

FORESTRY BILL 2013

SCREENING REGULATORY IMPACT ANALYSIS

Department of Agriculture, Food and the Marine

INTRODUCTION

The Department of Agriculture, Food and the Marine is proposing a new Forestry Bill to update current forestry legislation. The current regulatory regime, underpinned by the Forestry Act, 1946, has been in place for over 60 years. The Department of Agriculture, Food and the Marine believes that a new Forestry Bill is now required to update existing legislative provisions and to introduce a regulatory framework that will support the development of a modern, multi-functional, sustainable and high quality forestry sector which enshrines the principles of sustainable forest management (SFM) and protection of the environment.

Policy Context

The Government's Strategic Plan for the development of the forestry sector is set out in *Growing for the Future: A Strategic Plan for the Development of the Forestry Sector in Ireland*, published in 1996. The overall aim of the Strategic Plan is "to develop forestry to a scale and in a manner which maximises its contribution to national economic and social well-being on a sustainable basis and which is compatible with the protection of the environment". The strategy sets out a series of long-term strategic actions for a wide range of forestry activities and defines how the overall strategy can be achieved on a sustainable basis and in a manner which is compatible with the protection of the environment.

The principal aim of the 1996 strategy is to increase the productive forest areas to 17% of total land area by 2035. Currently, the national forest estate is comprised of over 750,000 hectares, almost 11% of the national land area. In 2004 the Department commissioned "A Review and Appraisal of Ireland's Forestry Development Strategy (Peter Bacon and Associates, 2004). The report concluded that the planting targets set out in the Strategy can be achieved, recommending that the strategic target should be 20,000 hectares per annum up to 2035 (Chapter 7.2, para 1), but also commented that a lower planting target could be a viable basis for support, providing that the planting is undertaken in a manner that maximises the non-timber benefits (Executive Summary, para 9). A review of national forest policy was initiated by the Government in 2010 and the review report is currently undergoing a Strategic Environmental Assessment. It is anticipated that the report will issue later this year.

Need for Legislative Reform

The need to review the **Forestry Act 1946** was identified in *Growing for the Future*. The principal reasons identified then were:

- The Forestry Act 1946 was enacted at a time when the national forest estate was much smaller (c. 120,000ha), forestry activity was mainly undertaken by the State, and post war timber shortages required strict control of tree felling.
- The current Act concentrates primarily on silvicultural and wood supply issues and does not encompass issues such as protection of the environment, the amenity value of forests, multiple-use forestry and the concept of sustainable forest management (SFM).
- The statutory requirements of the felling licence system has become cumbersome in the context of the increasing volume of timber being harvested, particularly from the private sector, and needs to be updated and made more efficient. In addition, the requirement that all limited felling notifications must be lodged at the local Garda Station is outdated, burdensome and inefficient and is no longer required.
- A suitable legislative framework is required to support the implementation of the long term and comprehensive nature of the Strategic Plan for the development of the forestry sector.

Since the Strategic Plan was published in 1996, Ireland has entered into a number of international agreements to implement the principles of Sustainable Forest Management (SFM). In addition, during the intervening period, a number of EU Directives aimed at protecting the environment from inappropriate development, have focused attention on the potential environmental impact of some forestry operations.

In order to comply with Ireland's international obligations, the *Irish National Forest Standard* and the *Code of Best Forest Practice – Ireland*, were published in 2000. These are supplemented by a suite of environmental guidelines on water quality, archaeology, the landscape, harvesting, biodiversity, aerial fertilisation and forest

protection. The purpose of these documents is to ensure that forestry development in Ireland is undertaken in line with the principles of SFM. However, they have no current legal standing and the Minister often has only limited power to enforce compliance if the developer is not seeking statutory consent or a license from the Minister. In order to ensure full compliance with Ireland's international obligations, these principles must be granted a degree of legal status to ensure that forestry operations are compliant with best forest practice.

In addition, forest owners and managers have repeatedly expressed concerns about delays in the felling licence system caused by the cumbersome and bureaucratic nature of the existing regulatory system. It is felt that the legislative provisions contained in the 1946 Act governing the felling licence system are now outdated and cause unnecessary delays in the application process.

"A Review and Appraisal of Ireland's Forestry Development Strategy (Peter Bacon and Associates, 2004) found that "there is a growing perception in the sector that the regulatory framework is becoming unwieldy and a barrier to the development of the sector" (Section 2.5.3) and recommended that "forestry legislation should be updated in areas such as the integration of EU directives and felling procedures and should be updated regularly" (Chapter 7, Para 7.3.11).

Furthermore, the European Commission has previously expressed concern about the potential impact of unregulated forestry activities on, among other things, water quality and natural heritage.

OBJECTIVE

The main objective in enacting a new Forestry Bill is to introduce one principal Act which updates existing forestry legislation and introduces a comprehensive legislative framework which caters for modern forestry practice in a sustainable manner and in compliance with Ireland's international obligations.

It is envisaged that the Bill will make better provision for future forestry development by enabling the Minister to provide, by regulation, a comprehensive approval and licensing system for forestry activities. It will provide for forestry operations and activities to be undertaken in a manner which maximises the economic,

environmental and social value of forests within the principles of sustainable forest management. It is intended that the various powers and functions provided to the Minister will be implemented by way of Regulations. This will enable the Minister to monitor the effectiveness of the overall provisions within the Act and, where appropriate, amend or update the relevant Regulations, when and if required.

The principal features of the proposed new Forestry Bill are outlined in Annex 1.

Options

There are three realistic options open to the Department

Option 1 – Do nothing (No policy change).

The “no policy change option” has been included for benchmarking purposes only. Forestry now operates under a complex regulatory framework including a range of domestic legislation and regulations, Directives and Regulations of the European Community, and various international agreements. The business of forestry and forest management has also changed significantly since the Forestry Act 1946 was enacted. It is clear that the existing legislative framework for forestry in Ireland is outdated, unwieldy and incapable of addressing the environmental and administrative complexities of a modern forestry sector and needs to be completely overhauled and updated.

Option 2 – Limited legislative change (Amend existing legislation)

Given the passage of time since the last Forestry Act was introduced and the significant number of changes that are now required to reflect the important and evolving role forests and forestry have in a modern society, for the same reasons as those outlined in Option 1 above, this is not considered to be a suitable option.

Option 3 – Replace, update and consolidate the existing legislative framework

The Department believes that a new updated and consolidated Forestry Bill is the most effective means of delivering a comprehensive legislative framework which can deliver the requirements of a modern forestry sector and provide the framework needed to ensure that forestry development is undertaken in a sustainable manner and in line with best international practice.

IDENTIFICATION OF COSTS, BENEFITS AND OTHER IMPACTS

The primary risk identified during the review process concerns the “no policy change” option.

A failure to update and streamline the felling licence system will result in continued inefficiencies, and thereby increase costs, in the areas of forest management, harvesting and marketing. The existing felling licence system was designed at a time when there were only a small number of private forest owners and the bulk of felling activity was undertaken by the State. The system is too cumbersome and bureaucratic to facilitate the development of a modern forestry sector and was not designed to cater for the large number of private forest owners who have entered the sector over the past 30 years. The system, burdened by the administrative provisions of the Forestry Act 1946, will struggle to cope with the significant increase in timber harvesting which will inevitably arise in the coming years as more and more private sector forests mature.

A failure to introduce a new legislative framework which enshrines the principles of sustainable forest management and places protection of the environment at the forefront of forestry development carries significant risks and potential costs for the sector overall. These principles form the backbone of forestry certification and without proper certification of forest products, market opportunities for Irish timber, especially from the private forestry sector, will be severely diminished.

Costs

It is not envisaged that the new Forestry Act will result in any significant additional cost to the Exchequer or business.

There is unlikely to be a significant increase in costs associated with enforcement and compliance by the State. It is envisaged that enforcement and compliance can be accommodated within existing resources.

Benefits

The primary benefits of opting for a new Forestry Bill will be to update and consolidate existing forestry legislation and guidelines into one legislative framework. It is envisaged that:

- The new Act will ensure that sustainability and protection of the environment are to the forefront when any forestry activity, is being considered
- Updating and streamlining of the felling license system, and the introduction of Forest Management Plans, will enable growers and timber processors to make long term planning decisions.
- The simplification of the felling licence system will encourage forest owners to maximise their forest resource.

Other Impacts

Environment

It is envisaged that by introducing a legislative framework which addresses the environmental impact of forestry activities, the Forestry Bill will have a positive impact on the environment by placing, in primary forestry legislation, environmental assessment systems for forestry activities and operations.

Rural Communities

It is envisaged that the new Forestry Bill will assist rural development by encouraging employment in rural communities, while ensuring that forestry development is undertaken in an appropriate manner.

Rights of citizens

The Department is satisfied that the Bill does not impinge on the rights of citizens.

No significant impact is envisaged in relation to Employment, North/South or East/West Relations, Gender Equality, Poverty or people with disabilities.

Consultation

The Department of Agriculture, Food and the Marine has engaged in an extensive consultation process, over a period of 14 years, as part of its review of existing forestry legislation.

Consultative Group

In November 2005 a Consultative Group was established by the Department of Agriculture and Food in the final stages of its review of the Forestry Act. The Group was chaired by the Department of Agriculture and Food and comprised of representatives from the Irish Forest Industry Chain, the Tree Council of Ireland, Irish Farmers Association, National Parks and Wildlife Service, National Council for Forest Research and Development (COFORD) and City and County Managers Association. Specifically, the Consultative Group was asked to critically evaluate the existing Forestry Act, consider what operational issues need to be included in any new Act and to assess and evaluate submissions received. The establishment of the Consultative Group coincided with advertisements in the national newspapers seeking final submissions from interested parties.

In total, during the overall consultation period between 1998 and 2006, 26 separate written submissions were received.

Public Seminar (2006)

In May 2006 a special public seminar, chaired by Professor Jack Gardiner, was held to allow all those who made submissions an opportunity to present and clarify their submissions directly to the Consultative Group.

The Consultative Group examined all the submissions received during the consultation phases, and considered all the comments raised at the public seminar.

The following lists those who responded under the consultation processes

An Taisce

Catherine Mullen

Clare County Council

Coillte Teoranta

Environmental Protection Agency
Friends of the Irish Environment
IFS Irish Forestry Services Ltd
Irish Farmers Association
Irish Forestry Industry Chain
Irish Timber Growers Association
Irish Wildlife Trust
Just Forests
Macroom District Environmental Group
National Parks and Wildlife Service
Niall O'Carroll
Patrick Michael R. Hyde
Peter Fegan
Society of Irish Foresters
Teagasc Research Centre Kinsealy
Ted Cook
The Marine Institute
The Salmon Research Agency of Ireland
The Woodland League
Tree Council of Ireland
Woodland Contractors Ltd
Woodlands of Ireland

The submissions were taken into account during the preparation of the Bill.

Enforcement and Compliance

The Bill proposes to empower the Minister to introduce a range of regulations aimed at simplifying the felling licence system, laying down conditions for forest management plans, controlling inappropriate forestry development by way of prior assessment and introducing a range of offences and penalties. The purpose of the offences and penalties is to ensure that those forestry activities that are likely to have an environmental impact are not undertaken without prior consent and prior assessment of the possible impact such development may have on the environment.

The Bill also provides for the establishment of a statutory appeals system by way of an amendment to the Agriculture Appeals Act 2001 which will allow for appeals against Department decisions concerning applications for forestry development consent (i.e. approval, licence, permission etc). It is envisaged that implementation

of the enforcement and compliance provisions of any new Forestry Act will be accommodated within existing resources.

Review

It is intended that the Minister will review, in consultation with key stakeholders, the operation of the Bill post enactment and the Bill is structured so as to allow the Minister to amend the legislative framework, by regulation, in response to any relevant issues that may be identified.

Principal features of the proposed Forestry Bill

1. Ensure that establishment, improvement and development of forests and the forestry sector are undertaken to the highest possible environmental standards

The Bill aims to ensure that any forestry activity which has the potential to have a negative environmental impact will require the prior approval of the Minister. Furthermore, any activity which requires prior approval will be subject to an environmental assessment and only when the Minister is satisfied that the activity will not have a negative impact will approval be granted.

The Forestry Act will provide a statutory regulatory framework which ensures that all forestry development is compatible with protection of the environment and encourages the enhancement of the environment and the development of a modern, multi-functional and high quality forestry sector which enshrines the principles of sustainable forest management (SFM) and international best practice. The new Act will have regard to social, economic and environmental functions of forestry.

2. Tree Felling – Amendment of the existing felling licence system

The Felling Licence system under the Forestry Act 1946 is now considered overly cumbersome and bureaucratic and incapable of dealing with the increasing needs of a modern, privately owned, forestry sector. There are currently two types of felling licences, a General Felling Licence (GFL) and a Limited Felling Licence (LFL). A GFL allows a person to cut down trees as part of normal forest management practices, i.e. forest thinning and/or clearfelling where the area clearfelled is to be replanted. A LFL allows a person to cut down trees other than for normal forest management reasons, e.g. trees located in hedgerows or clearfelling where the area clearfelled is not to be replanted. However, only in limited circumstances will the Minister allow a person to clearfell an area under a LFL without replanting. Where possible, the Minister will insist that the licensee replant an alternative area or

the person can make a payment to the Minister towards the "expenses of the administration of public services relating to forestry" (S.42, Forestry Act 1946) in lieu of replanting.

The Department proposes to replace the existing two felling licence system with a single felling licence. Where a Felling Licence is granted, the Minister will be empowered to attach replanting or preservation conditions but will also have the power to decide not to attach such conditions.

A further issue which attracts many complaints is the existing provision, under S.61 of the 1946 Act, whereby all applications for a limited felling licence must be lodged through the local Garda Station. It is proposed to remove the administrative role of An Garda Síochána from the system. An Garda Síochána has been consulted on the matter and has no objection in principle to this proposal. It is anticipated that these changes will simplify the felling licence system and reduce administrative delays.

3. Provide statutory basis for Forest Management Plans and Forestry Guidelines.

When the Forestry Act 1946 was introduced, the State was the predominant player in commercial forestry and the need to regulate forest planning and management activities was not considered. Forest Management Plans (FMP) provide guidance to forest owners on the long-term management of their forests. This is particularly important for private farm forest owners, where the average forest size is c. 8 hectares. In recent years, most afforestation has been undertaken by farmers who, in the main, have little experience or knowledge of forestry. Consequently, it is vital that all forest owners have a forest management plan, prepared by a suitably qualified professional forester and approved by the Minister, to enable them to plan the future management of their forest asset. It is proposed to place FMPs on a statutory footing. This will enable the Minister to ensure that the national forest estate is being appropriately managed.

*Since 2000, the Forest Service has published the **Irish National Forest Standard, Code of Best Forest Practice – Ireland**, and a suite of*

environmental guidelines on water quality, archaeology, the landscape, harvesting, biodiversity, aerial fertilisation and forest protection. The purpose of these documents is to provide guidance and advice to forest owners on how forests activities should be carried out and how forests should be managed, in accordance with good forest practice. However, these publications have no statutory basis and the Minister often has no power to enforce compliance. It is proposed to empower the Minister to produce and implement guidelines, codes of practice and standards for good forestry practice within a regulatory framework.

4. Allow for change of land use including amending obligation to replant

Currently, under the Forestry Act 1946, the Minister is obliged to require that every applicant who applies for a general felling licence for the purpose of clearing land must replant the land in question. It is proposed to give the Minister the power to waive the replanting obligation when applying conditions to a licence.

5. Introduce a range of offences and penalties in the case of unapproved Forestry Development.

One of the main purposes of the new Forestry Act is to introduce appropriate control mechanisms for forestry operations, by way of licence and consent, so as to ensure that forestry development is undertaken in a sustainable manner and with due regard to the environment. These control mechanisms can only be effective if they are supported by a system of penalties. It is proposed to empower the Minister to apply penalties for minor unlicensed felling offences without recourse to the courts.

6. Appeals

The Bill provides for an amendment to the Agriculture Appeals Act 2001 which will allow appeals against decisions of the Department concerning applications under the forestry grant schemes, and applications for licences or approvals for forestry operations.

7. Enhance Protection of Forests and Plant Health

The Act aims to ensure that Ireland's disease free status is maintained by empowering the Minister to make regulations to prevent the introduction and spread of any organism which may be destructive to trees. The Act will empower the Minister to make regulations to, among other things, destroy any plant, restrict the importation of any forest reproductive material and wood product, order the expulsion of anything that is likely to introduce a destructive disease, insect, pest, invasive species or organism, if he considers its entry a potential danger to the national forest resource, and destroy any such material.

- 8. Empower the Minister to introduce regulations, as appropriate, in order to implement national forestry policy as it evolves.**