the restrictions introduced in this amendment, this provision remains a major benefit to farmers. A tree of 3 cu. m is still a very large tree and I believe amendment No. 82 achieves a balance between meeting the needs of landowners and protecting larger established or veteran trees. In the circumstances, I do not see a need for amendment No. 83.

Deputy Éamon Ó Cuív: I am not sure that amendments Nos. 82 and 83 have the same intent. The amendment states that one can cut up to 15 cu. m on one's land but I want to exclude a constituent of parkland or wood pasture, including ancient heritage and veteran trees, on an agricultural holding. I am not sure whether that exclusion will be included in the Minister of State's version of the Bill, as it will be amended. People should not be allowed cut up to 15 cu. m in those particular areas. The Minister of State might clarify if one will be able to cut 15 cu. m if one has wood pasture or ancient heritage and veteran trees on an agriculture holding.

Deputy Tom Hayes: The Deputy's concerns will be addressed in amendment No. 88.

Deputy Éamon Ó Cuív: I am talking about amendment No. 83.

Chairman: We have not reached that yet.

Deputy Tom Hayes: The Deputy's concerns will be addressed when we come to deal with amendment No. 88.

Deputy Éamon Ó Cuív: Chairman, are we not discussing amendments Nos. 82 and 83?

Chairman: Yes.

Deputy Éamon Ó Cuív: Amendment No. 83 states:

In page 18, line 29, to delete “on an agricultural holding” and substitute the following:

“, nor a constituent of parkland or wood pasture, including ancient, heritage and veteran trees, on an agricultural holding, including farm forestry,”.

Deputy Tom Hayes: We will deal with that again when we reach amendment No. 88.

Deputy Éamon Ó Cuív: Is the Minister of State telling me that for discussion purposes this amendment should have been linked to amendment No. 88?

Deputy Tom Hayes: Essentially.

Deputy Éamon Ó Cuív: Is there any possibility we could discuss amendment No. 88 with these amendments?

Chairman: I cannot allow that. We must deal with amendment No. 82 first. I am sorry.

Deputy Éamon Ó Cuív: I have said my piece. When we reach amendment No. 88 we will hear the reply.

Amendment agreed to.

Chairman: Amendment No. 83 cannot be moved because it is an alternative to amendment No. 82.

Amendment No. 83 not moved.

Deputy Richard Boyd Barrett: I move amendment No. 84:

In page 18, line 33, after “species,” to insert “below a certain size,”.

I will await the Minister of State’s response.

Deputy Tom Hayes: The management of hedgerows includes the regular trimming and cutting of species such as hawthorn and blackthorn to ensure they are maintained in a stock proof condition. The exemption of these species also takes into account the natural capacity of these species to produce vigorous growth when cut. Tabling an amendment to limit the exemption to below a certain size of these species would prove impractical for landowners who periodically cut thousands of kilometres of hedgerow each year. Good practice encourages the retention of individual trees in hedgerows, and landowners take this into account in their management. Hawthorn hedges and individual trees provide an important contribution to our countryside and this exemption allows farmers to manage hedgerows in accordance with good agricultural practices.

Chairman: Is Deputy Boyd Barrett happy with that?

Deputy Richard Boyd Barrett: Not entirely.

Deputy Tom Hayes: I am surprised.

Deputy Richard Boyd Barrett: It is a question of striking a balance. We have to be practical, and farmers have to be able to maintain-----

Deputy Tom Hayes: It is because of their management and their way of operating the-----

Deputy Richard Boyd Barrett: That is accepted but on the other hand hedgerows have important environmental, amenity and biodiversity value. It is about achieving the right balance and it is felt by some of the environmental groups that this swings the balance a little too far in the direction of giving free latitude to do something that could be potentially damaging to the environment. That is why there is an attempt to put qualifications on that freedom.

Deputy Michael McNamara: I want to pick up on something the Minister of State said, which makes a lot of sense. He said that good practice requires the retention of individual trees and hedgerows, and that is reflected in section 18(1)(m)(v) which states: “in a hedgerow and felled for the purposes of its trimming, provided that the tree does not exceed 20 centimetres in diameter when measured 1.3 metres from the ground”. If the tree is more than 20 centimetres in diameter and is measured more than 1.3 metres from the ground, it is not exempt because good practice requires the retention of individual trees in hedgerows. We all agree with that, yet hedgerows are usually beside public roads and if it is within 10 metres of a public road, it can be cut down. Where is the balance? There is a contradiction inherent in the Bill, although the Minister of State might say otherwise. I am reiterating what I said earlier. It is very important that hedgerows can be cut and that trees of a certain size can be cut as part of a hedgerow. Otherwise, it is not possible to do it, and farmers have a problem in that when they are cutting a hedgerow, if there is a sapling that has been growing for four or five years, they might be in trouble for cutting it. I do not believe they should be in trouble. They should be allowed manage hedgerows, but they should not be allowed to cut trees if they are not a danger to the public.

Deputy Tom Hayes: It is a safety issue.

Deputy Michael McNamara: This issue might be looked at before Report Stage.

Chairman: Am I correct that the Deputy’s point is that if a hedgerow is on a roadside or within 10 metres of a roadside it is exempted?

Deputy Michael McNamara: It is not clear.

Chairman: That is the Deputy’s point. We might get clarification on that.

Deputy Richard Boyd Barrett: Also, the balance is problematic.

Deputy Tom Hayes: We will get clarification on it.

Deputy Tom Barry: We are losing sight of the fact that hedgerows on the side of roads in particular need to be maintained. As someone who uses large machinery on roads, we are finding the hedgerows are growing in. It may be difficult to picture that if one lives in Dublin but we deal with roads that might be only 13 ft. wide and operate machines that are 13 ft. wide also. Our main problem is that hedgerows are encroaching on top of the roads. They are keeping the roads damp, which leads to the roads deteriorating. We need the latitude to cut those trees for our safety and that of other road users. We should not get too pedantic about saving the odd bush or tree. Not doing so is causing major problems. We need to be able to tackle roadways that are narrow, yet vital, if we are to be able to move equipment. Some landowners who are not farmers are not maintaining their hedges at all. This needs to be addressed.

Deputy Martin Heydon: I wish to follow on from Deputy Barry’s point. The most common call I receive on this issue is from school bus services that use small, rural back roads. As the hedges are overgrown, some services refuse to take those roads to pick up children. Everyone’s hands seem to be tied.

Deputy Éamon Ó Cuív: It would also be fair to say that if one asked people in the countryside about hedgerows and the greatest change to same in the past 70 or 80 years, they would not point to hedgerows being cut down, but to their growing wild. Traditionally, farmers cut the hedges, folded them back onto themselves and made them bushy and thick. They did that by hand. It was every year's winter work and, therefore, was within the cycle of nature of nesting birds. There is an idea that the kinds of hedge we have now are the same that we had 100 years ago but according to all of the old people I know they are not. It was only in more recent times that people stopped trimming hedges every year and keeping them at reasonable levels.

I concur with Deputy Barry. Negotiating minor rural roads is causing a major problem in terms of road and vehicular damage. Anyone who has experience of running trucks or other vehicles knows that they could be driven up and down a motorway and there would not be a dent in them, but they would burst tyres and so forth on rural roads. As the Deputy mentioned, roads are getting damp.

Deputy Tom Hayes: The Bill-----

Deputy Éamon Ó Cuív: It is not true to say that most hedgerows are along roads. Most fields have hedgerows around their four sides, three of which are not normally along a road.

Deputy Tom Hayes: The Bill provides that a farmer can manage the hedgerows. There is an exemption in respect of the blackthorn and the hawthorn, but the Bill allows for the matters raised by the Deputies.

Amendment put and declared lost.

Deputy Richard Boyd Barrett: I move amendment No. 85:

In page 18, line 35 and 36, to delete "20 centimetres" and substitute "10 centimetres".

All of these amendments have the same theme. What has emerged from this discussion is that size might not be the right criterion. It is a question of practicality. If something is a danger, blocks school buses or damages the road or if it has the potential to pose such dangers, cutting it down should be possible. Proximity to the road or size is not a good criterion, as it would allow hedges or something that is environmentally important or sensitive to be cut down unnecessarily. There is a problem with the criteria for making decisions on what can be cut down and it needs to be examined. Perhaps there is no perfect solution. The person in question is from Mullingar and the issue never even occurred to me beforehand. That said, some roads near the edge of my constituency towards the mountains experience these problems. Clearly the local authority must have a role in assessing what is dangerous and a responsibility to assist property owners on the basis of the common good.

The Minister of State should take all of these points on board. I certainly must consider some of them. I will revert to the people I have spoken to and consider which amendments can be tabled on Report Stage to try to get the balance right.

Deputy Tom Hayes: The basis for a size threshold is to strike a balance, as the Deputy mentioned, between allowing farmers to manage hedgerows actively and reducing requirements for felling licences. The effect of placing a 20 cm threshold means that a farmer can manage hedgerows in accordance with good agricultural practice without being required to apply for a licence. Reducing the threshold to 10 cm, which is 4 in., would result in a significant number of felling licence applications each year as farmers plan to cut their hedges outside the

bird nesting season. This would be an unnecessary application process, as most licences would be granted. Therefore, I will not accept the amendment.

Deputy Richard Boyd Barrett: I have raised the issue, so I can raise it again.

Deputy Tom Hayes: Yes.

Chairman: Is the Deputy withdrawing his amendment?

Deputy Richard Boyd Barrett: I do not like the idea of withdrawing it either.

Deputy Tom Hayes: It is not in the Deputy's nature.

Deputy Richard Boyd Barrett: That is not the way I do things.

Deputy Tom Hayes: We have come to know that.

Chairman: It can be reintroduced.

Deputy Richard Boyd Barrett: I must press or withdraw.

Chairman: Yes.

Amendment put and declared lost.

Chairman: Amendment No. 86 is in the name of Deputy Ferris, but he is not present. Amendments Nos. 86 and 87 are logical alternatives and will be discussed together.

Amendment No. 86 not moved.

Deputy Richard Boyd Barrett: I move amendment No. 87:

In page 18, line 37, after "ground" to insert "or is not in a hedgerow of historical, ecological and/or landscape significance".

We have more or less discussed this matter and are going over the same ground. It must be taken into account and balanced against other practical concerns if something is of historical, ecological or landscape significance. This is the common theme of these amendments and I will not elaborate further.

Deputy Tom Hayes: I have limited the exemption from the licensing requirement by excluding trees greater than 3 cu. m in volume. This is a large tree and should remain within the licensing system. It is important to understand that the Bill's primary purpose is forestry, the sustainable management of forests and, in appropriate circumstances, the protection of other important trees in the wider landscape.

I have listened to the concerns raised by environmental stakeholders and will table an amendment to address some of them in so far as that is practical, possible and appropriate to a forestry Bill. However, I must stress that the Bill is not about regulating the alteration or removal of hedgerows in general. Other legislation addresses that issue, in particular the Wildlife Acts and the 2011 European Communities regulation. The qualification in the amendment proposed by the Deputy has also been proposed to me and elaborated upon when my Department consulted the Environmental Pillar and the Woodland League of Ireland.

I presume that Deputy Ferris intended to include the word "significance" in his amendment

No. 86. Such a qualification would require the inclusion of a long list of additional criteria by which a landowner could determine whether the tree in question was in hedgerow deemed to be of historical, ecological or landscape significance. I have examined one set of criteria proposed to me by the environmental stakeholders and found them to be unnecessarily complex, subjective in part and likely to place an unwarranted administrative burden on landowners and my Department. They are also predicated on the assumption that the Bill allows for the removal of hedgerows, which it does not. The amendment that I shall move later sufficiently addresses these concerns in a manner that is more compatible with the existing statutory designations and protection processes used in Ireland for built heritage and the landscape. Therefore, I cannot agree to these amendments.

Deputy Richard Boyd Barrett: Is the Minister of State moving another amendment on the matter on Report Stage?

Chairman: No, later today.

Deputy Tom Hayes: It is amendment No. 88, which is the next amendment to be discussed.

Deputy Richard Boyd Barrett: I do not think that is sufficient.

Chairman: How stands the amendment?

Deputy Richard Boyd Barrett: I shall press the amendment.

Amendment put and declared lost.

Deputy Tom Hayes: I move amendment No. 88:

In page 18, between lines 43 and 44, to insert the following:

“(2) A tree within—

(a) the curtilage or attendant grounds of a protected structure under Chapter 1 of Part IV of the Act of 2000,

(b) an area subject to a special amenity area order, or

(c) a landscape conservation area under section 204 of the Act of 2000, shall not be an exempted tree, unless it is a tree to which *subsection (1)(a), (b), (e), (f) or (g), or subparagraph (i) or (ii) of subsection (1)(m), applies.*”.

As I mentioned previously, concerns were raised in consultations with certain stakeholders, namely the Environmental Pillar and Woodlands of Ireland, about the need to retain larger established trees in hedgerows, as well as individual old or veteran trees, by not exempting them from the felling licence system.

It is important to understand that the primary concern of the Bill is forestry and the sustainable management of forests and, in appropriate circumstances, the protection and management of other important trees in the wider landscape. The legislation is not about regulating the alteration or removal of hedgerows more generally. There is other legislation to address this issue, particularly the Wildlife Acts and the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011. Under a previous amendment, a farmer or other landowner can still remove 15 cu. m. of timber in any period of 12 months but the size of any

individual tree must not exceed 3 cu. m.

The purpose of amendment No. 88 is to exclude from the exempted list certain important trees in the wider landscape and other important old or veteran trees. These are trees which, by virtue of their occurrence in areas designated by a relevant local authority under the Planning and Development Acts, contribute to the value of buildings of special architectural or historical interest, are within areas of outstanding natural beauty or special recreational value, or form part of a landscape or natural elements deemed worthy of preservation.

It is my intent that my amendment will provide an appropriate and workable balance. In particular, I do not wish to preclude farmers or other landowners from felling, for example, a tree in a dangerous condition or from continuing to manage or maintain hedgerows on the lands in accordance with good agricultural practice. To that end, pending advice from the Office of Parliamentary Counsel, I wish to indicate the possibility of proposing further minor amendments on Report Stage to this section, which is more restricted than intended.

Deputy Richard Boyd Barrett: Obviously the conditions being imposed are positive, but the point of the amendment is that there are trees that could be felled but should not be, which fall outside these conditions.

I take the Minister of State's point that the matter can be a bit subjective, although not on the ecological front. Areas such as historical and landscape significance can have a subjective element. I feel - and I suspect that the Environmental Pillar people will feel the same - that there needs to be a little bit more than the criteria proposed in the amendment, which refers to the curtilage of a protected structure, a special amenity area or a conservation area. I support the amendment but suggest that additional criteria should be included to provide protections against trees being cut down that should not be cut down.

Deputy Michael McNamara: Are there many landscape conservation areas? I suspect not, and I suspect the practice varies widely from one local authority to another. Local authorities may have a number of landscape conservation areas while county councils may only have a few. That is not because the landscape in one council is more worthy of protection than another but is due merely to practice.

What happens in SACs, SPAs and NHAs and areas that are proposed to be designated as such? Are they included? These are just a couple of issues. As the Minister of State has said, he will examine the matter on Report Stage.

Deputy Tom Hayes: Yes.

Deputy Michael McNamara: I appreciate his doing so. I have a problem with the stipulation that trees must be less than 3 cu. m. The law must be discernible and the average punter walking down the street must be able to know whether he is law-abiding. I have discussed the matter with the Minister's officials and I disagree with their views. When I look at a tree I have no idea whether it is 3 cu. m. even though I have lived on a farm for almost 40 years. There are a number of farmers seated around the table. Eddie Hobbs has called us all Fine Gael farmers. Did he include Deputy Boyd Barrett? I do not know how the Deputy feels about being called a Fine Gael farmer.

Chairman: No need for substitution here. I ask the Deputy to go easy on Deputy Boyd Barrett.

Deputy Michael McNamara: I do not know whether Deputy Pringle is one either. Let me make a serious point. Can the average landowner look at a tree and know whether or not it is 3 cu. m? I do not think so. As the law is formulated at present, I do not think that the average landowner can determine whether he or she is acting within the law. If an average person cannot discern that then the law is an ass. Legislation must be clear so that people can decide whether to abide by it or not.

Deputy Tom Hayes: I take the Deputy's point that the average farmer may not be able to judge if a tree is 3 cu. m, but the Department's inspectors will know the answer. One can calculate how much timber is needed to fill a 10 ft. by 6 ft. trailer.

Deputy Michael McNamara: Only after cutting down a tree.

Deputy Tom Hayes: One will know then how much timber is needed to fill a trailer of a certain size. Most farmers will know how much timber is required because they use the size of their trailers to calculate loads. Deputy Tom Barry is a farmer and will know better than anybody that that is how farmers calculate loads.

Deputy Michael McNamara: One can only know that information after a tree has been cut down. What happens if there is too much timber for a 10 ft. by 6 ft. trailer? If there is, then that means one has broken the law and the inspector will be able to say that the tree was 3.2 cu. m. and not 2.9 cu. m.

Deputy Tom Barry: No small tree will fit in a car trailer, and a bigger tree will fit in a 10 ft. by 6 ft trailer. If one needs a lorry to load the timber then one has exceeded the exemption.

Deputy Michael McNamara: Why not refer to the diameter of the tree? That would mean anyone could use a measuring tape to make his or her calculation.

Deputy Éamon Ó Cuív: There is a standard process by which one measures trees.

Deputy Tom Barry: Yes.

Deputy Michael McNamara: Can Deputy Ó Cuív share the formula with us? I am afraid I do not know the formula.

Chairman: We are discussing the Bill. I will not allow discussion of the formula for measuring the diameter of tree or its volume.

Amendment agreed to.

Chairman: Amendment No. 89 is in the name of Deputy Pringle. I call Deputy Boyd Barrett to move the amendment.

Deputy Richard Boyd Barrett: I move amendment No. 89:

In page 18, between lines 43 and 44, to insert the following:

“(2) Provision should be given to encourage natural regeneration of scrub back to high natural forest as scrub is a valuable habitat. Scrub should be designated as agro-forestry.”.

The amendment is pretty self-evident and I look forward to hearing from the Minister of State.

Deputy Tom Hayes: It must be acknowledged that a balance must be struck between the protection of forests and a landowner's ability to retain existing fields in agriculture. It is a tree's natural instinct to colonise open space and if fields are managed less intensively they will become woodland eventually. I recognise the importance of scrub woodland and its role as a reservoir of species and an area of biodiversity. If scrub woodland with trees meets the definition of a forest as described in the Bill, trees will require a felling licence and they are not exempt. The term agro-forestry can be described as the integration and management of trees in conjunction with agriculture to produce multiple benefits. It is not the intention of the Bill to categorise or define scrub as agro-forestry, as that would imply that all such woodlands and habitats would have an element of agricultural production as an objective. Landowners already acknowledge the benefit of trees in the provision of shelter for livestock but they must be allowed to choose if they want a field to become woodland through natural scrub encroachment. The exemption in this Bill to allow trees less than five years of age to be removed from a field without a licence recognises the importance of agriculture and farmers' requirements in managing fields. I do not accept this amendment.

Deputy Richard Boyd Barrett: Again, this is a question of balance. The spirit of the amendment and the theme of my amendments is Ireland's underperformance in developing its natural potential for forestry in general, afforestation using native species and the creation of biodiversity. It is a tragedy that we have performed so badly when our conditions are so well suited to forestry. Our forests are a significant attraction and one of the reasons people love our landscape and countryside. We are failing absolutely to utilise our potential in this area. This amendment proposes that we encourage the natural development of native forests from scrub and seek out the means to do that. It is not about targeting farmers negatively but alerting them to a major untapped potential that has not been recognised. This could be good for the farmers, for the country and for the environment.

I do not understand the reason the Minister of State has a problem with this amendment.

Deputy Tom Hayes: Deputy, I am not being smart, but I find it hard to see how it would be good for farmers. Landowners must be able to manage their land in the best way possible under the guidelines. The Deputy proposes to allow the land to grow wild and future generations may not be allowed to manage the land.

Deputy Richard Boyd Barrett: I think it should be encouraged.

Deputy Tom Barry: Quite a few farmers, such as myself, use wood gasification boilers, which are becoming more popular to provide heat and water for those with large dairy farms. The Minister referred to felling trees of 15 cubic metres. We are all assuming that firewood is cut to be sold, but farmers use large amounts of timber. I do not see that reflected in the Bill.

This might not be the place to raise my concern, but whereas we appreciate the value of our timber, wood gasification boilers use a great deal of timber which could be used more productively. I would like the Minister to consider that point.

Chairman: That is a matter for discussion on a section. I am dealing with the amendment.

Amendment put and declared lost.

Question proposed: "That section 18, as amended, stand part of the Bill."

Deputy Michael McNamara: I support the point made by Deputy Barry. The amount

of timber in 15 cubic metres is very little. We have to distinguish between active and passive farming. If one is growing trees as a crop, one should be able to thin out the forest and use the timber for firewood and also for sale as firewood. This Bill is unique in terms of Department of Agriculture, Food and the Marine policy in that it does not differentiate between active and passive farmers. Farmers who grow a crop should have as little as possible to limit what they can do with the crop. In terms of forestry, this should mean that they can cut down trees for use as firewood, either for themselves or for sale. That is one element of the Bill. The Bill is limited to trees outside afforestation. If one goes to the trouble of planting a forest, one cannot cut the trees for one's own use, but if one has an oak tree that is 800 years old on the farm, it can be cut and put into the wood burner. In my view, that is nonsensical. It is allowing people who have mature beech, oak, or ash on the land to cut it to supply a firewood market in the local town while a person who has 200 acres of forestry cannot cut trees or even use the thinnings to supply the firewood market.

Chairman: Will the Deputy clarify what he means when he said they cannot cut or even use the thinnings?

Deputy Michael McNamara: The person must apply for a felling licence. He cannot cut the timber for firewood without a felling licence.

Chairman: He can thin it.

Deputy Michael McNamara: Of course, but he must go to the trouble of obtaining a licence to do so. Section 18 deals with exempted trees. Subsection (1)(m) applies to trees outside a forest, whereas I believe it should apply to trees inside a forest. The provision in section 18(1)(m)(iii) should be changed to specify 25 cu. m. rather than 15 cu. m. That would enable people who are active farmers to use their crop, as opposed to passive farmers being allowed to go around the hedgerows and lop down every old tree for the wood burner or sell the wood at the local grocery shop. I am raising these issues with a view to tabling an amendment on Report Stage to the effect that paragraph (m) will apply to trees in a forest and that we increase the volume from 15 cu. m. to 25 cu. m. in paragraph (m)(iii). It is logical that one should be able to bring one's crop to market to sell it.

Question put and agreed to.

Section 19 agreed to.

NEW SECTION

Deputy Tom Hayes: I move amendment No. 90:

In page 19, between lines 15 and 16, to insert the following:

“**20.** (1) Where a replanting order is served on any person (including a variation to such an order under *section 25(9)*), the Minister may, as soon as may be after so serving or varying the order, send a copy thereof to the Authority which shall—

(a) in the case of registered land, register the replanting order as a burden affecting such land, or

(b) in the case of unregistered land, register the replanting order as a deed within the meaning of Part 3 of the Act of 2006.

(2) Where—

(a) *subsection (1)* applies, and

(b) in whole or in part, the burden has been discharged or modified,

the Minister shall, upon application by the owner, issue to the Authority a certificate stating the extent to which, in his or her opinion, the burden has been discharged, or modified.

(3) The Authority shall, on receipt of the certificate, register it as proof of the discharge, partial discharge, or modification (according to the terms of the certificate) of the burden.

(4) The Minister shall send a copy of the certificate to the owner.

(5) No fees shall be payable to the Authority in respect of any steps taken under this section.”.

Amendment agreed to.

SECTION 20

Question proposed: “That section 20 stand be deleted.”

Deputy Éamon Ó Cuív: Deputy Pringle and I are opposed to the idea of registering the requirement to replant a forest as a burden on people’s property. I presume that the acceptance of amendment No. 90 means that the original section 20 will become section 21.

Chairman: No, that is not the case. The original section has been replaced by the new section. Amendment No. 90 in the name of the Minister has replaced section 20. This amendment was accepted. It involves the deletion of section 20. I am just clarifying that.

Deputy Éamon Ó Cuív: I am totally opposed to the idea of having this registered as a burden on the land. It is expensive, cumbersome and unnecessary in my view. If there is a legal obligation to replant, then I do not see why it has to be a burden on someone’s land.

Question put and agreed to.

Amendment No. 91 not moved.

Section 21 agreed to.

Sections 22 and 23 agreed to.

SECTION 24

Question proposed: “That section 24 stand part of the Bill”.

Deputy Éamon Ó Cuív: This section opens a Pandora’s box. It states the following:

(1) The Minister may charge such fees as may be prescribed for the following:

(a) an application for a licence, approval or registration, or

(b) any other service provided under the relevant statutory provisions,

and different fees may be charged for different classes of such licences, approvals, registrations or other services.

(2) The Minister may recover as a simple contract debt, in any court of competent jurisdiction, any amount owed in respect of a fee charged under this section.

This will open a Pandora's box because everything done with the forestry department will now be paid for by the punter. It is kind of funny to be paying grants to people for afforestation and then to charge them. It is a habit that the State tends to have, and I am opposed to it.

Deputy Tom Hayes: I cannot agree. This issue was raised on Second Stage. At the time, I stressed that the inclusion of this provision within the Bill should not be interpreted as a statement of intent. I also reminded Deputies that the Department does not charge for forestry licences or for any of its scheme applications, and this remains the position. It is a matter of policy whether the Minister should charge for such services and it would be remiss not to include for such eventuality in this legislation. While I must allow for that possibility in the future, I myself do not foresee any need for such charges.

Deputy Éamon Ó Cuív: The Minister of State keeps saying "I myself", but we are not legislating for the Minister of State. He knows that once the provision is there, sooner or later somebody will use it to raise a bit of cash. If I had the time, I would love to be able to trawl through all the Bills passed by the Oireachtas since the 1920s and count the number of times a provision like this was introduced. A Minister would come into the House and say that he does not intend doing this, but is just creating a possibility that it might happen, although not on his watch. I would love to find out how many fees were introduced because of a legislative provision introduced in this nice soft way. A Minister would ask if he was being accused of putting a charge on something and would claim he was not doing so.

To protect the Minister of State's position in order that we will not have a change like this, we should oppose this section. We should ensure that not only will the Minister or the Minister of State or their officials not succumb to temptation, no future Minister will succumb to the temptation. For most Administrations, this is too big a temptation to resist in the long term when the pressure comes on.

Deputy Tom Hayes: I appreciate what the Deputy is saying. I will consider introducing an amendment on Report Stage. This amendment could require the Minister, prior to signing a regulation to charge fees under this section, to bring the draft regulation before the committee or something like that. I will give it consideration, because I understand what the Deputy is saying.

Deputy Éamon Ó Cuív: I appreciate that.

Deputy Michael McNamara: I welcome that. The fines are set out in the Bill as €500, €1,000 or whatever, and over time they become meaningless as the fines in the 1946 Act became meaningless. The power to prescribe fees is just a general power to prescribe fees, and we can be absolutely certain that once they are introduced, they will go up every year and will not become meaningless, so I welcome the Minister of State's consideration of a further amendment.

Question put and agreed to.

SECTION 25

Question proposed: "That section 25 stand part of the Bill".

Deputy Michael McNamara: Earlier we raised the issue of burdens being placed on properties. The Minister of State was clear that it was only where an unlawful and illegal felling had taken place that a burden would be placed on the property. I wonder whether that is entirely clear from section 25, but wondering is far as I would push it.

Deputy Richard Boyd Barrett: Section 25(9) reads “The Minister, may, with the consent of the owner, issue a replanting order in respect of other land owned by the owner instead of the land concerned”. That is problematic because it is potentially open to abuse. Something is cut down that should not be cut down, but then the offender can replant somewhere else. There may be times when that is right and appropriate, but it should be as a last resort and only when it is line with the principles of sustainable forest management and is shown to be the best option from that point of view.

Deputy Tom Hayes: While I have not formally proposed an amendment to section 25, I will be reviewing section 25(1) on Report Stage with a view to allowing the issuing of a replanting order where a person has failed to comply with the requirement of a felling licence to replant. This subsection allows for replanting orders where unlicensed felling or where trees have been seriously damaged.

Deputy Richard Boyd Barrett: I did not catch all of that. If someone cuts down trees-----

Deputy Tom Hayes: I will be reviewing it on Report Stage.

Deputy Richard Boyd Barrett: Fair enough.

Question put and agreed to.

Amendment No. 92 not moved.

Section 26 agreed to.

Sections 27 and 28 agreed to.

SECTION 29

Deputy Richard Boyd Barrett: I move amendment No. 93:

In page 28, between lines 31 and 32, to insert the following:

“(w) importation of forestry products or materials;”.

Deputy Tom Hayes: Section 29(3) already provides the Minister with extensive powers to regulate or restrict the landing in the State of anything which is likely to introduce a destructive disease, insect, pest, invasive species or organism. The Minister may direct or authorise the destruction of any such articles or direct their expulsion from the State. In addition the Minister may regulate to ensure the traceability of forestry-related material from the propagation stage to timber and timber products. I assure the Deputy that adequate provision is included in the Bill to regulate for actions to combat the landing of diseased or invasive species in the State and to provide for traceability systems for imported or locally-produced timber. Consequently, I am not in a position to agree to the amendment.

Deputy Richard Boyd Barrett: I do not see why the Minister of State has a problem with it. It is simply including another measure. Imported forestry materials should be regulated positively. Why does the Minister of State not include it as part of the extensive list? Arguably,

all the items on the list are dealt with elsewhere by other things so why bother listing them at all? If the Minister of State has a list, why does he not include this measure on it?

Deputy Tom Hayes: I have already covered that. The advice of the Parliamentary Counsel is that it does not need to be included.

Amendment put and declared lost.

Deputy Éamon Ó Cuív: I move amendment No. 94:

In page 29, between lines 39 and 40, to insert the following:

“(p) facilitating the development of a competitive timber industry and employment in rural Ireland;

(q) promoting and facilitating the provision of a sufficient supply of sawlog at competitive prices to meet the requirements of the timber industry.”.

Amendment put and declared lost.

Deputy Tom Hayes: I move amendment No. 95:

In page 30, lines 33 and 34, to delete “Council Directive 85/337/EEC of 27 June 1985” and substitute the following:

“Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011”.

This is a technical amendment the purpose of which is to update the text to reflect the most recent legislative developments. The initial directive from 1985 and its three amendments have been codified and replaced by Directive 2011/92/EU of 13 December 2011.

Amendment agreed to.

Section 29, as amended, agreed to.

NEW SECTIONS

Chairman: Amendment No. 96 is in the name of Deputy Ferris, who is not here to move it.

Amendment No. 96 not moved.

Deputy Richard Boyd Barrett: I move amendment No. 97:

In page 31, between lines 20 and 21, to insert the following:

“**30.** Provision shall be made for a review of the Forestry Act 1988 for the purpose of improving the consistency of Coillte objectives and operations in line with the Rio Forest Principles.”.

This is an important amendment. The question of Coillte and its centrality to Irish forestry has been discussed at the committee before as well as in the Dáil in the context of the discussions that took place there recently. It is the elephant in the room because Coillte is the biggest owner of forestry in the country. While we were all pleased to see Coillte stay in public ownership-----

Deputy Michael McNamara: Self-praise is no praise.

Deputy Richard Boyd Barrett: I have praise for everyone who fought to keep our forests public. This does not mean that all is rosy in the Coillte garden. There are concerns about Coillte, its objectives and the fact that it has failed in the area of afforestation. I imagine the company will give reasons and justifications for that but when the largest owner and the public owner of our forests has not assisted in our reaching our targets and, consequently, we have fallen far short of them, then the matter must be addressed. There are many other questions relating to objectives, priorities, governance, conflicts of interest and the sale of some public forests, all of which need to be examined. We cannot properly address the question of Irish forestry without bringing Coillte into the frame.

The Act that established Coillte predated the Rio declaration and the principles of sustainable forest management that are supposed to inform this Bill as well as our approach to forestry generally and that is a problem. It is problematic that we are dealing with this Bill at a time when the long-promised review of Coillte has never materialised. It was never published, it was started and abandoned somewhere along the line.

There is something of a veil of secrecy around Coillte. It is insulated from proper scrutiny and accountability. For all these reasons we believe it is imperative to have a review of the Forestry Act 1988, which is out of date in so far as it informs the position of Coillte. We have moved on to Rio and all of the things that flow out of the declaration. Therefore, Coillte must be brought into that frame. We need a review of Coillte to inform proper forest policy in the country.

Deputy Tom Hayes: When I introduced the Forestry Bill 2013 to Members on Second Stage, I said the purpose of the Bill was to reform and update the legislative framework relating to forestry. It is intended to support the development of a modern forestry sector that can operate in accordance with good forestry practice and with a view to protection of the environment. The Bill is about forestry and good forestry practice; it is not about Coillte. I emphasised that point at the beginning of Second Stage. The provisions are applicable to public and private forest owners, who are growing in numbers, as we all know.

As members will be aware, on foot of a Government decision in June 2013, an analysis is currently being undertaken in respect of a merger of Coillte and Bord na Móna. The analysis is being overseen by NewERA and the relevant stakeholder Departments. It will include financial analysis of the identified costs and benefits that could arise from the merger of the two entities. It will consider legal and technical issues arising from the merger of the entities. It will set out the structures, the merger options available and the advantages or disadvantages associated with each and consider an integrated approach to a merged entity.

It was also decided in June 2013 that a restructuring of Coillte overseen by NewERA and the relevant stakeholder Departments should be undertaken. Proposals in respect of restructuring are currently being considered and evaluated by NewERA. The Government will consider all options to maximise value from Coillte when restructuring is complete. Pending receipt of the report of the analysis from NewERA and the outcome of the restructuring of the company, it is premature to suggest that there is a need for a review of the 1988 Act to redefine Coillte's objectives and operations. Consequently, I am not in a position to agree to the amendment.

Deputy Richard Boyd Barrett: I believe that is getting things the wrong way around.

Deputy Tom Hayes: I thought the Deputy would say that.

Deputy Richard Boyd Barrett: This is a big one and it is not possible to separate the matters by saying there is forestry, which we are addressing in this Bill, and then there is Coillte, which is totally separate.

Deputy Tom Hayes: That is what we are doing.

Deputy Richard Boyd Barrett: I can see that is what the Minister of State is doing but I do not believe it is sustainable - to use that term - because Coillte is so dominant in this area. It is not possible to talk about having sustainable forest practice if Coillte is not in the frame and we do not really know what it is doing. I believe the Minister of State has got it the wrong way around. The rumour now is that the Bord na Móna merger will not proceed, which would be a positive thing.

Deputy Tom Hayes: Does the Deputy believe rumours?

Deputy Richard Boyd Barrett: I would be heartened by the rumours.

Deputy Tom Hayes: I would be surprised if the Deputy believed rumours.

Deputy Richard Boyd Barrett: I believe that would be moving it in the wrong direction. However, I still believe we should have the review. The legislation that underpins Coillte dates from 1988. If Coillte is not reviewed in the light of the concepts of sustainable forest management and good forest practice that are supposed to inform how forestry is done all over the world now and that we have signed up to, then we are doing something dreadfully wrong. Half of forestry would be left out of the frame which is just not right or sustainable. I will certainly be pressing the amendment and raising it again on Report Stage.

Deputy Tom Hayes: The Government made a good decision in June and it was welcomed by the people.

Deputy Richard Boyd Barrett: That is undoubtedly correct.

Deputy Tom Hayes: It was accepted across all sectors of the community in the countryside, including by forest owners, people working for Coillte and people using Coillte facilities for walking or other recreational purposes. We are engaged in an evaluation process to see what NewERA comes up with. As I said earlier, it would not be right to introduce provisions in legislation when decisions have not been made. This is about forestry, forest practice and encouraging people, particularly in the private sector. A significant amount of consultation took place on the Bill and the private forest owners were actively engaged in it. To fulfil the potential of this sector and deliver jobs we need to involve the private sector. The Bill is about dealing with underutilised land. I know Coillte will be used to the taxpayers' best benefit and we will come to an agreement that will be amenable to everyone.

Amendment put and declared lost.

SECTION 30

Question proposed: "That section 30 stand part of the Bill."

Deputy Michael McNamara: We are repealing the 1946 Act and not really making substantial changes. Anything relating to felling licences could be done by way of amendment to

the 1946 Act and the protections in place for individual trees could have been retained. Why were individual trees worthy of protection in 1946 and suddenly no longer worthy of protection in 2014?

Deputy Éamon Ó Cuív: It was because Fianna Fáil was in power in 1946.

Deputy Michael McNamara: That is one possibility; I am sure the Minister of State will come up with another.

Deputy Richard Boyd Barrett: Forestry was a big passion of the revolutionaries.

Deputy Michael McNamara: Why were trees so worthy of protection in 1946, and now they are worthless and a danger to the public? Obviously there are more cars on the road now, but the vast majority of car accidents do not involve trees.

The real legislation we should be changing is the 1988 Act to establish Coillte, which is untouched and Coillte remains dominant. The Minister has huge powers to change or refuse forest management plans applying to private property or to do whatever he wants with them, while at the same time the Minister is one of two shareholders in Coillte. So I have a problem with section 30 and I hope the Minister might review it as part of the overall objectives of the Bill. We cannot ignore Coillte.

Deputy Tom Hayes: While I have not tabled an amendment to section 30, on Report Stage I will be reviewing section 30(2), the repeal of section 39 of the Wildlife Act 1976, with a view to proposing an amendment.

Question put and agreed to.

Section 31 agreed to.

SECTION 32

Question proposed: "That section 32 stand part of the Bill."

Deputy Éamon Ó Cuív: We are opposing the fact that the Statute of Limitations will not apply and that the Minister can seek to recover grants for up to 20 years. I know it will be argued that trees grow for 20 years etc. However, I have had farmers come in 12 or 13 years after the land was checked and a grant awarded only for the Department to claim it had changed the way it does its calculation of ecological areas and so on and, even though the whole thing was done professionally from the very beginning, looking to get money back. That undermined the bank's confidence in the grant because the accumulation of even a very small amount of money over 20 years amounts to a considerable amount of money. The banks then get concerned as to whether these grants are worth the paper they are written on given that the Department can come after the person who got the grant well into the future. The five-year retrospection on the LPIS is a warning to all of us as to what can happen.

The Bill allows for up to 20 years for somebody to come back with a better measuring tape on something that was approved for a grant, claim there was a miscalculation and ask for the money back. It is outrageous and will undermine not only the confidence of farmers investing in forestry but will also undermine the confidence of financial institutions lending money to people to invest because banks are always worried that a grant might be clawed back. If somebody is overpaid by €500 each year for 20 years, the person can suddenly get a bill for €10,000. In the greater scheme of things that would be a very small joint error because when

the application is made there is a chance to check that everything in the application is correct.

I believe this section should be deleted.

Deputy Tom Hayes: I am aware of the concerns the Deputy has expressed. I am still considering the matter in consultation with my legal advisers and the Parliamentary Counsel. I propose to revert to the issue on Report Stage and we will be guided by the views of the legal experts at that point. I have taken on board what the Deputy has said.

Deputy Éamon Ó Cuív: We will fight it out again on the next Stage.

Deputy Tom Barry: I understand Deputy Ó Cuív's perspective on this matter. In the early days many of the forests were mapped out by tape and now it is all digitised. Where the Department recognised that areas were incorrect, modifications were made but fines were not imposed. Perhaps the Minister of State might reconsider the matter in light of the fact that the work is already being done.

Deputy Éamon Ó Cuív: There is no fine envisaged here, it merely relates to the clawing back of money. I am aware of the case of a person who went through everything with a fine-tooth comb. An ecological area was kept in a forest on their land as part of the overall agreement and now the Department is seeking to get money back in respect of that area. That is what really brought this matter to my attention.

Deputy Tom Hayes: We will take action on it between now and Report Stage.

Question put and agreed to.

Section 33 agreed to.

NEW SECTION

Chairman: Amendment No. 98 is in the name of the Minister. Acceptance of the amendment will involve the deletion of section 34. Amendment No. 99 is an alternative to amendment No. 98, therefore, both amendments may be discussed together by agreement.

Deputy Tom Hayes: I move amendment No. 98:

In page 33, between lines 2 and 3, to insert the following:

“Amendment of Agriculture Appeals Act 2001

34. The Agriculture Appeals Act 2001 is amended-

- (a) in section 5-
 - (i) in subsection (1), by substituting “Schedule 1” for “the Schedule”, and
 - (ii) by substituting for subsection (2) the following:
 - “(2) The Minister may, for the purpose of—
 - (a) the reorganisation of schemes,
 - (b) deleting spent schemes,

(c) giving persons an appeal in respect of applications under schemes that may come into existence, or

(d) in the case of any enactments or statutory instruments, giving persons an appeal in respect of applications under enactments or statutory instruments that may be passed or made (and not for the time being set out in Schedule 2),

amend by regulations Schedule 1 or 2, as appropriate, by adding an item to, or deleting an item from, either of those Schedules.”,

(b) in section 7(1) by substituting “Schedule 1” for “Schedule”,

(c) by inserting the following after section 14:

“Establishment of Forestry Appeals Committee and its function

14A. (1) The Minister shall establish a committee, which shall be known and is in this Act referred to as the Forestry Appeals Committee, consisting of a chairperson and such and so many other members (not being less than 2) as the Minister determines.

(2) The function of the Forestry Appeals Committee shall be to hear and determine appeals specified in subsection (4).

(3) An officer of the Minister shall be eligible for appointment as a member (including as chairperson) of the Forestry Appeals Committee but, in a case where a majority (or all) of the members of the Committee are such officers, a majority of such officers shall be of a grade senior to the grade of the officer who made the decision, the subject of the appeal to the Committee.

(4) Where a person is dissatisfied with a decision made by the Minister or an officer of the Minister under an enactment or statutory instrument set out in Schedule 2, he or she may appeal to the Forestry Appeals Committee against the decision and, on the hearing of the appeal, the Committee may confirm, cancel or vary the decision as it thinks fit.

(5) The decision of the Forestry Appeals Committee on such an appeal shall, subject to subsection (6), be final and conclusive.

(6) Any person dissatisfied with a decision of the Forestry Appeals Committee may appeal that decision to the High Court on any question of law.”,

(d) by renumbering the Schedule as Schedule 1 and inserting the following Schedule after it:

“Schedule 2

Section 7 of the Forestry Act 2014

Regulation 3 of the European Communities (Forest Consent and

Assessment)

Regulations 2010 (S.I. No. 558 of 2010) Regulation 3 of the European Communities (Aerial Fertilisation) (Forestry) Regulations 2012 (S.I. No. 125 of 2012)”.’.

This amendment to sections 5 and 7 of the Agriculture Appeals Act 2001 involves technical changes to allow for the ongoing updating of the list of schemes that come within the remit of the agriculture appeals office and to extend the office’s remit to include, in a new Schedule 2, appeals against felling and aerial fertilisation licence decisions and consents that are not covered by the various forestry schemes. While this is a lengthy amendment to the original text of the Bill, it is important to stress that it does not alter in any way the purpose of the original provision which is to have all forestry appeals dealt with by the independent agriculture appeals office.

The only distinction being made is that scheme applications, including afforestation, roads and woodland improvement, will be dealt with by the agriculture appeals office in the very same way as most other agriculture scheme appeals, while appeals against licence and consent decisions will be dealt with by a forestry appeals committee appointed by the Minister, as provided for under section 14A, under the auspices of the agriculture appeals office. Similar committee systems already operate on an *ad-hoc* basis to deal with various aspects of the single payment and disadvantaged areas schemes. This committee system has worked effectively and efficiently for such appeals and I envisage that the forestry appeals committee will operate equally well. The chairman and members of the forestry appeals committee will be appointed by the Minister and while it is not specified as to who should be chairman or who should serve on the committee, the appointment of officers of the Department is not precluded. The composition of the committee may comprise a mix of departmental and private individuals as was the case with the single payment appeals and disadvantaged areas scheme appeals committees. Decisions on such appointments will be made at the appropriate time and I will keep an open mind as to the composition of the membership of the committee and the appointment of its chairman.

Members may ask why we are distinguishing between scheme applications and such licence applications. The reason for this relates to the original purpose for which the appeals office was established, which was to consider and make determinations on appeals in respect of applications for entitlement under various schemes operated by the Department. The extension of the Agriculture Appeals Act proposed in the amendment will for the first time bring under the remit of the appeals office the consideration - on appeal - of licence applications. It is the view of the appeals office, in light of its experience with the operation of committees, that these appeals would best be considered within the context of a committee which can deal efficiently and effectively with complex issues and draw on the necessary expertise from other resources.

As regards amendment number 99, section 6 of the Agriculture Appeals Act 2001 provides that “Appeals Officers shall, subject to this Act, be independent in the performance of their functions”. As a result, there is no need for the amendment because the matter to which it refers it is already adequately provided for in the 2001 Act.

Deputy Richard Boyd Barrett: It is good that there will be a forestry appeals committee. However, independence and composition are two important considerations in that regard. In light of what the Minister of State just said and in view of what is concerned in the amendment, I am of the view that it should be stipulated that stakeholders should be involved. Given that we are dealing with issues which affect farmers, they should be represented. In addition and given

that there are also issues relating to the environment involved here, why is it not stipulated that environmental experts should serve on the appeals committee? There are probably other stakeholders who should also be involved. The Minister should not have a free hand. What is proposed somewhat resembles an insider appeals mechanism. In other words, the appeals committee will comprise individuals similar to those who will make the decisions in the first instance. That would not be great.

Deputy Tom Hayes: It is important that people of quality should serve on the committee. In order for the system to work, it is necessary to include people - be they farmers or whomever - who know what they are doing. The general thrust of the amendment reflects this.

Deputy Richard Boyd Barrett: It is not stipulated, however. The matter will pretty much be dealt with on the basis of whatever the Minister decides.

Deputy Tom Hayes: It is left open because at any particular time it may be necessary to bring in expertise. When dealing with matters within the Department I find that if one is open and if one gets the best people, one can proceed at pace.

Deputy Richard Boyd Barrett: Not everyone is as open as is the Minister of State. That is the problem.

Deputy Tom Hayes: The intention is that they will be.

Deputy Richard Boyd Barrett: I have done what I can to flag the issues involved.

Amendment agreed to.

Section 34 deleted.

Amendment No. 99 not moved.

TITLE

Question proposed: "That the Title be the Title to the Bill."

Deputy Michael McNamara: I wish that, as the Title suggests, the Bill promoted forestry. However, I see no evidence that this is the case. I would like there to be much greater promotion of forestry. All I see here are provisions that are at best neutral to forestry, which on the other hand make forestry owners compete for the firewood market with any farmer who wants to cut down trees. I have no problem with dangerous trees being cut down and I fully agree that the public must be protected, as must the trees. However, I do not believe this Bill promotes forestry in any way.

Question put and agreed to.

Chairman: I wish to thank committee members for their forbearance, including those Deputies who substituted for absent committee members. I also thank the Minister of State and his officials for their attendance and co-operation with committee members in advance of this debate.

Bill reported with amendments.

MESSAGE TO DÁIL

Chairman: In accordance with Standing Order 87, the following message will be sent to the Clerk of the Dáil:

The Select Committee on Agriculture, Food and the Marine has completed its consideration of the Forestry Bill 2013 and has made amendments thereto.

The select committee adjourned at 12.10 p.m. *sine die*.