

FORESTRY ACT (NORTHERN IRELAND) 2010

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Forestry Act (Northern Ireland) 2010 which received Royal Assent on 28 June 2010. They have been prepared by the Department of Agriculture and Rural Development in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Primary Forestry legislation is contained in the Forestry Act (NI) 1953. The Act is antiquated and reflects a past priority to establish a strategic reserve of timber and to maintain a timber supply. Modern forestry as reflected in the Forestry Strategy - “Northern Ireland - A Strategy for Sustainability and Growth” recognises that forestry is now a complex and multi-functional enterprise, with increasing economic, social and environmental purposes and benefits. It also recognises that the modern Forest Service must manage these diverse and sometimes competing functions in an integrated and balanced way, and strive to maximise the benefit of the public estate.
4. The Act will carry forward several key existing provisions of the Forestry Act (NI) 1953 which support practical, everyday Forest Service business, but in a wider context. It will also introduce some new powers. As well as the traditional function of the development of afforestation, “forestry” will also include the management of forestry land so as to contribute to the protection of the environment, biodiversity and the mitigation of or adaption to climate change. It will also promote and encourage the enjoyment and recreational use of that land by the public and promote the social benefits of forests. The Department will also be able to use or develop forestry land for a purpose other than forestry, which will allow the Department to develop its land to obtain better value from the public estate - for example to allow for the creation of wind farms or the development of tourist facilities.

CONSULTATION

5. The policy proposals underpinning the Act were developed in two major consultations of the industry and key stakeholders between June 2002 and December 2004. This culminated in “A Strategy for Sustainability and Growth” (March 2006). The consultation process highlighted broad support for an update of forestry legislation to provide the Department with more powers to develop more diverse opportunities.

6. Forest Service also consulted with industry and stakeholders in June 2008 and provided them with an update on proposed provisions of the Act.

OPTIONS CONSIDERED

7. The main options considered were:-

Option 1 - Amend the Forestry Act (NI) 1953

Option 2 - Replace the Forestry Act (NI) 1953 with a new Forestry Act

8. The Forest Service did not have all the powers necessary for its increasingly diverse responsibilities, be they economic, social or environmental. Option 1 would have left the Forest Service with an unwieldy Act, with many amendments over different pieces of legislation. The Departmental Solicitor's Office and the Office of the Legislative Counsel both agreed that a revision was not enough, and that a new Act would be required.

OVERVIEW

9. The Act contains 40 sections and 2 schedules which replace the Forestry Act (Northern Ireland) 1953.

COMMENTARY ON SECTIONS

Part 1 – Functions of the Department

Section 1 – General duty of the Department

This section places the Department's duty to promote forestry on a wider footing than the traditional primary role of developing afforestation, the supply of timber, and the maintenance of reserves of growing trees. This had been the emphasis in the 1953 Act, and while this traditional role continues, section 1 recognises that modern sustainable forestry also includes protection of the environment, biodiversity, climate change and social and recreational use.

Section 2 – Principal powers of the Department

This section covers a wide spectrum of the main powers of the Department to engage in and support the afforestation of land, forestry management and woodland industries.

Section 3 – Provision of facilities on forestry land

Section 3 empowers the Department to provide a wide range of facilities to improve the amenity of forestry land. The Department may wish to charge for certain facilities, such as the use of an interpretative centre, or car-parking. However, this must be done with the approval of the Department of Finance and Personnel.

Section 4 – Use or development of forestry land

Section 4 will provide a power for the Department to develop its land to obtain better value from the public estate – for example the use of wind farms or the development of tourist facilities on forestry land. In exercising this power, the Department must have due regard to its general duties in section 1 to promote afforestation and sustainable forestry.

The Department is already committed through the UK Forestry Standard and the UK Woodland Assurance Standard to credible standards of sustainable forest management. Furthermore, any development will have to be in line with the Environmental Impact Assessment (Forestry) Regulations (NI) 2006.

Section 5 – Compulsory acquisition of land

Section 5 will give the Department compulsory purchase powers to provide or improve access to any land for the purposes of its functions under the Act. Acquisition may be temporary or permanent and includes an easement or right over land. This will be a useful power for the Department, particularly where timber ready for harvesting is landlocked and no agreement on access to it is possible. The Department will be required to follow the process for vesting in the Local Government Act (NI) 1972, including the serving of a notice of its intention to make a vesting order, the allowing of representation, provision of compensation, and right of appeal to the Lands Tribunal (as contained in Schedule 1).

Section 6 – Inquiries, information, etc

Section 6 will allow the Department to carry on inquiries and collect and disseminate the results, including the preparation and publication of statistics, for the purposes of any of its functions under the Act, including the promotion of forestry. There is also a new requirement for the Department to publish and maintain a register detailing location, size and type of woodlands in Northern Ireland. The Department may exploit any intellectual property arising from these activities, including the provision of instruction and the undertaking of research under section 5 of the Agriculture Act (Northern Ireland) 1949 and may enter into arrangements with bodies outside Northern Ireland which carry out similar activities.

An offence is created for failure to comply with a request to provide or permit the collection of any information.

Section 7 – Incidental Powers

Section 7 will allow the Department to use partnerships, or body corporate structures, to support its functions. For example, the Forestry Strategy envisages partnerships as a means to accommodate more active or high value pursuits in support of wider government objectives for sport and tourism, and enhancement of the environment. Partnerships or body corporate structures may also support section 4 to obtain better value from the public estate, wind farms and tourism initiatives being two potential examples. The use of these powers is subject to DFP approval.

Part 2 – Protection of Forest Trees from Damage

Section 8 – Control of animals in forests

Section 9 – Control (with permission of occupier) of animals on land adjacent to forest

Section 10 – Control of animals on land adjacent to forests

Sections 8 to 10 are intended to protect forest trees from damage by wild animals. Section 8 allows the occupier, in the event of damage to growing trees by deer or hares (except Irish hares), to cull such animals in their close season.

Section 9 allows the Department to request that occupiers of land adjoining forest take effective measures against wild animals that pose a threat to that forest. As a further resort, the Department may seek permission to enter the land to take, kill or destroy the animals.

Section 10 is similar, except that it would allow mandatory measures rather than the consensual ones in section 9. Section 10 will remain dormant, to be used only at such time as a widespread problem will warrant its activation, when it must be laid before the Assembly (section 39). In both section 9 and section 10, “wild animals” specifically excludes birds, the Irish hare and animals protected by Schedule 5 to the Wildlife (Northern Ireland) Order 1985.

Section 11 – Removal or destruction of vegetation on adjoining land

Section 11 allows the Department, to prevent fire risk from vegetation on uncultivated land adjoining a forest. It may serve a notice on the occupier of the uncultivated land requesting that any vegetation within a 15 metre boundary of the forest should be removed or destroyed or other specified measures taken to reduce fire risk. If the occupier fails to comply within 4 months of the date of service of the notice, an authorised person may remove or destroy the vegetation or take other appropriate action to reduce the fire risk.

Section 12 – Protection for persons acting under sections 8 to 11

Section 7(1)(a) of the Game Preservation Act (Northern Ireland) 1928 forbids the culling of hares in their close season and Section 7(A)(1)(a) forbids their culling on Sundays. Article 19(1) of the Wildlife (Northern Ireland) Order 1985 prohibits the killing of fallow, sika and red deer in the close season.

Article 19(4) of the Wildlife (Northern Ireland) Order 1985 forbids the taking and removing of live deer, their marking or tagging, or their transportation by aircraft, other than inside the aircraft. Persons will be protected against these prohibitions where they take action under sections 8, 9 or 10 of the Forestry Act.

Section 7B of the Game Preservation Act (Northern Ireland) 1928 prohibits the taking, destruction or molestation of the nests or eggs of game birds. Section 7E of the Game Preservation Act (Northern Ireland) 1928 prohibits the burning or destruction from 15 April to the 31 August of cover for game birds. Persons will be protected against these prohibitions where they remove or destroy vegetation under section 11 of the Forestry Act.

Article 10(4) of the Wildlife (Northern Ireland) Order 1985 prohibits the damaging, destruction, or obstruction of the shelter or protective place of any wild animal protected under Schedule 5 of that Order. Article 14 of the Wildlife (Northern Ireland) Order 1985 prohibits the picking, uprooting, removal or destruction of wild plants protected under its Schedule 8. Persons will be protected against these prohibitions where they remove or destroy vegetation under section 11 of the Forestry Act.

Section 13 – Burning of vegetation

Under this section, a person wishing to burn vegetation within one and a half kilometres of a forest not owned by that person is required to give to the forest owner notice of between 14 days and one calendar month.

An offence is created for failure to comply with this requirement.

Following receipt of the notice, a forest owner may serve a counter notice objecting to the proposed burning as it may cause damage. A person who burns vegetation in contravention of the requirement for notice or after receiving a counter notice is liable for any damage caused to the forest.

Section 14 – Protection of forest trees, etc from pests

Section 14 amends the Plant Health Act (Northern Ireland) 1967 (c. 28) to provide powers to make subordinate legislation to control the tree disease risk posed by imported wood packaging.

Part 3 – Felling of Trees (Restriction of felling)

Intrinsic to the restriction of felling of trees is a felling and regeneration licensing system to promote the sustainability of woodlands.

Section 15 – Requirement of licence for felling

The felling restrictions have a threshold of 0.2 hectares because the Department's Forest Service wishes to regulate forests and woodlands, rather than be a steward of individual trees, which are already covered by Tree Preservation Orders under Planning legislation. The threshold was also set because this area matches the minimum area for planting grants under existing Forest Service planting grant schemes.

There is a wide spectrum of exemptions from the requirement for a felling licence, ranging from trees in gardens, public parks, fruit trees, and small trees. An exemption at section 15(2)(e) (ii) is for "where the aggregate cubic content of the trees which are felled by that person without a licence does not exceed 5 cubic metres in any quarter". To get a sense of what this means, 5 cubic metres equates to one large oak tree.

An offence is created for any person who fells trees where an exemption does not apply and where no licence has been obtained.

There is provision for the Department to serve a restocking notice where it appears that an offence has been committed (section 22 – Power of Department to require restocking after unauthorised felling).

Regulations under section 15 must be made by laying of a draft before and approval by resolution of the Assembly.

Section 16 – Application for felling licence

The application for felling licences will be prescribed in subordinate regulations. It is expected that the application will include: details of the location and area of trees to be felled, a map showing the woodland, special features or restrictions such as Tree Preservation Orders or ancient monuments, and the regeneration or other plans for the felled area, and any other information required by the felling management plan. The management plan must be agreed by the Department and the process may involve an inspection by a forest officer of the area to be felled.

The Department has a power, prescribed by regulations, to charge a fee to cover its administration costs, and the cost of the inspection (section 21 – Fees in connection with felling licences). Regulations under section 16 must be made by laying of a draft before and approval by resolution of the Assembly.

Section 17 – Compensation on refusal of felling licence

Any compensation payable will be based on the depreciation of the value of trees attributable to deterioration in the quality of the timber as a result of the refusal of a felling licence. Disputed compensation will be dealt with by the Lands Tribunal.

Section 18 – Operation and conditions of felling licence

A licence of not less than 5 years will be granted subject to a felling management plan for the land in question, and may specify the timing of felling, the restocking of the land and other conditions, such as maintaining the character of ancient woodland. Regulations may provide for details on the form, content and amendment etc of management plans.

Section 19 – Deferred decision on an application for felling licence

There is provision for the Department to give notice to an applicant within 3 months, or within a further agreed time, or the application will be deemed to have been refused.

If it appears that the applicant does not have an estate in the land and could not therefore comply with conditions of a licence, the Department may postpone consideration of the application until the relevant person has become a party to the application.

Section 20 – Appeal against decision of Department on application for felling licence

Section 23 – Appeal against restocking notice

Section 25 – Appeal against enforcement notice

There is provision for appeal to a person appointed by the Department under Section 26 in respect of an applicant: (a) who has been refused a felling licence or who has been aggrieved by the conditions attached to a felling licence; (b) upon whom a restocking notice has been served who objects to the notice or to any of its requirements; or (c) to whom an enforcement notice is given in relation to a felling licence or restocking notice who considers that the conditions of either the licence or the restocking notice have been complied with (Section 24 – Notice to require compliance with felling licence conditions or restocking notice) or that the steps required by the enforcement notice are not required for compliance with either the licence or the restocking notice.

On appeal the appointed person may confirm the decision of the Department regarding the application, the restocking notice or the enforcement notice, or direct the Department to issue the felling licence subject to certain conditions, or modify any existing conditions, or modify or withdraw a restocking notice or an enforcement notice.

An offence is created for failure to take the steps required by an enforcement notice.

Section 26 – Appeals under this Part

An appellant under Section 20, 23 or 25 is entitled to have an appeal determined by a person outside the Civil Service who has been appointed by the Department. The manner and timing of making an appeal and the procedures to be followed in connection with determining an appeal are to be prescribed by regulations.

Section 27 – Identification of trees

There is provision for the Department to mark trees or require identification of trees in certain circumstances, such as where they must be clearly identified by an applicant for a felling licence. For clear felling only the boundary trees need to be marked.

Section 29 – Application of this part to Crown land

Crown land is not excluded from Part 3. However, the grant of a felling licence will not extend to the imposition of conditions on any felling licence granted or to the issue of a restocking notice without the consent of the Crown Estate Commissioners, in the case of land belonging to Her Majesty or the consent of a government department in the case of land belonging to that department. The full requirements of Part 3 apply to any estate which is within Crown land and which is for the time being held otherwise than on behalf of the Crown.

Part 4 – Miscellaneous and Supplementary

Section 31 – Public right of access to, and byelaws for, forestry land

Section 31 bestows a statutory right for pedestrian access to all forestry land. This access will of course be limited in some instances, for example, where there are forestry operations, or environmental sensitivities. The section allows the Department to make byelaws to restrict access, and indeed, to regulate the reasonable use of forestry land by visitors.

Section 32 – Powers of entry

Section 32 provides for an authorised person, on production of his authority, to enter any land for the purpose of exercising any functions of an authorised person under the Act and to enable the Department to carry out any of its functions under the Act. In addition, a person entering land may take other persons and equipment as necessary e.g. for the purpose of monitoring numbers of wild animals.

A number of controls are included:

- The time of entry must be reasonable;
- 24 hours notice must be given to the occupier, or less if the occupier agrees;
- The authorised person must produce his authority, if requested;
- A lay Magistrate's warrant is required where entry is refused or where the land is unoccupied and the circumstances are urgent e.g. in a case of extensive damage being caused to forest land by wild animals on land adjacent to the forest;
- There is no authority for entry to a dwelling house;
- There is a duty on those entering the land to leave it secure;
- If any damage is caused compensation may be recovered from the Department.

The powers of entry are extended under Schedule 1, Compulsory Acquisition of Land, to include surveying or examining land with a view to acquiring it compulsorily, or in connection with a claim for compensation in respect of such an acquisition.

Section 33 – Obstruction of officers, etc

Any person who intentionally obstructs an officer of the Department or an authorised person in the exercise of any function under the Act is guilty of an offence.

Section 34 – Prosecutions under this Act

The time limit for bringing court proceedings for certain offences is 6 months beginning from the date on which sufficient evidence to justify a prosecution is known to the Department. No proceedings may be brought more than 2 years after the offence. The Courts and Tribunal Service has been advised of this provision and is content.

HANSARD REPORTS

10. The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly.

STAGE	DATE
Introduction of the Act to the Committee for Agriculture and Rural Development	28 April 2009
Introduction to the Assembly	29 June 2009
Second Stage debate	15 September 2009
Committee Stage - evidence from Departmental officials	22 September 2009
Committee Stage - evidence from Woodland Trust and Royal Society for the Protection of Birds	3 November 2009
Committee Stage - evidence from Ulster Wildlife Trust	24 November 2009
Committee Stage - evidence from Farm Woodlands Ltd	1 December 2009
Committee Stage - evidence from Council for Nature, Conservation and the Countryside	1 December 2009
Committee Stage - evidence from Sport NI, Premier Woodlands Ltd and British Association for Shooting and Conservation	8 December 2009
Committee Stage - evidence from Northern Ireland Environment Link, Confederation of Forest Industries, Ulster Farmers' Union and Countryside Access and Activities Network	21 January 2010
Committee Stage - evidence from Departmental officials	26 January 2010
Committee Stage - evidence from Departmental officials	1 February 2010
Committee Stage - evidence from British Association for Shooting and Conservation, Confederation of Forest Industries, Countryside Access and Activities Network, Northern Ireland Environment Link, Royal Society for the Protection of Birds, Woodland Trust and Departmental officials	8 February 2010
Committee Stage - evidence from Departmental officials	15 February 2010

*These Notes refer to the Forestry Act (Northern Ireland) 2010 (c.10)
which received Royal Assent on 28 June 2010*

Committee Stage - consideration of sections 1 to 4, 6 to 40, Schedules 1 and 2 (section 5 referred for further consideration)	22 February 2010
Committee Stage - consideration of section 5	23 February 2010
Committee's report on the Act - Report number 29/09/10R	1 March 2010
Consideration Stage in the Assembly	27 April 2010
Further Consideration Stage	17 May 2010
Final Stage	25 May 2010
Royal Assent	28 June 2010

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