



Forest Industries Ireland Submission:

Draft Agriculture Appeals (Amendment) Bill
2020

August 2020

1. Forest Industries Ireland

Forest Industries Ireland (FII) is an all island body constituted within Ibec. Our member companies cover the whole timber supply chain from nurseries that grow the saplings to forest management companies, farmers and landowners that plant and manage their forests, and to sawmills and manufacturers who convert the forest crop into construction timber, panel products, fencing materials, packaging and biofuel.

2. The Forest and Timber Sector

For many decades, the state and our people have invested in increasing afforestation in Ireland. In return, Ireland has an industry that provides 12,000 jobs throughout our rural communities and the economic contribution is of the order of €2.3 billion per annum. Our challenge as a sector will not be sustaining existing jobs, but finding people to fill thousands more jobs, as the sector doubles in size over the next fifteen years. These new jobs will be valuable, sustainable and 'green-tech' jobs based primarily in rural areas of the country.

Over the coming years, the private forests planted in the 1980s and 1990s will come to maturity and deliver a major supply increase onto the market. This is a further opportunity for Ireland.

Today, we work with more than 20,000 farmer-forest owners. Most of them have made the decision to plant a portion of their farm. They get a steady and reliable income and it delivers a valuable crop when the forest matures. Increasingly too, farmers are interested in the environmental and social contribution that their forests make.

3. The Forestry Licensing Crisis

Since the introduction of new forestry licensing procedures in 2019, the processing and issuing of forestry licences have been seriously disrupted. Licences issued by the Forest Service are required to plant, access, or harvest all forest trees and DAFM is tasked with issuing these licences as well as setting standards. The standards are now so onerous that DAFM is capable only of processing a fraction of licence applications that are required to sustain the industry.

This disruption has impacted right across the forest sector, affecting all our activities from afforestation to timber harvesting. The current level of felling licence approvals is only 25% of the rate required by the industry. As the level of licensing has declined, the industry is being starved of the required supply of timber. The financial impact is enormous, and many jobs and businesses are currently in jeopardy. Our sawmills will run out of timber within months unless the situation is rectified. We are at crisis point and the current situation is severely hindering Ireland's attempts to economically recover from COVID-19.

Clearly, the level of licensing by the Department is failing the industry. Another key component of the licensing process, the Forestry Appeals Committee (FAC), is also causing a significant problem. The FAC deals with appeals against felling, roads, and planting. Currently, there are circa 400 outstanding projects appealed but not yet processed. Since the start of the year the FAC has processed circa 26 projects per month. At this rate it will take 15 months to clear the

backlog of appeals. However, the rate of new appeals is far greater than the rate at which they are being processed by FAC, so this backlog is getting bigger.

The long delays at the FAC, coupled with inadequate licence approvals in the first instance, are creating a crisis and leading to timber supply shortfalls in the short-term and which will also cause long-term damage to the industry if urgent action is not taken.

4. Specific comments on the proposed amendments

Introduction

FII welcome the proposed amendments and encourages the Minister to implement them with additional elements. Serious reform to the FAC is needed to enable it to cope with the volume of appeals that are being lodged. It is clear from the backlog of appeals, that the volume of appeals being experienced is far beyond what was envisaged when the FAC was introduced by the Forestry Act. The result is an overwhelmed system that has no chance, in its current guise, of getting to grips with the situation. It is essential that the FAC is reformed and given additional resources to make effective these reforms. The FAC will only be fit for purpose when it is capable of issuing decisions within 60 days of appeal.

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 regarding 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.

4.1 FII recommendations on the provisions in Head 3:

4.1.1 Annual Report:

FII welcomes the introduction of a yearly report. The report should focus on the performance of the FAC against a specific set of KPIs that focus on the fast and efficient delivery of decisions on appeals. The target performance for the FAC should be the delivery of all decisions within 60 days of the appeal being lodged. Adequate processes and resources must be put in place to ensure this timeframe is delivered.

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 withstanding 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.

4.2 FII recommendations on the provisions in Head 4:

4.2.1. Chairperson and the operation of FAC divisions

- i. FII welcomes the approach proposed with the introduction of Deputy Chairpersons as this overcomes a clear bottleneck that currently exists where the Chairman must participate in every appeal.
- ii. FII welcomes the proposal to enable the FAC to meet in divisions. These divisions should be fully capable of operating independently and simultaneously.
- iii. FII recommends that a division of the FAC should be able to operate without one of the Chairpersons and can be comprised of FAC board members only.
- iv. FII recommends that a quorum for a committee should be two people rather than three. This would be sufficient and would boost the productivity of the FAC.
- v. FII welcomes the removal of the requirement for a member of the FAC to be of a specified grade or higher. This will enable the FAC to utilise the full resources at its disposal.

4.2.2. Provision of personnel and resources to the FAC

In order to clear the backlog and provide a timely process in future, the FAC must be given the resources and the number of personnel that it needs to implement multiple divisions and run multiple appeals simultaneously and reach a point where all appeals are decided upon within 60 days of the appeal being lodged.

4.2.3. Statutory timeframe for appeals:

A statutory timeframe should be put in place for dealing with appeals. A decision on all appeals should be issued within 60 days of the appeal being lodged. This approach is already being adopted with success for strategic housing developments which have a specific statutory deadline of 16 weeks. It is not possible for companies to operate in an environment where there is huge uncertainty about the timing of FAC decisions.

The divisions must be able to act efficiently and to a set timeframe. Looking at the current timeframes at the FAC, significant additional resources must be added to make use of the multiple division approach.

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;

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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)

4.3 FII Recommendations on the provisions in Head 5

4.3.1. Payment of fees

FII welcomes the proposal to introduce a fee for appeals. This is an absolutely essential step in order to help finance the provision of adequate resources to the FAC and bring this in line with other planning requirements. At present, the FAC is clearly under resourced and does not have the ability to deal with appeals in a timely manner. Additional resources, supported by the introduction of a fee, are essential.

4.3.2. Oral hearings

FII supports the power of the Chairperson(s) to determine whether an oral hearing is required to determine an appeal. This an important measure in streamlining the operation of the FAC. It has been apparent since the inception of the FAC that the holding of oral hearings has been creating long delays in the determination of appeals and has contributed significantly to the build-up of the large backlog of appeals.

4.3.3. Powers of the Minister

FII supports the proposals for the Minister to retain the stated powers to issue Ministerial Directives and make regulations for the FAC.

5. Recommendations additional to those contained in the proposals:

FII recommends a number of additional measures be added to the draft proposals:

5.1. National forest policy

The terms of reference of the FAC should note the obligation of the forestry licensing system and the appeals process to support national forest policy. Successive governments over many years have recognised the importance of the forest sector and have supported its development. The FAC in its decision making should be cognizant of national policy and this policy should inform its thinking when considering appeals.

The forest sector supports 12,000 jobs all across the country and contributes €2.3 billion annually to the national economy. It is a vital economic player in rural Ireland and also contributes greatly to Ireland's fight against climate change.

5.2. Vexatious appeals

The Chairperson of the FAC should be given powers to dismiss any appeals that he/she deems purely vexatious and without merit.

5.3. Appeals to be site-specific

The valid grounds for appeal should be further developed to ensure that all appeals are related to a specific site and are not simply a form of objection to national forest policy or the general operation of the forestry licensing process.

5.4. Use Precedence for Appeal Determination

The Chairman of the FAC should be empowered to establish and put on record firm precedents from existing decisions. There is no value in hearing repeated appeals that are generic and raise no new or specific issues. It would help the operation of the FAC greatly if it were able to refer to previous cases and issue decisions in accordance with these. If an appeal is upheld or rejected, the FAC should be able to examine its backlog of existing appeals (and new appeals) and summarily issue the same decision on appeals of exactly the same type and same pertinent factors.

5.5. Requirements for lodging an appeal

- i. The Minister should be empowered to establish more rigorous requirements with regard to an application to appeal. The appeal should have **precise grounds that should relate specifically to an individual licence**, rather than a group of licences, licences generally, or the licensing process. The appellant should state their specific objection in each case.
- ii. When lodging the appeal, the appellant should provide **evidence** for their specific appeal.
- iii. The appellant should be required to **state their specific interest** in the licence that they are appealing.

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