

Draft Agriculture Appeals (Amendment) Bill 2020 – Public Consultation

Background

In July 2020, the Government approved the drafting of an amendment to the Agriculture Appeals Act, 2001 to align the forestry licencing and appeals processes with similar planning processes. This action is a commitment in the Programme for Government.

Comments are now invited on this draft Bill before its presentation to the Oireachtas for their consideration after the summer recess.

Public Participation

The deadline for submission of feedback on the draft Bill is **5.00 pm on Friday 28th August 2020**.

Submissions will be accepted by e-mail to **ForestryBill2020@agriculture.gov.ie**. Please note that all submissions will also be published on the Department's website.

All submissions will be acknowledged and given full consideration by the Department.

Department of Agriculture Food and the Marine
31 July 2020

Draft General Scheme of the Agriculture Appeals (Amendment) Bill 2020

Contents

Part 1

Preliminary and General

1. Short title, commencement and citation
2. Definitions

Part 2

Amendment to Principal Act

3. Amendment of section 14 of Principal Act
4. Amendment of section 14A of Principal Act
5. Power to charge or recover fees, oral hearings, Ministerial directives and matters that may be proscribed

Acts Referred to

Agriculture Appeals Act 2001 (No. 29)

Local Government Act 2001 (No. 37)

Harbours Acts 1996 (No. 11)

Local Government Act 1991 (No. 11)

Forestry Act 1988 (No. 26)

Forestry Act 2014 (No. 31)

Companies Act 2014 (No. 38)

Planning and Development Act 2000 (No. 30)

DRAFT

Draft General Scheme of the Agriculture Appeals (Amendment) Bill 2020

An Act to amend the Agriculture Appeals Act 2001 and to align the forestry licencing and appeals processes with similar planning processes.

Be it enacted by the Oireachtas as follows:

Part 1

Preliminary and General

Head 1

Short title, collective citation and commencement

1. (1) This Act may be cited as the Agriculture Appeals (Amendment) Act 2020.
- (2) The Principal Act and this Act shall be construed together as one.
- (3) This Act shall come into operation on such day or days as the Minister for Agriculture, Food and the Marine may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

Explanatory Note

This Head provides the standard provisions for the title, citation and commencement of the Bill.

Head 2

Definitions

2. In this Act “Principal Act” means the Agriculture Appeals Act 2001 (No. 29 of 2001).

Explanatory Note

This Head provides the definitions for the Bill.

Part 2

Amendment to Principal Act

Head 3

Amendment of section 14 of Principal Act

3. Section 14 of the Principal Act is amended by the insertion of the following subsections after subsection (3):

“(4) As soon as may be after the end of each year, but not later than 6 months thereafter, the Chairperson of the Forestry Appeals Committee shall make a report to the Minister of his or her activities and the activities of the Forestry Appeals Committee during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

(5) A report under subsection (1) shall be in such form and shall include information in regard to such matters (if any) other than those referred to in that subsection as the Minister may direct.

(6) The Chairperson of the Forestry Appeals Committee shall, whenever so requested by the Minister, furnish to him or her information in relation to such matters as the Minister may specify concerning the Chairperson’s activities or the activities of the Forestry Appeals Committee.”.

Explanatory Note

This Head inserts a requirement for the Chairperson of the FAC to issue an annual report similar to that of the Director of the Agriculture Appeals Office.

Head 4

Amendment of section 14A of Principal Act

4. (1) Section 14A of the Principal Act is amended-

(a) by the insertion of the following subsections after subsection (2):

“(2A) The Forestry Appeals Committee may sit in divisions of itself to hear appeals and any such division not chaired by the Chairperson shall be chaired by a deputy chairperson.

(2B) The quorum for the Forestry Appeals Committee shall consist of a chairperson or deputy chairperson (if a deputy chairperson is designated) and any 2 ordinary members.”,

(b) in subparagraph (3), by the deletion of the words following “Forestry Appeals Committee” where they appear in that subsection , and

(c) by the insertion of the following subsection after subsection (3):

“(3A) The Minister may designate 1 or more of the ordinary members of the Forestry Appeals Committee to deputise for the chairperson for the purpose of hearing and determining appeals.”.

(d) by the substitution of the following subsection for subsection (4):

“(4) (a) A person referred to in paragraph (b) (in this subsection referred to as a relevant person) who is dissatisfied with a decision made by the Minister or an officer of the Minister under an enactment specified in Schedule 2 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.

(b) Each of the following is a relevant person:

(i) a person who makes an application for a licence, approval, or entry in a register under an enactment specified in Schedule 2;

(ii) a person to whom a licence, approval or entry referred to in subparagraph (i) has been granted, given or made and, pursuant to a decision of the Minister under section 7(2) of the Act of 2014, conditions attaching to it are varied, or it is suspended, revoked or removed;

(iii) a person who has, in accordance with regulations for the time being made under section 6, 10, 17, 22 or 30 of the Act of 2014, made submissions or observations in writing to the Minister, or officer of the Minister in relation to an application referred to in subparagraph (i) or a decision of the Minister referred to in subparagraph (ii);

(iv) a person who has an interest in land adjoining land in respect of which, a decision has been made on foot of an application referred to in subparagraph (i) or a decision referred to in subparagraph (ii) has been made and, who satisfies the Forestry Appeals Committee that-

(I) the matter to which the decision on foot of the application refers or the matter to which the decision refers will differ materially from the matter to which the application, licence, approval or entry referred by reason of conditions imposed or varied or the suspension, revocation or removal, and

(II) the imposition, or variation of the conditions or the suspension, revocation or removal will materially affect the person's enjoyment of the land or reduce the value of the land;

(v) a person prescribed by regulations for the time being made under section 17 or 22 of the Act of 2014 as a person to be consulted, in accordance with those regulations, by the Minister under section 17(5) or 22(5) of that Act who the Forestry Appeals Committee is satisfied ought to have been and was not consulted by the Minister in relation to an application referred to in subparagraph (i);

(vi) in relation to an application referred to in subparagraph (i) or a decision referred to in subparagraph (ii) which requires the carrying out of a screening for environmental impact assessment, submission of an environmental impact statement, carrying out of an environmental impact assessment, screening for an appropriate assessment, submission of a Natura Impact Statement or carrying out of an appropriate assessment, an environmental body.

(c) When making an appeal under this section a relevant person shall-

- (i) pay any fee prescribed under section 14B, and
- (ii) comply with regulations for the time being made under sections 7 and 15.

(d) In this subsection:

“Act of 2014” means the Forestry Act 2014;

“enactment” means-

- (i) an Act of the Oireachtas,
- (ii) a statute that was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution, or

(iii) an instrument made under an Act of the Oireachtas or a statute referred to in subparagraph (ii);

“environmental body” means a body or organisation (not being a state authority)-

(i) the aims or objectives of which relate to the promotion of environmental protection,

(ii) which has, during the period of 12 months preceding the appeal, pursued those aims and objectives;

“state authority” means each of the following:-

(i) a Minister of Government;

(ii) a local authority within the meaning of section 2 of the Local Government Act 2001;

(iii) An Bord Pleanála;

(iv) Environmental Protection Agency;

(v) Commissioners of Public Works in Ireland;

(vi) a company formed in respect of a harbour in accordance with section 7 of the Harbours Acts 1996;

(vii) National Tourism Development Authority;

(viii) Health Service Executive;

(ix) a regional assembly established in accordance with section 43 of the Local Government Act 1991;

(x) Inland Fisheries Ireland;

(xi) Geological Survey of Ireland;

(xii) Teagasc - the Agriculture and Food Development Authority;

(xiii) National Roads Authority;

(xiv) Electricity Supply Board;

(xv) Commission for Regulation of Utilities;

(xvi) Waterways Ireland;

(xvii) Bord Na Móna;

(xviii) Coillte Teoranta (being a company formed and registered under the Companies Acts as provided for by section 9 of the Forestry Act 1988);

(xix) Health and Safety Authority;

(xx) Ervia;

(xxi) Marine Institute;

(xxiii) An Bord Iascaigh Mhara;

(xxiv) EirGrid;

(xxv) a body or other person established-

(I) by or under an enactment (other than the Companies Act 2014 or a former enactment relating to companies within the meaning of section 5 of that Act) or charter,

(II) by any scheme administered by a Minister of the Government, or

(III) under the Companies Act 2014 (or a former enactment relating to companies within the meaning of section 5 of that Act) in pursuance of powers conferred by another enactment,

and financed wholly or partly, whether directly or indirectly by means of moneys provided or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government;

(xxvii) a company (formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act) a majority of the shares in which are held by or on behalf of a Minister of the Government;

(xxviii) a planning authority within the meaning of the Planning and Development Act 2000.”.

(2) The amendment under subsection (1)(d) of section 14A of the Act of 2000 applies to the following decisions made on or after the coming into operation of subsection (1):

- (a) on an application referred to in subsection (4)(b)(i) of section 14A;
- (b) referred to in subsection (4)(b)(ii) of section 14A.

Explanatory Note

This Head provides for those with standing to take an appeal to the Forestry Appeals Committee . It also provides for the Forestry Appeals Committee to sit for the purpose of hearing and determining appeals in divisions. The Head also removes a requirement for the majority of the members of the committee to be of a grade higher than the officer who made the decision under appeal.

Head 5

Power to charge or recover fees

5. The Principal Act is amended by the insertion of the following sections after section 14A:

“14B (1) The Minister may charge such fees as he or she may prescribe for an appeal under section 14A(4) and different fees may be charged for different classes of such appeal.

(2) If the Minister proposes to make regulations prescribing fees referred to in subsection (1), the Minister shall cause a draft of the proposed regulations to be laid before each House of the Oireachtas, together with a statement of the Minister outlining the content, purpose and likely implications of the proposed regulations and including such other information (if any) as the Minister considers appropriate.

(3) If within such period as the Minister considers reasonable to allow for recommendations of this kind to be made by each such House (not being less than the period specified in subsection (4)) either House of the Oireachtas (or a committee of such House) makes recommendations to the Minister in relation to the draft of the proposed regulations, the Minister shall consider the recommendations and may, as he or she thinks appropriate—

(a) make the regulations in the terms of the draft laid pursuant to subsection (2), or

(b) modify the terms of the draft so laid and make the regulations in the terms as so modified.

(4) The period referred to in subsection (3) is the period of 21 days on which the House of the Oireachtas concerned next sits after the draft of the regulations is laid before it.

(5) Subsections (2) to (4) apply to regulations amending regulations that prescribe fees referred to in subsection (1) as they apply to regulations prescribing such fees.

Conduct of Appeals

14C.—(1) Where the Chairperson of the Forestry Appeals Committee is of the opinion that the case is of such a nature that it can properly be determined without an oral hearing, the Forestry Appeals Committee may determine the appeal summarily.

(2) Where, in the opinion of the Chairperson of the Forestry Appeals Committee, an oral hearing is required he or she shall, as soon as may be, fix a date and place for the oral hearing, and give reasonable notice of the said oral hearing to the appellant, the Minister, and any other person appearing to the Chairman to be concerned in the appeal.

(3) An oral hearing may be conducted by a division of the Forestry Appeals Committee constituted to hear that appeal.

(4) Where the Forestry Appeals Committee is requested to hold an oral hearing of an appeal and decides to determine the appeal without an oral hearing, it shall serve notice of its decision on the person who requested the oral hearing, on each other party to the appeal and on each person who made submissions or observations to the Forestry Appeals Committee in relation to the appeal.

Procedure at Oral hearing

14D.—(1) In conducting an oral hearing of an appeal, the Forestry Appeals Committee may require any officer of the Minister to give to the Forestry Appeals Committee such information in relation to the appeal as the Forestry Appeals Committee may reasonably require, and the officer shall comply with the requirement.

(2) The Forestry Appeals Committee, in conducting an oral hearing of an appeal, may take evidence on oath and for that purpose may administer oaths, and a person giving evidence at an oral hearing shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.

(3) The Forestry Appeals Committee in conducting an oral hearing of an appeal may, by notice in writing to any person, require the person to attend at such time and place as is specified in the notice to give evidence in relation to any matter in question at the oral hearing or to produce any books, deeds, contracts, accounts, vouchers, maps, plans or other documents in his or her possession, custody or control which relate to the matter.

(4) Section 14C and this section apply in place of section 8 in respect of an oral hearing of an appeal convened by the Forestry Appeals Committee.

General policy directives

14E.—(1) The Minister may from time to time issue such general directives as to policy in relation to forestry appeals as the Minister considers necessary and the Forestry Appeals Committee shall, in performing its functions, have regard to any such directives.

(2) Nothing in this section shall be construed as enabling the Minister to exercise any power or control in relation to a particular appeal with which the committee is or may be concerned.

(3) Where the Minister gives a directive under subsection (1), the following provisions shall apply:

- (a) as soon as practicable after issuing it the Minister shall cause a copy of the directive to be laid before each House of the Oireachtas;
- (b) the directive shall be published in *Iris Oifigiúil*; and
- (c) the Minister shall cause a copy of the directive to be sent to the chairperson of the Forestry Appeals Committee.

(4) The Minister may amend or revoke a directive under this section and subsection (3), with the necessary modifications, shall apply as if the amendment or revocation were a directive under subsection (1).

Forestry Appeals Committee Regulations

14F. Without prejudice to the generality of provisions in this Act proscribing matters, the Minister may make regulations with respect to the Forestry Appeals Committee to provide for any or all of the following:

- a) appointment of Forestry Appeals Committee members including the chairperson and deputy chairpersons;
- b) responsibilities of chairperson, deputy chairpersons and ordinary members;
- c) term of office of chairperson, deputy chairpersons and ordinary members;
- d) resignation of chairperson, deputy chairpersons or ordinary members;
- e) election of chairperson, deputy chairperson or ordinary member to public office;
- f) Removal from the committee in case of ill health or stated misbehaviour;
- g) casual vacancies on the Committee;
- h) disclosure of interests;
- i) remuneration, allowances and expenses of the committee made with the consent of the Minister for Public Expenditure and Reform;
- j) procedures for hearings, including oral hearings;
- k) scheduling and location of appeals;
- l) engagement of technical assistance;
- m) timeline, procedure and requirements for submitting an appeal;

- n) timeline, procedure and requirements for other submissions to the committee;
- o) notifications, periods for such notifications and deadlines relating to an appeal;
- p) contents of applications for appeals and submissions;
- q) requests for additional information;
- r) issuing of information to other parties to the appeal;
- s) taking of evidence and swearing of oaths;
- t) hearings in private;
- u) circumstances and conditions under which oral hearings may be held using electronic means;
- v) publishing of findings;
- w) measures to improve the efficiency of the committee.”;
- x) additional requirements which an environmental body referred to in section 14A(4)(b)(vi) shall satisfy in order to make an appeal under paragraph (c), being
 - (i) in relation to its membership,
 - (ii) that the pursuit of its aims or objectives be otherwise than for profit,
 - (iii) in relation to the possession of a specified legal personality and the possession of a constitution or rules,
 - (iv) that the area of environmental protection to which its aims or objectives relate is relevant to the class of matter into which the decision, the subject of the appeal, falls.

Explanatory Note

This Head inserts a number of sections which provide:

- (a) for the Minister to fix a charge for an appeal or submission to the Forestry Appeals Committee;
- (b) that the FAC may hold an oral hearing;

- (c) for the operational matters relating to an oral hearing;
- (d) for the issuing of Ministerial directives to the Forestry Appeals Committee;
- (e) for matters that may be proscribed in Regulations made under section 7(2).

DRAFT